Sovereign Immunity -- Private Foundation

Number: INFORMAL

Date: August 20, 2014

Mr. Harold M. Knowles
General Counsel
Florida A & M University Foundation, Inc.
Post Office Box 6562
Tallahassee, Florida 32314

Dear Mr. Knowles:

This office is in receipt of your letter of August 5, 2014, requesting assistance in determining whether the Florida Agricultural and Mechanical University Foundation, Inc. (FAMU Foundation), comes within the scope of section 768.28(2), Florida Statutes, for purposes of sovereign immunity protections. Attorney General Bondi has asked me to respond to your inquiry.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may formally comment. The Florida Attorney General is statutorily authorized to provide legal advice and opinions on questions of state law to governmental agencies and officers. *See* section 16.01(3), Florida Statutes. The FAMU Foundation is a private nonprofit corporation and this office has no authority to provide opinions to private corporations. In addition, a review of the recent case law relating to this issue suggests that such a determination would require resolving mixed questions of law and fact which is the province of the judiciary, not the Florida Attorney General's Office.

In an effort to assist you, however, I am enclosing a copy of a recent case considering whether a direct-support organization functioned primarily as an instrumentality of a university and thus was entitled to limited sovereign immunity pursuant to section 768.28, Florida Statutes. *UCF Athletics Association Inc., v. Plancher,* 121 So. 3d 1097 (Fla. 5th DCA 2013), provides a thorough analysis of the facts involved in making such a determination and the recent case law used in developing the Fifth District Court of Appeal's opinion.

I trust that these informal comments and the copy I am enclosing will be helpful to you. The conclusions expressed herein are those of the writer and do not represent an opinion of the Florida Attorney General's Office.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

Enclosure: *UCF Athletics Association Inc., v. Plancher,* 121 So.3d 1097 (Fla. 5th DCA 2013).