

Dual office-holding, university board of trustees

Number: INFORMAL

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Dr. Howard B. Rock
Chair, Faculty Senate
Florida International University
University Park
Miami, Florida 33199

Dear Dr. Rock:

This is in response to your request for assistance in determining whether you may serve on the statewide university board of governors, while also serving as a member of the university's board of trustees, without violating the dual office-holding prohibition in section 5(a), Article II, Florida Constitution.

You state that you currently serve as Chair of the Faculty Senate at Florida International University (FIU) and, as such, are a member of the university's board of trustees. You are currently chair-elect of the Advisory Council of Faculty Senates and, when you assume the chair next year, will be a member of the statewide university board of governors. The question has arisen whether you may continue to serve as a member of the university's board of trustees when you assume membership on the statewide university board of governors without violating the dual office-holding prohibition in section 5(a), Article II of Florida's Constitution.

Section 5(a), Article II, Florida Constitution, prohibits a state, county, or municipal officer from simultaneously holding another state, county, or municipal office. The prohibition applies to both elected and appointed offices.[1] The constitutional prohibition does not refer to special district offices.[2] The courts and this office, therefore, have concluded that the dual office-holding prohibition does not apply to the officers of an independent special district.[3]

As a result of voter approval of an amendment to the Florida Constitution in 2002, section 7 was added to Article IX. The overall purpose of the amendment was to create a system of governance for the state university system. Subsection (c) of the provision creates a board of trustees to administer each local constituent university. Also created by the amendment is a statewide board of governors, responsible for the operation and control of the whole university system. In addition to fourteen citizen members appointed by the governor and approved by the Senate, the commissioner of education, the chair of the advisory council of faculty senates and the president of the Florida student association are designated members of the statewide board of governors.

During the 2002 Legislative Session, individual boards of trustees were created for each university.[4] These boards were granted powers and duties with striking similarities to those extended by statute to community college boards of trustees.[5]

While this office has not previously addressed the status of a university trustee or member of the statewide university board of governors for purposes of dual office-holding, the question has been raised in the past regarding a community college board of trustees.[6]

In *Advisory Opinion to the Governor--Dual Office-Holding*,[7] the Supreme Court of Florida reiterated that special district officers are not within the dual office-holding prohibition, concluding that a member of a community college district board of trustees

"is an officer of a special district created to perform the special governmental function of operating a community college and is not a state, municipal, or county officer within the meaning of article II, section 5(a). Thus, the dual office holding prohibition does not keep a state, county, or municipal officer from serving on a community college board of trustees."[8]

Thus, it is clear that a trustee for a community college is not an officer under the prohibition against dual office-holding in section 5(a), Article II, Florida Constitution. Given the almost identical structure of local university boards of trustees to the community college boards of trustees, it could reasonably be argued that the underlying rationale and, therefore, conclusions reached in *Advisory Opinion to the Governor -- Dual Office-Holding* would have equal application and justify finding that such boards are district offices not subject to the constitutional dual office-holding prohibition.

Passage of the amendment to section 7, Article IX, Florida Constitution, however, has altered the governing structure of the state university system. The Legislature has not at this time had the opportunity to address any changes that may have to be made to Part II, Chapter 1001, Florida Statutes, to accommodate the mandate of the constitutional amendment. While several pre-filed bills relate to the state university system, it would be premature to comment upon the effect of such legislation. I would note, however, that Governor Bush has appointed several individuals to the statewide board of governors who also serve as members of local university boards of trustees.[9]

I trust these informal comments will be helpful in assessing the ramifications of your assuming the positions you have questioned.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See, e.g., Ops. Att'y Gen. Fla. 02-49 (2002), 80-97 (1980), and 69-2 (1969).

[2] While the 1968 Constitution broadened the language of the dual office-holding prohibition to include municipal as well as state and county offices, it does not refer to special districts.

[3] See, e.g., Ops. Att'y Gen. Fla. 71-324 (1971) (member of hospital district's governing body is not an officer within constitutional dual office holding prohibition); 73-47 (1973) (trustee of junior college district may serve as member of parks, planning, and zoning commission), 75-153 (1975) and 80-16 (1980) (legislator may serve as a member of a community college district board of trustees); 78-74 (1978) (municipal parking board member may serve as member of community college district board of trustees); 85-24 (1985) (mayor may serve on a community redevelopment district established by general law); 86-55 (1986) (member of Big Cypress Basin's governing board may serve as city mayor); 94-42 (1994) (city commissioner may serve on a local multi-agency career service authority); 94-83 (1994) (person may serve on airport authority and on school board); 96-84 (1996) (city commissioner may also serve on area housing commission).

[4] See ss. 1001.71 - 1001.74, Fla. Stat., created by ss. 83-86, Ch. 2002-387, Laws of Fla., effective January 7, 2003.

[5] Cf. s. 240.319, Fla. Stat.

[6] See Ops. Att'y Gen. Fla. 75-153 (1975), 80-16 (1980), and 91-79 (1991).

[7] 630 So. 2d 1055 (Fla. 1994).

[8] 630 So. 2d at 1058.

[9] See "Governor Bush Appoints Florida Board of Governors" press release, dated December 23, 2002, naming to the board: Ms. Ava L. Parker, a member of the University of Central Florida Board of Trustees; Mr. Steven Uhlfelder, a member of the Florida State University Board of Trustees; and Dr. Zachariah P. Zachariah, a member of Board of Trustees for Nova Southeastern University.