

**Should There Be
Public Comments During
Clay County School Board
“Workshop” Meetings?**

*Coulda, woulda, shoulda been
PRESENTED TO THE CCSB:
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CLAY HILL, FLORIDA

Should There Public Be Comments During
CCSB “Workshop” Meetings?

I Am Stanley Frank Pfenning

I Live In Clay Hill, Florida

I Am A Citizen of the United States Of America

I Have Been A Florida Resident Since 1967

I AM A NON-LAWYER

Non-lawyers Cannot Give Legal Advice

I Can Share Common Knowledge; and

**I Can Make Suggestions to Elected
and/or Appointed Boards or Commissions**

Outline:

- Take a look at the improvements taking place :
 - Federal Government
 - State Level:
 - House Bill 355 and Senate Bill 206
 - Local Level:
 - Clay County Board of County Commissioners
 - Clay County School Board

Should There Public Be Comments During CCSB “Workshop” Meetings?

- ❖ Since The First Day Of His Administration, President Barack Obama Has Made Open Government A High Priority
- ❖ The Memorandum On Transparency And Open Government Was The First Executive Action To Bear The President’s Signature, To Work Toward An Unprecedented Level Of Openness In Government

Should There Public Be Comments During CCSB “Workshop” Meetings?

Federal Agencies Have Done A Great Deal To Make
Government More Transparent And More Accessible

Providing People With Information
That They Can Use In Their Daily Lives

and

**Soliciting Public Participation In
Government-Decision-Making**

and

**Collaborating With All Sectors
On New And Innovative Solutions**

Should There Public Be Comments During
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**President Obama
Emphasized
Three Independent
Reasons To Support
Open Government**

Should There Public Be Comments During
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Open Government Promotes Accountability
Which Can Improve Performance

In The Words Of Supreme Court Justice Louis Brandeis:

**“SUNLIGHT IS SAID
TO BE THE BEST OF
DISINFECTANTS”**

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Transparency Enables People To Find
Information They Can Readily Find And Use

For this reason, the President has asked agencies to
“HARNESS NEW TECHNOLOGIES”
and to:

SOLICIT
PUBLIC FEEDBACK
TO IDENTIFY INFORMATION OF
GREATEST USE TO THE PUBLIC

Should There Public Be Comments During CCSB “Workshop” Meetings?

Government Should Develop Policies, Rules, And Plans
With Close Reference To The Knowledge, Expertise,
And Perspectives Of Diverse Members Of The Public

**As The President Said
Knowledge Is Widely Dispersed
In Society, and Public Officials
Benefit From Having Access
To That Dispersed Knowledge**

And Hence

“COLLECTIVE EXPERTISE AND WISDOM”

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As it developed a U.S. National Action Plan (“National Plan”), the Federal Government engaged in extensive consultations with external stakeholders, including a broad range of civil society groups and members of the private sector

It solicited input from the Administration’s own Open Government Working Group, comprised of senior-level representatives from executive branch departments and agencies

White House policymakers also **engaged the public** via a series of blog posts, **requesting ideas** about how to focus Open Government efforts on increasing public integrity, more effectively managing public resources, and improving public services

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The Process Of Opening Government Is A Continuing Work-In-Progress

The National Plan is but one step in an initiative that has produced significant results over the last two and a half years and that will continue, in many forms in the future

The Feds Will Continue To Generate And Implement Open Government Policies And Reforms With The Commitment To
**Continue To Seek Input From Outside Groups
And Citizens** About How To Create A More Open Government

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U.S. NATIONAL ACTION PLAN – NEW INITIATIVES

- ❖ **Creating a more Open Government requires a sustained commitment by public officials and employees at all levels of government; it also requires an informed and active citizenry.**
- ❖ **IN FURTHER TESTAMENT TO THE VALUE OF OPENING GOVERNMENT, MANY OF THE IDEAS PRESENTED WERE THEMSELVES SUGGESTED DURING CONSULTATIONS WITH THE PUBLIC AND NON-GOVERNMENTAL GROUPS**

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**Open Government Increases Public Integrity
and**

Promotes Public Participation In Government
In The United States

We Have A Government Of The People
By The People And For The People

The Wisdom Energy and
Creativity Of The American Public

Is The Nation’s Greatest Asset

**The U.S. Is Committed To
Expanding Opportunities For
Public Participation In Government**

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Last year, President Obama said at the United Nations General Assembly:

In all parts of the world, we see the promise of innovation to make
government more open and accountable

we should bring specific commitments to promote transparency;

to fight corruption;

TO ENERGIZE CIVIC ENGAGEMENT;

and to leverage new technologies so that we
strengthen the foundation of freedom in our own countries,
while living up to ideals that can light the world

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**The Open Government Efforts Of The U.S. Government
Have Been Undertaken With Close Reference
To The President’s Goals:**

Fostering Public Accountability;

Providing People with Information They Can
Readily Find And Use, Often In Their Daily Lives;

and

**BENEFITING FROM THE
DISPERSED KNOWLEDGE OF
THE AMERICAN PEOPLE**

Should There Public Be Comments During CCSB “Workshop” Meetings?

**Florida's Sunshine Law Provides A Right of Access to
Governmental Proceedings at
Both the State and Local Levels**

The Sunshine Law **generally applies to
any gathering, whether formal or casual,**
of two or more members of the same board or commission
**MEETING TO DISCUSS SOME MATTER ON
WHICH FORESEEABLE ACTION WILL BE TAKEN**

Should There Public Be Comments During CCSB “Workshop” Meetings?

Article I, Section 24 of the Florida Constitution:

All meetings of any collegial body of
The executive branch of state government or
Of any county, municipality,
SCHOOL DISTRICT, or special district,
At which official acts are to be taken

or

**At which public business
Is to be transacted or discussed,**

SHALL BE OPEN AND NOTICED TO THE PUBLIC

Should There Public Be Comments During CCSB “Workshop” Meetings?

CHAPTER 286, FLORIDA STATUTES:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision...

except as otherwise provided in the Constitution

...at which official acts are to be taken are declared to be public meetings open to the public at all times

and

no resolution, rule, or **formal action** shall be considered binding except as taken or made at such meeting

Should There Public Be Comments During CCSB “Workshop” Meetings?

WHEN DOES THE SUNSHINE LAW APPLY?

The Sunshine Law applies to any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision

It applies equally to elected or appointed boards or commissions such as

SCHOOL BOARDS and special districts and virtually all state and local collegial public bodies are covered by the open meetings requirements

Should There Be Public Comments During CCSB “Workshop” Meetings?

What Are The Procedural Requirements Of The Sunshine Law?

There Are Four Simple Requirements:

- 1) **Meetings Of Boards Or Commissions Must Be Open To The Public**
- 2) **Reasonable Notice Of Such Meetings Must Be Given**
- 3) **Minutes Of Meetings Must Be Taken**
- 4) **Venue Must Be Accessible**

**A Public Agency Cannot Hold A Meeting At Any Facility
Which Discriminates Based On Age, Race, Etc.,**

Nor Can A Public Agency Unreasonably Restrict Public Access

**It Must Hold Meetings In An Accessible Facility Of
Sufficient Size So As To Accommodate The Anticipated Turnout**

Should There Public Be Comments During
CCSB “Workshop” Meetings?

What Is Reasonable Notice?

**"Reasonable" Is Not Defined In The Florida Statutes,
But The Courts Have Said
Notice Of Public Meetings
Must Be "Sufficient So As To Inform"
Members Of The Public Who May Be
Interested In Attending The Meeting**

**This Means That Such Notice
Must Be Reasonable Under The Circumstances**

**The Required Notice Must Be
Reasonable In Terms Of
Content, Timing, And Placement**

Should There Public Be Comments During
CCSB “Workshop” Meetings?

What Is The General Rule Relating To Public Participation?

**Generally, The Public Has An
"Inalienable Right To Be Present
And To Be Heard"
At Most Public Meetings**

Government Agencies Can Adopt Reasonable Rules
Which **Require Orderly Behavior**
And
Allow For The **Orderly Progression
Of Public Meetings**

This Includes
Limiting The Amount Of Time An Individual Can Speak
When A Large Number Of People Attend And Wish To Speak

Should There Public Be Comments During CCSB “Workshop” Meetings?

When Can A Meeting Be Closed To The Public?

There Is A **General Presumption Of Openness**, Meaning That A Meeting Of Two Or More Members Of The Same Collegial Body Is Presumed Open **Unless There Is A Specific Statutory Exemption**

**ONLY THE LEGISLATURE CAN CREATE AN
EXEMPTION TO OUR CONSTITUTIONAL RIGHT OF ACCESS**

**There are over 1,000 exemptions
to the public records and open meetings law,
and many of the meetings exemptions have strict
limitations, requiring tape recordings, limiting who
may attend the closed meeting, etc.**

Should There Public Be Comments During
CCSB “Workshop” Meetings?

1st District Court of Appeals
Opinion, filed March 10, 2010
**NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR
REHEARING AND DISPOSITION THEREOF IF FILED**

Keesler and Boyd

Appellants

v.

Community Maritime Park Associates, Inc.
(CMPA)
Appellees

Should There Public Be Comments During CCSB “Workshop” Meetings?

Trial Court in Escambia County
considered whether Sunshine requires
CMPA, Inc. to allow input from the
public during reasonably noticed and
open public meetings
Keesler and Boyd contend the phrase
“Open to the Public” inherently
includes the right to speak during
open meetings

Should There Public Be Comments During
CCSB “Workshop” Meetings?

In Escambia County
Judge Frank Bell
granted summary
judgment in favor of
CMPA

Should There Public Be Comments During
CCSB “Workshop” Meetings?

Judge Bell found that § 286.011(1)
gives Keesler and Boyd the right to be
present but not to speak at CMPA
meetings.

The First District Court of Appeals
Agreed and **AFFIRMED**

Should There Public Be Comments During CCSB “Workshop” Meetings?

That is not to say the courts have
ruled the public cannot speak
during public meetings

The courts do not want to legislate
from the bench as supported by the
words found in this 1st DCA Opinion

Should There Public Be Comments During CCSB “Workshop” Meetings?

“We agree with the trial court that the remedy Appellants are seeking in this case is more appropriately left to the legislative process or the local public officials to whom the CMPA board members are accountable.”

Should There Public Be Comments During
CCSB “Workshop” Meetings?

I respect the courts for not
waiting to legislate from the
bench

Trusting in the legislative process,
sounds reasonable enough to me
I can do that!

Should There Public Be Comments During CCSB “Workshop” Meetings?

There is legislation currently pending in Tallahassee that if passed in to law will effectively force all public boards and commissions in Florida to formally adopt rules and policies for public participation during certain public meetings

Should There Public Be Comments During
CCSB “Workshop” Meetings?

Senate Bill 206
Sponsored by
Sen. Joe Negron

Companion bill:

House Bill 355
Sponsored by
Rep. Martin David "Marty" Kiar

Should There Public Be Comments During CCSB “Workshop” Meetings?

When SB206/HB355 passes into law:

Members of the public shall be given a reasonable opportunity to be heard on an item that is of significant interest to the public and that is within the subject matter jurisdiction of the board or commission.

Should There Public Be Comments During CCSB “Workshop” Meetings?

The Reapportionment Committee took great efforts to allow public input into the re-drawing of district lines.

Sen. Gaetz showed brilliant leadership by insisting it was right to allow public input and to take public comments from the customers, the true stake-holders at many locations around the state

Should There Public Be Comments During CCSB “Workshop” Meetings?

The Clay County School Board has the opportunity to be viewed as leaders in the quest for a more open and transparent government by choosing to adopt formal rules and policies to allow public participation during all CCSB Public Meetings instead of waiting for Tallahassee. You also have the opportunity to show Clay County voters how you feel about their right to speak during public meetings.

Should There Public Be Comments During
CCSB “Workshop” Meetings?

The Published CCSB Policy refers to
the “RIGHT OF ANY CITIZEN TO
ADDRESS THE [SCHOOL] BOARD”

The CCSB Policies written word,
Not an attorney’s spoken words
Referring to some privilege

FACT:

The Clay County School Board
Policy **Does Allow**
The Public To **Attend All**
CCSB Meetings
With Certain Specified Exceptions

ISSUE:

**In Practice, Historically The CCSB Has Not
Allowed For Public Comments During
“Workshop” Meetings**

**According to Deputy Superintendent Denise Adams
- There is NO Written CCSB Policy
for Workshop Meetings -**

CCSB POLICIES:

§1.02 THE DISTRICT SCHOOL BOARD

E. Board Meetings

1. Time of Meetings

a. The *regular meetings* of the School Board shall be held on the third Thursday of each calendar month at 7:00 p.m. Future regular meeting dates may be changed by action of the School Board at any previous meeting; provided that each member is notified by letter or by distribution of the minutes showing a record of the change. When a meeting date is changed, the Superintendent shall take appropriate action to inform the public.

CCSB POLICIES:

b. *SPECIAL MEETINGS* SHALL BE HELD AT THE TIME DESIGNATED BY THE SUPERINTENDENT, SCHOOL BOARD CHAIRMAN, OR WHEN CALLED BY A MAJORITY OF THE SCHOOL BOARD MEMBERS AS SPECIFIED IN WRITTEN NOTICE

CCSB POLICIES:

c. All Official Meetings Of The School Board Shall Be Open To The Public, **Except As Provided Under Section E,** Hereunder, And **Any Other Meetings Or Conferences Shall Be Conducted As Public Meetings**

ANY CITIZEN SHALL BE GIVEN AN OPPORTUNITY TO ADDRESS THE SCHOOL BOARD DURING ITS MEETINGS

CCSB POLICIES:

d. NO FORMAL ACTION SHALL BE TAKEN BY THE SCHOOL BOARD AT ANY MEETING OTHER THAN A REGULAR OR SPECIAL MEETING. A School Board may not conduct business in a secret meeting. A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public and discuss official business. **When at such meetings officials transact or agree to transact business at a future time in a certain manner, they violate the Government in the Sunshine Law, regardless of whether the meeting is formal or informal**

CCSB POLICIES:

e. *Exceptions to the Sunshine Law* – Pursuant to the **Public Employees Collective Bargaining Act, Chapter 447, Florida Statutes**, all discussions between the chief executive officer of the public employer, or his/her representative, and the legislative body or the public employer relative to collective bargaining are exempt from the Sunshine Law. However, pursuant to 447.605 (2), collective bargaining negotiations between a chief executive officer, or his/her representative, and a bargaining agent are not exempt from the Sunshine Law. **Also, certain hearings concerning exceptional students are exempt from the Sunshine Law pursuant to the Privacy Act.**

ANALYSIS:

**YES, THE CLAY COUNTY SCHOOL BOARD SHOULD
ALLOW THE CITIZENRY TO MAKE COMMENTS AT EVERY STAGE
OF THE GOVERNMENT-DECISION-MAKING PROCESS**

**One Respected CCSB Member Stated That Historically Only 2 or 3 Citizens Attend Most
"Workshops" – If Each Were Given 3-Minutes, Less Than Ten Minutes Would Be Added
to the Meeting**

**Federal Or State Laws Encourage The Free Exchange Of Ideas
During Most Government Meetings in Florida – Public Comments ARE Permitted:
The Cost to the Taxpayer for Allowing Public Comments is Negligible**

**The pending legislation in Tallahassee has a very good chance of becoming Florida Law
this current Legislative Session.**

**There Is No Official Written CCSB Policy On
"Workshop" Meetings –**

CONCLUSION:

Should There Public Be Comments During
CCSB "Workshop" Meetings?

**In The Absence Of A Contrary Written
Policy**

**"Workshops" Should Be Viewed By CCSB
Definition
As "Special" Meetings**

**THE CCSB POLICIES CURRENTLY DO
PERMIT
ORDERLY PUBLIC COMMENTS DURING
ALL OPEN MEETINGS; INCLUDING,
REGULAR AND SPECIAL MEETINGS**

“There Will Never Be A Really Free And Enlightened State Until The State Comes To Recognize The Individual As A Higher And Independent Power, From Which All Its Power And Authority Was Derived, And Treats Him Accordingly.”

~Henry David Thoreau~



Have a Very Nice
Rest of the Day
Okay!

December 15, 2011

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Should There Public Be Comments During CCSB “Workshop” Meetings?

Sources:

http://www.whitehouse.gov/sites/default/files/us_national_action_plan_final_2.pdf

<http://www.floridafaf.org/resources/faqs>

http://www.clay.k12.fl.us/school_board_policies.htm

<http://www.flsenate.gov/Session/Bill/2012/206>