

County commissioner, authority to request information

Number: INFORMAL

Date: January 18, 2012

Mr. Hal A. Airth
Attorney at Law
Post Office Box 448
Live Oak, Florida 32064

Dear Mr. Airth:

On behalf of the Suwannee County Board of County Commissioners, you have asked for this office's assistance in resolving a matter relating to the powers and duties of the commission. Specifically, you have asked whether, in a non-charter county where the heads of the various county departments report to and are directly responsible to the Board of County Commissioners, a county commissioner may require a department head to provide copies of departmental records or other information to the commissioner without first obtaining the approval of the board or filing a public records request. Attorney General Bondi has asked me to respond to your letter.

Initially, I must advise you that this office is authorized to provide legal opinions on questions of state law; we have no authority to provide local governments with detailed suggestions as to how they may accomplish the work for which they were elected. As such, I must advise you that this office cannot direct how a county commissioner should accomplish his or her duties. However, the following informal comments are provided in an effort to assist you.

Public officers may exercise only that power which is conferred upon them by law. The powers and duties of public office are measured by the terms and necessary implication of the grant of constitutional or statutory authority.[1] Pursuant to Article VIII, section 1, Florida Constitution:

"Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law." [2]

In non-charter counties, such as Suwannee County, the constitution specifies the scope of county powers:

"Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict."

Thus, it is the responsibility of the county commission to conduct the business of county government.

Chapter 125, Florida Statutes, reflects this general power^[3] and provides specific powers to the county's governing body. Among the powers set forth in section 125.01, Florida Statutes, are the power to "[a]dopt . . . rules of procedure[,]"^[4] "[c]reate civil service systems and boards[,]"^[5] and generally, "[p]erform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."^[6] These enumerated powers are not exclusive or restrictive and a board of county commissioners is deemed to have all implied powers necessary to carry out its enumerated functions, including the authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.^[7]

A review of Suwannee County's ordinances and charter do not reveal any local legislative provisions relating to staff for the commission or the authority of the commission to direct staff. Rather, I must rely on your assertion that "the heads of the various county departments report to and are directly responsible to the Board of County Commissioners[.]" Article II, section 58-31 of the Suwannee County Code defines "[d]epartment head" to mean "a person with the title of department head, who is assigned the overall responsibility for the operation of a recognized department or area of county operation[.]"

I am aware of no law or ordinance or administrative rule of the Suwannee County Commission that would require a county commissioner who is performing his or her official duties to request the permission of the entire commission before requesting information from staff to be used in accomplishing those duties.^[8] As discussed above, a public official may exercise those express powers conferred by Florida's constitution and statutes and possesses the implied authority incidental to a power expressly granted. The authority to direct staff in the performance of official duties and responsibilities would appear to be an express power of the members of the county commission.

I trust that these informal comments will assist you in advising the Suwannee County Commission. Thank you for contacting this office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney

GH/tsh

[1] See 63C Am. Jur. 2d *Public Officers and Employees* s. 225.

[2] Art. VIII, s. 1(e), Fla. Const.

[3] See s. 125.01(1), Fla. Stat., providing that "[t]he legislative and governing body of a county shall have the power to carry on county government."

[4] Section 125.01(1)(a), Fla. Stat.

[5] Section 125.01(1)(u), Fla. Stat.

[6] Section 125.01(1)(w), Fla. Stat.

[7] See 12 Fla. Jur.2d *Counties and Municipal Corporations* ss. 147 and 148.

[8] *Compare* Op. Att'y Gen. Fla. 2011-12, in which this office concluded that, pursuant to the language of a special act of the Legislature, an individual member of the board of commissioners of the North Broward Hospital District may ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district, but may not otherwise give direction to or interfere with any such employee.