County Chief Correctional Officer

Number: INFORMAL

Date: July 17, 2013

Mr. Frank A. Baker
Attorney for the Board of County
Commissioners of Jackson County
4431 Lafayette Street
Marianna, Florida 32446

Dear Mr. Baker:

On behalf of a majority of the members of the Board of County Commissioners of Jackson County, you have asked whether the board may appoint the County Administrator as the "chief administrative officer" of the county's jail when the administrator is not a certified correctional officer. You state that Jackson County is a non-charter county which has a county administration form of government adopted pursuant to sections 125.70 – 125.74, Florida Statutes.

In sum, I have found no requirement that the chief correctional officer of a county be a certified correctional officer when his or her primary duties do not encompass the direct supervision, custody, and control of prisoners in the jail. Any potential conflict in the chief administrative officer's proposal of himself or herself as the chief correctional officer would need to be addressed by the Florida Commission on Ethics.

Section 951.06, Florida Statutes, addresses the employment of correctional officers by a county, as follows:

"(1) The county commissioners *shall designate a chief correctional officer* and such correctional officers as they deem necessary.
(2) All chief correctional officers of prisoners shall see that all rules and regulations prescribed by law or the department are fully observed and complied with; enforce discipline among the prisoners in and about the camps; and administer punishment to prisoners, when in their judgment the same is necessary in order to enforce proper discipline, conforming always to the law and rules and regulations.
(3) All boards of county commissioners shall immediately discharge any correctional officer who shall be guilty of gross negligence or cruel and inhuman treatment of prisoners under their control and their action shall be final.
(4) The salaries of correctional officers provided for in this chapter shall be fixed by the board of county commissioners, and the chief correctional officer shall be furnished means of transportation over the roads of the county when necessary, the upkeep and operation of which shall be furnished by the county; however, the county shall not in any case be required to furnish a driver of such conveyance where such services are required to be paid for.
(5) All salaries contemplated by this chapter shall be paid from the general revenue fund of the county." (e.s.)

Additionally, pursuant to section 951.061, Florida Statutes, the county commission may designate the sheriff as the chief correctional officer of the county's correctional system. If designated, the sheriff or his or her designee is responsible for enforcing state law concerning the operation and maintenance of county jails.[1]

Thus, the plain language of section 951.06, Florida Statutes, requires the county commission to designate a "chief correctional officer." The statute, however, does not define "chief correctional officer," nor does it prescribe qualifications an individual must have in order to assume the position.[2] A "correctional officer" for purposes of certification under Chapter 943, Florida Statutes, is defined as

"any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose *primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates* within a correctional institution; however, the term 'correctional officer' does not include any secretarial, clerical, or professionally trained personnel."[3] (e.s.)

While this office does not interpret local codes and ordinances, I would note that section 54-1 of the Jackson County Code establishes the position of "[c]ounty jail administrator" as the "chief correctional officer" for the county. The county jail administrator:

"shall see that all rules and regulations prescribed by law or by the state department of corrections are fully observed and complied with; shall enforce discipline among the prisoners in and about the county jail; and administer punishment to prisoners when, in his judgment, such punishment is necessary in order to enforce proper discipline, conforming always to the law and to all applicable rules and regulations."[4]

To the extent the chief correctional officer's primary duties of enforcing discipline among the prisoners and administering punishment to enforce proper discipline constitute the "supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution," Florida law would require that such officer be a certified correctional officer.

The county's code, however, prescribes the qualifications for the position:

"The jail administrator shall be a resident of the county; and shall be qualified by administrative, executive, and financial experience and ability to serve as the chief correctional officer for the county, pursuant to standards for employment established and administered by the state department of corrections,[5] as supplemented by job requirements which may be from time to time adopted in the future by the board of county commissioners. The jail administrator shall occupy the position of department head. Applicants for the filling of such position shall be proposed by the county administrator and shall require confirmation by a majority of the members of the board of county commissioners."

It is unclear whether the qualifications of "administrative, executive, and financial experience" requires the jail administrator or chief correctional officer to be a certified correctional officer. However, as noted above, the exercise of custody and control over prisoners would apparently require such certification.[6] Moreover, it appears, in the scenario you have presented and under

the county's code, that the county administrator would be recommending himself for the position of chief correctional officer, subject to confirmation by the board of county commissioners.[7] This office offers no comment on the propriety of such action, but would suggest that the question of any conflict under the Florida Code of Ethics be presented to the Florida Commission on Ethics.

While your inquiry does not involve the appointment of the sheriff as the chief correctional officer of a county, it is instructive to consider the qualifications one must possess in order to be a sheriff to consider whether a chief correctional officer needs to be a certified correctional officer. Article VIII, section 1(d) of the Florida Constitution, provides for county officers, as follows:

"There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."

There is no requirement in section 1(d), Article VIII, Florida Constitution, that a sheriff be a certified law enforcement officer. By logical inference, a sheriff who is appointed as the chief correctional officer of a county jail would not be required to obtain certification as a correctional officer before assuming the position. I have not found, nor have you directed my attention to, any statutory requirement that a chief correctional officer be a certified correctional officer under Chapter 943, Florida Statutes, when his or her primary responsibilities do not encompass those enumerated in section 943.10(2), Florida Statutes. Absent a requirement that a chief correctional officer be certified as a correctional officer under Chapter 943, Florida Statutes, this office cannot read such a requirement into the law.[8]

Finally, while the subject of dual office-holding was not broached in your inquiry, there may be concerns that a county administrator with pervasive duties in the administration of all county departments would not also be able to be the chief correctional officer for the county.[9] The Legislature, however, has expressed its intent that the powers granted a county administrator are administrative or ministerial in nature and are "*not to delegate any governmental power* imbued in the board of county commissioners as the governing body of the county[.]"[10] (e.s.) Thus, the Legislature has made clear that a county administrator possesses no delegated governmental powers which would predicate a finding that the position is an office for purposes of dual office-holding.[11]

I trust that these informal comments will be of assistance to you. They do not constitute an official opinion of the Attorney General, but rather are observations by the undersigned.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 951.061(2), Fla. Stat.

[2] *Cf.* s. 110.107(27), Fla. Stat., defining "Law enforcement or correctional officer" as "a law enforcement officer, special agent, correctional officer, correctional probation officer, or institutional security specialist *required to be certified under chapter 943.*" (e.s.); s. 112.19(1)(b), Fla. Stat., defining "Law enforcement, correctional, or correctional probation officer" as "any officer as defined in s. 943.10(14)[.];" s. 112.531(2), Fla. Stat., defining, for purposes of the part, "Correctional officer" as "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term 'correctional officer' does not include any secretarial, clerical, or professionally trained personnel."

[3] Section 943.10(2), Fla. Stat.

[4] Section 54-1(a), Jackson County Code.

[5] While the county's code refers to standards for employment established and administered by the Florida Department of Corrections (DOC), Ch. 96-312, Laws of Fla., abolished the Jail Standards Committee within DOC and created a working committee to develop model standards for managing and operating detention facilities. The Florida Model Jail Standards, s. 1.32, defines "Officer-in-Charge" as "The Sheriff, Chief Correctional Officer or any correctional administrator appointed by a City or County Board of Commissioners," but does not otherwise prescribe standards for the position.

[6] Section 1.44 of the Florida Model Jail Standards, defines "Supervision, Care, Custody, and Control" as

"A *certified correctional officer's*, or juvenile detention officer's *duties* including observing, watching, monitoring, moving, having custody of, exercising dominion and control over, safeguarding, taking charge of, restraining, overseeing, protecting, supervising, and directing inmates. This definition shall not include duties involving the automated opening or closing of doors within the facility when such duties are performed under the direction and observation of a certified correctional officer or certified juvenile detention officer." (e.s.)

[7] *Cf.* Inf. Op. to Ms. Alison Rogers, Escambia County Attorney, dated Nov. 15, 2011 (non-charter counties adopting Part III, Ch. 125, Fla. Stat., imposes responsibility of hiring personnel on county administrator; with exception of hiring department heads, requiring confirmation by county commission, act does not prescribe a role for the county commission in hiring of individuals).

[8] *See* Ops. Att'y Gen. Fla. 06-26 (2006) and 81-10 (1981) (this office is without authority to qualify or read into a statute an interpretation or define words in the statute in such a manner

which would result in a construction that seems more equitable under circumstances presented by a particular factual situation; such construction when the language of a statute is clear would, in effect, be an act of legislation which is exclusively the prerogative of the Legislature); *cf. Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974).

[9] While this office has concluded that a "correctional officer" is not an officer for purposes of the dual office-holding prohibition, *see* Op. Att'y Gen. Fla. 98-31 (1998), no opinion addresses the status of a chief correctional officer.

[10] Section 125.74(2), Fla. Stat. Sections 2-46. – 2-51., Jackson County Code of Ordinances, expresses the same limitation on the powers of the county administrator.

[11] Section 5(a), Art. II, Fla. Const., prohibits a person from holding at the same time more than one office under the government of the state and the counties and municipalities therein.