District office; dual officeholding, resign to run

Number: INFORMAL

Date: August 18, 1998

Mr. Stephen W. Johnson
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RE: DUAL OFFICEHOLDING--ELECTIONS--SPECIAL DISTRICTS--city commissioner serving on special district's governing body. s. 99.012, Fla. Stat.; Art. II, s. 5(a), Fla. Const.

Dear Mr. Johnson:

You ask whether a member of a city commission may also serve on the board of a special taxing district. Attorney General Butterworth has asked me to respond to your letter.

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."

The above prohibition applies to both elected and appointed offices. Moreover, it is not necessary that the two offices be within the same governmental unit. The constitutional prohibition, however, applies only to state, county, and municipal officers. It is not applicable to offices of independent special districts.[1]

In a 1994 advisory opinion, the Supreme Court of Florida reiterated that special district officers are not included within the dual officeholding prohibition. In the *In re Advisory Opinion to the Governor--Dual Officeholding*,[2] the Court concluded 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 officeholding prohibition does not keep a state, county, or municipal officer from serving on a community college board of trustees."

While the Court considered membership on the board of trustees of a community college district to constitute a special district office and thus to be outside the parameters of Article II, section 5(a), Florida Constitution, the Supreme Court in the *In re Advisory Opinion to the Governor--School Board Member--Suspension Authority*,[3] rejected the designation of school board members as district officers.

The Governor had asked the Court whether school board members could be suspended under the constitutional provisions governing county officers or whether a suspension should be accomplished under the statutory provisions governing district officers. The Court concluded that school board members are county officers who have equivalent powers and authority to that of the county commission although their power is exercised in different local governmental spheres. As county officers, however, school board members are precluded from simultaneously holding another state, county or municipal office.

Care must, therefore, be taken in determining the nature and character of a district or authority to determine whether the governmental entity is an agency of the state, county or municipality such that its officers may be considered state, county or municipal officers for purposes of dual officeholding.

For example, in Attorney General Opinion 84-90, this office considered whether a member of the Volusia County Health Facilities Authority was an officer of the county. While the authority was created and organized under Part III, Chapter 154, Florida Statutes, as a public body corporate and politic, it was created by the county by ordinance or resolution. The governing body of the county appointed the authority members, was empowered to remove the members, and was authorized to abolish the authority at any time. This office, therefore, concluded that the authority was an instrumentality of the county and its officers were county officers. Thus, the constitutional prohibition against dual officeholding prohibited the mayor from also serving on the governing body of the county health facilities authority.

Similarly, in Attorney General Opinion 91-79, this office concluded that the Fort Walton Beach Area Bridge Authority, created as a dependent special district within the county, was an instrumentality of the county for dual officeholding purposes. Under the act creating the district, the county commission was charged with approving the authority's annual budget and for filling vacancies on the authority.

More recently, this office stated that a legislator could not simultaneously serve on the airport authority created as a dependent special district of a municipality which possessed the authority to appoint members and approve the authority's budget.[4] Since the authority appeared to be an agency of the city, it was subject to the dual officeholding prohibition.

Therefore, a determination as to whether a particular special district is an independent or dependent special district is relevant in determining whether the prohibition against dual officeholding in Article II, section 5(a), of the Florida Constitution, is applicable.[5]

Regarding the provisions of section 99.012, Florida Statutes, the Resign-to-Run Law, it appears from your letter that you have already contacted the Division of Elections in the Department of State on this issue. Section 106.23(2), Florida Statutes, authorizes the Division of Elections to provide advisory opinions regarding the interpretation of Florida's elections laws.[6] As stated in this office's Statement Concerning Attorney General Opinions, a copy of which is enclosed, "when an opinion request is received on a question falling within statutory jurisdiction of some other state agency, the request will either be transferred to that agency or the requesting party will be advised to contact the other agency."

Thus, this office would refer any inquiry regarding the interpretation of a provision of the Florida Election Code, such as the Resign to Run Law, to the division. I would note, however, that section 99.012, Florida Statutes, refers not only to state, county, or municipal offices but also to district offices.[7]

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

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosure

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[1] Previous opinions of this office have consistently held that officers of special districts or authorities created by statute to perform a special state or county function do not fall within the scope of the constitutional prohibition. *See, e.g.,* Ops. Att'y Gen. Fla. 71-324 (1971) (member of hospital district's governing body not an officer within constitutional dual officeholding prohibition), 73-47 (1973) (member of junior college district may serve as member of a parks, planning and zoning commission), 75-153 (1975) and 80-16 (1980) (legislator may serve as member of 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 community redevelopment district established by general law); 86-55 (1985) (member of Big Cypress Basin's governing board may serve as city mayor).

[2] 630 So. 2d 1055, 1058 (Fla. 1994).

[3] 626 So. 2d 684 (Fla. 1993).

[4] Informal Opinion to the Honorable Bob Starks, dated March 25, 1997.

[5] *Cf.* 189.403(2), Fla. Stat., defining "[d]ependent special district" as a special district meeting at least one of the following criteria:

"(a) The membership of its governing body is identical to that of the governing body of a single county or municipality.
(b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
(c) During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality.
(d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality."

[6] The statute further provides that the division's "opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion."

[7] *See, e.g.,* ss. 99.012(2) and (3)(a), Florida Statutes, which provides:

"(2) No person may qualify as a candidate for more than one public office, whether federal, state, *district*, county, or municipal, if the terms or any part thereof run concurrently with each other. (3)(a) No officer may qualify as a candidate for another public office, whether state, *district*, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he or she presently holds." (e.s.)

Compare Art. II, s. 5(a), Fla. Const., which refers to offices under state, county, or municipal government.