Dual office holding, regional planning council

Number: INFORMAL

Date: November 05, 2003

Mr. Samuel Goren
General Counsel for the South Florida
Regional Planning Council
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308

Dear Mr. Goren:

You ask whether membership on a regional planning council constitutes a state office for purposes of the constitutional prohibition against dual office holding contained in Article II, section 5(a), Florida Constitution.

As you note, this office previously addressed the issue of the applicability of Article II, section 5(a), Florida Constitution, to members of a regional planning council. In Attorney General Opinion 01-28, this office stated that based on the decision of the Fourth District Court of Appeal in *Orange County v. Gillespie*,[1] and until legislatively or judicially clarified, membership on a regional planning council constitutes an office within the meaning of Article II, section 5(a), Florida Constitution. Subsequently, in Attorney General Opinion 01-87, this office stated that members of the regional planning councils and their staff, in incurring travel expenses to carry out such functions, constitute state travelers for purposes of section 112.061, Florida Statutes.

You question whether such councils are subject to the dual office holding prohibition in light of the exemption contained in Article II, section 5(a), Florida Constitution, for statutory bodies having only advisory powers.

The court in *Gillespie,* in considering whether a voting member of a regional planning council was a "public officer" within the meaning of Florida's Resign-to-Run Law, considered whether such councils were advisory only. It had been argued that the council acted in an advisory capacity and thus outside the scope of the resign to run law; the court, however, held that the regional planning councils had been delegated and possessed the powers and attributes of sovereignty. In reaching such a conclusion, the *Gillespie* court relied on the Florida Supreme Court's opinion in *Advisory Opinion to the Governor*[2]:

"In that Advisory Opinion to the Governor the Supreme Court held that a member of the State Planning Board [created by Chapter 17275, Acts of 1935, Laws of Florida] was a state officer. The general powers, purpose and duties of the State Planning Board (on a state level) established by Chapter 17275 were quite comparable to the general powers, purpose and duties of the Regional Planning Council (on a regional level) as authorized by F.S. Chapter 160, F.S.A. Although the State Planning Board was authorized to act only in an advisory capacity (as was the Regional Planning Council), the Supreme Court found that powers and attributes of sovereignty were delegated to and reposed in the State Planning Board within the concept of the

court's holding in State ex rel. Clyatt v. Hocker, supra."[3]

While the court stated that a regional planning council could not exercise sovereign power to the same extent as could a member of the State Planning Board, it did not state that such planning councils did not exercise sovereign powers but rather that the exercise of such powers was limited "in the sense that a local officer clearly does not exercise sovereign power to the same extent as a comparable officer with state-wide jurisdiction."[4]

Thus, the court held that members of such councils constituted public officers for purposes of the resign-to-run law which was applicable at that time only to state, county or municipal offices.[5] While regional planning councils, created to perform a special governmental function within a defined region, could have been considered a special district outside of the constitutional dual office holding prohibition, Attorney General Opinions 01-28 and 01-87 note that the *Gillespie* court held that regional planning council members were officers within the meaning of the resign-to-run law which did not at that time include district offices. It, therefore, appeared that the court considered such councils to be acting on behalf of the state in implementing state policies regarding growth management.

This office therefore concluded that In light of the Fourth District Court of Appeal decision in *Orange County v. Gillespie, supra,* and until legislatively or judicially clarified, membership on a regional planning council constitutes an office within the meaning of Article II, section 5(a), Florida Constitution. This office suggested, however, that the Legislature may wish to clarify the status of these regional planning councils and their officers. You state that the Legislature has not clarified this issue nor does it appear that the courts have recently considered this matter. Accordingly, this office finds no basis at this time to alter the conclusions reached in the earlier Attorney General Opinions. This office, however, would continue to suggest that the Legislature may wish to clarify this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] 239 So. 2d 132 (Fla. 4th DCA 1970), *cert. den.,* 239 So. 2d 825 (Fla. 1970).

[2] 1 So.2d 636 (Fla. 1941).

[3] 239 So. 2d at 133-134.

[4] *Id.* at 134.

[5] *See* s. 99.012, Fla. Stat. (1971), stating in subsection (2) that "[n]o individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county,

or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office . . . ." Section 99.012 was subsequently amended and now refers to district offices in addition to state, county and municipal offices; however, at the time the court reached its opinion in *Orange County v. Gillespie, supra,* the statute did not refer to district offices.