

Schools, insurance benefits to contract attorney

Number: INFORMAL

Date: September 14, 2001

Mr. Gary L. Williams
Chairperson
School Board of Madison County
312 Northeast Duval Street
Madison, Florida 32340

RE: SCHOOL BOARDS--INSURANCE BENEFITS--ATTORNEYS--authority to provide insurance benefits to contract attorney for school board. ss. 112.08 and 230.03, Fla. Stat.

Dear Mr. Williams:

You ask whether the school board may provide insurance benefits through its group plan to its attorney and assistant school board attorneys who provide legal services under a contract with a retainer and hourly rate.

In sum, it appears that the position of school board attorney is an integral part of the school board's organizational structure such that the individual filling the position may be considered an officer or employee of the district, regardless of the manner in which he or she is compensated. Accordingly, the school board may provide insurance benefits through its group plan to its attorney and assistant school board attorneys who provide legal services on a contractual basis.

You state that the school board retains a private attorney to provide legal services at an hourly rate. The attorney advises the board on all legal matters relating to the district and assistant school board attorneys act at the direction and in the absence of the school board attorney. Members of the school board believe substantial savings may be realized by offering the school board attorney and the assistants the option of participating in the group health insurance program offered by the board. The cost of providing the coverage would be offset through negotiation with the attorney.

Section 112.08(2)(a), Florida Statutes, provides:

"Every local governmental unit is authorized to provide and pay out of its available funds for all or part of the premium for life, health, accident, hospitalization, legal expense, or annuity insurance, or all or any kinds of such insurance, for the officers and employees of the local governmental unit and for . . . dependents of such officers and employees upon a group plan"

A school board is considered to be a local governmental unit for purposes of this section.[1]
Thus, in order for a private attorney retained by the school board and paid an hourly rate under a contract to be a participant in the district's group insurance plan, he or she would need to be an officer or employee of the district.[2]

Section 230.03, Florida Statutes, provides for the management, control, operation, administration, and supervision of district school systems. It states:

"In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law."^[3]

School boards clearly possess "home rule power" such that a school board may exercise any power for school purposes in the operation, control, and supervision of its schools, unless expressly prohibited from doing so by the Florida Constitution or general law.^[4] There is no specific statutory prohibition against a school board purchasing insurance for a contract attorney.

While this office has long held the position that a public entity is prohibited from indemnifying private entities,^[5] an individual carrying out the function of school board attorney would be performing a governmental function of the school board.^[6] Thus a private attorney contracted to perform the services of the school board attorney would appear to have been vested with the role of school board attorney and may be considered an officer or employee of the school district.

I trust these comments will assist you in this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See s. 112.08(1), Fla. Stat.

[2] *Cf. State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919) (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). *Cf.* s. 112.061(2)(c), Fla. Stat., defining "[o]fficer or public officer" as "an individual who in the performance of his or her official duties is vested by law with sovereign powers[;]" and s. 112.061(2)(d), Fla. Stat., defining "[e]mployee or public employee" as "[a]n individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head[.]"

[3] Section 230.03(2), Fla. Stat.

[4] See Ops. Att'y Gen. Fla. 83-72 (1983), 84-58 (1984), 84-95 (1984), 86-45 (1986) and 00-10 (2000). See also *School Board of Collier County v. Florida Teaching Profession National Education Association*, 559 So. 2d 1197, 1198 (Fla. 2d DCA 1990), generally discussing home-

rule powers possessed by school boards.

[5] See Ops. Att'y Gen. Fla. 93-34 (1993) and 84-103 (1984).

[6] *Cf.* Op. Att'y Gen. Fla. 98-59 (1998), in which this office concluded that a city attorney working on a contract basis was carrying out duties as city attorney did more than merely enter into a contract to provide professional services; she assumed the role of city attorney, a role established by the city charter. See s. 230.22(4), Fla. Stat., recognizing the authority of the school board to "[c]ontract, sue, and be sued," and s. 230.23005(6), Fla. Stat., stating that school boards "may adopt policies and procedures necessary to implement federal mandates and programs, court orders, and other legal requirements of the state."