Charter Schools - Governing Board

Number: AGO 2013-27

Date: November 21, 2013

Subject:
Charter Schools – Governing Board

Ms. Dolores D. Menendez
City of Cape Coral Attorney
Post Office Box 150027
Cape Coral, Florida 33915-0027

RE: CHARTER SCHOOLS – PROSPECTIVE – RETROACTIVE – GOVERNING BOARD – construction and application of statute prohibiting employee of charter school or spouse from serving on governing board of charter school. s. 1002.33(26)(c), Fla. Stat.

Dear Ms. Menendez:

As City Attorney for the City of Cape Coral, Florida, you have asked for my opinion on substantially the following questions:

1. Is section 1002.33(26)(c), Florida Statutes, applicable to municipal charter schools?

2. Does section 1002.33(26)(c), Florida Statutes, apply to a Municipal Charter School Authority governing board member that was appointed prior to the effective date of the statute and whose term commenced before the effective date of the statute?

3. Does section 1002.33(26)(c), Florida Statutes, operate prospectively or retroactively?

In sum:

1. Section 1002.33(26)(c), Florida Statutes, is applicable to all charter schools. The statute contains no language limiting its application.

2. and 3. Section 1002.33(26)(c), Florida Statutes, is a substantive statute and applies prospectively. Thus, a governing board member, appointed prior to the effective date of the statute and whose term commenced prior to the effective date of the statute, may complete his or her term of office, but may not be reappointed to the governing board so long as his or her spouse is employed by the charter school as such reappointment is prohibited by section 1002.33(26)(c), Florida Statutes.

According to your letter, the City of Cape Coral operates a municipal charter school system under the authority of section 1002.33(15), Florida Statutes. This system consists of two elementary, one middle, and one high school and operates through a charter with the Lee County School District. The Charter and ordinances of the City of Cape Coral prescribe the

governance and operations of the municipal charter school system. These municipal charter schools are governed by a governing board made up of seven voting members appointed by the city council and three non-voting members appointed by the parent organizations of the three school levels (elementary, middle, and high school). You advise that two members of the charter school governing board have spouses that are employees of the charter school system. Your questions are based on concerns about legislation adopted by the 2013 Florida Legislature which became effective July 1, 2013, relating to standards of conduct and financial disclosure for charter schools.

In order to supplement the educational opportunities of Florida's children, the Legislature authorized the creation of charter schools in 1996.[1] The statute, now codified at section 1002.33, Florida Statutes, allows for both the creation of new charter schools and the conversion of existing public schools to charter status.[2] Section 1002.33 provides for the creation of such charter schools as part of the state's program of public education.[3]

Section 1002.33(26), Florida Statutes, establishes standards of conduct and financial disclosure for charter school governing boards and employees. The statute provides:

"(26) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE. –
(a) A member of a governing board of a charter school, including a charter school operated by a private entity, is subject to ss. 112.313(2), (3), (7), and (12) and 112.3143(3).
(b) A member of a governing board of a charter school operated by a municipality or other public entity is subject to s. 112.3145, which relates to the disclosure of financial interests.
(c) An employee of the charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, may not be a member of the governing board of the charter school."

Subparagraph (26)(c) was created by section 1, Chapter 2013-250, Laws of Florida, with an effective date of July 1, 2013.[4] This is the language about which you have inquired.

Question One

Section 1002.33(26)(c), Florida Statutes, provides that an employee of a charter school or the spouse of that employee may not be a member of the governing board of the charter school. Nothing in this subparagraph limits its application to certain charter schools. The Legislature clearly identified "charter school[s] operated by a municipality" in other provisions of subsection (26), but did not include limiting language in subparagraph (c).[5] Thus, if the legislative intent was to limit application of subparagraph (c), the Legislature could have used language similar to that of other related provisions.[6] Based on the absence of any language limiting application of section 1002.33(26)(c), Florida Statutes, this office cannot read such a limitation into the statute.[7]

Thus, it is my opinion that section 1002.33(26)(c), Florida Statutes, is applicable to municipal charter schools.

Questions Two and Three

Your second and third questions deal with the prospective or retroactive operation of section 1002.33(26)(c), Florida Statutes. These questions are related and will be discussed together.

Section 1002.33, Florida Statutes, appears to be a substantive statute, that is, one which creates or imposes new obligations or duties or impairs or destroys existing rights.[8] It is the general rule that a substantive statute, in the absence of an express command that the statute is to be applied retroactively, operates prospectively.[9] Nothing in the text of the statute or in the legislative history created during consideration of the statute reflects a legislative intent that this statutory provision be applied retroactively. In the absence of a clear legislative expression to the contrary, a law is presumed to operate prospectively, particularly in those instances in which retroactive operation of the law would impair or destroy existing rights.[10]

The courts of this state and this office have recognized that public officers have a property right in their offices,[11] thus, suggesting that the statute should be read to operate prospectively in order to avoid impairing an existing right. The board member of concern took office on April 1, 2013, and will serve a three-year term. Because the board member was appointed prior to the effective date of the act and the prohibition applies prospectively, it is my opinion that this board member may serve out his or her term. However, this board member may not be reappointed to the governing board of the charter school so long as his or her spouse is employed by the school.

In sum, it is my opinion that section 1002.33(26)(c), Florida Statutes, is a substantive statute and applies prospectively. Further, it is my opinion that a governing board member, appointed prior to the effective date of the statute and whose term commenced prior to the effective date of the statute, may complete his or her term of office, but may not be reappointed to the governing board so long as his or her spouse is employed by the charter school as such reappointment is prohibited by section 1002.33(26)(c), Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* s. 1, Ch. 96-186, Laws of Fla.

[2] Section 1002.33(3), Fla. Stat

[3] Section 1002.33(1), Fla. Stat.

[4] Section 11, Ch. 2013-250, Laws of Fla.

[5] *See* s. 1002.33(26)(b), Fla. Stat., providing that "[a] member of a governing board of a charter school operated by a municipality . . . is subject to s. 112.3145, which relates to the disclosure of

financial interests." *Compare* s. 1002.33(26)(a), Fla. Stat., the provisions of which specifically include "a charter school operated by a private entity[.]"

[6] It is a well-recognized principle of statutory construction that the mention of one thing implies the exclusion of another – *expressio unius est exclusio alterius*. Thus, when a statute enumerates the things upon which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned. *See Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944).

[7] This office is without authority to qualify or read into a statute an interpretation or define words in a statute in such a manner which would result in a construction that seems more equitable under circumstances presented by a particular factual situation; such construction when the language of a statute is clear would in effect be an act of legislation which is exclusively the prerogative of the Legislature. *Cf. Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974); and Ops. Att'y Gen. Fla. 81-10 (1981) and 06-26 (2006).

[8] *See Life Care Centers of America, Inc. v. Sawgrass Care Center, Inc.*, 683 So. 2d 609 (Fla. 1st DCA 1996); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352 (Fla. 1994).

[9] *See e.g., Alamo Rent-A-Car, Inc. v. Mancusi, supra* (substantive statute is presumed to operate prospectively rather than retroactively unless clear expression of legislative intent to the contrary); *Young v. Altenhaus*, 472 So. 2d 1152) (Fla. 1985); *Fogg v. Southeast Bank, N.A.*, 473 So. 2d 1352 (Fla. 4th DCA 1985) (statutes generally operate only prospectively); *VanBibber v. Hartford Accident & Indemnity Insurance Company*, 439 So. 2d 880 (Fla. 1983) (in absence of clear legislative intent to make them retroactive, substantive statutes are prospective only).

[10] *State v. Lavazzoli*, 434 So. 2d 321 (Fla. 1983) (in absence of clear legislative expression to contrary, law is presumed to operate prospectively, particularly in those instances in which retroactive operation of law would impair or destroy existing rights); *Hotelera Naco, Inc. v. Chinea*, 708 So. 2d 961 (Fla. 3d DCA 1998) (if new law impairs vested rights, creates new obligations, or imposes new penalties, court may refuse to apply it retroactively notwithstanding clear evidence of legislative intent to the contrary).

[11] *See Holley v. Adams*, 238 So. 2d 401 (Fla. 1970); *Piver v. Stallman*, 198 So. 2d 859 (Fla. 3d DCA 1967); and Op. Att'y Gen. Fla. 78-153 (1978). *And see* CJS *Officer* s. 187 ("The right to hold public office, either by election or appointment, is one of the valuable rights of citizenship, the exercise of which should not be declared prohibited or curtailed except by plain provisions of law.").