Baker Act, federal law enforcement officers

Number: INFORMAL

Date: November 08, 2005

Mr. James J. Kelly
Department of Veterans Affairs
Post Office Box 5005
Bay Pines, Florida 33744

Dear Mr. Kelly:

Thank you for contacting the Florida Attorney General's Office to express your concern that federal law enforcement officers should be included within the scope of the term "law enforcement officer" for purposes of Florida's Baker Act, Part I, Chapter 394, Florida Statutes. Attorney General Crist has asked me to respond to your letter.

You specifically refer to Attorney General Opinion 99-68 in which this office concluded that a federal law enforcement officer did not constitute a law enforcement officer for purposes of the Baker Act, and thus possessed no authority under the act to initiate the involuntary examination of a person or to transport such person as a law enforcement officer. You have suggested that rather than the more limited definition of "law enforcement officer" contained in section 943.10, Florida Statutes, which is used in Attorney General Opinion 99-68, a broader definition be used such as that in section 790.001(8), Florida Statutes.

Part I, Chapter 394, Florida Statutes, is "The Florida Mental Health Act" or "The Baker Act."[1] The act provides for voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to section 394.463(1), Florida Statutes, a person may be taken to a receiving facility[2] for involuntary examination if there is reason to believe that he or she is mentally ill and because of that mental illness has refused voluntary examination or is unable to determine for himself or herself whether examination is necessary. A determination must be made that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself or that there is substantial likelihood that without care or treatment serious bodily harm to that person or others may result in the near future as evidenced by recent behavior.[3]

The Baker Act contains specific definitions for terms used in the act. Section 394.455, Florida Statutes, defines "[l]aw enforcement officer" to mean "a law enforcement officer as defined in s. 943.10." Thus, the Legislature has determined that the definition provided in section 943.10, Florida Statutes, is the definition of "law enforcement officer" to be used throughout the Baker Act. Section 943.10(1), Florida Statutes, states:

"'Law enforcement officer' means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in

whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency."

As Attorney General Opinion 99-68 notes, federal police officers are not appointed or employed by the state or a political subdivision thereof. The Attorney General's Office has no authority to supply additional words or to modify the meaning of a duly enacted statute.[4] Thus, the provisions of the Baker Act imposing certain duties and responsibilities on law enforcement officers are not applicable to a federal veterans affairs police officer and provisions relating to the initiation of involuntary examination or the transportation of persons by law enforcement officers under the Baker Act do not apply to a federal law enforcement officer.

I would also point out that this office has recognized that Part I, Chapter 23, Florida Statutes, authorizes state and local law enforcement agencies in the State of Florida to enter into a mutual aid agreement with a law enforcement agency of the Unites States.[5] As is discussed more fully in Attorney General Opinion 99-68, a state or local law enforcement agency could enter into a mutual air agreement with a law enforcement agency of the United States to assist in the enforcement of the Baker Act.

Therefore, absent a mutual aid agreement and until and unless the Legislature amends the definition of "law enforcement officer" for purposes of the Baker Act to include federal officers, this office continues to be of the opinion, expressed in Attorney General Opinion 99-68, that federal law enforcement officers do not constitute law enforcement officers for purposes of Florida’s Baker Act, and thus, possess no authority under the act to initiate the involuntary examination of a person or to transport such person as law enforcement officers.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Section 394.451, Fla. Stat.

[2] *See* s. 394.455(30), Fla. Stat., for a definition of a treatment facility.

[3] Section 394.463(1), Fla. Stat.

[4] *Cf., Chaffee v. Miami Transfer Company, Inc.,* 288 So. 2d 209 (Fla. 1974); Ops. Att'y Gen. Fla. 87-43 (1987) and 82-20 (1982).

[5] *See* Ops. Att'y Gen. Fla. 99-68 (1999) and 94-36 (1994).