

Law enforcement officers, off duty employment

Number: INFORMAL

Date: May 08, 2001

Chief Jesus M. Menocal
Sweetwater Police Department
500 Southwest 109th Avenue
Sweetwater, Florida 33174

Dear Chief Menocal:

You ask whether a municipal police officer is permitted to work off duty in a law enforcement capacity outside their jurisdiction. You also ask whether such an officer may make an arrest outside of their jurisdiction. Attorney General Butterworth has asked me to respond to your letter.

It is not clear from your letter whether the municipal police officer would be hired by the state, county or another municipality as a law enforcement officer. If so, I would note that this office has considered law enforcement officers to constitute "officers" for purposes of the dual officeholding prohibition in Article II, section 5(a), Florida Constitution. This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state, counties and municipalities.

It is the powers that a law enforcement officer may exercise, particularly the authority to arrest without a warrant and to carry firearms in carrying out his duties, not the salary or certification requirements, that characterize the law enforcement officer as an "officer."^[1]

Generally, therefore, a law enforcement officer in one jurisdiction may not accept employment or appointment as an officer in another jurisdiction without violating the dual officeholding prohibition in Article II, section 5(a), State Constitution. The courts, however, have recognized a limited exception to this prohibition when the officer receives no remuneration for the additional duties.

In *Vinales v. State*,^[2] the Supreme Court of Florida held that the constitutional dual officeholding prohibition did not apply to the appointment pursuant to statute of municipal police officers as state attorney investigators since the appointment was temporary and no additional remuneration was paid to the police officers for performing the additional criminal investigative duties. The following year, the Second District Court of Appeal in *Rampil v. State*,^[3] followed the *Vinales* exception and concluded that it was not a violation of Article II, section 5(a) of the Florida Constitution for a city police officer to act in the capacity of deputy sheriff since that officer received no remuneration for such duties.

The *Vinales* case dealt with the performance of additional law enforcement functions and duties in a police capacity and not the exercise of governmental power or performance of official duties on a disparate municipal board exercising and performing quasi-judicial powers and duties. Similarly, *Rampil* concerned the performance of additional law enforcement functions. This office

has therefore stated that the exception recognized in *Vinales* and *Rampil* is limited and does not apply, for example, to a police officer who serves as a law enforcement officer, receiving remuneration for both positions.[4]

If your inquiry concerns the off-duty employment of a police officer by a private entity, I am enclosing copies of several Attorney General Opinions which generally discuss off duty employment by law enforcement officers.[5]

Regarding your inquiry about the authority of police officers to make arrests outside their jurisdiction, I would note that the powers of a municipality, including its police powers, generally cease at the municipal boundaries and cannot, absent statutory authorization, be exercised outside the city's limits.[6]

This office in Attorney General Opinion 71-72 concluded that a municipal police officer outside the corporate limits of the city could not conduct a criminal investigation, unless such officer worked in partnership with a law enforcement agency having jurisdiction over the subject of the investigation and the place. The opinion recognized that a municipal police officer lacks any power or authority as a police officer in any part of the state beyond the corporate limits of the city where the officer is employed, and any action by the officer would be subject to review as if it were the action of a private citizen.

The Legislature has provided statutory authority for municipal police officers to exercise their powers extraterritorially under certain circumstances. For example, section 901.25, Florida Statutes, authorizes a municipal police officer to make arrests outside the officer's jurisdiction, if the officer is in fresh pursuit. Additionally, a municipal police officer may patrol municipally-owned property and facilities that are located outside of the municipal boundaries, and "when there is probable cause to believe a person has committed or is committing a violation of state law or of a county or municipal ordinance on such property or facilities, may take the person into custody and detain him in a reasonable manner and for a reasonable time."

Part I, Chapter 23, Florida Statutes, the "Florida Mutual Aid Act," creates a state law enforcement mutual aid plan that provides for the coordination of law enforcement planning, operations, and mutual aid.[7] To carry out this plan, the Legislature has found it necessary to "allow a law enforcement agency to enter into a mutual aid agreement with another law enforcement agency of this state or any other state or with any law enforcement agency of the United States or its territories." [8]

The act recognizes that law enforcement assistance may cross jurisdictional lines under a mutual aid agreement. In further recognition of the extraterritorial exercise of law enforcement, section 23.127(1), Florida Statutes, provides:

"Any employee of any Florida law enforcement agency who renders aid outside the employee's jurisdiction but inside this state pursuant to the written agreement entered under this part has the same powers, duties, rights, privileges, and immunities as if the employee was performing duties inside the employee's jurisdiction. . . ."

You may wish to discuss these issues further with the Sweetwater City Attorney. I trust,

however, that the above informal advisory comments and enclosed material may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosures

[1] *Maudsley v. City of North Lauderdale*, 300 So. 2d 304 (Fla. 4th DCA 1974). See *State ex rel. Gibbs v. Martens*, 193 So. 835, 837 (Fla. 1940), in which the Supreme Court of Florida held that a probation officer was an "officer" since he had the right to arrest without a warrant because "no right is more sacred or more jealously guarded than the one that liberty shall not be infringed except by due process of law."

[2] 394 So. 2d 993 (Fla. 1981).

[3] 422 So. 2d 867 (Fla. 2d DCA 1982).

[4] See, e.g., Op. Att'y Gen. Fla. 90-15 (1990).

[5] See Ops. Att'y Gen. Fla. 90-61 (1990) and 97-01 (1997), copies of which are enclosed. Cf. s. 561.25, Fla. Stat., prohibiting state, county, or municipal officers with police powers from being employed by or engaging in beverage business.

[6] See s. 166.021(3)(a), Fla. Stat., stating that municipal home rule powers do not extend to "the subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution[.]" And see *Ramer v. State*, 530 So. 2d 915 (Fla. 1988) (city police officer lacked authority to seize vehicle on private property outside city limits); *Collins v. State*, 143 So. 2d 700 (Fla. 2d DCA 1962), *cert. den.*, 148 So. 2d 280 (Fla. 1962).

[7] Section 23.121(1)(a), Fla. Stat.

[8] Section 23.121(1)(g), Fla. Stat.