

Secretary Dept. of Elder Affairs/internal auditor

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Subject:

Secretary Dept. of Elder Affairs/internal auditor

Mr. E. Bentley Lipscomb
Secretary
Department of Elder Affairs

RE: DEPARTMENT OF ELDER AFFAIRS--VOLUNTEERS--AUDITS--appointment of volunteer as chief internal auditor. s. 20.055, F.S.

QUESTION:

Is the Secretary of the Department of Elder Affairs authorized to appoint a volunteer to serve as the chief internal auditor of the department?

SUMMARY:

The Secretary of the Department of Elder Affairs is authorized to appoint a volunteer to serve as the "chief internal auditor" for the department.

Chapter 20, F.S., provides the organizational structure of the executive branch of state government. Section 20.055(2), F.S., requires that "[e]ach state agency shall employ a chief internal auditor[1] who shall be appointed by and directly responsible to the agency head." [2] Educational and licensure qualifications of the chief internal auditor are prescribed by s. 20.055(3), F.S., and the duties and responsibilities for this position are set forth in subsections (4)-(6). Thus, the issue is the meaning of the term "employ" as used in s. 20.055(2), F.S., which requires that a state agency "employ" a chief internal auditor.

The term "employ" is not defined for purposes of s. 20.055, F.S., but, when used as a verb as it is in this statute, it is commonly understood [3] to mean to make use of [;] to use or engage the services of; . . . also: to provide with a job that pays wages or a salary or with a means of earning a living. [4] It has also been defined as "[t]o use in some process or effort; put to service [;] [t]o devote or apply . . . to some activity; [t]o engage the services of; put to work." [5] Based on these definitions, I cannot conclude that the word "employ" can only be understood to mean "to hire for wages or a salary." Rather, it would appear that utilizing the services of a volunteer would also fall within the scope of the term "employ," as used in s. 20.55(2), F.S.

In fact, the utilization of volunteer service by state agencies is encouraged. Part IV, Ch. 110, F.S., relates to the use of volunteers by state agencies. Section 110.502(1), F.S., provides that:

"Every state department or state agency, through the head of the department or agency,

secretary of the department, or executive director of the department, is authorized to recruit, train, and accept, without regard to requirements to the State Career Service System as set forth in part II of this chapter, the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors,[6] to assist in programs administered by the department or agency."

To facilitate the use of volunteers, the state has waived the application of general laws relating to state employment. In addition to the exemption of volunteers from the State Career Service System contained in s. 110.502(1), F.S., subsection (2) of the statute provides that:

"Volunteers recruited, trained, or accepted by any state department or agency shall not be subject to any provisions of law relating to state employment, to any collective bargaining agreement between the state and any employees' association or union, or to any laws relating to hours of work, rates of compensation, leave time, and employee benefits, except those consistent with s. 110.504. However, all volunteers shall comply with applicable department or agency rules."

It would appear that the language of the statute exempting volunteers from "law[s] relating to state employment" is a reference to those provisions contained in Ch. 110, F.S., which is entitled "State Employment." Thus, the statute would exempt volunteers from state statutes regulating the Senior Management Service System,[7] and the Selected Exempt Service System,[8] as well as exempting them from the general state employment provisions contained in ss. 110.105-110.174, F.S.[9] However, this exemption from laws relating to state employment would not encompass the educational and licensure qualifications set forth in s. 20.055(3), F.S., which would, in my opinion, apply to a volunteer employed as a chief internal auditor.

Thus, reading the term "employ" as used in s. 20.055(2), F.S., to authorize the use of volunteers, together with the specific provisions of Part IV, Ch. 110, F.S., encouraging the use of volunteer service by state agencies, it is my opinion that the Department of Elder Affairs is authorized to utilize a volunteer who meets the statutory educational and licensure qualifications in the position of chief internal auditor.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] Pursuant to s. 20.055(1)(c), F.S., "[c]hief internal auditor" is defined for purposes of the statute as the person who is appointed by the agency head to direct internal auditing functions for the state agency.

[2] See s. 20.055(1)(a), F.S., defining "[s]tate agency" as "each department created pursuant to chapter 20, and . . . the Executive Office of the Governor, the Department of Military Affairs, the

Parole commission, the Board of Regents, the Game and Fresh Water Fish commission, the Public Service commission, and the state courts system"; *and* see s. 20.41, F.S., creating the Department of Elderly Affairs.

[3] Words of common usage, when used in a statute, should be construed in their plain and ordinary sense. See *Pedersen v. Green*, 105 So.2d 1, 4 (Fla. 1958), and *State v. Egan*, 287 So.2d 1, 4 (Fla. 1973).

[4] Webster's Third New International Dictionary 743 (unabridged ed. 1981). *And* see Webster's New collegiate Dictionary 373 (1975).

[5] The American Heritage Dictionary of the English Language 428 (1979).

[6] See s. 110.501, F.S., defining these terms as follows:

"(2) 'Regular-service volunteer' means any person engaged in specific voluntary service activities on an ongoing or continuous basis.

(3) 'Occasional-service volunteer' means any person who offers to provide a one-time or occasional voluntary service.

(4) 'Material donor' means any person who provides funds, materials, employment, or opportunities for clients of state departments or agencies, without monetary or material compensation."

[7] See Part III, Ch. 110, F.S.

[8] See Part V, Ch. 110, F.S.

[9] Despite these general exemptions, Part IV, Ch. 110, F.S., clearly provides that volunteers are covered by state liability protection under s. 768.28, F.S., and workers' compensation pursuant to Ch. 440, F.S. See s. 110.504(4) and (5), F.S.