Dual Office-Holding -- Child Protective Investigator

Number: INFORMAL

Date: October 21, 2013

Ms. Debra Coppola
12668 Willow Springs Court
Jacksonville, Florida 32246

Dear Ms. Coppola:

Thank you for considering this office as a source for assistance in determining whether your employment as a part-time municipal police officer and as a child protective investigator would violate the dual office holding prohibition in section 5(a), Article II, State Constitution. The materials you have provided indicate that your application for dual employment as a child protective investigator and a part-time municipal police officer has been denied by the Department of Children and Family Services. While this office may offer general observations about the constitutional dual office holding prohibition, we will not comment upon the administrative decision of an agency in applying its policy governing dual employment.

You acknowledge and this office has previously determined that a police officer, whether full-time or part-time, who receives remuneration would be an officer for purposes of the prohibition.[1] The materials you have provided indicate that the Department of Children and Families has taken the position that a child protective investigator with the authority to remove children from their homes exercises a portion of the sovereign power of the state and, therefore, is an office for purposes of the constitutional prohibition against dual office holding.

Section 5(a), Article II, State 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."

This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state, counties and municipalities. The prohibition applies to both elected and appointed offices.[2] While the term "office" is not defined by the Florida Constitution for purposes of the dual office holding prohibition, The Supreme Court of Florida has stated:

"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 . . . . The term 'office' embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and

not by contract."[3]

Thus, in order to have an office, for purposes of the dual office holding prohibition, there would have to be a delegation of a portion of the sovereign power by law "and not by contract." You have provided a copy of the job description for a child protective investigator, which indicates that such a position may "[r]emove children from their homes in cases of severe of [sic] egregious abuse."[4] Section 39.01(62), Florida Statutes, defines "[p]rotective investigator" as:

"an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function."

A review of the statutes governing protective investigations shows that in the event a child protective investigator, acting as the agent for DCF, determines that a child requires immediate or long-term protection and such services are refused by the parents or legal custodians of the child, the child may be taken into protective custody.[5]

The state, exercising its sovereign power as *parens patriae*,[6] has the responsibility to intervene between parent and child when there is demonstrated physical harm occurring to the child that puts a reasonable person on notice that medical intervention is necessary for the sake of the child's life.[7] A delegation of this sovereign power to act as *parens patriae* would appear to create an office subject to the dual office holding prohibition in section 5(a), Article II, State Constitution.

I trust these informal comments will be of assistance to you in resolving your question.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See also* Op. Att'y Gen. Fla. 90-15 (1990) (part-time police officer may not also serve as a full-time police officer in another jurisdiction when he or she receives remuneration for both positions without violating dual office holding prohibition).

[2] *See* Ops. Att'y Gen. Fla. 69-2 (1969) and 80-97 (1980).

[3] *See State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919).

[4] People First, Occupation Profile for Child Protective Investigator, Position Number 60050920-51148240, Closing Date 10/15/2013.

[5] *See* s. 39.301(14)(b), Fla. Stat. *See also* Rule 65C-29.003(5)(a)1., Fla. Admin. C., governing

child protective investigations where an investigator is to develop a safety plan which may include taking the child into custody.

[6] Black's Law Dictionary (8th Ed. 2004), p. 1144, *parens patriae*: "The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves."

[7] *Hermanson v. State*, 570 So. 2d 322 (Fla. 2d DCA 1990).