

School Board, charter provisions

Number: INFORMAL

Date: June 05, 2002

The Honorable Stan Jordan
Representative, District 17
9210 Arlington Expressway
Jacksonville, Florida 32225-8212

Dear Representative Jordan:

You ask about the constitutionality of several provisions of the City of Jacksonville's Charter in light of the recent decision of the Florida Supreme Court in *Cook v. City of Jacksonville*.^[1] Specifically, you ask whether section 13.15 of the city charter which establishes term limits for School Board members and section 13.04 of the charter which prohibits a school board member from holding public office or public employment are constitutional.

Initially, it should be noted that this office has no authority to declare a duly enacted charter provision invalid or unconstitutional; rather this office must presume the validity of such provision until a court of competent jurisdiction in an appropriate judicial proceeding declares otherwise. In an effort to be of assistance, however, I would offer the following informal comments.

In *Cook v. City of Jacksonville, supra*, the Supreme Court of Florida considered the validity of a provision of the Jacksonville Charter which imposed term limits on the county clerk of court. The Court held that such term limits amounted to a disqualification of office and said that Article VI, section 4 of the Florida Constitution provided the exclusive list of disqualifications that may be permissibly imposed. In its conclusion, the Court stated:

"We find that article VI, section 4(a), Florida Constitution, provides the only disqualifications applicable to the county offices established by article VIII, section 1(d), Florida Constitution. Thus, we hold that section 12.11, Jacksonville Charter, providing for a term limit on the clerk of the circuit court . . . [is] invalid, as those provisions unconstitutionally attempt to impose an additional disqualification from election to office."

The Court's conclusion refers only to those county constitutional officers recognized in Article VIII, section 1(d), Florida Constitution. While the Supreme Court has held that district school board members are county officers,^[2] they are not Article VIII, section 1(d), officers. Rather district school board members are provided for in Article IX, section 4, Florida Constitution. Thus, the specific holding in *Cook* does not directly apply to school board members.

A review of the Court's opinion, however, indicates that the court's analysis is not limited to Article VIII, section 1(d), officers. The Court frequently refers to "offices authorized by the constitution" and states that Article VI, section 4, Florida Constitution, provides the only disqualifications which may be imposed on such offices. Such term would clearly include school board members. The Court's decision would appear to have a broader impact than merely on

Article VIII, section 1(d), officers. Thus, to the extent that a county charter imposed a disqualification such as term limits on an office authorized by the Constitution, such provision would be subject to question in light of the *Cook* decision.

I would note, however, that Article IX, section 4(a), Florida Constitution, provides for a school board "composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, *as provided by law*." [3] Thus, while the *Cook* opinion would raise significant questions concerning the ability of a county charter to impose term limits on school board members, it is not readily apparent how the provision "as provided by law" in Article IX, section 4(a), Florida Constitution, would affect the court's opinion on this issue.

Regarding the limitation on a school board member holding another public office or public employment, resolution of this issue would depend upon whether the court viewed it as a disqualification or merely a limitation on the right to retain the office. In *Holley v. Adams*, [4] the court considered the validity of the resign to run law on constitutional officers. The Court stated:

"The [resign to run] law is simply a limitation upon the right to retain the office already held when seeking another. It is not a limitation upon the right to seek another office, for the incumbent of an office has the choice under the statute to retain it unmolested or give it up and seek another. . . . Ch. 70-80 does not prescribe qualification but relates to the eligibility of those who may become candidates." [5]

The *Cook* Court did not overrule the *Holley* decision. Thus, the Court treats a limitation on the right to retain an office differently than a limitation on the right to seek an office. Accordingly, it is not clear whether the *Cook* decision would necessarily preclude a charter provision placing limitations on an officer to hold other public employment.

As noted above, this office has no authority to declare a duly enacted charter provision invalid or unconstitutional. The county, however, may wish to seek declaratory relief regarding the impact of the *Cook* decision on its charter provisions.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] Case Nos. SC00-1745 and SC00-1908 (Fla. filed May 23, 2002).

[2] See *In re Advisory Opinion to the Governor--School Board Member--Suspension Authority*, 626 So. 2d 684 (Fla. 1993), holding that district school board members are "county" officers for the purposes of the Governor's suspension authority under Art. IV, s. 7(a), Fla. Const.

[3] See *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974), in which the Supreme Court recognized that it had "consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements." However, with the Constitution itself stating that such school board members shall be "chosen . . . as provided by law," the Court held that no qualifications were mentioned; therefore, the constitutional principle mentioned above was not invoked.

[4] 238 So. 2d 401 (Fla. 1970).

[5] *Id.* at 406 (citation omitted).