Dual office holding, advisory commissions

Number: INFORMAL

Date: August 22, 2005

Ms. Mimi Reid Hardman
Director
The Depot Lake Wales Museum
325 South Scenic Highway
Lake Wales, Florida 33853

Dear Ms. Hardman:

You have asked whether the dual officeholding prohibition in section 5(a), Article II, of the Florida Constitution, precludes your serving on a local historic preservation board and a bicycling and pedestrian safety commission at the same time you are serving on the Florida Historical Commission. It is your understanding that all three of the entities are advisory in nature and you have indicated that you did not take an oath of office for your position on the Florida Historical Commission. You have also provided a copy of the Lake Wales Code provision limiting a person's appointment to no more than two boards, commissions or committees at the same time.

Regrettably, this office's authority to render legal opinions is statutorily limited to responding to questions involving application of state law, thereby precluding a legal interpretation of a local code or ordinance. Any restrictions in the Lake Wales Code on the number of appointments to its municipal boards, commissions or committees would govern such appointments. As to any potential dual officeholding conflicts that might arise from your appointment to an advisory board, the following general comments are offered.

The dual officeholding prohibition in section 5(a), Article II, of the Florida Constitution, provides that no person may hold more than one office under the government of the state and the counties and municipalities therein, with the exception of a notary public or military officer who may hold another office. Moreover, 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 language is clear that appointment to a statutory body having only advisory powers does not implicate the dual officeholding prohibition. For example, this exception has been applied in Attorney General Opinion 72-179 in which it was concluded that a legislator could serve as member of ad hoc charter revision commission appointed by a municipal governing body to serve in a purely advisory capacity to study and recommend changes in municipal charter.[1]

By way of contrast, in Attorney General Opinions 89-25 and 90-33, this office found that local planning and zoning commissions that possessed the power to grant variances without review or which are final unless appealed to the county commission did not fall within the exception for

advisory bodies. As noted in those opinions, only those statutory bodies possessing advisory powers are excepted; Article II, section 5(a), Florida Constitution, does not provide for or recognize an exception for statutory bodies whose powers are substantially or predominately advisory.

The Supreme Court of Florida,[2] determined that a member of the State Planning Board is a state "officer" within the dual officeholding prohibition even though the members of the board were authorized to act only in an advisory capacity. The Court noted that the members of the board were appointed by the Governor, served a fixed term of office, performed duties imposed upon them by statute and were authorized to "expend public funds appropriated for that purpose in the discharge of [their] duties, exercising [their] own discretion in that regard."[3] Thus, the Court concluded that powers and attributes of sovereignty had been "delegated to or reposed in the State Planning Board."

Thus, a review of the statutory powers and duties of a board or commission is necessary to determine whether a member holds an office for purpose of the dual officeholding prohibition in section 5(a), Article II, of the Florida Constitution. An appointment to a municipal board or commission with only advisory powers, however, would not run afoul of the dual officeholding prohibition.

I trust that these informal comments will be of assistance to you in resolving the question you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See also* Ops. Att'y Gen. Fla. 73-288 (1973) (municipal zoning board having only advisory powers may serve as county tax collector); 74-232 (1974) (town council member may serve on advisory county planning commission); 77-74 (1977) (powers exercised by Florida Advisory Council member are advisory and as such are excluded from constitutional dual office holding prohibition); 78-36 (1978) (member of board of trustees of county public health trust may serve on board of business regulation); 86-105 (1986) (local planning agency whose function is information gathering and advising local government entity falls within exception to dual officeholding prohibition).

[2] *In Advisory Opinion to Governor*, 1 So. 2d 636 (Fla. 1941).

[3] *Id. at* 638.