Dual Officeholding, community alliance

Number: INFORMAL

Date: May 07, 2001

Ms. Joni Goodman
Executive Director
Guardian Ad Litem Program
Juvenile Justice Center
3302 Northwest 27th Avenue, North Annex
Miami, Florida 33142-5824

RE: GUARDIAN AD LITEM--COMMUNITY ALLIANCES--DEPARTMENT OF CHILDREN AND FAMILIES--DUAL OFFICEHOLDING--director of guardian ad litem program's service on community alliance. s. 20.19(6), Fla. Stat.; Art. II, s. 5(a), Fla. Const.

Dear Ms. Goodman:

You have asked for assistance in determining whether, as the Executive Director of the Guardian Ad Litem Program for the 11th Judicial Circuit, you may also serve on a community alliance created pursuant to section 20.19(6)(e), Florida Statutes, without violating the constitutional prohibition against dual officeholding.

According to your letter, the Community Based Care Alliance for Miami-Dade County, which was established pursuant to section 20.19(6)(d), Florida Statutes, has requested that you become a member of the alliance. You advise that you are a public officer holding the position of Program Director of the 11th Judicial Circuit Guardian Ad Litem Program. By virtue of this public office you are a significant stakeholder in the juvenile justice system. You also advise that the functions you perform are critically related to the planning and implementation of community-based care and the duties of the community alliance.

Article II, section 5(a), Florida Constitution, provides:

"No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and 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."

This provision prohibits a person from simultaneously serving in more than one state, county or municipal office. The prohibition applies to both elected and appointed offices.[1]

The term "office" is not defined by the Constitution, although the Supreme Court of Florida has stated:

"The term 'office' implies a delegation of a portion of the sovereign power to, and the possession

of it by, the person filling the office, while an 'employment' does not comprehend a delegation of any part of the sovereign authority. The term 'office' embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract."[2]

The courts and this office have recognized that the legislative designation of an officer to perform *ex officio* the functions of another or additional office does not violate the dual officeholding prohibition, provided that the duties imposed are consistent with those being exercised. As the Supreme Court of Florida stated in *Bath Club, Inc. v. Dade County*,[3]

"Article II, section 5(a) was manifestly fashioned to ensure that multiple state, county, and municipal offices will not be held by the same person. Underlying this objective is the concern that a conflict of interest will arise by dual officeholding whenever the respective duties of office are inconsistent. Where additional duties are assigned to constitutional officers and there is no inconsistency between these new and pre-existing duties, however, the dual officeholding prohibition does not preclude such an assignment. In such cases, newly assigned duties are viewed merely as an addition to existing responsibilities."

In Attorney General Opinion 2000-72, this office considered the nature of community alliances established pursuant to section 20.19(6), Florida Statutes. This office noted that the reorganization of the Department of Children and Families during the 2000 legislative session included the elimination of health and human services boards and the establishment of community alliances.[4] These community alliances, established by the Department of Children and Families in consultation with local communities, consist of the "stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services."[5]

This office concluded that the newly-created community alliances stand in a substantially similar position to the predecessor health and human services boards. The opinion stated that community alliance members possessed a portion of the state's sovereign power since they are charged with the governance of community-based services and empowered to plan how resources appropriated to the department and from local funding are to be used. Thus, this office asserted in Attorney General Opinion 2000-72 that members of the community alliance would be considered public officers subject to the dual officeholding prohibition in section 5(a), Article II of the Florida Constitution.

Section 20.19(6)(d), Florida Statutes, however, provides that the initial membership of an alliance shall include the district administrator and a representative from each of the following: county government; the school district; the county United Way; the county sheriff's office; the circuit court corresponding to the county; and the county children's board, if one exists. Based upon this legislative designation of alliance membership, this office concluded in Attorney General Opinion 2000-72 that public officers of the entities enumerated in section 20.19(6), Florida Statutes, may serve on Community Alliances in an *ex officio* capacity without violating the dual officeholding prohibition in section 5(a), Article II, Florida Constitution.

The list of public officials enumerated in section 20.19(6)(d), Florida Statutes, however, is specifically limited and does not include the executive director of a guardian ad litem program.

Section 20.19(6)(e), Florida Statutes, does provide that, after the initial meeting of the alliance, the group may increase its membership to include individuals and organizations representing funding organizations, who are community leaders, who have knowledge of community-based service issues, or who otherwise have perspectives enabling them to accomplish the duties assigned to the alliance.

While the Legislature may assign additional powers and duties, not inconsistent with pre-existing duties, to a public official such that there is an *ex officio* extension of the office, there is no such legislative *ex officio* designation in the situation about which you have inquired. The *ex officio* exception exists when the enabling legislation authorizing the creation of the board in question designates a public officer to serve as a member of the board and thereby imposes additional or *ex officio* duties upon that officer.[6]

In sum, it would appear that a potential violation of the constitutional dual officeholding prohibition would occur if the executive director of a guardian ad litem program for a particular judicial circuit, who is a public officer, also serves simultaneously on a community alliance created pursuant to section 20.19(6)(e), Florida Statutes, unless he or she serves in one of the designated *ex officio* positions.[7] I would note that section 20.19(6)(d), Florida Statutes, does contain a provision requiring that a representative from the circuit court corresponding to the county serve as a member of the alliance. This position is an *ex officio* designation for the circuit court representative and, if the executive director of the guardian ad litem program for that judicial circuit were chosen to serve in this capacity, such service would not violate the dual officeholding prohibition.

I trust that these informal comments may be of assistance to you in resolving this matter.

Sincerely,

Gerry Hammond
Assistant Attorney General

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[1] *See, e.g.,* Ops. Att'y Gen. Fla. 80-97 (1980) and 69-2 (1969).

[2] *State ex rel. Holloway v. Sheats,* 83 So. 508, 509 (Fla. 1919). *See also State ex rel. Clyatt v. Hocker,* 22 So. 721 (Fla. 1897).

[3] 394 So. 2d 110, 112 (Fla. 1981).

[4] Section 2, Ch. 2000-139, Laws of Fla.

[5] Section 20.19(6)(a), Fla. Stat. *And see* s. 20.19(6)(b), Fla. Stat., setting forth the duties of such alliances:

"1. Joint planning for resource utilization in the community, including resources appropriated to the department and any funds that local funding sources choose to provide.
2. Needs assessment and establishment of community priorities for service delivery.
3. Determining community outcome goals to supplement state-required outcomes.
4. Serving as a catalyst for community resource development.
5. Providing for community education and advocacy on issues related to delivery of services.
6. Promoting prevention and early intervention services."

[6] *See, e.g.,* s. 30.15(1)(i), Fla. Stat. (sheriff *ex officio* timber agent); s. 39.001(7)(b)1., Fla. Stat. (representatives of Department of Law Enforcement and Department of Education *ex officio* members of task force); s. 153.60, Fla. Stat. (county commissioners *ex officio* governing body of water and sewer district); and s. 161.25, Fla. Stat. (county commissioners *ex officio* beach and shore preservation authority). *And see* Op. Att'y Gen. Fla. 81-72 (1981) (city council, as the legislative body for the municipality, may by ordinance impose the additional or *ex officio* duties of the office of city manager on the city clerk).

[7] *See* Op. Att'y Gen. Fla. 00-72 (2000).