Public Officers - Suspension - County Officers

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Date: October 02, 2013

Subject:
Public Officers – Suspension – County Officers

Mr. George T. Reeves
Attorney for the Madison County
Board of County Commissioners
Post Office Drawer 652
Madison, Florida 32341

RE: PUBLIC OFFICERS – SUSPENSION – COUNTY OFFICERS – right to salary and benefits during period of suspension. ss. 112.40, 112.41, 112.44, and 112.45, Fla. Stat.; s. 7(a), Art. IV, Fla. Const.

Dear Mr. Reeves:

On behalf of the Board of County Commissioners of Madison County, you ask substantially the following question:

May a former county official who was suspended by the Governor due to a criminal indictment receive salary and benefits for the time of such suspension when no action was taken by the Senate, the underlying indictment was dismissed after the official's term of office ended, and the official has not been reinstated?

In sum:

A county official suspended by the Governor, but not removed by the Senate, nor prosecuted for the underlying criminal indictment, is not statutorily entitled to back salary and benefits unless such official has been reinstated by affirmative action on the part of the Governor, the Senate, or a court.

You state that the Supervisor of Elections for Madison County for the term January 2009 through January 2013 was charged with various crimes in November 2011 and was suspended at that time by executive order of the Governor. The supervisor's term of office ended while the suspension was in place, the Senate has taken no action on the suspension, and a subsequent motion to dismiss the criminal charges was granted. To your knowledge, no request for reinstatement has been made to the Governor, nor has the suspension been rescinded. The former supervisor, however, has requested back pay and benefits for the time of her suspension.

Section 7, Article IV, Florida Constitution, provides:

"(a) By executive order stating the grounds and filed with the custodian of state records, the

governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.
(b) The senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.
(c) By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter."

Section 112.40, Florida Statutes, requires that an order of suspension by the Governor be delivered to the Department of State, which in turn must "forthwith deliver copies by registered mail, or otherwise as it may be advised, to the officer suspended, the Secretary of the Senate, and the Attorney General." The suspension is effective upon its filing with the Department of State and no further communication by the Governor with the Senate is necessary to permit the Senate to act.[1] The order must specify facts sufficient to advise both the officer and the Senate of the charges forming the basis of the suspension.[2] Section 112.41(2), Florida Statutes, directs the Senate to conduct a hearing in the manner prescribed by Rules of the Senate.[3] Should an official who has been suspended by the Governor not be removed by the Senate, section 112.44, Florida Statutes, states that "the officer shall be reinstated[.]" In the instant situation, however, this office has been advised that action by the Senate has been held in abeyance. As noted above, the Constitution recognizes that at any time prior to removal by the Senate, a suspended official may be reinstated by the Governor.[4]

Thus, the Constitution provides the manner in which a county official may be suspended by the Governor and should the Governor suspend an elected county official by filing the requisite executive order as prescribed in section 7(a), Article IV, Florida Constitution, the suspended official is not entitled to the pay and emoluments of the office for the period of the suspension unless and until he or she is reinstated by the Senate, by the Governor, or by a court.[5]

In Attorney General Opinion 72-222, this office was asked whether a suspended county official was entitled to back pay when the underlying criminal indictment was not prosecuted after the official’s term of office had ended and no action had been taken by the Senate. After discussing the constitutional procedure for suspension by the Governor and the provision for compensation of a suspended official in section 112.45, Florida Statutes,[6] this office concluded that unless and until a suspended official has been reinstated by action of the Governor, the Senate, or a court, the suspended official has no right to the compensation accrued during his or her suspension, even though the criminal indictment supporting the suspension is not prosecuted.

There have been no amendments to the relevant statutes which would alter the conclusion reached in Attorney General Opinion 72-222, nor has this office been informed that the suspended public official in the instant situation has been reinstated or the suspension rescinded such that she is presently entitled under Florida law to payment of salary and benefits for the

period of her suspension.

Accordingly, it is my opinion that a suspended county official is not statutorily entitled to back salary and benefits unless such official has been reinstated by affirmative action on the part of the Governor, the Senate, or a court.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 112.40, Fla. Stat.

[2] Section 112.41(1), Fla. Stat.

[3] While this office does not interpret Rules of the Senate, I would note that Rule 12.9 addresses the procedure to be followed when the Senate has received an executive suspension:

"An executive suspension of a public official who has pending against him or her criminal charges, or an executive suspension of a public official that is challenged in a court shall be referred to the Ethics and Elections Committee, other appropriate committee, or special master; however, all inquiry or investigation or hearings thereon shall be held in abeyance and the matter shall not be considered by the Senate, committee, subcommittee, or special master until the pending charges have been dismissed, or until final determination of the criminal charges at the trial court level, or until the final determination of a court challenge, if any, and the exhaustion of all appellate remedies from any of the above. The committee, subcommittee, or special master shall institute action within three (3) months after the conclusion of any pending proceedings. In a suspension case in which the criminal charge is a misdemeanor, the committee, subcommittee, or special master and the Senate may proceed if the written consent of counsel for the Governor and of the suspended official is obtained."

[4] *See* s. 7(a), Art. IV, Fla. Const.

[5] *See* Ops. Att'y Gen. Fla. 76-51 (1976) and 72-222 (1972).

[6] Section 112.45(2), Fla. Stat., relates to the effect of an order by the Senate as to the removal or reinstatement of a suspended official, stating "should the official be reinstated [by the Senate], he or she shall be entitled to reimbursement for such pay and emoluments of office from the date of suspension to that date, as though he or she had never been suspended, and the order of the Senate, or a certified copy thereof, shall constitute the authority of the county, district, or state, to make such payment for reimbursement."