



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Larry Lebowitz

Case: K15-036	Case Name:	Date Open:	Date Closed:
Complainant(s): Paul Calli	Subject(s): Miami Shores Charter School Board of Directors and Mayor Alice Burch	CASE CLOSED June 2, 2015 Date: 5/24/17	

Allegation(s):

Conducting a secret meeting of a municipally-owned Charter School board at which a majority of board members voted to not renew the principal's contract for the upcoming school year. The meeting was held without notice. No minutes were taken. The proceedings were not recorded, all in violation of the state Sunshine Law..

Relevant Ordinances:

Florida Statutes, Chap. 286.011
Public meetings and records; public inspection; criminal and civil penalties.—

(1) 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, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree...

Florida Constitution, Section 5(a), Article II, which provides in part that "[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein . . ." The constitutional provision does not define the term "office" or "officer," but the Supreme Court of Florida has stated that an "office" implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office.

For more detail, see the Attorney General's Office compiled case law precedents on dual office-holding at:

<http://myfloridalegal.com/pages.nsf/Main/92e25864d475966f85256cc6007b96cb>

Investigation:

Interviews

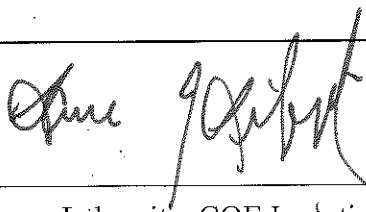
- Paul Calli, Joan Lutton, Susan Dombrowsky, Nicholas Dorn, Carter Winkle, David Benjamin, Dr. Alan Silbert (via proffer from attorney Jack Blumenfeld), Reid Bernstein, City Clerk Barbara Estep, Attorney Joseph Raia.

Document/Audio/Video Review:

Extensive public records --- mostly board members' emails -- were gathered as part of this investigation. Phone records were subpoenaed. Video tapes of relevant board meetings that occurred after the illegal meeting were reviewed and partially transcribed. See file for more details.

Conclusion(s):

See State Attorney's Office close-out memorandum for details, supplemented by investigative memoranda summarizing the COE's role in the case, attached to this report.

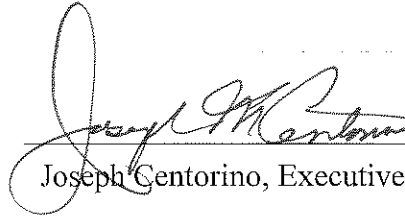


Larry Lebowitz, COE Investigator

Approved by:



Michael Murawski, Advocate



5/24/17

Joseph Centorino, Executive Director

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Miami-Dade County Commission on Ethics and Public Trust

To: Michael Murawski, Advocate &
Joseph Centorino, Executive Director

cc: Martha D. Perez, Staff Attorney

From: Investigator Larry Lebowitz

Date: May 22, 2017

Re: Close out K15-036 (Miami Shores Charter School, Alice Burch case)

Attached please find the State Attorney's Office close-out memo regarding Miami Shores Mayor Alice Burch's role in a violation of the state Sunshine-in-Government and Open-Meeting laws by members of the Miami Shores Village Charter School Authority (d/b/a the Doctors Charter School board of directors) on May 21, 2015.¹

I am attaching this supplemental report to close out the COE file and further document materials that may not be highlighted in the SAO analysis.

JURISDICTIONAL HISTORY

Paul Calli ("Calli") -- a local attorney whose children attend Doctors Charter School and who coaches the baseball team there -- filed a formal Complaint with COE² alleging Sunshine Law violations. Acting on a recommendation from the Advocate, the Commission dismissed Calli's Complaint as legally insufficient in July 2015. The Advocate argued that Sunshine violations are criminal in nature and are not specifically subject to the Commission's civil jurisdiction.

Calli had concurrently raised the same allegations to the Chief of the Public Corruption section at the State Attorney's Office, who asked this investigator to work on the SAO case with Assistant State Attorney Luis Perez-Medina. This Investigator, working at the direction of ASA Perez-Medina, conducted the bulk of the work, but the case was completed with ASA Trent Reichling.³

As the SAO close-out note mentions, Alice Burch ("Burch"), through her attorney, Jane Raskin, declined repeated requests to provide a voluntary statement to the SAO. Raskin refused to let her client

¹ Close-Out Memo, Criminal Investigation, Public Corruption Unit, 64-15-34

² COE Case C15-08: *Calli vs. Miami Shores Charter School Authority*

³ ASA Reichling was assigned the case when ASA Perez-Medina took a leave of absence to run for a circuit court judgeship in 2016

be interviewed without a subpoena that would have provided Burch with limited immunity from prosecution.

After the SAO close-out, this Investigator briefly suggested that COE consider reclaiming jurisdiction, and continue the investigation under the County Code provision prohibiting the "Exploitation of Official Position."

But exploitation would have been hard to prove by a preponderance of the evidence. While she wielded oversized power and influence over the Doctors Charter School board ("DCS board") after serving as its most active member over a 12-year period, Burch, legally, was not a member of the board at the time of the illegal acts, nor was she in the room when the Sunshine Law violations occurred. And while all of the players involved were aware that Burch had been elected Village Mayor, there is little evidence that she exploited her mayoral post to induce a majority of friends and political loyalists on the DCS board to violate the Sunshine Law.

BACKGROUND AND FACTS:

Burch was a member of the the DCS board from its inception in 2003⁴ until her election as mayor in April 2015. Several witnesses described Burch as the charter school's *de facto* godmother, and one of DCS' most active and powerful board members. As the board's longtime Secretary, she maintained the minutes, set and distributed agendas for the board and its various committees, and maintained a close working relationship with board Chair Dr. Alan Silbert of the NDMF and helped to recruit like-minded volunteers to seek appointment to the board by the Village Council.⁵

While the settled case law is clear that Burch, legally, was no longer a member of the school board from the moment she took the oath of office for her mayoral post,⁶ her subsequent acts led to the Sunshine violations committed on May 21, 2015, by a majority of her friends and political allies on the DCS board.

In essence, after her election as Mayor, Burch continued to play an oversized, powerful, behind-the-scenes role on the DCS board and led those board members to conduct the illegal, private meeting at which they orchestrated the *de facto* firing of DCS Executive Director Nicholas Dorn on May 21, 2015.⁷ The meeting was not publicly noticed. No minutes were taken.⁸ The proceedings were not recorded.⁹

⁴ Serving grades 6-through-12, DCS opened in 2005 after obtaining a \$10 million endowment from the North Dade Medical Foundation ("NDMF") and village voters ratified a construction bond issue in 2004. It was built on land leased from Barry University at the site of the former Biscayne Kennel Club. Unlike many privately run charter schools, the DCS charter is issued to the Village of Miami Shores. As a subdivision of the local government, the DCS board is subject to the state Open Government and Sunshine Law provisions.

⁵ The DCS board has 13 members: Seven appointed by the Miami Shores Village Council, and two apiece from the North Dade Medical Foundation, Barry University, and the DCS Parent Teacher Student Association.

⁶ After a recount, Burch was declared the top vote-getter and sworn in as Village Mayor on April 21, 2015

⁷ Technically, the board voted not to offer Dorn a contract renewal for the upcoming 2015-16 school year

⁸ Then-Board Chairman Dr. Alan Silbert scratched together some notes that were entered into the record after the fact on June 13, 2015 as part of the "cure." But the minutes didn't accurately reflect who said what, who made the motion to not offer Dorn a new contract or how board members voted.

⁹ It should be noted that the illegal "shade" meeting occurred immediately after the regular, publicly noticed DCS board meeting was adjourned. Because the DCS board had failed to find a new secretary to replace Burch, minutes were taken of the May 21 regular meeting by a DCS employee. Nobody

The illegal meeting occurred immediately after the regular, publicly noticed DCS board meeting of May 21 had adjourned. Because the DCS board had failed to appoint a new Secretary to replace Burch, minutes of the regular meeting were taken by a school employee. Nobody asked that employee to stay and record the illegal "shade" meeting.

It should also be noted that Burch was in the audience for the regular, publicly noticed meeting, the minutes of which reflect that she spoke on a topic from the audience. But Burch departed when the "shade" meeting began. Dorn stated that he was blind-sided by the secret meeting. He had attended the regular meeting and addressed several issues as the school principal, but was not asked to stay, even though his contract renewal was the only subject discussed at the illegal closed-door meeting.

The evidence showed that Burch, who had served as the DCS board secretary for many years, distributed a "dossier" of email complaints she had been compiling since the start of the school year from DCS employees who disagreed with Dorn or did not like his management style. Burch held onto those emails for most of the school year, choosing to distribute them, and other items, to board members after she was elected mayor, but in the days just prior to the illegal meeting. She personally mailed them, and other items, to most of the board members¹⁰ after she was elected mayor, but in the days just prior to the illegal meeting. And even though she was no longer a DCS board member, Burch was the one who attempted, at the last minute, to contact the DCS outside legal counsel, Joseph Raia, to determine if a "shade" meeting was legal.

At 7:35 AM on May 21, Burch sent an email to Raia with the Subject line: "Can the DCS Board meet privately under this provision about the [Executive Director's] contract?" She copied a section of the Florida Statutes, Chapter 447.605, which provides very limited exemptions to the open-meetings law where a legislative body such as the school board could meet privately with its chief executive or a delegated representative to prepare for collective bargaining negotiating strategy. She wrote:

Dear Joe,

I am in a very strange situation. I cannot serve on two boards at once. I want our chairman, Alan Silbert MD, to be able to hold a closed meeting at the end of the DCS Board meeting today on the renewal of the one-year contract with the Executive Director. I'd like him to have a determination from you about this so that he can feel confident in distributing documents about the ED that do not need to be made public.

She attached a copy of the Sunshine Law exemptions, a copy of the dossier she had already distributed to the board members regarding the staff complaints about Dorn, plus an excerpted memo from Daniel Tosado, a retired Miami-Dade Public Schools administrator who briefly acted as a consultant to the DCS board and a mentor to Dorn.¹¹ Burch stated that she didn't want to publicly

asked that employee to stay and record the illegal "shade" meeting. It should also be noted that Burch was in the audience for the regular meeting, and spoke on a topic, but left the room when the "shade" meeting began. It should also be noted that Dorn, who attended the regular meeting and addressed several issues as any school principal normally would, was not asked to stay even though his contract renewal was the only subject discussed at the subsequent "shade" meeting.

¹⁰ DCS board member Lutton was in Europe at the time, and received her dossier of materials from Burch via email. She participated in the illegal meeting via Skype, objected to its results and resigned days later.

¹¹ Tosado was hired by the board to act as a mentor for Dorn. They met a handful of times in early 2015. Dorn said he cut off contact when he realized that Tosado was expecting to be paid by DCS.

distribute the criticisms of Dorn. But enticing her former board colleagues into an illegal private meeting served another purpose: It shielded her DCS board allies from publicly acknowledging that they were forcing Dorn out after just one school year.

When Burch failed to reach Raia in time, she instructed board Chair Silbert that she believed it was OK to forge ahead with the meeting.¹² Raia was on vacation at the time, and didn't formally respond to the email until after the board, led by Dr. Silbert, met privately in closed session and voted not to renew Dorn's contract.

Raia's response to Burch at 12:07 AM on May 22:¹³

Sorry that I am just seeing this email now, but that provision would not apply to this situation.

Joe

After the fact, Burch, in her own emails, referred to these acts as "her mistake," "my fault" and claimed to take "full responsibility for the error."

At 2:51 AM, Burch responded to Raia:

Dear Joe,

By the time you wrote this, my fault, a shade meeting had been held. We need your help in curing the defect. Sadly, the Doctors Charter School Board will need to advertise a full, open meeting on the issue of whether or not to offer a second year on Mr. Dorn's contract. I am copying [board Chairman] Dr. [Alan] Silbert and will help him to advertise the meeting. It seems necessary to me that you, Joe, be present at this meeting. I take full responsibility for the error.

Early last evening I had a conversation with a very valued member of the Board, who is also the Vice Chairman [David Benjamin]. The shade meeting had shaken him up quite a bit, as he strongly disagreed with the result. He is an attorney, so it did not take him long to go home, discover the sunshine law violation, have a sleepless night, and send me his resignation from the Board. I spoke to him, and the resignation was mostly (not entirely) about being part of a Board that would violate the sunshine law. I assured him that it was my fault and that we would take

Tosado confirmed in a phone interview that he was uncomfortable being asked by DCS to evaluate Dorn's performance because he wasn't hired in that capacity. Tosado was unaware Dorn had not been extended a contract extension and expressed surprise that some DCS board members were using his notes to justify not renewing Dorn's contract. While Dorn clearly had some areas that merited improvement, Tosado stated that Dorn was a young administrator and had the capacity to grow into the job. Tosado was not under oath or subpoena at the time. By the time the SAO decision was made to not proceed with the case, his testimony became moot.

¹² See emails between Alice Burch and attorney Joseph Raia, and proffer of Dr. Alan Silbert, via his attorney, Jack Blumenfeld.

¹³ There were other missed communications between Burch and Raia on the evening of May 21 before he sent the email explaining that she was incorrectly interpreting the exemptions to the Sunshine law. At 5:40 PM – prior to the regularly scheduled board meeting – Burch sent Raia an email with an attached copy of Dorn's contract and contact information for Dr. Silbert. The email was prefaced with "Sorry to bother you when you are so far away." At 8:17 PM – shortly after the illegal shade meeting concluded – Raia sent Burch an email with the Subject line: "I hear you need to talk" and told her to call him on the cell. At 9:02 PM Raia sent Burch another email explaining that he was having trouble reading the .pdf file of Dorn's contract on his smartphone and will try to open it later when he had access to his laptop.

immediate steps to cure the defect. He put a hold on his resignation for more time to think the matter over. Of course he thinks Mr. Dorn should have the opportunity to speak, to represent his views.

She made similar, apologetic on-the-record admissions in emails to other board members and in public meetings after news of the illegal May 21 shade meeting started to circulate on social media websites in Miami Shores.¹⁴

DCS board member witnesses -- including attorney Benjamin and Barry University Education Professor Carter Winkle -- testified that the entire May 21 meeting appeared to have been a pre-ordained ambush. Benjamin, Winkle and Joan Lutton pointed to prepared remarks made at the outset of the "shade" meeting by board Treasurer Connie Benson, a Burch loyalist. Benson made the motion to not offer Dorn a contract renewal for 2015-16. Several described the Benson soliloquy and motion as "scripted."¹⁵

The DCS board, acting on the advice of the school's legal counsel¹⁶ after the fact, "cured" the illegally conducted "shade" meeting with a legally noticed, emergency public meeting on May 27, 2015, at which Dorn's contract was discussed again. The board voted publicly, on the record, not to offer Dorn a contract renewal for the 2015-16 school year. But that vote was largely a formality since Dorn had already tendered his resignation on May 24 in the wake of the illegal meeting.¹⁷

In the following weeks, most of the key players on the DCS board resigned or refused to seek reappointment when their terms expired in June 2015.¹⁸ Many of the people who were critical to the Sunshine Law violations were volunteer appointees. One of those persons who departed the DCS board after the Dorn affair was Burch ally Dennis Kleinman.

Emails exchanged between Kleinman and Burch left little doubt that Burch wanted to get rid of Dorn from the outset. At 10:10 AM on Sunday, May 24 -- the Sunday of the three-day Memorial Day -- Dorn resigned in an email sent to the entire DCS board. Later that day, Kleinman sent Burch an email with Dorn's resignation attached:

*Hi Alice,
Mission accomplished. Somebody must have leaked the news.*

¹⁴ See Burch's statements at the Miami Shores Village Commission meeting on June 2, 2015.

¹⁵ Benson was on a list of prospective witnesses but was not interviewed. Benson was among the group of longtime DCS school board members who declined to seek re-appointment in June 2015. By the time the SAO decision was made to not proceed with the case, her testimony became moot.

¹⁶ Unlike most municipal school boards, DCS and its various committees would often operate without a staff or contract attorney at its meetings. The school is represented by legal counsel specializing in charter-school issues, but the school board only occasionally would employ that firm.

¹⁷ Emails and testimony of DCS board member Lutton, who was opposed to Dorn's dismissal and resigned from the board after the "shade" meeting. Lutton testified that she had been asked by Burch to help Dr. Silbert break the news to Dorn that his contract wasn't going to be renewed. Lutton testified that she didn't tell Burch or Silbert that she had already privately urged Dorn to resign rather than have a public firing on his record that might hurt his future career opportunities.

¹⁸ All of the DCS board members who voted to not renew Dorn's contract either immediately resigned or let their terms expire within weeks of the "cure" meeting. A new majority of DCS board members was appointed by the Village Council. The newly constituted DCS board, at its first meeting, voted to offer Dorn a one-year contract. Dorn eventually accepted, but he resigned midway through the academic year after his wife, a Presbyterian minister, accepted a new job out-of-state. Complainant Calli was among the newly appointed board members. Benjamin was briefly named chairman.

*I would still consider getting Joe Reyes' [sic] opinion on the Board action.
What do you think Alice?
Dennis¹⁹*

MITIGATING FACTORS

As is well documented in the SAO close out memoranda, many of the people responsible for conducting the illegal "shade" meeting acted quickly to "cure" the issues by conducting a publicly noticed legal meeting less than a week later.

Many of the responsible parties who orchestrated Dorn's de facto firing at that illegal May 21 meeting tendered their resignations or did not seek reappointment when their terms expired a few weeks later.

At one point during the criminal investigation, research was briefly conducted into the longshot plausibility of trying to build a misdemeanor conspiracy case against Burch for her role in inducing her former board colleagues to violate the Sunshine Law. That idea was quickly dispatched for a number of reasons.

It should be noted, for the record, that after the controversy arose early in her tenure as mayor, Burch enrolled in and completed a good-government class as part of former County Commissioner Katy Sorensen's leadership academy at the University of Miami.

RECOMMENDATIONS/TANGENTIAL ISSUES TO ADDRESS AT CLOSE-OUT

Other potential Sunshine Law violations may have occurred during the period prior to April 2015 when Burch was still, legally, a member of the DCS Board. Phone records obtained via subpoena indicate she was in contact with several of the board members at various points in late 2014 and early 2015.²⁰ But that evidence is circumstantial, at best, there is no direct proof that she was orchestrating Dorn's dismissal or conducting any other DCS business with board members outside of the Sunshine.

After the SAO's decision was made not to pursue charges against any of the DCS board members who were actively responsible for the Sunshine violations, there was little incentive to pursue this avenue of investigation, including subpoenas for testimony and records confirming the conduct of school business outside of a legally posted public meeting.

But this leads to another issue which the COE Executive Director might want to address with the closing of this file.

¹⁹ As further evidence, take note of the DCS Finance Committee meeting minutes from May 18, 2015 – three days before the illegal meeting at the heart of this investigation. The Finance Committee was preparing Kleinman to make a presentation the next night in front of the Village Council, at which the school board was seeking a \$250,000 allocation to fill operating deficits and balance the books for 2014-15. Kleinman was filling in for another Burch ally, Treasurer Benson, who could not attend. The Finance minutes, prepared by the school's then-development director, indicate Ms. Burch was an active participant in the meeting to prep Kleinman. But it's unclear whether Ms. Burch was acting as a school board member or as the new mayor. The next night, Burch sat on the dais as mayor as Kleinman presented the DCS case for the \$250,000 allocation. And in private emails after the meeting, Burch praised Kleinman's successful presentation.

²⁰ Burch's phone records also indicate that she was in contact with several of the DCS board members directly after the illegal shade meeting on May 21 and into the early morning hours of May 22.

As has been mentioned elsewhere in this report, the DCS board did not have regular, consistent legal counsel attending its board meetings. Some witnesses said this lack of legal coverage was the byproduct of longstanding DCS board practice and budgetary constraints. Attorney Raia said the school, as an institution, was his client at the time, not the board.

This lack of municipal legal representation contributed to the chain of events that resulted in the illegal "shade" meeting on May 21, 2015, starting with Burch's erroneous interpretation of the exemptions in the open-meetings statutes, followed by her inability to reach Raia while he was on vacation. If she was no longer a board member, why was Burch responsible for contacting the school's attorney, and seeking his advice for the board to conduct a private meeting? And when she was unable to reach Raia, under what authority was she operating to instruct then-Chairman Silbert it was OK to conduct the meeting outside of the Sunshine?

Burch's mistake wound up costing the school -- and indirectly, the village taxpayers -- thousands of dollars in the wake of the controversy.²¹ But this public entity, a subdivision of the Miami Shores village government, continues to operate without consistent legal counsel. The DCS board has many new members, and even though Raia's firm has been replaced, the school board is believed to still be operating without a municipal attorney present at many of board and committee meetings.

Given the lack of legal assistance from the Village Attorneys office, and a lack of resources to pay for constant outside counsel at the various DCS board and committee meetings, it might behoove the DCS board -- or key members of its executive committee, at a minimum -- to receive regular, training in the Sunshine Law and Open Meeting Statutes, maintenance of public records, ethics laws.

At minimum, the Village Attorney should be provided a copy of this report and warnings that an active, working board with numerous committees, many of whom are communicating via private (non-village) email accounts, need to be better stewards of the public record.

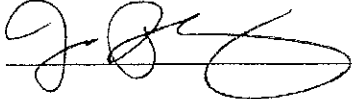
²¹ Raia's firm, Gunster Yoakley, filed an invoice seeking \$27,000 in the wake of the illegal meeting, the counseling that led to the "cure" meeting on May 27, and to respond to numerous public records requests. The bill was eventually knocked down to approximately \$21,000. DCS subsequently hired another firm to represent the school.



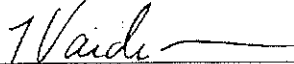
CLOSE-OUT MEMO
Criminal Investigation
Public Corruption Unit

A.S.A.: Trent Reichling

INVESTIGATION #: 64-15-34

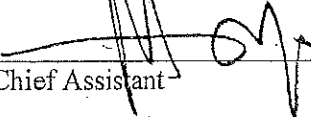
SIGNATURE: 

DATE: November 18, 2016

REVIEWED BY: 

DATE: 11/29/16

Tim VanderGiesen, Division Chief, PCU


 JOSE J. ARROJO, Chief Assistant

DATE: 12/5/16

SUBJECT(S): Alice Burch

EMPLOYMENT: Mayor - Village of Miami Shores

INVESTIGATOR: Larry Lebowitz

INTERNAL AFFAIRS
 INVESTIGATOR:

AGENCY: Miami-Dade Commission on Ethics
 & Public Trust

AGENCY:

PHONE: 305-579-2594

PHONE:

CONCLUSION

CHARGES FILED

COURT CASE NUMBER:

CRIME
 Sunshine Law Violation

STATUTE
 286.011

DEGREE
 M2

OTHER: CLOSED -- NO CHARGES FILED

Facts and Background:

Alice Burch was elected Mayor of the Village of Miami Shores on April 17, 2015 and sworn in as Mayor on April 21, 2015. Prior to being sworn in as Mayor, from 2003 leading up to and through her election for Mayor, Burch was an active member of the Doctor's Charter School Board. The final official position held by Burch leading up to her mayoral election was Secretary of the Board. As secretary, Burch was responsible for keeping meeting minutes, setting agendas, and publishing meeting notices among other board secretary related tasks. Burch was appointed as a member of the school

board by the Village of Miami Shores.¹ According to other members of the board, Burch was considered the most active member of the Board, often involved in the day to day activities of the charter school.

In the summer of 2014, the Board selected Nicholas Dorn as the charter school's Executive Director (school's principal). In an interview provided to Investigator Lebowitz and ASA Perez-Medina, Dorn stated Burch was a "shadow principal" and undercut Dorn's ability to establish a cohesive chain of command. Dorn described other confrontations he had with other board members, specifically Connie Benson, whom witnesses described as a close Burch ally. Dorn also stated he had confrontations with staff and students, and explained the issues were due to Dorn being the new executive director. At one point during Dorn's tenure, the school board hired Dr. Daniel Tosado to serve as a mentor advisor to Dorn. In March or April of 2015, Dorn ended the mentorship with Tosado.

In April 2015, Burch ran for one of three open village council seats in the Village of Miami Shores. Under the Village's charter, the top vote getter becomes mayor for the first two years of the four year term. On April 17, 2015, after a recount, Burch was declared the Village mayor. Burch was sworn in on April 21, 2015. On May 6, 2015, at the direction of the Board's president Dr. Alan Silbert, Burch circulated an email to the Doctor's Charter School board members containing the comments of Tosado (the mentor). At or near the time of this email, packages containing other documents pertaining to Dorn were mailed to most of the school board members in plain envelopes with no return addresses. All recipients, in interviews provided to Investigator Lebowitz and ASA Perez-Medina, stated they believed Burch sent the documents. The documents contained notes, comments, and emails from school employees and school board members about Dorn's qualities as Executive Director. The package also included a cover letter, containing Burch's letterhead, that summarized the included documents and stated Burch was "no longer governed by the Sunshine Law," because she was elected to the Village Council.

The investigation revealed that on May 18, 2015, Burch attended the finance committee meeting for the school board. The meeting minutes, taken by a school board staffer, reveal Burch was involved in the finance committee meeting and offered advice concerning an upcoming presentation to the Village Council for a \$250,000 allocation. On May 21, 2015, the Board held a public meeting. The investigation revealed Burch distributed the agenda for this meeting via email on May 19, 2015 and attended the meeting, sitting in the audience. The minutes of the meeting, held May 21, 2015, reflect Burch spoke concerning issues faced by the charter school. In those same minutes, during the finance report, finance chair Connie Benson reported about the approval to get the \$250,000 allocation. At the end of the public meeting, Silbert stated a meeting would be held in the shade for board members only. This investigation later revealed that the shade meeting was illegal.

In minutes of the shade meeting that took place on May 21, 2015 (published, after the fact, on June 13, 2015 by Dr. Alan Silbert in an attempt to cure the original defect), Silbert indicated a motion was made and seconded not to offer Dorn a renewal of his contract and to appoint Dorn's second in command (Douglas Garber) as Executive Director of the school. During the course of the investigation, Investigator Lebowitz and ASA Perez-Medina interviewed members of the board who were present for the shade meeting. Board members David Benjamin, Carter Winkle, and Joan Lutton stated the shade meeting was orchestrated to not offer a renewal of Dorn's contract. Specifically, that board member Connie Benson, a Burch ally, offered what was characterized as a "scripted" motion to not renew Dorn's contract at the beginning of the shade meeting. Additionally, Benjamin, Winkle, and Lutton stated they objected to holding a shade meeting concerning Dorn's contract renewal but were outvoted eight to three. On May 24, 2015, prior to being officially informed that the board would not renew his contract, Dorn issued an email of resignation to the school board.

As part of the investigation, emails sent by Burch leading up to and after the May 21, 2015 were reviewed. In one email, dated May 21, 2015 and sent at 7:35AM, Burch sought legal advice from school board attorney Joseph Raia concerning the use of a shade meeting to discuss the renewal of Dorn's contract. More specifically, Burch asked whether the public meeting and records exemption contained in F.S. 447.605 permitted the holding of a shade meeting to discuss Dorn's contract. Raia responded on May 22, 2015 at 12:07AM, and indicated F.S. 447.605 would "not apply to this situation." As a result, upon receiving further instruction and advice from Raia on May 23, 2015, Burch sent emails to members of the board informing the board's members that a public board meeting needed to be held May 27, 2015 to cure the shade meeting and Burch's "mistake."

¹ A board member appointed by the Village of Miami Shores serves a two (2) year term, and the school board's bylaws do not specify term limits.

A review of the school board meeting minutes for May 27, 2015, include the presentation of Burch's written resignation from the Board of Directors. According to the minutes, Dorn, who was in the audience for the regular meeting on May 21st, stated that he was disappointed to discover that the separate shade meeting had occurred after he left. The May 27th minutes further reflect Dorn stated that he would not be seeking to renew his contract due to the "hostile working relationship with some members of the board." Additionally, the meeting minutes indicate Silbert apologized for the shade meeting and spoke about the issue. Thereafter, a motion was made to accept Dorn's decision to not renew his contract by board member Ted Kretzschmar and seconded by Dr. Chester Morris.

On June 20, 2016, as part of the investigation, Burch was offered the opportunity to provide a voluntary statement to ASA Trent Reichling and Investigator Lebowitz. Burch declined to provide a statement, absent a subpoena.

Violation of Sunshine Law § 286.011

Florida Statute § 286.011 requires all meetings of any board of a political subdivision, including meetings with or attended by members of the board, "at which official acts are to be taken are declared to be public meetings open to the public at all times." A "shade meeting" is a Sunshine Law exemption pursuant to F.S. § 286.011(8) and permits counsel for public bodies to obtain nonpublic advice from public bodies concerning settlement negotiations and strategy sessions related to litigation expenditures for pending litigation. *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 551 n.2 (Fla. 2nd DCA 2014). These are exceptions which do not apply here. Per § 286.011(3)(b), any member of the school's Board of Directors who knowingly attends a meeting not held in accordance with § 286.011 violates the Sunshine Law and can be criminally charged. The Board's discussion and vote to not renew Dorn's contract as executive director in secret on May 21, 2015 is an official action that required a public meeting with the appropriate notice. The secret or "shade" meeting held by the Board on May 21, 2015 is a violation of the Sunshine Law per F.S. § 286.011 and is not exempt to be held in the shade per F.S. § 286.011(8).

The evidence uncovered during the investigation revealed Burch solicited legal advice from the Board's attorney in an effort to allow Silbert and the Board to hold a closed meeting to discuss Dorn's contract renewal. It should be noted the closed meeting was held prior to Burch receiving the legal advice sought from the Board's attorney, who later informed Burch the closed meeting was a Sunshine Law violation. Further, in the beginning of May 2015, a package containing notes, comments, and emails from school employees and school board members about Dorn's qualities as executive director, along with a letter that contained Burch's letter head summarizing the package's contents was sent to members of the Board of Directors. Burch had been compiling some of the emails justifying the majority's decision not to renew Dorn's contract since the previous August. The communications sent by Burch electronically and via mail reveal Burch's intention to have the Board not renew Dorn's contract on May 21, 2015. However, in determining whether Burch committed a Sunshine Law violation when she sent the packets to Board members, it must be determined whether Burch was a member of the Board of Directors during the time in which the violation was committed. More specifically, was Burch permitted to hold a dual office as a Director of the Doctor's Charter School Board and the Village Mayor of Miami Shores.

Article II, Section 5 of the Florida Constitution prohibits a person from holding more than one office "under the government of the state and the counties and municipalities therein." Art II, § 5(a), Fla. Const. Moreover, an exception to the dual office rule includes being a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers. Per the Village of Miami Shores Charter, the Charter School Board is delegated authority that "extends to all matters regarding the operation and management of such charter school but does not include the delegation of any taxing authority, nor a delegation of the disposition of any proceeds of the bond issue..." The Board is not merely an advisory committee, and thus Burch would be precluded from holding a dual office as both the Mayor and School Board Director. The consequence of the acceptance of an incompatible office by an individual already holding office operates as a resignation of the first office. *Holley v. Adams*, 238 So.2d 401, 408 (Fla. 1970). Therefore, Burch's swearing to and accepting the office of the Village's mayor on April 21, 2015 operated as a resignation from her office as School Board Director. Burch, ergo, was not a Board Director during the time in which the Board committed the Sunshine Law violation. Burch's "resignation" precludes criminal liability since she was not holding the office of Board Director at the time of the violation.

Since the meeting held in the shade May 21, 2015 is a Sunshine Law violation, a relevant concern is whether the public meeting held by the Board May 27, 2015 cured the violation. An open public meeting can cure a prior Sunshine Law violation as long as the Board does not ceremonially accept or perfunctorily ratify recommendations or actions taken

at the prior unnoticed meeting. *See Finch v. Seminole County School Bd.*, 995 So.2d 1068, 1073 (Fla. 5th DCA 2008). Here, the school's Board of Directors held a noticed public meeting on May 27, 2015. The minutes reflect an open discussion of the Sunshine Law violation and shade meeting held May 21, 2015. It should be noted that Dorn spoke at the open meeting and stated he would not seek the renewal of his contract as executive director before the Board held an open public vote to renew Dorn's contract. Therefore, the Board voted at the public meeting to accept Dorn's decision to not renew his contract. A review of the meeting minutes and discussion do not reflect merely a "ceremonial" acceptance of actions taken at the unnoticed, illegal meeting held May 21, 2015. As such, the noticed public meeting May 27, 2015 served to cure and remedy the Board's Sunshine Law violation May 21, 2015.

Curing an illegal shade meeting does not necessarily absolve the participants of criminal responsibility. A review of the totality of the circumstances is necessary to determine whether anybody should be criminally charged for conducting a shade meeting. In the instant case, there is no evidence of an ongoing or systematic problem of conducting shade meetings. Additionally, while the Board was ill advised in taking direction from Burch, it seems that they were operating on some sort of belief that their actions were legal. Finally, the Board quickly acted to cure the illegal act by having a meeting in the Sunshine within a few days. Based on the totality of the circumstances, the evidence does not support the filing of criminal charges for Sunshine Law violations committed by the Doctor's Charter School Board of Directors. The matter is now closed.