Dual Office-holding, Greater Orlando Aviation Auth.

Number: INFORMAL

Date: June 08, 2010

Mr. Frank Kruppenbacher
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

Dear Mr. Kruppenbacher:

You state that you are a member of the Florida Commission on Ethics. You have been presented with the opportunity to serve on the Greater Orlando Aviation Authority, but are concerned that your service on that body while also serving on the Ethics Commission might violate the constitutional prohibition against dual office-holding. You therefore inquire whether service on the Greater Orlando Aviation Authority constitutes an office for purposes of Article II, section 5(a), Florida Constitution.

Article II, section 5(a) of the Florida Constitution, provides in pertinent part:

"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."

The constitutional dual office-holding prohibition refers only to state, county, and municipal offices; there is no reference to special district offices. Both the courts and this office have therefore concluded that the dual office-holding prohibition does not apply to the officers of an independent special district. In *Advisory Opinion to the Governor--Dual Office-Holding*,[1] the Supreme Court of Florida reiterated that special district officers are not included within the dual office-holding prohibition, concluding that a member of a community college district board of trustees is not included within the dual office-holding prohibition.

Similarly, this office in Attorney General Opinion 94-83 stated that membership on the Panama City-Bay County Airport Authority, created as a independent special district, did not constitute an office for purposes of Article II, section 5(a), Florida Constitution. The authority was created by law to perform a limited function, its members were appointed by a diverse group of governmental agencies that had no oversight or control over the functions or actions of the authority.[2]

This office has cautioned, however, that care must be taken in determining the nature and character of a district or authority to determine whether the governmental entity is an agency of government such that its officers may be considered state, county, or municipal officers for purposes of the dual office-holding prohibition. For example, in Attorney General Opinion 84-90,

this office considered whether a member of the Volusia County Health Facilities Authority was a county officer. While the authority was created and organized pursuant to Part III, Chapter 154, Florida Statutes, as a public body corporate and politic, it was created by the county by ordinance or resolution. The governing body of the county was responsible for the appointment of the authority board members as well as the removal of board members, and was authorized to abolish the authority at any time. Thus, this office concluded that the authority was an instrumentality of the county and its officers were county officers for purposes of Article II, section 5(a), Florida Constitution.

Similarly, in Attorney General Opinion 91-79, this office concluded that the Fort Walton Beach Area Bridge Authority, created as a dependent special district within the county, was an instrumentality of the county for dual-office holding purposes. Under the act creating the district, the county commission was charged with approving the authority's annual budget and for filling vacancies on the authority.[3]

Subsequently, in Attorney General Opinion 2008-61, the question presented was whether a member of the Volusia Growth Management Commission was an officer for purposes of Article II, section 5(a) of the Florida Constitution. The commission was created by the county charter to determine the consistency of comprehensive plan amendments with current comprehensive plans of the county itself and the municipalities within Volusia County. While the county did not appoint all the members of the commission, it was created by the county charter and its powers and duties were prescribed by county ordinance; its budget was approved by and funded by the county. Thus, as a dependent special district of the county, created by county charter and defined by county ordinance and whose budget was approved and funded by the county, this office concluded that the commission appeared to be a part of county government and its members county officers.[4]

In Attorney General Opinion 94-42, however, this office stated that a city commissioner could serve on the Monroe County Career Service Council without violating the dual office-holding prohibition. Members on the career service council were appointed, like the Volusia Growth Management Commission, by various governmental entities within the county. However, unlike the commission, the council, created by special act to review personnel practices and hearing career service personnel complaints of various governmental entities within Monroe County, appeared to be in the nature of an independent special district and thus not subject to Article II, section 5(a), Florida Constitution. The special act did not provide for removal at will by the governing body of a single county or a single municipality or require approval of the council's budget through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

The Greater Orlando Aviation Authority (Authority) was originally created as the Greater Orlando Port Authority in 1957 by the Legislature, as an "agency of the city."[5] The Authority’s charter has been amended numerous times.[6] In 1998, the Legislature consolidated the provisions creating and amending the Authority, referred to as the "Greater Orlando Aviation Authority Act" (hereafter the "Act").[7] The Act provides that the Authority constitutes "an agency of the city." The Act further provided that "[f]or the purposes of the applicable requirements of s. 189.404, Florida Statutes, the authority shall be categorized as an independent special district."[8] While this language was subsequently amended during the same legislative session,[9] it was

amended the following year to again provide: "For the purposes of the applicable requirements of s. 189.404, Florida Statutes, the authority shall be categorized as an independent special district."[10]

While the Authority does not constitute a dependent special district as that term is defined in section 189.403(2), Florida Statutes,[11] the Act, as amended, does not make the Authority independent of the city. Although the Act states that for purposes of the applicable provisions of section 189.404, Florida Statutes, the Authority is categorized as an independent special district, the Act also specifically provides that the Authority is an agency of the city and that the exercise of powers conferred by the Act on the Authority are an "essential municipal function of the city." The Act requires each appointed member of the authority to execute a bond, which bond shall be approved by the city council and filed with the city clerk.[12] Section 8(2) of the Act provides that the Authority has the power to, among other things, "issue revenue bonds *of the city*, payable solely from revenues[.]"[13] (e.s.) While the Authority may acquire property, section 8(6) of the Act provides that any "real estate or interest therein proposed to be purchased, acquired, or sold by the authority shall first be approved by resolution of the city council;" in addition, the granting of any lease or franchise for a term in excess of 10 years "must first be approved by resolution of the city council."[14] While the Authority may exercise the power of eminent domain, the resolution of the Authority for such acquisition and condemnation must be presented to the city council for its approval and no condemnation proceedings in the exercise of the power of eminent domain by the Authority "shall be initiated or valid unless and until the city council shall, by resolution, approve the [Authority's] resolution[.]"[15]

An examination of existing case law relating to the Authority fails to clarify its status.[16] While this office recognizes that the right to hold office is a valuable one which should not be curtailed except by plain provisions of the law,[17] this office cannot state that the Authority is not a municipal office for purposes of Article II, section 5(a), Florida Constitution.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

---

[1] 630 So. 2d 1055, 1058 (Fla. 1994).

[2] *And see* Ops. Att'y Gen. Fla. 71-324 (1971) (member of hospital district's governing body not an officer within constitutional dual office-holding prohibition); 73-47 (1973) (trustee of junior college district may serve as member of parks, planning, and zoning commission); 75-153 (1975) and 80-16 (1980) (legislator may serve as a member of a community college district board of trustees); 78-74 (1978) (municipal parking board member may serve as member of community college district board of trustees); 85-24 (1985) (mayor may serve on a community redevelopment district established by general law); 86-55 (1986) (member of Big Cypress Basin's governing board may serve as city mayor); 94-42 (1994) (city commissioner may serve

on a local multi-agency career service authority); 94-83 (1994) (person may serve on airport authority and on school board); 96-84 (1996) (city commissioner may also serve on area housing commission); 01-14 (2001) and 02-83 (2002) (water control district commissioner may serve as city commissioner); 02-22 (2002) and 00-17 (2000) (dual office-holding prohibition inapplicable to positions in independent fire protection district).

[3] *Cf.* Op. Att'y Gen. Fla. 90-91 (1990), concluding that the Hillsborough County Hospital Authority, created by special act with all powers of a body corporate, whose members are appointed by the Hillsborough County Commission which possess the power to fill vacancies on the authority, remove members for misfeasance, malfeasance or willful neglect of duty, and approve the authority's budget, was a county agency. *And see* Inf. Op. to the Honorable Bob Starks, dated March 25, 1997, stating that the Sanford Airport Authority, created by special act of the Legislature as a dependent special district to the municipality, was an agency of the city and thus subject to the dual office- holding prohibition.

[4] *And see* Op. Att'y Gen. Fla. 09-48 (2009), concluding that the City of Orlando Downtown Development Board appeared to be a part of municipal government and thus its members would be municipal officers subject to the dual office-holding prohibition. The board was designated a dependent special district; its members were appointed by the municipality, its powers and duties prescribed by local ordinance (the special act adopted as a code provision), and its budget approved by the city, funded with ad valorem taxes requested by the board and approved and levied by the city.

[5] Chapter 57-1658, Laws of Fla.

[6] *See* Chs. 61-2599, 67-1834,69-1389, 71-133, 75-464, 77-612, 78-578, 80-553, 80-554, 82-347, 87-555, 88-474, 91-319, 92-152, 98-491, 98-492, 99-455 and 2004-366, Laws of Fla.

[7] Chapter 98-492, Laws of Fla.

[8] Section 3, Ch. 98-492, Laws of Fla.

[9] *See* s. 1, Ch. 98-491, Laws of Fla., providing:

"Subsection (1) of section 3 of House Bill 3959, 1998 Regular Session [enacted as Ch. 98-492, Laws of Fla.], is amended to read . . . In addition, the authority is an independent special district, as defined in chapter 189, Florida Statutes."

[10] Section 1, Ch. 99-455, Laws of Fla.

[11] *See* s. 189.403(2), Fla. Stat., defining "Dependent special district" as a special district that meets at least one of the following criteria:

"(a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
(b) All members of its governing body are appointed by the governing body of a single county or a single municipality.

(c) During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality.
(d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality."

Compare s. 189.403(3), Fla. Stat., defining "Independent special district" as

"a special district that is not a dependent special district as defined in subsection (2). A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality."

And see s. 3(1) of the Act, as amended by s. 3, Ch. 2004-366, Laws of Fla., providing that the Authority is composed of the mayor of the City of Orlando, the Chair of the Orange County Board of County Commissioners, and 5 members appointed by the Governor, subject to approval by the Senate; s. 3(7) of the Act providing that the county commission member and any appointed member may be suspended from office by the Governor and removed by the Senate while the city council member may be removed from office by majority vote of the members of the city council, for good cause; and s. 13 of the Act requiring the Authority to submit its proposed budget to the city council which conducts a public hearing on the budget, after which the Authority may adopt the budget.

[12] Section 3(5) of the Act.

[13] *And see* s. 11 of the Act authorizing the Authority to provide for the "issuance of revenue bonds *of the city*." (e.s.)

[14] *And see* s. 8(16)(a) of the Act requiring approval of the city council to obtain options, contracts or other rights to acquire real or personal property for a reasonable period of time and for a consideration not in excess of 5 percent of the purchase price specified therein unless prior approval of the city council has been obtained; s. 8(16)(b) requiring the prior approval of the city council for the Authority to sell, or give the right of use of its property to the city or other public body without consideration or for less than a full and adequate consideration; and s. 8(18) requiring express prior approval by city ordinance for the Authority to employ its own airport guards or police officers or to contract for the same or to provide its own fire protection, crash and rescue services or arrange for the same, or to acquire by agreement (but not through eminent domain) aviation projects of the city or, with prior approval of the city council, aviation projects within the county.

[15] Section 16 of the Act.

[16] *See, e.g., City of Orlando v. Hausman*, 534 So. 2d 1183 (Fla. 5th DCA 1988) (referred to Authority as an agency of the city); *Greater Orlando Aviation Authority v. Crotty*, 775 So. 2d 978 (Fla. 5th DCA 2000), *review dismissed*, 790 So. 2d 1103 (Fla. 2001) (Authority is a special district created by special act which provides that the Authority is an agency of the city and that its exercise of the powers conferred by the act constitutes the performance of essential municipal functions); *Greater Orlando Aviation Authority v. Bulldog Airlines, Inc.*, 705 So. 2d 120 (Fla. 5th DCA 1998) (refers to Authority as a state agency); *Laborers' International Union of*

North America, Local 517 v. Greater Orlando Aviation Authority, 385 So. 2d 716 (Fla. 5th DCA 1980) (in response to appellee's suggestion that lower court's dismissal of the city should be upheld on the grounds that the complaint failed to sufficiently allege the city's interest, the court stated that an "amended pleading could readily bring to the trial court's attention the following language from the [Authority's] enabling act which should provide the requisite interest for the purposes of joinder as a party in an action for declaratory judgment[,]" citing to the language that the Authority constituted an "an agency of the city, and exercise by the authority of the powers conferred by this act shall be deemed and held to be an essential municipal function of the city").

[17] *See, e.g.*, Ops. Att'y Gen. Fla. 071-324 (1971), 03-12 (2003), 08-10 and 08-15 (2008). *And see Treiman v. Malmquist*, 342 So. 2d 972 (Fla. 1977); *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956) (statutes and constitutions imposing restrictions upon the right of a person to hold office should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers); *Vieira v. Slaughter*, 318 So. 2d 490 (Fla. 1st DCA 1975), *cert. denied*, 341 So. 2d 293 (Fla. 1976).
It is a generally established principle that the right to hold office is a valuable one which should not be curtailed in the absence of plain provisions of law. Thus, if ambiguity exists in construing provisions limiting the right to hold office, those provisions should be construed in favor of eligibility.