

State of Florida
Office of the Attorney General
Informal Legal Opinion

Number: **INFORMAL**
Date: **June 11, 2001**
Subject: **School board rules, minimum guidelines**

Ms. ~~Cynthia~~ S. Prettyman
General Counsel
Palm Beach County School District
3340 Forest Hill Boulevard, C-316
West Palm Beach, Florida 33406-5869

RE: SCHOOL BOARDS--RULEMAKING--SUPERINTENDENT OF
SCHOOLS--ADMINISTRATIVE PROCEDURES--board rules must contain minimum
guidelines for administration. ss. 120.536, 120.54, 230.22 and
230.32, Fla. Stat.

Dear Ms. Prettyman:

On behalf of the superintendent of the Palm Beach County School District, you have asked this office for a legal opinion as to whether school board policies or rules governing the internal administration or operation of the school district must include guidelines or procedures to be followed when implementation of such policies or rules has been delegated to the superintendent.

In sum, school board rules must contain guidelines or procedures to be followed by the superintendent for their administration or implementation, even though they cover the internal administration or operation of the school district.

Your original question was cast in terms of whether the rule-making provisions in sections 120.536 and 120.54, Florida Statutes, require rules adopted by the school board to contain procedures to be followed under the cited circumstances.[1] A more basic issue to be resolved is whether minimum guidelines are in place such that there is a valid delegation of authority to the superintendent.

Section 230.22, Florida Statutes, sets forth the general powers to be exercised by the school board, after considering recommendations submitted by the superintendent. These general powers include the authority to:

- "(1) Determine policies and programs deemed necessary by it for the efficient operation and general improvement of the district school system.
- (2) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it to supplement those prescribed by the state board and the commissioner."

It is well settled that a governing body makes all "fundamental and primary policy decisions" and that the delegation of authority to administer a program thereunder, in order to be valid, must contain

"some minimal standards or guidelines." [2] The degree of specificity required in such standards or guidelines depends upon the complexity of the subject and the "degree of difficulty involved in articulating finite standards." [3]

The sufficiency of guidelines is determined by whether they adequately enable the one who has been delegated authority and the courts to determine if the governing body's intent is being carried out. [4] Absent sufficient standards, the agency or individual becomes the "lawgiver rather than the administrator of the law" [5] and is open to "acting through whim, showing favoritism, or exercising unbridled discretion." [6]

Thus, the school board, as the governing body of the school district, in promulgating rules to be administered by the superintendent, must provide minimal guidelines to insure that the board's intent is carried out. Rules promulgated by the school board are presumed to be valid and must be given effect until ruled otherwise by a court of competent jurisdiction. [7]

Section 230.32, Florida Statutes, sets forth the general powers of the superintendent. These powers include advising and counseling the school board on educational matters and recommending to the board matters upon which action should be taken. [8] The superintendent may also "[r]ecommend to the school board for adoption such policies pertaining to the district school system as the superintendent may consider necessary for its more efficient operation." [9] Moreover, the superintendent may submit rules to the board for adoption which, once adopted, the superintendent must see are executed. [10]

Nothing contained in the school code, however, would exempt the school board from the basic requirement that a rule must contain minimal guidelines to insure that implementation of the rule carries out the board's intent.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] You have provided copies of proposed policies that apparently have not been adopted as rules, but are characterized parenthetically as such. While the court, in *Florida League of Cities, Inc. v. Administration Commission*, 586 So. 2d 397 (Fla. 1st DCA 1991), stated that when an agency has not yet solidified its position on policy in a particular area, agency policy is incipient or evolving and therefore exempt from rulemaking. Section 120.52(15), Fla. Stat., defines the term "Rule" to mean

"each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes procedure or practice requirements of an agency and includes any form which

imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. . . ."

[2] *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978) (fundamental and primary policy decisions shall be made by members of the Legislature, while administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment act establishing the program). See also, Op. Att'y Gen. Fla. 91-24 (1991) (Zoning is a legislative power not delegable to an administrative board; execution of zoning plans, however, may be carried out by an administrative board or body, if the instrument conveying such power contains meaningful standards and guidelines for the board or body to follow in exercising its power).

[3] 372 So. 2d at 918.

[4] See, *Department of Insurance v. Southeast Volusia Hospital District*, 438 So. 2d 815, 819 (Fla. 1983), appeal dismissed, 466 U.S. 901 (1984).

[5] 372 So. 2d at 919.

[6] *Lewis v. Bank of Pasco County*, 346 So. 2d 53, 56 (Fla. 1976).

[7] See, Ops. Att'y Gen. Fla. 85-81 (1985), 82-4 (1982), 79-46 (1979), and 76-185 (1976). Cf., *Department of Professional Regulation, Board of Medical Examiners v. Durrani*, 455 So. 2d 515 (Fla. 1st DCA 1984); *Florida Citrus Commission v. Golden Gift*, 91 So. 2d 657 (Fla. 1956).

[8] Section 230.32(2), Fla. Stat.

[9] Section 230.32(3), Fla. Stat.

[10] Section 230.32(4), Fla. Stat.