Local Hearing Officer -- Dual Office-Holding

Number: AGO 2013-26

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Subject:
Local Hearing Officer -- Dual Office-Holding

Mr. Usher L. Brown
Brown, Garganese, Weiss & D'Agresta, P.A.
Post Office Box 2873
Orlando, Florida 32802-2873

RE: LOCAL HEARING OFFICER – DUAL OFFICE-HOLDING – whether a local hearing officer may simultaneously serve as a red light traffic camera hearing officer for multiple jurisdictions. s. 316.003(91), Fla. Stat.; Art. II, s. 5(a), Fla. Const.

Dear Mr. Brown:

As City Attorney for the City of Winter Park, Florida, you have asked for my opinion on substantially the following question:

Can a "local hearing officer," as defined in section 316.003(91), Florida Statutes, be employed to provide service on behalf of more than one municipality or county without a violation of the prohibition against dual office-holding?

In sum:

The exemption for *ex officio* service as a local hearing officer for a local government pursuant to section 316.003(91), Florida Statutes, must be read strictly and extends only to service in that capacity for the local government for which the local hearing officer currently acts as a code enforcement board or special magistrate. The exception does not extend to service as a local hearing officer for other local governmental jurisdictions and such simultaneous service would violate the prohibition contained in Article II, section 5(a), Florida Constitution.

You are aware of Attorney General Opinion 2013-18 which concludes that service as a red light traffic infraction hearing officer is an "office" for purposes of Article II, section 5(a), Florida Constitution, the dual office-holding prohibition. That opinion also states that "[t]he language of section 316.003(91), Florida Statutes, appears to provide an *ex officio* exception to the constitutional dual office-holding prohibition for currently appointed code enforcement boards or special magistrates for charter county, noncharter county, or municipal code enforcement boards to also act as 'local hearing officers' for purposes of conducting hearings related to violations of section 316.0083, Florida Statutes." You ask whether, in light of the *ex officio* exception, a local hearing officer as defined in section 316.003(91), Florida Statutes, may serve in that capacity for multiple jurisdictions without violating the constitutional dual office-holding prohibition. For the following reasons, I conclude that they may not.

Section 316.003(91), Florida Statutes, as added by Chapter 2013-160, Laws of Florida, provides the Legislature's definition of a "local hearing officer:"

"LOCAL HEARING OFFICER.–The person, designated by a department, county, or municipality that elects to authorize traffic infraction enforcement officers to issue traffic citations under s. 316.0083(1)(a), who is authorized to conduct hearings related to a notice of violation issued pursuant to 316.0083. *The charter county, noncharter county, or municipality may use its currently appointed code enforcement board or special magistrate to serve as the local hearing officer*. The department may enter into an interlocal agreement to use the local hearing officer of a county or municipality." (e.s.)

The statute provides that the local government may use its[1] own currently appointed magistrate to serve as the local hearing officer. Nothing in the statute extends the exemption to allow a local hearing officer currently appointed as the code enforcement board or special magistrate for a jurisdiction to serve for other municipalities or counties outside the jurisdiction which has appointed him or her. The language of the statute is clear.[2]

Legislative history surrounding the enactment of the language in section 316.003(91), Florida Statutes, supports this reading. The House of Representatives Final Bill Analysis of CS/CS/HB 7125 which brought this language into the statute states, in explaining the effect of the changes resulting from the bill, that "[t]o facilitate the hearings, local governments may use their currently appointed code enforcement board or special magistrate to serve as the local hearing officer."[3] Further, in the fiscal comments on the bill, the legislative analysis states that "[t]he local government that has issued the notice of violation may use its currently appointed code enforcement board or special magistrate to serve as the local hearing officer for purposes of conducting the hearing."[4]

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.[5]

Finally, provisos and exceptions in statutes are to be narrowly and strictly construed.[6] Thus, as an exception to the constitutional dual office-holding prohibition, the language in section 316.003(91), Florida Statutes, must be read narrowly and strictly construed to preclude its extension.

In sum, it is my opinion that the exemption for *ex officio* service as a local hearing officer for a local government pursuant to section 316.003(91), Florida Statutes, must be read strictly and extends only to service in that capacity for the local government for which the local hearing officer currently acts as a code enforcement board or special magistrate. The exception does not extend to service as a local hearing officer for other local governmental jurisdictions and such simultaneous service would violate the prohibition contained in Article II, section 5(a), Florida Constitution.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* Webster's New Universal Unabridged Dictionary (2003), p. 1017 ("its" is a pronoun and the possessive form of "it") and The American Heritage Dictionary (Office Edition 1983), p. 371 ("its" is the possessive form of "it," used as a modifier before a noun).

[2] The general rule is that where language is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction. *Fine v. Moran*, 77 So. 533, 536 (Fla. 1917); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984).

[3] *See* 2013 Florida House of Representatives Final Bill Analysis of CS/CS/HB 7125, p. 31, dated June 18, 2013.

[4] *Id.* at p. 34.

[5] *See, e.g., Young v. Progressive Southeastern Insurance Company*, 753 So. 2d 80 (Fla. 2000); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341 (Fla. 1952) (where statute sets forth exceptions, no others may be implied).

[6] *See Samara Development Corporation v. Marlow*, 556 So. 2d 1097 (Fla. 1990); *Farrey v. Bettendorf*, 96 So. 2d 889 (Fla. 1957) (proviso to be strictly construed); *State v. Nourse*, 340 So. 2d 966 (Fla. 3d DCA 1976) (any statutory exception to general prohibition is normally strictly construed against one attempting to take advantage of exception); Ops. Att'y Gen. Fla. 99-11 (1999), 97-89 (1997), and 93-17 (1993).