Dual Office-Holding

Number: INFORMAL

Date: October 23, 2014

Mr. David A. Seeley
Umatilla Police Department
Post Office Box 2286
Umatilla, Florida 32784

Dear Mr. Seeley:

As a police officer for the City of Umatilla, you have asked whether you may also serve as a city commissioner for another city. You are aware of the dual office-holding prohibition in section 5(a), Article II of the Florida Constitution, but raise the point that the Constitution does not address sanctions for violation of its provisions. Pursuant to the prohibition, however, a police officer for one city may not serve as a city commissioner for another city without violating the dual office-holding prohibition in section 5(a), Article II, Florida Constitution. While there are no constitutionally specified sanctions for a dual office-holding violation, the following general observations should be considered before undertaking another office.

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

"No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. *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." (e.s.)

Thus, clearly a police officer for one municipality simultaneously holding the seat of a city commissioner for another municipality would violate the dual office-holding prohibition. As reflected by the Dual Office-holding Pamphlet distributed by this office, the constitutional prohibition against dual office-holding contains no sanctions for violation of its terms. While section 5(a), Article II, Florida Constitution, does not sanction or otherwise impose penalties upon an individual who defies its terms, there is a clear prohibition against holding two offices simultaneously and courts of this state have recognized consequences which may occur when an officer attempts to simultaneously serve in another office.

In *Gryzik v. State*[1], the Supreme Court found that an agricultural inspector who also served as a part-time deputy was violating the dual office-holding prohibition, but refused to suppress evidence which was found during a traffic stop based upon an argument that the agricultural inspector had no authority. The court noted that in Florida an officer continues to serve *de facto* in the first office and found that the protecting the public interest and welfare was paramount to enforcing the dual office-holding prohibition. The Court further found that a *Quo Warranto* action

is the appropriate and adequate remedy to determine the right of an individual to hold public office.[2] Thus, it would appear that continued service in one office while accepting and serving a second would be subject to judicial review and potential removal from office.

As reflected by the court case, continued service in an office while accepting and serving in a second office raises questions as to the validity of any official action taken by an officer. Moreover, section 876.05, Florida Statutes, requires all persons who are employees on the payroll of the state or any of its subdivisions, counties, cities, or school districts to take the following oath:

"I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will *support the Constitution* of the United States and *of the State of Florida*." (e.s.)

It is assumed that when one supports the Constitution of the State of Florida, such person does not knowingly violate the provisions contained therein.

I trust these informal comments will be helpful.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] 380 So. 2d 1102, 1104 (Fla. 1980).

[2] *Id.* at 1105.