Attorney volunteering as law enforcement officer

Number: INFORMAL

Date: October 28, 2005

The Honorable Mitch Needelman
Representative, District 31
Post Office Box 1656
Melbourne, Florida 32901

Dear Representative Needelman:

You ask whether section 454.18, Florida Statutes, precludes an attorney who is certified as a part-time law enforcement officer or auxiliary law enforcement officer from volunteering as a part-time deputy sheriff or auxiliary deputy sheriff.

Section 454.18, Florida Statutes, provides in pertinent part:

"No sheriff . . . , or deputy thereof, shall practice in this state . . . . And any person, whether an attorney or not, or whether within the exceptions mentioned above or not, may conduct his or her own cause in any court of this state, or before any public board, committee, or officer, subject to the lawful rules and discipline of such court, board, committee, or officer. The provisions of this section restricting the practice of law by a sheriff . . . or deputy thereof, shall not apply in a case where such person is representing the office or agency in the course of duties as an attorney."

In *Harich v. State*,[1] the Florida Supreme Court considered whether an attorney working as an assistant public defender violated the above statute in representing a defendant when he was also designated as a "special deputy sheriff." While the attorney was characterized as a special deputy from 1970 through 1989 in Volusia and Marion Counties, the Court found that the only benefit he received from this status was his ability to carry a firearm. He had no authority to act as a deputy, received no income, maintained no certification, had no training as a deputy, was issued no equipment, never wore a deputy's uniform, responded to no roll calls, had no regular duties as a deputy and was not included on any duty rosters, never held himself out as a law enforcement officer, never made an arrest or stop, never used his special deputy status to obtain information and never received any information due to this status. The Court noted that the attorney's sole reason for becoming a special deputy was to permit him to carry a firearm; he never intended to act as a deputy and the sheriff never intended him to act as a law enforcement officer. In light of the above, the Court held that there was no violation of the statute or conflict of interest.[2]

In the instant inquiry, however, it appears that the part-time or auxiliary law enforcement officer would be performing the duties of a law enforcement officer. Section 943.10(6) and (8), respectively, define "Part-time law enforcement officer" and "Auxiliary law enforcement officer" for purposes of certification as follows:

"(6) 'Part-time law enforcement officer' means any person employed or appointed less than full

time, as defined by an employing agency, with or without compensation, 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.

* * *

(8) 'Auxiliary law enforcement officer' means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions."

Thus, both a certified part-time law enforcement officer and a certified auxiliary law enforcement officer possess the authority to make arrest and perform law enforcement functions. While an auxiliary law enforcement officer must be acting under the direct supervision of a full-time or part-time law enforcement officer, the court in *Stanford v. State*,[3] considered the term "direct supervision" as applied to law enforcement officers, stating:

"Given the exigencies inherent in the law enforcement profession, we conclude that the requirement that auxiliary officers function while 'under the direct supervision' or 'in the company and under the direct control of' a full or part-time law enforcement officer is met as long as the auxiliary officer is directly accountable to a full or part-time law enforcement officer who is in the immediate vicinity of the scene and who has ultimate control of the situation. The degree of supervisory control necessary would be dependent upon the exigencies created by the circumstances."

This office has stated that while section 943.10(8), Florida Statutes, requires that an auxiliary law enforcement officer be under the direct supervision of a full-time or part-time law enforcement officer when making arrests or performing law enforcement functions, the term "direct supervision" would not appear to require physical proximity of the control officer but could be accomplished through the use of telecommunications technology.[4]

In light of the above, it appears that section 454.18, Florida Statutes, would preclude a practicing attorney from volunteering his or her time as a part-time deputy sheriff. The only exception to the prohibition against a deputy sheriff practicing law within this state is when the deputy-attorney is representing the sheriff's office. While a closer question is presented with respect to the auxiliary law enforcement officer, it appears that such an officer would also be precluded from practicing law if he or she acting as a law enforcement officer, making arrests, albeit under the supervision of a full-time or part-time law enforcement officer.[5] The Legislature may wish to clarify its position on this matter. It is suggested, however, that The Florida Bar be consulted inasmuch as the courts in *Harich v. State* and related cases considered whether there was a prohibited conflict of interest by such representation.

Thank you for contacting the Florida Attorney General's Office. I hope that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] 573 So. 2d 303, 305 (Fla. 1990), *cert. den*., 499 U.S. 985, 113 L. Ed. 2d 740, 111 S. Ct. 1645 (1991).

[2] *Accord Wright v. State*, 857 So. 2d 861 (Fla. 2003*); Randolph v. State*, 853 So. 2d 1051 (Fla. 2003).

[3] 415 So. 2d 879 (Fla. 1st DCA 1982).

[4] Attorney General Opinion 93-64 (1993).

[5] *Compare* Inf. Op. to Hon. Kevin Beary, dated January 7, 1997, in which this office stated that the provisions of section 561.25, Florida Statutes, would not prevent an unpaid auxiliary deputy from owning an interest in a fast food restaurant which offers beer and wine as a secondary service to its customers since the Legislature's intent in enacting the statute – to prevent the biased and prejudiced enforcement of the alcoholic beverage laws – would not appear to be threatened by an unpaid auxiliary deputy's ownership of a fast food restaurant that incidentally serves beer and wine as part of its food service operation when the auxiliary officer has no independent authority to enforce the laws of this state. In the instant inquiry, however, the activities of the individual as a practicing attorney are not incidental but the primary function of his or her practice.