Public Records, judicial applications

Number: INFORMAL

Date: January 30, 2003

Subject:
Public Records, judicial applications

Mr. John W. Frost, II
Chairman
Second Judicial Nominating
Commission
Post Office Box 2188
Bartow, Florida 33830

Dear Mr. Frost:

You have asked my opinion as to whether the correspondence between your office and persons wishing to obtain an application for the vacant seat on Florida's Second District Court of Appeal are public records which must be disclosed.

Based upon the following analysis, it is my opinion that such correspondence is a public record subject to disclosure.

Section 11(d), Art. V, State Const., provides:

"There shall be a separate judicial nominating commission as provided by general law for . . . each district court of appeal . . . . Uniform rules or procedure shall be established by the judicial nominating commissions . . . . Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. *Except for deliberations of the judicial nominating commissions*, the proceedings of the commissions and *their records shall be open to the public*." (e.s.)

Section 11(d), Art. V, State Const., does not define the term "records" of the judicial nominating commissions.

You refer to s. III of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions which provides in pertinent part:

"All applications, and other information received from or concerning applicants, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public."

Since the persons requesting applications are not yet (and may never be) applicants, you ask whether information regarding these individuals, received by you in your capacity as Chairman of

the Second Judicial Nominating Commission, must be disclosed.

Prior to the approval of House Joint Resolution (HJR) 1160, at the November 1984, general election, records of the judicial nominating commissions were not subject to Ch. 119, F.S. As the Supreme Court of Florida in In Advisory Opinion to the Governor[1] stated:

"[T]he judicial nominating commissions are apart of the executive branch of government performing an executive function which cannot be limited by legislative act. The Governor has no power to establish rules governing the operation of the nominating commissions, as the exercise of such a power might tend to curtail the constitutional independence of the commissions. The power and duty for promulgating rules for the commissions must rest with the members of the commissions."

House Joint Resolution 1160 amended s. 11(d), Art. V, State Const. to clearly provide that, with the exception of deliberations, records of the judicial nominating commissions are public records which must be disclosed. In reviewing the history surrounding the adoption of HJR 1160, it appears that the constitutional amendment sought to open judicial nominating commissions “all the way” with the exception of the deliberations of the commission.[2]

The Legislature in proposing the amendment to s. 11, Art. V, State Const., had before it the definition of the term "public records" for purposes of Ch. 119, F.S., Florida’s Public Records Law.[3] That definition includes all papers, letters or other materials made or received pursuant to law or in connection with the transaction of official business by any agency.[4] Under such a definition, the correspondence either prepared or received by your office in connection with the transaction of the commission’s business would be a public record.

While the Constitution authorizes the adoption of uniform rules or procedure for judicial nominating commissions at each level of the court system, s. 11(d), Art. V, State Const., mandates that records of the commissions, except for their deliberations, must be open to the public. Such a constitutional requirement limits the rule-making authority of the commissions and cannot be altered or diminished by rule.

While s. III of the Uniform Rules requires that all information regarding applicants be open to the public, it does not provide for or require that all other information received by the commissions is confidential. You have not directed my attention to any provision in the rules which either defines what constitutes “records” of the judicial nominating commissions or provides that all documents, papers, etc., made or received by the commission, or a member thereof, while carrying out its duties are not subject to disclosure.

Correspondence between you and persons seeking to obtain applications for the vacant seat on the Second District Court of Appeal relates to the duties and functions of the judicial nominating commissions. Such correspondence made or received by the commission (or a member thereof) in carrying out those duties would, therefore, appear to constitute a record of the commission within the contemplation of s. 11(d), Art. V, State Const. Thus, I am of the opinion that the correspondence between you (or your office on your behalf) in your capacity as Chairman of the Second Judicial Nominating Commission and persons wishing to obtain an application, including the names of such persons, are records open to the public.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

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[1] 276 So.2d 25, 30 (Fla. 1973).

[2] *See* Tape, Judiciary Civil-Committee, Florida Senate, April 25, 1984; *see also* Tape 2, Committee on Judiciary, Florida House of Representatives, April 5, 1984. House Joint Resolution originated as Recommendation 14 of the Article V Review Commission's Final Report. The official recommendation did not include closing the deliberations of the judicial nomination commission. While that provision was voted on favorably by the commission (12-10 vote), an affirmative vote of 14 was required for a recommendation. *See* Staff Summary on PCB 38 (HJR 1160), Committee on Judiciary, House of Representatives, February 2, 1984.

[3] *See generally* Jenkins v. State, 385 So.2d 1356 (Fla. 1980) (constitutional amendment must be viewed in light of historical development of the decisional law extent at the time of the amendment's adoption and the intent of the framers and adopters); In re Advisory Opinion to Governor, 374 So.2d 959 (Fla. 1979); Plante v. Smathers, 372 So.2d 933 (Fla. 1979).

[4] Section 119.011(1), F.S., defines "Public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The term was further defined by the Supreme Court of Florida in Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla. 1980), in which the court held that the definition included "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."