Dual Office Holding, special magistrates

Number: INFORMAL

Date: June 27, 2011

Mr. Lonnie N. Groot
1001 Heathrow Park Lane
Suite 4001
Lake Mary, Florida 32746

Dear Mr. Groot:

Thank you for contacting this office for a reassessment of previous opinions relating to the application of the dual office-holding prohibition in section 5(a), Article II of the Florida Constitution. You have requested assistance from this office in your capacity as a hearing officer for the City of Palm Coast and question the viability of the prohibition as it relates to its impact on your ability to act as a hearing officer to multiple local governments.

As acknowledged in your letter, the constitutional dual office-holding prohibition limits an individual's ability to serve in two offices simultaneously under the government of the state, counties, or municipalities. Section 5(a), Article II of the Florida 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."

In Attorney General Opinion 2010-19, this office was asked whether service as a code enforcement hearing officer for one city would preclude service as a special magistrate for another. Recognizing previous determinations that service as a special magistrate for a value adjustment board constitutes an office within the scope of Article II, section 5(a), Florida Constitution, and that service on a code enforcement board also constitutes an office for purposes of the prohibition on dual office-holding, it was concluded that an individual serving as a hearing officer could not simultaneously serve as a special magistrate without violating the dual office-holding prohibition.[1]

The factual scenarios you have presented in your letter are not dissimilar to the ones that were considered in Attorney General Opinion 2010-19, such that you are aware that this office's position is that an individual serving as a special magistrate for one public agency may not simultaneously serve as a special magistrate for another.[2] You set forth, however, that the application of the dual office-holding prohibition to simultaneous service as a special magistrate in several jurisdictions unreasonably restrains your ability to practice law.

I have found no cases interpreting the dual office-holding prohibition in section 5(a), Article II of the Florida Constitution as a restraint on the ability of an attorney to practice law, nor am I aware that such a determination has been made by The Florida Bar. While you indicate that you feel that the engagement of an attorney to serve as a special master or special magistrate to handle code enforcement cases is in the nature of an employment, this office, as indicated above, has consistently held otherwise.

I trust that these informal comments will clarify the position that this office has taken in application of the dual office-holding prohibition in section 5(a), Article II of the Florida Constitution.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* Op. Att'y Gen. Fla. 05-29 (2005) (service as special magistrate for value adjustment board constitutes an office within the scope of Art. II, s. 5(a), Fla. Const., and service on code enforcement board constitutes an office for purposes of dual office-holding prohibition). *See also Rodriguez v. Tax Adjustment Experts of Florida, Inc*., 551 So. 2d 537 (Fla. 3d DCA 1989) (special masters for value adjustment boards are quasi-judicial officers).

[2] *But see Vinales v. State*, 394 So. 2d 993 (Fla. 1981) (municipal police officers temporarily and without remuneration appointed as state attorney investigators did not violate dual office-holding prohibition); *Rampil v. State*, 422 So. 2d 867 (Fla. 2d DCA 1982) (city police officer providing additional law enforcement duties without additional remuneration may act as deputy sheriff).