Community alliances, dual officeholding

Number: INFORMAL

Date: April 11, 2002

The Honorable Edward Fine
Chief Judge
Fifteenth Judicial Circuit of Florida
Palm Beach County Court House
205 North Dixie Highway
West Palm Beach, Florida 33401

RE: DUAL OFFICEHOLDING–COMMUNITY ALLIANCES–appointment of various officers to local community alliance. s. 20.19(6), Fla. Stat.; Art. II, s. 5(a), Fla. Const.

Dear Judge Fine:

You ask whether the State Attorney, three judges, the Public Defender, local law enforcement chiefs and the Director of the County Department of Health may serve as members of the Community Alliance pursuant to Florida Statute section 20.19(6) without violating section 5(a), Article II of the Florida State Constitution.

Article II, section 5(a), Florida Constitution, provides:

"No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers."

Article II, section 5(a) was manifestly fashioned to ensure that multiple state, county, and municipal offices will not be held by the same person.

In Attorney General Opinion 00-72, this office considered the nature of community alliances established pursuant to section 20.19(6), Florida Statutes. This office noted that the reorganization of the Department of Children and Families during the 2000 legislative session included the elimination of health and human services boards and the establishment of community alliances.[1] These community alliances, established by the Department of Children and Families (department) in consultation with local communities, consist of the "stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services."[2]

This office concluded that the newly-created community alliances stand in a substantially similar position to the predecessor health and human services boards. The opinion states that community alliance members possess a portion of the state's sovereign power since they are

charged with the governance of community-based services and empowered to plan how resources appropriated to the department and from local funding are to be used. Thus, this office asserted in Attorney General Opinion 00-72 that members of the community alliance would be considered public officers subject to the dual officeholding prohibition in section 5(a), Article II of the Florida Constitution.

Section 20.19(6)(d), Florida Statutes, provides that the initial membership of an alliance shall include the district administrator and a representative from each of the following: county government; the school district; the county United Way; the county sheriff's office; the circuit court corresponding to the county; and the county children's board, if one exists. The courts and this office have recognized that the legislative designation of an officer to perform *ex officio* the functions of another or additional office does not violate the dual office-holding prohibition, provided that the duties imposed are consistent with those being exercised.[3] Where additional duties are assigned to officers and there is no inconsistency between these new and pre-existing duties, the dual officeholding prohibition does not preclude such an assignment. In such cases, newly assigned duties are viewed merely as an addition to existing responsibilities.

Based upon this legislative designation of alliance membership, this office concluded in Attorney General Opinion 00-72 that a public officer of the entities enumerated in section 20.19(6), Florida Statutes, may serve on Community Alliances in an *ex officio* capacity without violating the dual officeholding prohibition in section 5(a), Article II, Florida Constitution.

The list of public officials enumerated in section 20.19(6)(d), Florida Statutes, however, is specifically limited. Section 20.19(6)(e), Florida Statutes, provides that, after the initial meeting of the alliance, the group may increase its membership to include individuals and organizations representing funding organizations, who are community leaders, who have knowledge of community-based service issues, or who otherwise have perspectives enabling them to accomplish the duties assigned to the alliance. Such general language, however, would not constitute an *ex officio* designation of a public officer not listed. The *ex officio* exception exists when the enabling legislation authorizing the creation of the board in question designates a public officer to serve as a member of the board and thereby imposes additional or *ex officio* duties upon that officer.[4] This office has previously considered whether the executive director of a guardian ad litem program for a particular judicial circuit, who is a public officer, could simultaneously serve on a community alliance created pursuant to section 20.19(6)(e), Florida Statutes without violating the dual officeholding prohibition. Since the director was not among the public officers specifically listed, a potential violation would occur unless he or she served as the *ex officio* representative from the circuit court.[5]

Currently, the statute refers to the district administrator and a representative from each of the following: county government; the school district; the county United Way; the county sheriff's office; the circuit court corresponding to the county; and the county children's board, if one exists. Only the district administrator and officers from the enumerated entities may serve in an *ex officio* capacity on the community alliance.

Section 20.19(6), Florida Statutes, does not refer to the state attorney or public defender; thus, their appointment to a community alliance would appear to violate Article II, section 5(a), Florida Constitution. House Bill 523, which provides that the state attorney and public defender may be

added to the membership of a local community alliance, was recently passed by the 2002 Legislature and was ordered enrolled on March 15, 2002. The bill has not yet been presented to the Governor.

You inquire about the appointment of local law enforcement chiefs. Section 20.19(6), Florida Statutes, authorizes the appointment of a representative from the county sheriff's office; no provision, however, is made for municipal police chiefs. You also refer to three judges. The statute permits a representative from the circuit court corresponding to the county. Thus, while the statute permits a judge from the circuit to serve in an ex *officio* capacity, it does not authorize multiple judges to serve in such a capacity. You also inquire about the Director of the County Department of Health. This office has no information regarding the director and whether such a position constitutes an office for purposes of Article II, section 5(a), Florida Statutes.[6] If the director is an officer, however, he or she would be able to serve as the representative of the county without violating the constitutional dual officeholding prohibition.

I trust that these informal comments may be of assistance to you in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

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[1] Section 2, Ch. 2000-139, Laws of Fla.

[2] Section 20.19(6)(a), Fla. Stat. *And see* s. 20.19(6)(b), Fla. Stat., setting forth the duties of such alliances:

"1. Joint planning for resource utilization in the community, including resources appropriated to the department and any funds that local funding sources choose to provide.
2. Needs assessment and establishment of community priorities for service delivery.
3. Determining community outcome goals to supplement state-required outcomes.
4. Serving as a catalyst for community resource development.
5. Providing for community education and advocacy on issues related to delivery of services.
6. Promoting prevention and early intervention services."

[3] *See, e.g., Bath Club, Inc. v. Dade County*, 394 So. 2d 110, 112 (Fla. 1981); Op. Att'y Gen. Fla. 81-72 (1981) (city council, as the legislative body for the municipality, may by ordinance impose the additional or *ex officio* duties of the office of city manager on the city clerk).

[4] *See, e.g.,* s. 30.15(1)(i), Fla. Stat. (sheriff *ex officio* timber agent); s. 39.001(7)(b)1., Fla. Stat. (representatives of Department of Law Enforcement and Department of Education *ex officio* members of task force); s. 153.60, Fla. Stat. (county commissioners *ex officio* governing body of water and sewer district); and s. 161.25, Fla. Stat. (county commissioners *ex officio* beach and

shore preservation authority).

[5] Informal Opinion to Ms. Joni Goodman, Executive Director of the Guardian Ad Litem Program for the 11th Judicial Circuit, dated May 4, 2001.

[6] *See State ex rel. Holloway v. Sheats,* 83 So. 508, 509 (Fla. 1919), stating:

The term "office" implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an "employment" does not comprehend a delegation of any part of the sovereign authority. The term "office" embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract.