

Soil & Water Conserv. Dist., mileage

Number: INFORMAL

Date: October 09, 2009

The Honorable Calvin Lee
Supervisor, Group Three
Duval Soil and Water
Conservation District
260 U.S. Highway 301, North
Suite 108
Baldwin, Florida 32234

Dear Supervisor Lee:

You state that the Duval Soil and Water Conservation District is considering hiring an administrative assistant as an independent contractor. You ask whether this individual is entitled to mileage.

Initially, I would note that requests from public agencies should come from the head of the agency. When the head is a collegial body such as a board or commission, a request should come from a majority of the members of the board or commission. In addition, this office asks that such a request be accompanied by a memorandum of law prepared by the agency attorney addressing the issue presented. Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative, or administrative policy. In addition, opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances, or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question.

In an effort to be of assistance, I would generally note that section 112.061, Florida Statutes, establishes standard travel reimbursement rates, procedures, and limitations, with certain exceptions and exemptions, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency. As an independent special district, the provisions of section 112.061 would be applicable to the soil and conservation district.[1] Subsection (2)(d) and (e) of the statute defines the terms "employee" and "authorized person:"

"(d) Employee or public employee—An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

(e) Authorized person—

1. A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties.

2. A person who is called upon by an agency to contribute time and services as consultant or adviser.

3. A person who is a candidate for an executive or professional position."

An independent contractor is not generally considered to be an officer, employee, or agent of a governmental entity. As this office stated in Attorney General Opinion 74-155 (available online at: <http://myfloridalegal.com/opinions>),

"In order for an independent contractor to receive any travel expense reimbursement, his arrangements with the agency must include "expense reimbursement"; otherwise we must assume that the service he renders includes his travel."

Your agreement characterizes the administrative assistant as an independent contractor. I would note that the court in *Farmers & Merchants Bank v. Vocelle*,^[2] in discussing when an individual is an independent contractor, stated:

"If the person serving is merely subject to the control or direction of the owner as to the result to be obtained, he is an independent contractor; if he is subject to the control or the person being served as to the means to be employed, he is not an independent contractor.

* * *

It is the right of control, not actual control or actual interference with the work, which is significant in distinguishing between an independent contractor and a servant. . . ."

You may wish to discuss this matter further with the attorney who advises the district. I hope, however, that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

[1] See s. 112.061(2)(a), Fla. Stat., defining "Agency or public agency" to mean "[a]ny office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law."

[2] 106 So. 2d 92, 95 (Fla. 1st DCA 1958). *And see, La Grande v. B & L Services, Inc.*, 432 So. 2d 1364 (Fla. 1st DCA 1983) (decisive question is who has the right to direct what shall be done, and how and when it shall be done).