

assessor's office," there is at least an inference that such laws—primarily budget laws—involve compensation sufficiently to generate potential conflict with the new act. The inference is also present that Ch. 73-172 relates to "compensation of employees of an assessor's office," which would indicate a legislative intent or expectancy that the new and extensive budget review powers should extend to amendment of compensation items when necessary, since there appears to be no other provision of the new act relating directly to such compensation. The care with which §6 of the new law [§195.087, F. S.] preserves notice and right of appeal by local governing bodies also indicates legislative cognizance of a significant delegation of authority to the department over matters formerly locally controlled.

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### CAREER SERVICE SYSTEM

#### SUBPOENA POWERS FOR GRIEVANCE COMMITTEES

*To: Walter Sims, Senator, 15th District, Orlando*

*Prepared by: Sharyn Smith, Assistant Attorney General*

#### QUESTION:

Does a grievance committee appointed under the present rules and regulations promulgated under the authority of Ch. 110, F. S., pertaining to state career service employees, possess subpoena powers?

#### SUMMARY:

A grievance committee appointed pursuant to §110.022(1)(g), F. S., may issue subpoenas by rule only when so authorized by the Department of Administration or the Career Service Commission. Such subpoenas must be issued in the name of the Department of Administration or the Career Service Commission.

Chapter 110, F. S., the State Career Service System, was originally enacted by Ch. 67-437, *supra*. Section 110.022(1) provides that the Department of Administration, through the Division of Personnel, shall have the power to adopt rules and regulations necessary to implement the purposes of the State Career Service System. Section 110.022(1)(g) provides that such rules and regulations shall provide for:

The promotion, demotion, reassignment, separation, reinstatement, employee performance evaluations, status, *grievances* and appeals of employees in the career service. (Emphasis supplied.)

Pursuant to §110.022(1)(g), the Department of Administration has adopted, at 22A-10.04, F.A.C., procedures for handling employee grievances. These procedures provide for an initial screening of the grievance by the personnel officer to determine if such grievance is one over which the affected agency head has jurisdiction and control, and, if so, a grievance committee is then appointed to hear the complaint. The grievance committee is composed of either three or five members selected from among the employees of the affected agency. Both the agency head and the aggrieved employee may select an equal number of committee members, either one each in the case of a three-member committee or two each in the case of a five-member committee. The final member of the committee is appointed by the members already selected by the agency and aggrieved employee. Only employees who have attained permanent status in the career service are entitled to have such a grievance committee convened.

The rules and regulations further provide that all meetings and investigations

of the committee are to be conducted during regular working hours and that any employee is to be allowed sufficient time off to appear before the committee when so requested.

No mention is made in the rules and regulations or in the enabling statute concerning subpoena powers of a grievance committee. The committee is given the power to call any *employee*, who shall then be given sufficient time off to appear before the committee. However, the subpoena power, along with the available criminal sanctions for enforcement of the subpoena, is given solely to the Department of Administration and the Career Service Commission at §110.081, F. S., as follows:

The department of administration and the career service commission shall have power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation of personnel practices or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

Under the rule of statutory construction known as *expressio unius est exclusio alterius*, it is clear that a grievance committee composed of state employees has no subpoena power per se. By the express terms of the statute, subpoenas may be issued only by the Department of Administration and the Career Service Commission. This is in accord with the general rule that essential governmental powers, such as the issuance of subpoenas, may not be exercised by one not a duly commissioned officer. *Florida Dry Cleaning and Laundry Board v. Economy Cash & Carry Cleaners, Inc.*, 197 So. 550 (Fla. 1940).

If provided for by rule, the Department of Administration or Career Service Commission may, however, authorize the chairman of the grievance committee to issue subpoenas in the name of the department and the commission. In *Florida Dry Cleaning and Laundry Board v. Economy Cash & Carry Cleaners, Inc.*, *supra*, at 557, the court held such an authorization to be valid as follows:

The Board may for any designated hearing authorize the person designated to conduct such hearing to issue subpoenas for witnesses whose presence may be required in the name of the Board, but may not delegate to the employee the power to determine whether or not a requested subpoena should be issued, because these matters involve the exercise of judicial discretion and, while the legislature may delegate judicial functions to a Board or Commission, it is not authorized to delegate such functions to a mere employee of such Board or Commission.

Therefore, a subpoena may be issued in the name of the Department of Administration or the Career Service Commission by a grievance committee appointed pursuant to Ch. 69-343, Laws of Florida, only when the Department of Administration or the Career Service Commission specifically authorizes such subpoena to be issued.