Law Enf.Officers' Bill of Rights, private investigator

Number: INFORMAL

Date: October 07, 2008

Chief Duncan W. Young
Bay Harbor Islands Police Department
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Dear Chief Young:

You ask whether under Part VI, Chapter 112, Florida Statutes, you may outsource the internal investigation of a law enforcement officer within your department.

You state that you have hired a private investigator to conduct such investigations and interrogations. While this office is precluded from commenting on the validity of actions already taken, the following informal comments are offered in an effort to be of assistance.

Part VI of Chapter 112, Florida Statutes, is designed to ensure certain rights for law enforcement and correctional officers. As the court stated in *Longo v. City of Hallandale*,[1] Part VI of Chapter 112, Florida Statutes, applies only to "*intra*departmental interrogation and investigation, and [has] as its purpose the protection of subordinate officers from 'third degree' tactics by superior officers . . . ." (emphasis supplied by the court)

Section 112.532(1), Florida Statutes, requires that "[w]henever a law enforcement officer or correctional officer is under investigation and *subject to interrogation by members of his or her agency* for any reason which could lead to disciplinary action, demotion, or dismissal," such interrogation shall be conducted in the manner prescribed by the statute. (e.s.) The statute requires that the "interrogation shall take place either *at the office of the command of the investigating officer* or at the office of the local precinct, police unit, or correctional unit in which the incident allegedly occurred, as designated by the investigating officer or agency."[2] In addition, section 112.532(1)(c), Florida Statutes, requires that the law enforcement officer or correctional officer under investigation "be informed of the *rank, name, and command of* the officer in charge of the investigation, *the interrogating officer*, and all persons present during the interrogation."[3] (e.s.)

I find nothing in the language of Part VI, Chapter 112, Florida Statutes, which contemplates that the internal investigation conducted pursuant to this part may be delegated to a private investigator.[4] You may wish, however, to seek legislative clarification on this matter.

I trust that the above informal advisory comments may be of assistance.

Sincerely,

Joslyn Wilson

Assistant Attorney General

JW/t

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[1] 42 Fla. Supp. 53, 57 (17th Cir. Broward Co., 1975), *affirmed*, 331 So. 2d 397 (Fla. 4th DCA 1976), *cert. denied*, 341 So. 2d 1080 (Fla. 1976).

[2] Section 112.532(1)(b), Fla. Stat.

[3] *See generally* s. 112.533(1)(a), Fla. Stat., requiring a law enforcement agency to establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency. Such system shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary. The statute goes on to provide that "[w]hen *law enforcement or correctional agency personnel assigned the responsibility of investigating the complaint* prepare an investigative report or summary, regardless of form, the person preparing the report shall" comply with the requirements set forth therein. *Cf.* s. 112.532(2), Fla. Stat., providing for complaint review boards stating that the "board members shall be law enforcement officers or correctional officers selected from any state, county, or municipal agency within the county."

[4] *Cf. Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944) (when the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State,* 335 So. 2d 815, 817 (Fla. 1976).