

073-47—March 7, 1973

DUAL OFFICEHOLDING

TRUSTEE OF JUNIOR COLLEGE DISTRICT SERVING AS MEMBER
OF PARKS, PLANNING, AND ZONING COMMISSION*To: Calvin B. Brown, Vero Beach**Prepared by: Richard Bennett, Assistant Attorney General*

QUESTION:

May a trustee of a junior college district also serve as a member of a parks, planning, and zoning commission?

SUMMARY:

A trustee of a junior college district may also serve as a member of a parks, planning, and zoning commission, a statutory body having only advisory powers.

In a letter dated August 4, 1970, addressed to the general counsel for the State Board of Education, my predecessor in office ruled that a junior college trustee was not a state, municipal, or county officer within the meaning of §5 of Art. II of the 1968 State Constitution. It was noted therein that it has long been settled that officers of a special district or authority which has been created by statute to perform a special state or county function are not state, municipal, or county officers within the meaning of the Constitution. Consequently, the dual officeholding prohibition was held not to apply. I find those rulings to be sound and adhere to them in the case before me for consideration. *Accord:* Attorney General Opinions 069-49 and 071-324.

In Advisory Opinion to the Governor, 1 So.2d 636 (Fla. 1941), the Supreme Court held a member of the State Planning Board to be a state officer within the dual officeholding prohibition even though members of the board were authorized to act only in an advisory capacity. However, the board was found to have been authorized to expend public funds in the exercise of their statutory duties. And the members served a fixed term of office after their appointment to the board by the governor. As noted in AGO 071-43 the court ultimately found "the powers and attributes of sovereignty" to have been delegated to the board by statute. In the above-mentioned opinion I held that members of a state park advisory council were not state officers within the prohibition of Art. II, §5, State Const., because there was no authority granted to the council to expend public funds or to exercise the "sovereign power" of the state.

Article II, §5, State Const., provides in part:

No person shall hold at the same time more than one office under the government of the state . . . except that . . . any officer may be a member of a . . . statutory body having *only* advisory powers.
(Emphasis supplied.)

If the parks, planning, and zoning commission has been granted more than mere advisory powers, that fact would exclude members of the commission from the exemption found in Art. II §5(a), *supra*. *Accord:* Attorney General Opinion 069-62.

The City Charter of Vero Beach specifies the powers and duties of the commission in Art. XIV, §123, Ch. 27943, 1951, Laws of Florida. That provision makes clear that the commission is an advisory council. And §125 grants the city council the authority

. . . to pass any ordinance which it deems necessary to carry into effect any plan or suggestion which the commission on city parks, planning and zoning is authorized to make pursuant to the provisions of this act.

It is clear that the commission is a statutory body having only advisory powers. Therefore, the members of the commission come within the exemption found in Art. II, §5(a), *supra*.

Your question is answered in the affirmative.

073-48—March 8, 1973

ELECTION LAW

DUTY OF SECRETARY OF STATE TO ENFORCE—SUBPOENA POWERS

To: Richard Stone, Secretary of State, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does the Department of State have the duty to enforce the provisions of §99.161(10), F. S. 1971, and to subpoena bank records of public officials in performing that duty?

SUMMARY:

The Department of State has no duty to enforce the provisions of §99.161(10), F. S. 1971, nor to subpoena bank records of public officials in connection with an alleged violation of the campaign-spending law. Under §104.27, *id.*, the duty to investigate alleged violations of this law and to enforce it in appropriate judicial proceedings is vested in the state attorney of the county in which the person charged with violating it resides.

Your question is answered in the negative.

Under §15.13, F. S., the Department of State is vested with the "general supervision and administration of the election laws, corporation laws and such other laws as are placed under it by the legislature and shall keep records of same." However, the Supreme Court of Florida stated in *State ex rel. Shevin v. Stone*, 279 So.2d 17 (Fla. 1972), that the secretary of state does not have the authority to make factual determinations as to the violations *vel non* of the resign-to-run law or the "campaign spending" law. The court said that "[a]ny challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made, as here." [279 So.2d at 22.]

Section 104.27, F. S. 1971, provides a special procedure for the initiation in the circuit court, by petition, of judicial proceedings to try alleged violations of §99.161, *supra*. The petition is filed in the circuit court of the county in which the person charged with the violation resides. This statute makes it the duty of the state attorney of that judicial circuit to investigate the charges made in such petition and to file in the proceedings such pleadings as he determines should be filed. Presumably, in the course of such investigation or proceedings, the state attorney could compel the attendance of witnesses, as authorized by §27.04, *id.*, as well as the production of books and papers in the custody of any such witness as he may properly, under applicable principles of law, be compelled to produce. See *Imparato v. Spicola*, 238 So.2d 503 (2 D.C.A. Fla., 1970). However, as noted above, there is nothing in the statutes which either expressly or by necessary implication vests in the Department of State the duty or authority to enforce the provisions of §99.161, *supra*; it necessarily follows that it has no subpoena powers with respect thereto.

I have not overlooked the provision of §104.27(8), *supra*, authorizing the