

Dual Officeholding, university board of trustees

Number: INFORMAL

Date: April 09, 2001

The Honorable Raymond O. Gross
Judge, Sixth Judicial Circuit
14250 49th Street North
Clearwater, Florida 33762

RE: STATE UNIVERSITIES--DUAL OFFICEHOLDING--JUDICIAL OFFICERS--SPECIAL DISTRICTS--whether newly created university board of trustees is state or special district office. Art. II, s. 5(a), Fla. Const.; Ch. 2000-321, Laws of Fla.; s. 240.313, Fla. Stat.

Dear Judge Gross:

You have asked this office for advice on whether a state officer may serve as a member of a university board of trustees under the newly constituted State University System without violating Article II, section 5, Florida Constitution, prohibiting dual officeholding.

At this time, there is insufficient information to make a clear determination of whether a member of a university board of trustees is an officer of a special district, and therefore unaffected by the dual officeholding prohibition, or a state officer prohibited from holding another state, county, or municipal office. To be of assistance, however, the following comments are offered.

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

"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 . . . any officer may be a member of a . . . statutory body having only advisory powers."

This constitutional provision prohibits a person from simultaneously serving in more than one state, county, or municipal office. The prohibition applies to both elected and appointed offices.[1] The term "office" is not defined by the Constitution, although the Supreme Court of Florida has stated that the term "implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office . . ."[2] Thus, in determining whether a particular position is an employment or office, careful consideration must be given to the powers and responsibilities imposed upon such a position by statute, charter, or ordinance.

The "Florida Education Governance Reorganization Act of 2000"[3] (act) provides that, effective January 7, 2003, the Governor shall appoint for each university in the State University System, a nine-member board of trustees. Each board of trustees will be a body corporate, with all attendant powers of such a body.[4] The Board of Regents, as it presently exists, will be abolished and the powers and duties of the regents will be transferred to the Florida Board of Education.[5]

The act creates "Florida Education Governance Officers," one of whom is a "Chancellor of State Universities." The Chancellor, appointed by the Commissioner of Education, will work "directly with each of the state university presidents and boards of trustees in focusing on the education and educational research needs of the individual university and its students." [6]

In order to facilitate a smooth transition on January 7, 2003, the Education Governance Reorganization Transition Task Force has been created. [7] By March 1, 2002, the task force must recommend to the Legislature "[r]ules and procedures as necessary to be followed by university boards of trustees . . . for recruitment and selection of presidents, procedures for annual evaluations of presidents, and procedures for interaction between presidents, the boards of trustees, and the new Florida Board of Education." [8] Other than general directions to ensure the quality of education, systemwide coordination and efficient progress toward attaining the act's mission, nothing else contained in the act speaks to the powers and duties of the boards of trustees that will be created for each university in the State University System.

The existing Board of Regents is made up of members who are clearly state officers for purposes of the dual officeholding prohibition in Article II, section 5(a), Florida Constitution. [9] However, there is insufficient information at this time on the power that will be possessed by the individual boards of trustees for each university and the nature of such positions to conclusively determine whether the members of such boards are officers for purposes of dual officeholding.

The constitutional dual officeholding prohibition refers only to state, county, and municipal offices; it does not refer to special district offices. [10] Thus, the courts and this office have concluded that the dual officeholding prohibition does not apply to the officers of an independent special district. [11]

For example, in *Advisory Opinion to the Governor--Dual Office- Holding*, the Court concluded that a member of a community college district board of trustees

"is an officer of a special district created to perform the special governmental function of operating a community college and is not a state, municipal, or county officer within the meaning of article II, section 5(a). Thus, the dual officeholding prohibition does not keep a state, county, or municipal officer from serving on a community college board of trustees." [12]

The Court accepted the reasoning of several Attorney General's Opinions in reaching its conclusion, and also noted that the Legislature, through the language in the statutes, considers community college trustees to be district officers. [13]

The language in Chapter 2000-321, Laws of Florida, offers no evidence of how the individual university boards of trustees will be characterized or how they will operate in relation to each other. Presently, there is nothing to suggest that each university will operate as an independent special district. However, as the "whereas" language of the act acknowledges, "the State Constitution does not withhold from the Legislature the power to prescribe additional powers and duties on constitutional, statutory, and administrative officers so long as such powers and duties are not inconsistent with their duties imposed by the constitution[.]"

Thus, it would be premature to offer a conclusion as to the nature of the office held by a member

of a university board of trustees. Should the Legislature characterize each university as a district, as community colleges are presently characterized, it would be logical to find that the members of a university board of trustees are officers of a special district not affected by the dual officeholding prohibition in Article II, section 5(a), Florida Constitution. Otherwise, should the Legislature create a system in which each university operates as a subdivision of the state, then the officers would be state officers precluded from holding any other state, county or municipal office.

Sincerely,

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Attorney General

RAB/tls

[1] See Ops. Att'y Gen. Fla. 69-2 (1969) and 80-97 (1980).

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

[3] Section 1, Ch. 2000-321, Laws of Fla. (2000).

[4] Section 3(5), Ch. 2000-321, Laws of Fla. (2000).

[5] Section 3(6)(a), Ch. 2000-321, Laws of Fla. (2000). Section 4, Ch. 2000-321, Laws of Fla. (2000), establishes the Florida Board of Education, effective January 7, 2003, as a part-time citizen board of seven members appointed by the Governor, with primary duties to establish education goals and objectives consistent with the policies and principles of the act.

[6] Section 5(3), Ch. 2000-321, Laws of Fla. (2000).

[7] Section 6(1), Ch. 2000-321, Laws of Fla. (2000).

[8] Section 6(5)(b), Ch. 2000-321, Laws of Fla. (2000).

[9] *Cf. In re Advisory Opinion to the Governor*, 171 So. 2d 539 (Fla. 1965) (members of state board of regents "officers" for purposes of former Art. III, s. 27, now Art. II, s. 5(c), Fla. Const.).

[10] While the 1968 Constitution broadened the language of the dual officeholding prohibition to include municipal as well as state and county offices, it does not refer to special districts.

[11] See, e.g., *Advisory Opinion to the Governor--Dual Office-Holding*, 630 So. 2d 1055 (Fla. 1994); Ops. Att'y Gen. Fla. 71-324 (1971) (member of hospital district's governing body is not an officer within constitutional dual officeholding prohibition); 73-47 (1973) (a member of junior college district may serve as member of parks, planning, and zoning commission), 75-153 (1975) and 80-16 (1980) (legislator may serve as a member of a community college district

board of trustees); 78-74 (1978) (municipal parking board member may serve as member of community college district board of trustees); 85-24 (1985) (mayor may serve on a community redevelopment district established by general law); 86-55 (1986) (member of Big Cypress Basin's governing board may serve as city mayor); 94-42 (1994) (city commissioner may serve on a local multi-agency career service authority); 94-83 (1994) (person may serve on airport authority and on school board); 96-84 (1996) (city commissioner may also serve on area housing commission).

[12] 630 So. 2d 1055, 1058 (Fla. 1994). *And see* Ops. Att'y Gen. Fla. 80-16 (1980) and 75-153 (1975) (member of community college board of trustees is a district officer and therefore not subject to the prohibition against dual officeholding).

[13] See s. 240.313(1), Fla. Stat. ("[e]ach community college *district* authorized by law and the Department of Education is an independent, separate, legal entity created for the operation of a community college"); s. 240.317, Fla. Stat. ("legislative intent that community colleges, constituted as political subdivisions of the state, continue to be operated by *district* boards of trustees . . ."). I would note that Chapter 2000-321, Laws of Florida, repeals Chapter 240, Florida Statutes, effective January 7, 2003, thereby extinguishing the existing system for community college districts. The act requires review by the Legislature prior to the repeal date, but there is nothing contained in the act that would indicate what action the Legislature may take.