Dual Office-holding, reserve law enforcement officer

Number: INFORMAL

Date: April 11, 2012

Mr. Sidney M. Nowell
Bunnell City Attorney
Post Office Box 819
Bunnell, Florida 32110-0819

Dear Mr. Nowell:

On behalf of the Bunnell City Commission, you ask whether the current city manager may also serve as a reserve officer in another county or municipality without violating the dual office-holding prohibitions of Article II, section 5(a), Florida Constitution. That section provides:

"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."

While the Constitution contains no definition for the terms "office" or "officer" for purposes of the dual office-holding prohibition, Florida courts and this office have advised that it is the nature of the powers and duties of a particular position that determines whether it is an "office" within the scope of the dual office-holding prohibition or an "employment" outside the scope of the provision.[1]

You state that the city charter "designates the Office of the City Manager as the Chief Administrative Officer" of the city, thus qualifying the position as an "office" under Article II, section (5)(a), Florida Constitution.[2] You also note that this office has stated that a "certified reserve police officer" constitutes an office for purposes of the constitutional dual office-holding prohibition.[3]

You, therefore, ask whether an exception exists when the two offices are not within the same governmental entity, specifically whether a certified reserve officer whose jurisdiction is outside of the municipality may also serve as a city manager.

The constitutional dual office-holding provision addresses the accumulation of offices by a single individual and was fashioned to ensure that the same person would not simultaneously hold multiple state, county, and municipal offices. As you note, this office has stated that the prohibition applies to both elected and appointed offices.[4] In addition, this office has concluded that it is not necessary that the two offices be within the same governmental unit.[5] Thus, a municipal officer is precluded from simultaneously holding not only another municipal office, but also a state or county office. For example, in Attorney General Opinion 90-15, this office stated that a part-time police officer may not also serve as a full-time police officer in another

municipality when he receives remuneration for both positions, without violating the dual office-holding prohibition contained in Article II, section 5(a), Florida Constitution.[6]

While a limited exception to the dual office-holding prohibition for law enforcement functions has been recognized by the courts,[7] this office has stated that the exception is limited to those situations in which a law enforcement officer is performing additional law enforcement functions for no additional remuneration. In considering this exception, this office in Attorney General Opinion 06-27 stated that the exception "has been applied only when both offices have related to criminal investigation or prosecution and not to the exercise of governmental power or performance of official duties on a disparate board or position." Thus, this office concluded that the exception did not permit a police chief to simultaneously serve as acting city manager.[8] A similar conclusion would appear warranted in the instant inquiry as to whether a reserve officer may simultaneously serve as a city manager.

I trust that the above informal advisory comments may be of assistance to the city in resolving this issue. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

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[1] *See State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919) (term "office" embraces the idea of tenure, duration, and duties in exercising a portion of the sovereign power, conferred or defined by law); Op. Att'y Gen. Fla. 99-34 (1999) (membership on the Florida State Fair Authority constitutes an office for purposes of Art. II, s. 5(a), Fla. Const.).

[2] *See* s. 4.01 of the Bunnell City Charter. Based upon a review of the particular powers of a position and the language of the statute, charter or ordinance creating the position, this office has considered the position of city manager, as the chief administrative officer of the city, to constitute an office for purposes of Art. II, s. 5(a), Fla. Const. *See, e.g.,* Ops. Att'y Gen. Fla. 80-97 (1980), 86-11 (1986), and 07-43 (2007).

[3] *See* Op. Att'y Gen. Fla. 77-63 (1977). *And see* Ops. Att'y Gen. Fla. 86-105 (1986) (auxiliary police officers who did not have authority to make arrests, but who were certified, carried firearms, and assisted regular police officers in carrying out their duties were "officers"), and 84-25 (1984) (sworn part-time municipal police officer an "office" and is an "officer" for purposes of Art. II, s. 5[a], Fla. Const.). *Compare* Op. Att'y Gen. Fla. 89-10 (1989) concluding that an administrative law enforcement position, having no law enforcement certification requirements or arrest powers and not authorized to independently exercise the sovereign powers of the state, is an employment and not an office for purposes of dual office-holding.

[4] *See, e.g.,* Ops. Att'y Gen. Fla. 69-2 (1969), 80-97 (1980), and 94-66 (1994).

[5] *See, e.g.,* Ops. Att'y Gen. Fla. 90-15 (1990), 06-46 (2006), 08-06 (2008), and 11-05 (2011).

[6] *And see* Op. Att'y Gen. Fla. 06-46 (2006) (simultaneous service on city commission and Florida Transportation Disadvantaged Commission prohibited by constitutional dual office-holding prohibition).

[7] *See Vinales v. State*, 394 So. 2d 993 (Fla. 1981) (Art. II, s. 5[a], Fla. Const., does not prohibit the appointment of municipal police officers as state attorney investigators since the appointment was temporary and no additional remuneration was paid to the police officers for performing additional criminal investigative duties); and *Rampil v. State*, 422 So. 2d 867 (Fla. 2d DCA 1982) (municipal police officer may also serve as a deputy sheriff without violating dual office-holding prohibition even though dual appointment was not temporary, as the police officer received no remuneration for his duties as deputy sheriff).

[8] *See, e.g.,* Ops. Att'y Gen. Fla. 84-25 (1984) (member of municipal board of adjustment may not serve as part-time law enforcement officer without remuneration), and 86-84 (1986) (city council member may not simultaneously serve as certified auxiliary law enforcement officer).