

Quo Warranto, suspended supervisor of elections

Number: INFORMAL

Date: January 07, 2004

Mr. John P. Contini
888 East Las Olas Boulevard, Suite 700
Fort Lauderdale, Florida 33301

Dear Mr. Contini:

Thank you for your letters of December 31, 2003 and January 5, 2004. You have requested this office to commence a *quo warranto* action on behalf of Miriam Oliphant, the suspended Supervisor of Elections in Broward County, Florida. After reviewing your draft petition and attached documents, I must decline to bring such an action.

The common-law remedy of *quo warranto* is employed either to determine the right of an individual to hold public office or to challenge a public officer's attempt to exercise some right or privilege derived from the State.[1] A proceeding under section 80.01, Florida Statutes, is in effect a statutory election contest, not a forum in which to challenge the authority of the Governor to suspend public officials or to question the constitutionality of the suspension process.[2] While Ms. Oliphant is afforded rights and benefits pursuant to her election under Article VIII, section 1(d), Florida Constitution, the Governor is also afforded the right to suspend her from office for misfeasance, as he did, pursuant to Article IV, section 7, Florida Constitution.

The proper forum for Ms. Oliphant to challenge the Governor's suspension is the Florida Senate. The Florida Senate is constitutionally provided under Article IV, section 7, Florida Constitution, with the power to investigate and hold hearings on Ms. Oliphant's suspension and possible removal from office. Under the procedures of the Florida Constitution and Statutes, Ms. Oliphant would be given an opportunity before the Senate to respond to the allegations of misfeasance contained in the Governor's Executive Order.

I would also note that Rule 12.7(3)(a), Florida Senate Rules, provides that if the suspension of a public official is challenged in court, "all inquiry or investigation or hearings thereon shall be held in abeyance and the matter shall not be considered by the Senate . . . until the final determination of a court challenge, if any, and the exhaustion of all appellate remedies[.]" Thus, the filing of a *quo warranto* action by Ms. Oliphant, as you request, will produce the very result about which you complain, that is, delay in the process of Senate investigation and action on her suspension.

Accordingly, the proper forum for Ms. Oliphant to be afforded her due process rights and seek redress is not the court system. Therefore, I must decline to bring the action Ms. Oliphant has requested.

Sincerely,

Charlie Crist
Attorney General

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[1] *State ex rel. Bruce v. Kiesling*, 632 So. 2d 601 (Fla. 1994).

[2] Florida courts have reviewed this process and determined its constitutional validity; the United States Supreme Court has affirmed this view. See *Fair v. Kirk*, 317 F. Supp. 12 (D.C. Fla., 1970), *affirmed* 91 S.Ct. 935, 401 U.S. 928, 28 L.Ed.2d 210, *rehearing denied*, 91 S.Ct 2245, 403 U.S. 941, 29 L.Ed.2d 722.