

SWEET | STEVENS | KATZ | WILLIAMS

Lawyers for education.



Mark Cheramie Walz

mwalz@sweetstevens.com

BOARD MEMBERS, SUNSHINE ACT & SOCIAL MEDIA

Social media allows school board members an easy mechanism to communicate with one another and to discuss business that may be coming before the board. But, does communicating about school district business in a private social media group violate the state Sunshine Act?

The Pennsylvania Open Meetings Law (also known as the Sunshine Act), which applies to all political subdivisions, requires that “official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public,” unless an exception to the law (such as executive sessions) applies. Official action includes making decisions on school district business and establishing any policy. Deliberations mean the discussion of agency business for the purpose of making a decision.

Pennsylvania courts have previously established that the Sunshine Act does not require agency members to inquire and learn about issues only at open meetings. Public officials have an affirmative duty to be fully informed and, as such, may “study, investigate, discuss and argue problems and issues” outside the confines of public meetings. The Pennsylvania Supreme Court recently ruled that “There is nothing in the [Sunshine] Act that expressly precludes private information gathering as a collective effort by members of an agency, including by a quorum. What the [Sunshine] Act does proscribe is private deliberations.”

Accordingly, it does not per se violate the Sunshine Act for school board members to discuss school district business on social media, even with a quorum of the group. But, it is critical that board members be educated on this issue and understand the difference between discussing and learning about school district business, and deliberating for the purpose of making a decision. The latter must be conducted in an open meeting. Given the difficulty in discerning the difference between discussions and deliberations, we suggest that board members avoid this practice altogether.

Furthermore, once a citizen alleges a violation of the Sunshine Act and initiates a civil action in court, all such social media conversations would be subject to discovery and would likely be made public. So while a private social media group may give the appearance of a safe space to air grievances and to speak candidly, it is not the proper mechanism to do so. Board members should be aware of this risk before utilizing social media to discuss school district business.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

SOUTHEAST REGION OFFICE

331 East Butler Avenue, New Britain, PA 18901

PHONE 215 345 9111 | FAX 215 348 1147

CENTRAL REGION OFFICE

P.O. Box 956, Hershey, PA 17033

PHONE 717 641 9025 | FAX 717 641 9026

NORTHEAST REGION OFFICE

2 South Main Street, Suite 303, Pittston, PA 18640

PHONE 570 654 2210 | FAX 570 655 1875

SWEETSTEVENS.COM