

School readiness coalition

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Ms. Sue Canning
Interim Chairperson
Volusia School Readiness Coalition
Post Office Box 2410
Daytona Beach, Florida 32115-2410

Dear Ms. Canning:

On behalf of the Volusia School Readiness Coalition, you ask whether school readiness coalitions, established pursuant to section 411.01, Florida Statutes, and their individual members, are covered by the immunity provisions of section 768.28, Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

According to your letter, you have been advised by the Florida Partnership for School Readiness that while the partnership is covered by sovereign immunity, the coalitions for school readiness may not be.[1] Section 768.28, Florida Statutes, in accordance with Article X, section 13 of the Florida Constitution, waives sovereign immunity for the state and its agencies and subdivisions to the extent specified in the act. Monetary limitations are specified in the statute allowing payment of a judgment against the state or its agencies and subdivisions.[2]

Section 768.28(2), Florida Statutes, defines "state agencies or subdivisions" to include "*independent establishments of the state*; counties and municipalities; and *corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities*[" (e.s.) In *Eldred v. North Broward Hospital District*,[3] the Supreme Court of Florida considered whether a hospital district was a "state agency or subdivision" for purposes of section 768.28, Florida Statutes. Noting that the governmental status of special districts is recognized by law, the court concluded that the hospital district was an "independent establishment of the state" and thus covered by section 768.28. In considering section 768.28, Florida Statutes, the Court stated that the statute effectively waived sovereign immunity "for all governmental entities." [4]

Section 411.01, Florida Statutes, the "School Readiness Act," seeks to create a system for school readiness by creating the Florida Partnership for School Readiness (partnership) to set state policy, and local coalitions to enhance the quality and quantity of preschool programs. The purpose of the partnership, which is assigned to the Executive Office of the Governor for administrative purposes, is to provide a unified approach to school readiness.[5]

While the school readiness program is to coordinate and operate in conjunction with the district school systems, it is not a part of the system of free public schools. Rather, it is a separate program for children under the age of kindergarten eligibility.[6] Section 411.01(5), Florida Statutes, provides for local governance of the school readiness system by school readiness coalitions. Section 411.01(5)(a)2., Florida Statutes, provides for the composition of the coalitions

which are to consist of at least 18 but not more than 25 members.

The act appears to contemplate that there shall be a coalition in each county. Section 411.01(5)(a)1., Florida Statutes, however, provides that if a coalition's plan would serve less than 400 birth-to-kindergarten age children, the coalition must either join with another county to form a multicounty coalition, enter into an agreement with a fiscal agent to serve more than one coalition, or demonstrate to the partnership its ability to implement its plan as a single-county coalition.

The school readiness coalitions replace the district interagency coordinating councils required under section 230.2305, Florida Statutes.[7] Members of the coalition are subject to the ethics provisions in Part III of Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.[8]

The statute recognizes that a coalition may incorporate. Section 411.01(5)(f), Florida Statutes, states that if a local coalition is not a legally established corporate entity, the coalition must designate a fiscal agent which may be a public entity or a private nonprofit organization.

It is not readily apparent from an examination of the statute as to the character of school readiness coalitions. The coalitions, created by law, whose composition, powers and duties are prescribed by statute and whose members of the coalition are subject to the ethics provisions in Part III of chapter 112, Florida Statutes, may well constitute governmental entities. Section 411.01, Florida Statutes, however, states that they are not part of the state school system and the statute does not place them as a part of state or local government. Nor does the statute create such a coalition as body corporate and politic, or require a coalition to be duly incorporated within the state as a nonprofit corporation. However, as noted above, the statute does recognize that a coalition may be incorporated.[9] A review of the legislative history surrounding the enactment of section 411.01, Florida Statutes, failed to provide any clarification.

It may, therefore, be advisable to seek legislative clarification regarding the status of the school readiness coalitions and the applicability of section 768.28, Florida Statutes, to such coalitions. Until such time as the Legislature may address such concerns, a coalition may wish to consider incorporating. If a coalition is incorporated, it would appear to qualify as a corporation acting primarily as an instrumentality of the state, county or municipality, and thus be subject to the provisions of section 768.28, Florida Statutes.

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

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tjw

[1] See School Readiness: Frequently Asked Questions, The Florida Partnership for School Readiness, p. 10.

[2] See s. 768.28(5), Fla. Stat.

[3] 498 So. 2d 911 (Fla. 1986).

[4] *Id.* at 913.

[5] See s. 411.01(4)2(i)3., Fla. Stat.

[6] See s. 411.01(2)(f), Fla. Stat.

[7] Section 411.01(5)(a)4., Fla. Stat.

[8] Section 411.01(5)(a)5., Fla. Stat.

[9] See s. 411.01(5)(f), Fla. Stat.