

Dual officeholding prohibition

Number: AGO 94-83

Date: August 23, 1995

Subject:
Dual officeholding prohibition

Captain Michael W. Gavlak
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RE: DUAL OFFICEHOLDING--SCHOOL BOARDS--COUNTIES--SPECIAL DISTRICTS--
applicability of dual officeholding prohibition to person simultaneously serving on county airport
authority and school board. Art. II, s. 5(a), State Const.

Dear Captain Gavlak:

You have asked for my opinion on the following question:

May a person serve simultaneously on the Bay County Airport Authority and on the Bay County
School Board without violating the terms of Article II, section 5(a), Florida Constitution?

In sum:

The dual officeholding prohibition of the Florida Constitution would not be violated by the
simultaneous service of one person as both a member of the Bay County School Board and the
Panama City-Bay County Airport Authority.

Section 5(a), Article II, Florida Constitution, provides in part that "[n]o person shall hold at the
same time more than one office under the government of the state and the counties and
municipalities therein" The constitutional provision does not define the term "office" or
"officer," but the Supreme Court of Florida has stated that an "office" implies a delegation of a
portion of the sovereign power to, and the possession of it by, the person filling the office.[1]

Despite the broad scope of the dual officeholding prohibition, this office has consistently advised
district officeholders that the constitutional prohibition does not apply to district offices.[2] District
officers, as officers of special districts, i.e., entities created by law to perform a special
governmental function, are not covered by the constitutional prohibition against dual
officeholding.

Recently, the Florida Supreme Court considered the designation of school board members as
district officers and rejected this designation in favor of that of county officers. In In Re Advisory
Opinion To The Governor--School Board Member--Suspension Authority,[3] the Governor asked
the Court whether school board members could be suspended under constitutional provisions

governing suspensions of county officers[4] or whether a suspension should be accomplished under the statutory provisions governing district officers.[5] The Court concluded that school board members are county officers who have equivalent power and authority to that of county commissioners although their power is exercised in different local governmental spheres.[6] Thus, a member of the Bay District School Board is an officer for purposes of the constitutional dual office-holding prohibition.

The Panama City-Bay County Airport and Industrial District was created by special act of the Legislature in 1967.[7] The governing authority for the district is composed of five members who are residents of Bay County and who are selected as follows: two of the five members are appointed by the city commission of the City of Panama City; two of the five members are appointed by the Board of County Commissioners of Bay County; the four appointed members select the fifth member.[8] Chapter 67-1099, Laws of Florida, created the airport district "for the purpose of acquiring, constructing, improving, financing, operating and maintaining airport projects"[9]

The Panama City-Bay County Airport and Industrial District appears to be a special district created to perform a special and limited governmental function. Therefore, a member of the Panama City-Bay County Airport and Industrial District Authority would not be an officer within the scope of the dual officeholding prohibition set forth in Article II, section 5(a), Florida Constitution.

In sum, it is my opinion that a person may serve simultaneously on the Panama City-Bay County Airport Authority and on the Bay County School Board without violating the terms of Article II, Section 5(a), Florida Constitution.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919), *see also State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

[2] *See, e.g., Op. Att'y Gen.* Fla. 71-324 (1971), 73-47 (1973), 75-153 (1975), 78-74 (1978), 80-16 (1980), 84-72 (1984), 85-24 (1985), and 86-55 (1986).

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

[4] *See* Art. IV, s. 7(a), Fla. Const.

[5] *See* s. 112.52, Fla. Stat.

[6] *Supra* at note 4, p. 689.

[7] The act was amended in 1969 by Ch. 69-834, Laws of Florida, but the changes made are not significant to this discussion.

[8] Chapter 67-1099, s. 3(1), at 179-180, Laws of Florida.

[9] Chapter 67-1099, s. 4, at 180-181, Laws of Florida.