Dual Office-holding--special magistrate

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Subject:
Dual Office-holding--special magistrate

Ms. Rinky S. Parwani
Legal Counsel
Hillsborough County Value
Adjustment Board
9905 Alambra Avenue
Tampa, Florida 33619

RE: DUAL OFFICE-HOLDING – SPECIAL MAGISTRATES – VALUE ADJUSTMENT BOARDS – HEARING OFFICERS – MUNICIPALITIES – value adjustment board special magistrate appointed for calendar year may not hold other office. s. 5(a), Art. II, Fla. Const.

Dear Ms. Parwani:

On behalf of the Hillsborough County Value Adjustment Board, you ask substantially the following question:

May a special magistrate appointed for a calendar year for the county value adjustment board serve as a city's hearing officer without violating the constitutional dual office-holding prohibition in section 5(a), Article II, Florida Constitution, if the hearings for each governmental agency are conducted in different months of the year and not simultaneously?

In sum:

A special magistrate appointed for a calendar year for the county value adjustment board may not also serve as a city's hearing officer, irrespective of whether the officer is simultaneously conducting hearings during the term of office, without violating the dual office-holding prohibition in section 5(a), Article II, Florida Constitution.

You pose the situation where a value adjustment board special magistrate who is appointed by Hillsborough County for a calendar year would be appointed as a hearing officer for a city in a different county and the hearings for each governmental entity would be conducted in different months and, therefore, not simultaneously. In this scenario, the special magistrate for the value adjustment board would have completed all hearings for petitions for the contract year, then begin hearings for the city.[1]

Initially, I would note that section 194.035(1), Florida Statutes, states that special magistrates may not be elected or appointed officials or employees of the county and further precludes employees and elected or appointed officials of a taxing jurisdiction or of the state from serving

as special magistrates. This contemplates a broader prohibition than mere dual office-holding in that employees of a county, taxing jurisdiction, or the state may not serve as special magistrates for the value adjustment board. Your question, however, appears to pose a more particular distinction for a special magistrate who has completed the hearings for the value adjustment board for the year, but still holds the position of special magistrate.

Section 5(a), Article II, Florida Constitution, provides:

"No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers."

This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state and the counties and municipalities. The terms "office" or "officer" are not defined and no distinction is made between part-time or full-time officers, nor is any exception made therefor.[2] The Florida Supreme Court in *State ex rel. Holloway v. Sheats*,[3] stated that the term "office," "implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office[.]"[4]

In the instant situation, the authority to conduct hearings as a special magistrate for the value adjustment board is inherent to the position and is held by the individual regardless of whether the special magistrate is in the process of conducting a hearing. Such authority does not cease to exist when the special magistrate concludes a hearing or conducts hearings on a part-time basis, but rather is attendant to holding the office and remains at the officer’s disposal for the term of the office.[5] The powers and duties of a special master, therefore, are not confined by the time period during which he or she is conducting hearings. Rather, a special magistrate is an officer at all times during his or her term of office.[6] The same would hold true for an individual appointed as a municipal hearing officer.

While Florida courts have recognized a limited exception to the dual office-holding prohibition for law enforcement officers who are temporarily assigned to perform law enforcement duties without remuneration for another law enforcement agency,[7] the exception deals with the performance of additional law enforcement functions and duties in a police capacity and not the exercise of governmental power or performance of official duties for another governmental board or entity exercising and performing quasi-judicial powers and duties. Moreover, the exemption only applies when the officer performs the additional duties without remuneration.

Accordingly, it is my opinion that a value adjustment board special magistrate who has been appointed for a calendar year may not also serve as a hearing officer for a municipality in another county, despite the fact that the individual in his or her capacity in each office would not be conducting hearings for both offices during the same time period.

Sincerely,

Pam Bondi

Attorney General

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[1] This office has determined that a special magistrate for a value adjustment board is an officer for purposes of the dual office-holding prohibition. *See* Op. Att'y Gen. Fla. 96-91 (1996) (special master appointed pursuant to s. 194.035, Fla. Stat., is an officer). It is assumed for purposes of this discussion that the hearing officer for the city is an officer subject to the prohibition. *Cf.* Inf. Op. to Ms. Susan H. Bingham, dated April 12, 1999, in which it was advised that simultaneous service as a traffic court hearing officer and a municipal administrative hearing master would violate the dual office-holding prohibition.

[2] *Compare* s. 5(a), Art. II, *supra*, excepting from its terms notaries public, military officers, members of a constitutional revision commission, constitutional convention, or statutory body having only advisory powers.

[3] 83 So. 508 (Fla. 1919).

[4] *Id.* at 509.

[5] *Cf.* Ops. Att'y Gen. Fla. 77-63 (1977) (non-salaried, part-time, certified auxiliary or reserve police officer is an "officer" within the purview of the constitutional dual office-holding prohibition); 86-105 (1986) (citizen trained and certified as an auxiliary law enforcement officer pursuant to Ch. 943, Fla. Stat., authorized to carry a firearm and assist regular police officers, is an "officer" for purposes of dual office-holding).

[6] A contract or agreement for the hearing officer for the city has not been provided, but it is assumed for purposes of this opinion that the hearing officer is appointed for a term and, as discussed in the text regarding a special magistrate, is exercising his or her duties as an officer and would possess such authority throughout the term of the office.

[7] *Compare Vinales v. State*, 394 So. 2d 993 (Fla. 1981) (section 5[a], Art. II, did not apply to appointment of municipal police officers as state attorney investigators, since appointment is temporary and with no additional remuneration), and *Rampil v. State*, 422 So. 2d 867 (Fla. 2d DCA 1982) (following *Vinales* exception, concluding that city police officer, in conducting a wiretap, could act in capacity as deputy sheriff, since officer received no remuneration for such duties). *See also* Op. Att'y Gen. Fla. 12-10 (2012) (special officer for a carrier under Ch. 354, Fla. Stat., may serve simultaneously as an unpaid reserve deputy sheriff without violating the Florida constitutional prohibition against dual office-holding in s. 5[a], Art. II, Fla. Const.).