

County Charter, supervision over county attorney

Number: INFORMAL

Date: September 08, 2003

Mr. Richard C. McCrea, Jr.
Attorney for Hillsborough County Board
of County Commissioners
Post Office Box 1378
Tampa, Florida 33601-1378

Dear Mr. McCrea:

On behalf of the Hillsborough County Board of County Commissioners, you ask whether the Hillsborough County Administrator has supervisory authority over the Hillsborough County Attorney with respect to personnel policy matters and for purposes of the administrative operation of that office.

As you note in the memorandum accompanying your letter, section 125.01(1)(b), Florida Statutes, generally provides:

"The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

* * *

(b) Provide for the prosecution and defense of legal causes in behalf of the county or state and retain counsel and set their compensation."^[1]

The courts of this state and this office have recognized the long-standing authority of a county commission to hire an attorney to provide legal services to the county.^[2] Part III, Chapter 125, Florida Statutes, the County Administration Law of 1974, however, authorizes a noncharter county to adopt the provisions of the act to provide for county administrator who is responsible for the administration of all departments of county government which the board of county commissioners has the authority to control. Section 125.74(1), Florida Statutes, provides in pertinent part that the county administrator has the power and duty to:

"* * *

(e) Establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection with the budget and supervise and administer all phases of the budgetary process.

* * *

(h) Recommend to the board a current position classification and pay plan for all positions in county service.

(i) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures.

* * *

(k) Select, employ, and supervise all personnel and fill all vacancies, positions, or employment under the jurisdiction of the board. However, the employment of all department heads shall require confirmation by the board of county commissioners.

(l) Suspend, discharge, or remove any employee under the jurisdiction of the board pursuant to procedures adopted by the board."^[3]

The above provisions, however, apply to noncharter counties.^[4]

Hillsborough County is a charter county.^[5] The issue of supervision of the county attorney would therefore be governed by the provisions of the county charter.

As discussed this office's Statement Concerning Attorney General Opinions, a copy of which is enclosed, opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Since resolution of your inquiry appears to be dependent upon the terms of the county charter rather than the provisions of state law, this office must decline to formally comment upon this matter. I would note, however, that the county charter appears to vest the county administrator with some direction over the county attorney since section 6.01 of the charter provides the "county attorney shall be appointed or terminated by the county administrator with the advice and consent of the board of county commissioners." This office has reviewed the memorandum prepared by the law firm requested by the Hillsborough County Board of County Commissioners, dated August 21, 2003, on this issue and concurs in analysis of this issue. The county, however, may wish to clarify this matter by amending the charter. I hope, however, that the above informal comments may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

^[1] *And see* s. 125.01(3)(a), Fla. Stat., providing that the enumeration of powers therein is not exclusive or restrictive, but incorporates all implied powers necessary or incident to carrying out such powers enumerated, including, among others, the authority to employ personnel, expend funds and enter into contractual obligations.

[2] See, e.g., *State ex rel. Himes v. Culbreath*, 174 So. 422, 424 (Fla.1937) (counsel may be employed by the boards of county commissioners whenever in the judgment of such boards the interests of the counties require the services of counsel in the courts); Ops. Att'y Gen. Fla. 75-149 (1975) (if elective office of county attorney established by special act is abolished, board of county commissioners may assign to some person or persons the functions of that office, that is, rendering legal advice and assistance to the board concerning its powers, duties and functions and representing the county in the prosecution and defense of legal causes); 76-207 (1976) (decision of whether or not to enter into contract for services of county attorney as well as the decision as to the amount and form or manner of compensation rests with the board of county commissioners and is subject to its sound discretion); 84-29 (1984) (in the absence of a special law or county ordinance so requiring, a noncharter county is not required to take competitive bids prior to hiring the county attorney); 86-102 (1986) (counties have the authority to enter into a contract of employment with an attorney for the provisioning of legal services to the county).

[3] Cf. *Nicolai v. Baldwin*, 715 So. 2d 1161, 1163-1164 (Fla. 5th DCA 1998) (notwithstanding the county attorney's official job description, the unrebutted testimony was that the county administrator was responsible for the management of the county attorney's office regarding nonlegal matters).

[4] See s. 125.72, Fla. Stat., providing that the provisions of Part III, Chapter 125, Florida Statutes, apply to any county which has not adopted a charter form of government. *But* see Part IV, Ch. 125, Fla. Stat., the "Optional County Charter Law," providing for the executive responsibilities and power of the county to be assigned to, and vested in, the appropriate executive officer, pursuant to the optional form adopted pursuant to section 125.83, Florida Statutes. Among such powers and duties is the responsibility to "[d]evelop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures, as may be authorized by the administrative code." Section 125.85(7), Fla. Stat.

[5] Cf. Art. VIII, s. 24, 1885 Fla. Const., authorizing the electors of Hillsborough County to adopt a charter form of government; and Art. VIII, s. 6(e), 1968 Fla. Const., stating, among other things, that Art. VIII, s. 24, 1885 Fla. Const., shall remain in full force and effect until that county shall expressly adopt a charter or home rule plan.