County Administration Law of 1974

Number: INFORMAL

Date: November 17, 2011

Ms. Alison Rogers
Escambia County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502

Dear Ms. Rogers:

On behalf of the Escambia County Commission, you ask several questions relating to the propriety of actions taken by a county commissioner regarding the hiring of an Equestrian Center manager.[1]

Specifically, you ask whether the County Administration Law of 1974 limits the extent and nature of a county commissioner's participation in the hiring or removal of an employee under the jurisdiction of the county commission. You also ask whether the commissioner's recommendation to county staff unduly influenced the selection process and whether the broad powers granted to the county commission permits the board or an individual commissioner to make recommendations for, and participate in, the hiring of an individual for a vacant position.

Attorney General Opinions are intended to address questions of law, not questions of fact or mixed questions of law and fact. Moreover, as discussed in this office's statement concerning Attorney General Opinions, opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law, but are generally referred to the attorney for the local government in question.

In light of the above, the following informal comments are offered in an effort to be of assistance. Part III, Chapter 125, Florida Statutes, the "County Administration Law of 1974"[2] provides a form of county administration for those non-charter counties adopting its terms.[3] Under the law, a non-charter county which has elected to adopt Part III of Chapter 125 "shall appoint a county administrator, who shall be the administrative head of the county and shall be responsible for the administration of all departments of the county government which the board of county commissioners has authority to control pursuant to this act, the general laws of Florida, or other applicable legislation."[4] The purpose of the County Administrator Law is to

"authorize a form of county administration that best assures an adequate and efficient provision of services to the citizens in this state, that provides for coordinated administration of county departments to better protect the health, welfare, safety, and quality of life of the residents in each of the more urbanized counties, and that places in the hands of a county administrator the multitude of details which must necessarily arise from the operation of a county as a unit of local government and, thus, enables the board of county commissioners to perform freely, without unnecessary interruption, its fundamental intended purpose of making policies within the framework of law applicable to county government in this state. It is the further legislative intent

to provide a formula and structure for the economic and efficient conduct of county affairs by making the county administrator established by this act responsible for handling of all things necessary to accomplish and bring to fruition the policies established by the board of county commissioners."[5]

It appears that Escambia County has adopted the provisions of Part III, Chapter 125, Florida Statutes.[6]

Section 125.74(1), Florida Statutes, enumerates specific powers and duties which the county administrator possesses.[7] The county administrator, when appointed, is given the power and duty, among others, to "[*s*]*elect*, employ, and supervise all personnel *and fill* all vacancies, positions, or employment under the jurisdiction of the board" although the employment of all department heads requires confirmation by the board of county commissioners.[8] (e.s.)

Thus, for non-charter counties which have adopted its terms, Part III, Chapter 125, Florida Statutes, imposes the responsibility of hiring personnel under the jurisdiction of the board of county commissioners on the county administrator.[9] With the exception of the hiring of department heads which require the confirmation of the county commission, however, the act does not prescribe a role for the county commission, or individual members of the commission, in the hiring of such individuals.[10] Whether the actions of a county commissioner in making a recommendation constitutes undue influence or violates the procedures adopted by the administrator in carrying out his or her statutory functions involves mixed questions of law and fact that this office cannot resolve.

I trust that the above informal comments may be of some assistance to the county in resolving these issues.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] From the documents attached to your letter, it appears that the individual was offered, and accepted an "at will" unclassified position as Equestrian Center Marketing & Promotions Coordinator.

[2] *See* s. 125.70, Fla. Stat.

[3] *See* s. 125.72, Fla. Stat., stating "[t]he provisions of this part may apply to any county in this state which has not adopted a charter form of county government *upon passage of a county ordinance by the governing body of such county expressly adopting this part.*" (e.s.)

[4] Section 125.73(1), Fla. Stat. *And see Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977), holding that the county administrator is responsible for the administration of only those

departments of the county which the board has the authority to control.

[5] Section 125.71, Fla. Stat.

[6] *See* s. 2-81, Escambia County Code.

[7] Such enumeration of powers, however, does not constitute a limitation on an administrator's administrative powers provided those powers and duties which are administrative or ministerial in nature. *See* s. 125.74(2), Fla. Stat., stating that it is the Legislature's intent to:

"grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to s. 1(e), Art. VIII of the State Constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county."

[8] Section 125.74(1)(k), Fla. Stat. *And see* s. 2-84(9), Escambia County Code.

[9] *Cf. Peters v. Hansen*, 157 So. 2d 103 (Fla. 2d DCA 1963) (where a public officer is charged by law with a specific duty, and the means by which the duty is to be accomplished are not specially provided for, the public officer has the implied power to use such means as are reasonably necessary to the successful performance of the required duty); *In re Advisory Opinion to the Governor*, 60 So. 2d 285 (Fla. 1952).

[10] *See generally Albritton v. Gandy*, 531 So. 2d 381 (Fla. 1st DCA 1988), in which a former county employee brought an action against an Escambia County commissioner for tortuously interfering with her employment with the county. The commissioner had advised the acting county administrator that he would prefer that the employee no longer work for the county. The court concluded that as the county administrator was responsible for the hiring and firing of such personnel under s. 125.74, Fla. Stat., the county commissioner in making such comments was not exercising an official duty and thus was not protected by absolute immunity. Moreover, as the administrator, not the county commissioner, was responsible for hiring and firing county employees, the commissioner was not a party to the employment relationship and thus an action for tortuous interference could be filed against the commissioner. *Id.* at 387-388.