Dual Office-holding, regional transp. auth.

Number: AGO 2013-02

Date: January 30, 2013

Subject:
Dual Office-holding, regional transp. auth.

Mr. David K. Wolpin
Ms. Laura K. Wendell
City Attorneys for the City of Aventura
2525 Ponce De Leon Boulevard, Suite 700
Cora Gables, Florida 33134

RE: SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY--MUNICIPALITIES--DUAL OFFICE-HOLDING--city commissioner may serve as member of governing board of special district transportation authority. s. 343.53, Fla. Stat.; Art. II, s. (5)(a), Fla. Const.

Dear Mr. Wolpin and Ms. Wendell:

On behalf of the City of Aventura, you ask substantially the following question:

May a city commissioner simultaneously serve as a member of the governing board of the South Florida Regional Transportation Authority without violating the dual office-holding prohibition in section 5(a), Article II of the Florida Constitution?

In sum:

A city commissioner may simultaneously serve as a member of the governing board of the South Florida Regional Transportation Authority without violating the dual office-holding prohibition in section (5)(a), Article II of the Florida Constitution, because the authority is a special district.

Article II, section 5(a), Florida Constitution, 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 . . . ." While the constitutional provision does not define the term "office" or "officer," 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.[1]

The constitutional dual office-holding prohibition, however, refers only to state, county, and municipal offices. There is no reference in the constitutional prohibition to special district offices, such that both the courts and this office have therefore concluded that the dual office-holding prohibition does not apply to the officers of an independent special district. In *Advisory Opinion to the Governor--Dual Office-Holding*,[2] the Supreme Court of Florida reiterated that special district officers are not included within the dual office-holding prohibition, concluding that a member of a community college district board of trustees is not included within the dual office-

holding prohibition. This office in Attorney General Opinion 94-83 stated that membership on the Panama City-Bay County Airport Authority, created as an independent special district, did not constitute an office for purposes of Article II, section 5(a), Florida Constitution. The authority was created by law to perform a limited function and its members were appointed by a diverse group of governmental agencies that had no oversight or control over the functions or actions of the authority.

This office has cautioned that care must be taken in determining the nature and character of a district or authority to determine whether the governmental entity is an agency of the state, county, or municipality such that its officers may be considered state, county, or municipal officers for purposes of dual office-holding. For example, in Attorney General Opinion 84-90, this office considered whether a member of the Volusia County Health Facilities Authority was an officer of the county. While the authority was created and organized under Part III, Chapter 154, Florida Statutes, as a public body corporate and politic, it was created by the county by passage of an ordinance or a resolution. The governing body of the county appointed the authority members, was empowered to remove the members, and was authorized to abolish the authority at any time. This office, therefore, concluded that the authority was an instrumentality of the county and its officers were county officers. Thus, the constitutional prohibition against dual office-holding prohibited a mayor from also serving on the governing body of the county health facilities authority.

Similarly, in Attorney General Opinion 91-79, this office concluded that the Fort Walton Beach Area Bridge Authority, created as a dependent special district within the county, was an instrumentality of the county for dual office-holding purposes. Under the act creating the district, the county commission was charged with approving the authority's annual budget and for filling vacancies on the authority.[3]

There is no question that a city commissioner is an officer of the city for purposes of the dual office-holding prohibition. However, to the extent the South Florida Regional Transportation Authority (authority) is a special district, a member of its governing board is not subject to the constitutional dual office-holding prohibition.

The authority is created as "a body politic and corporate, an agency of the state" in section 343.53(1), Florida Statutes. Pursuant to its enabling legislation, the authority has the right to own, operate, maintain, and manage a transit system in the tri-county area of Broward, Miami-Dade, and Palm Beach counties.[4] Its governing board is appointed as follows: each of its member counties selects one of its county commissioners; the secretary of the Department of Transportation selects one of the district secretaries (or his or her designee) from the districts within the authority’s service area "who shall serve ex officio as a voting member[;]" and the Governor appoints three members who are residents and qualified electors in the service area, but not residents of the same county.[5] The authority is authorized to "plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage a transit system and transit facilities." Moreover, the Legislature states its intent that the authority "shall have overall authority to coordinate, develop, and operate a regional transportation system within the area served."[6]

While the enabling legislation describes the authority as an "agency of the state," the authority is

designated as an independent special district by the Department of Economic Opportunity,[7] operates within a limited geographical area, and is specifically authorized to perform a limited governmental activity to fulfill its purpose. The nature and purpose of the authority would appear more closely aligned with that of a special district carrying out its limited powers. Membership on the authority's governing board, therefore, is more in the nature of a district office which is not subject to the constitutional prohibition against dual office-holding.

Accordingly, it is my opinion that a city commissioner may serve as a member of the governing board of the South Florida Regional Transportation Authority without violating the dual office-holding prohibition in section 5(a), Article II of the Florida Constitution, since the authority is a special district.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919); *see also State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

[2] 630 So. 2d 1055, 1058 (Fla. 1994).

[3] *Cf.* Op. Att'y Gen. Fla. 90-91 (1990), concluding that the Hillsborough County Hospital Authority, created by special act with all powers of a body corporate, whose members are appointed by the Hillsborough County Commission which possesses the power to fill vacancies on the authority, remove members for misfeasance, malfeasance or willful neglect of duty, and approve the authority's budget, was a county agency. *And see* Op. Att'y Gen. Fla. 01-28 (2001), in which this office determined that regional planning council member was a public officer subject to the dual office-holding prohibition, based on *Orange County v. Gillespie*, 239 So. 2d 132 (Fla. 4th DCA 1970), *cert. denied*, 239 So. 2d 825 (Fla. 1970) (planning council member was subject to Florida's Resign-to-Run Law which at that time only applied to state, county or municipal offices, as councils act on behalf of the state in implementing state policies regarding growth management). The AGO notes, however, that regional planning councils were not (and are still not) listed as special districts by the Department of Community Affairs (now Department of Economic Opportunity). Questions regarding the resign-to-run law should be addressed to the Division of Elections, Florida Department of State.

[4] Section 343.54(1)(a), Fla. Stat.

[5] Section 343.53(2), Fla. Stat.

[6] Section 343.54(1)(b), Fla. Stat.

[7] *See* http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm.