Education Practices Commission

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Subject:
Education Practices Commission

Gretchen Kelley Brantley, J.D.
Executive Director
Education Practices Commission
316 Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

Dear Ms. Brantley:

This office has received your letter asking whether the Education Practices Commission is a state agency under certain statutory provisions. Until legislatively or judicially determined otherwise, it is my opinion that the Education Practices Commission is an agency of state government for the purposes contained in the statutes discussed herein, found in chapters 119, 120, and 286.

The Legislature created the Education Practices Commission (hereinafter "EPC" or "Commission") in 1980. *See* Ch. 80-190, § 6, Laws of Fla. (1980) (CS/HB 97) (creating § 231.555, Florida Statutes). Its essential powers and duties are currently set forth in sections 1012.79 through 1012.799, Florida Statutes (2019). Under section 1012.79, the EPC consists of 25 members appointed by the State Board of Education, subject to Senate confirmation. Members serve staggered four-year terms for up to eight years and may be removed by the State Board of Education for misconduct.

The duties of the EPC are stated in section 1012.79(7) as follows:

> (a) to interpret and apply the State Board of Education's standards of professional practice;

(b) to impose discipline upon teachers and school administrators;
(c) to annually meet with the State Board of Education; and
(d) to adopt rules to implement the laws applicable to the EPC.

Its quasi-judicial role under paragraph (b) is set forth more specifically in sections 1012.795 and 1012.796, Florida Statutes. Under section 1012.796, the Department of Education ("Department") investigates an initial complaint against a teacher or administrator. If the Department finds probable cause that there has been a violation of law under section 1012.795(1)(a) through (p), it files a formal complaint against the teacher or administrator and

prosecutes the action pursuant to chapter 120. After a hearing, the administrative law judge issues a recommended order to the Commission. A panel of the Commission then conducts “a formal review of such recommendations and other pertinent information” and issues a final order either dismissing the complaint or imposing any of the penalties enumerated in section 1012.796(7), Florida Statutes.

The Role of the Education Practices Commission Within the Executive Branch

Chapter 20 of the Florida Statutes sets forth the organizational structure of the executive branch. Section 20.02(2), Florida Statutes, provides, in part: “The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness as intended by s. 6, Art. IV of the State Constitution.” Article IV, section 6 provides that all executive-branch functions must be allotted among up to 25 departments, each “under the direct supervision of the governor, lieutenant governor, governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor,” with two exceptions. Exception (b) applies to: “Boards authorized to grant and revoke licenses to engage in regulated occupations [which] shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.”

Consistent with article IV, section 6(b), and with section 20.02, Florida Statutes, the Legislature assigned the EPC to the Department of Education, but granted it a measure of independence from the Department in section 1012.79(6), as follows:

> (6)(a) The [Education Practices Commission] shall be *assigned to* the Department of Education for administrative purposes. The commission, in the performance of its powers and duties, *shall not be subject to control, supervision, or direction by the Department of Education*.
> (b) The property, personnel, and appropriations related to the specified authority, powers, duties, and responsibilities of the commission shall be provided to the commission by the Department of Education. In section 20.15, Florida Statutes (2019), which sets forth the structure of the Department of Education, subsection (6) provides: “COUNCILS AND COMMITTEES. — Notwithstanding anything contained in law to the contrary, the commissioner [of Education] shall appoint all members of all councils and committees of the Department of Education, *except* the Commission for Independent Education and *the Education Practices Commission*.” (Emphasis added.)

Section 20.03, Florida Statutes, contains definitions applicable to the executive branch, “[t]o provide uniform nomenclature throughout the structure of the executive branch.” The statute contains no language limiting its definitions to chapter 20.

Section 20.03(10) defines “commission”:

> (10) “Commission,” unless otherwise required by the State Constitution, means a body created by specific statutory enactment within a department, the office

> of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

This definition encompasses the EPC.

Section 20.03(11) defines "agency":

> (11) "Agency," *as the context requires*, means an official, officer, *commission*, authority, council, committee, *department*, division, bureau, board, section, or another unit or entity of government. (Emphasis added.)

Under this definition, a "commission" like the EPC may thus be considered an agency for some purposes. Whether the EPC is an "agency" for the purposes set forth in individual statutes depends on how those statutes use or define the term.

I. Chapter 119, Florida Statutes – Public Records

Under section 119.07(1)(a), Florida Statutes, every "agency" must facilitate the inspection of its public records by any person wishing to do so, under the supervision of the agency's custodian of public records. Section 119.011(2), Florida Statutes, defines "agency" as used throughout the chapter:

> (2) "Agency" means any state, county, district, authority, or municipal officer, *department*, division, board, bureau, *commission*, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(Emphasis added.)

You observe that, if EPC is an "agency" under chapter 119, it must ensure that policies and protocols are in place to comply with the requirements of chapter 119 regarding proper disclosure and protection of public records. Because the plain language of the definition of agency in section 119.011(2) encompasses the EPC and applies chapter-wide, the provisions you cite from chapter 119 do apply to the EPC. You specifically cite sections 119.021 (how records must be maintained); 119.071 (general exemptions from inspection); 119.0714 (records that have been made part of a court file); 119.084 (copyright protection for data processing software); 119.10 (penalties for violating chapter 119); 119.105 (disclosure of police reports); 119.11 (hearings regarding violations of chapter 119); and 119.12 (attorney's fees in a civil action for violation of chapter 119).

You also ask about the applicability of section 119.0701, Florida Statutes, which deals with public-records law compliance by persons and entities that enter into contracts with "public

agencies." Section 119.0701(1)(b) defines "public agency" as "a state, county, district, authority, or municipal officer, or department, division, board, bureau, *commission*, or other separate unit of government created or established by law." (Emphasis added.) Under the plain language of this definition, the EPC is a "public agency" and must comply with the provisions of section 119.0701 when contracting for services.

II. Chapter 120, Florida Statutes – Administrative Procedure Act

Chapter 120 provides procedures agencies must follow when conducting meetings, hearings, rulemaking, and other actions. The definition of "agency" in section 120.52(1) applies throughout chapter 120:

> (1) "Agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:
> (a) The Governor; each state officer and *state department*, *and each departmental unit described in s. 20.04*; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.
>
> (b) *Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county*. (Emphasis added.)

The EPC is not one of the specific departmental units set forth in section 20.04, Florida Statutes (which are division, bureau, section, or subsection), but it is a "governmental entity" with "statewide jurisdiction" granted by statute. It therefore comports with the definition of "agency" in section 120.52(1)(b).
Additional terms in section 120.52 further support the EPC's role as an "agency." The Legislature gave the EPC the authority to adopt rules in sections 1012.79(7)(d) and 1012.795(6)(b), Florida Statutes, and to issue final orders following disciplinary hearings in sections 1012.79(8) and 1012.796(7), Florida Statutes. These actions constitute "agency action" according to section 120.52(2). The collegial body in a governmental unit statutorily responsible for final agency action is the "agency head" under section 120.52(3). Finally, a "rule" is defined in section 120.52(16) as an "agency statement of general applicability." Accordingly, the EPC is an agency for purposes of chapter 120.

You raise various issues regarding the interplay between Chapter 120 and the statutes that govern EPC proceedings. Those matters are better left for the EPC to resolve in consultation with the Department of Education. You also raise some issues regarding various functions in the EPC's adjudicatory process that are handled by the Department of Education. Those matters are better addressed jointly by the EPC and the Department.

III. Chapter 286, Florida Statutes – Public Business: Miscellaneous Provisions

You state that the EPC is “its own entity and not an agency of the Department of Education” for purposes of complying with four provisions in chapter 286. The text of the statutes makes plain that the distinction makes no difference. The definitional terms of each provision apply to “commissions” like the EPC:

· Section 286.0105, regarding information about preserving a record for appeal that must be included in notices of meetings and hearings, applies to “[e]ach board, commission, or agency of this state.”

· Section 286.011, dealing with public meetings and records, applies to “any board or commission of any state agency.”

· Section 286.0114, dealing with the public’s opportunity to be heard at a public meeting, applies to meetings of “a board or commission of any state agency.”

· Section 286.012. which provides requirements for voting on official decisions, rulings, or acts at governmental meetings, applies to a member of “a state, county, or municipal governmental board, commission, or agency who is present.”

Therefore, the Education Practices Commission is authorized by the provisions discussed above to exercise the powers granted therein to an agency or commission, as the context requires.

Sincerely,

Ashley Moody
Attorney General

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