Board proceeding, disqualification of member

Number: INFORMAL

Date: January 30, 2012

Mr. Edward Rodgers
Chairman, Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Dear Mr. Rodgers:

On May 6, 2011, you requested our assistance in determining whether a member of a local commission on ethics who is present at a meeting of the board may abstain from voting on a measure to avoid creating an appearance of impropriety. This office responded to you in an Informal Attorney General Opinion dated June 9, 2011. By letter of July 11th, you again requested that this office issue a formal opinion on your question.

As you were advised in our earlier response, this office is limited by section 16.01(3), Florida Statutes, to providing legal opinions on questions of state law. Thus, the discussion in the Informal Attorney General Opinion was based on an examination of statutes and case law involving section 286.012, Florida Statutes. This office has no authority to comment on the procedures established by local ordinance for the conduct of meetings or hearings of the Palm Beach County Commission on Ethics. As was suggested in our earlier response, you may wish to discuss your concerns with the county attorney or the attorney who advises the Palm Beach County Commission on Ethics who can more fully explore any procedures established in the ordinance or charter provision creating the commission and describing its procedures.

However, In an effort to provide you with additional assistance, I would note that section 120.665, Florida Statutes, a section of Florida's Administrative Procedures Act, makes provision for the disqualification of agency personnel as follows:

"(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution."

Thus, the Florida Statutes make provision for the disqualification of an individual who is serving in an administrative agency proceeding when bias, prejudice, or interest is shown. The statute provides a procedure for establishing just cause for disqualification and makes provision for filling the seat of the disqualified individual so that business may continue to be conducted by the board or agency. I am enclosing a copy of section 120.665, Florida Statutes, with the annotations of cases construing this statute for your consideration.

The Palm Beach County Commission on Ethics may wish to consult with its attorney to determine whether adopting a rule making substantially the same provision for conducting the business of the commission is appropriate. I am also advised that various the model rules of administrative procedure may contain similar provisions and the attorney for the commission may wish to research and provide to the commission several such disqualification provisions in order that the commission may tailor a rule of conduct to suit its particular needs.

I trust that these informal comments may be helpful to you in addressing your concerns.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosure: s. 120.665, Fla. Stat. Annot.