Dual Officeholding

Number: INFORMAL

Date: September 26, 2016

Mr. John C. Carter III
1105 33rd Avenue Southwest
Vero Beach, Florida 32968

Dear Mr. Carter:

The Office of the Attorney General has received your inquiry as to whether you would be permitted to hold two different law enforcement positions in light of Article II, section 5(a) of the Florida Constitution. Attorney General Pam Bondi asked me to respond to your question.

Article II, section 5(a) provides, in part: “No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein[.]” You say you are employed as a law enforcement officer by the Indian River Shores Public Safety Department in a part-time capacity and are paid per diem, and that you would like to obtain a comparable position with a different law enforcement agency within Florida and work simultaneously for both.

You have not provided this office with a description of the duties and obligations of either your current position or the position you are seeking. Accordingly, I will only be able to provide you with a general discussion of this area of the law, as well as several cases and Attorney General Opinions that I believe will help you resolve your question.

Article II, section 5(a), Florida Constitution, prohibits a person from serving in more than one state, county, or municipal “office” simultaneously. Accordingly, the question is whether your current position and your hoped-for position qualify as “offices” under this provision. There is no constitutional or statutory definition of the term, “office.” Generally, this office has considered law enforcement officers to be “officers” when such officers are clothed with sovereign powers delegated by law rather than by contract, such as the authority to arrest without a warrant and to carry firearms in the course of duty.[1] How the officer is paid or whether the position is part-time or full-time have not played a role in our prior determinations.[2] Therefore, if both of the positions you are asking about authorize you to hold these powers, they would likely be considered offices subject to the constitutional provision prohibiting dual office-holding.[3]

There is a limited exception to this prohibition, however, that has been established by the courts of Florida and followed by the Attorney General.[4] When one of the two law enforcement positions is performed without remuneration, meaning on a volunteer basis, there is no violation of the dual office-holding prohibition. If an officer is paid for both positions, this would constitute prohibited dual office-holding.[5]

I hope this informal advisory discussion and the opinions enclosed are helpful to you. I recommend that you contact your City Attorney for further guidance in this matter.

Sincerely,

Ellen B. Gwynn
Assistant Attorney General

EBG/tsh

Enclosures: *Rampil v. State*, 422 So. 2d 867 (Fla. 2d DCA 1982); Ops. Att'y Gen. Fla. 2012-10 and 1990-15.

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[1] *See* Ops. Att'y Gen. Fla. 77-63 (1977); 12-10 (2012); 89-10 (1989).

[2] *See* Ops. Att'y Gen. Fla. 77-63 (1977); 90-15 (1990); 84-25 (1984).

[3] An administrative law enforcement position with no law enforcement certification requirement, arrest authority, or other sovereign powers would probably not be considered an "office." See Op. Att'y Gen. Fla. 89-10 (1989).

[4] *See Vinales v. State*, 394 So. 2d 993 (Fla. 1981); *Rampil v. State,* 422 So. 2d 867 (Fla. 2d DCA 1982).

[5] See Ops. Att'y Gen. Fla. 90-15 (1990); 12-10 (2012); Inf. Op. to Sidney M. Nowell, dated April 11, 2012.