

County commissioners as county constitutional officers

Number: INFORMAL

Date: December 31, 1998

Mr. Larry M. Haag
Citrus County Attorney
111 West Main Street, 3rd Floor
Inverness, Florida 34450

RE: COUNTY COMMISSIONERS--COUNTY OFFICERS.

Dear Mr. Haag:

Thank you for contacting this office regarding whether county commissioners are county officers. Attorney General Butterworth has asked me to respond to your letter.

You have noted in your letter that Article VIII of Florida's Constitution treats county officers and county commissioners separately.[1] While this is indeed the case, county commissioners are generally considered county officers for purposes of the Florida Constitution and the statutes.

County commissioners take the oath of office as county officers under the provisions of Article II, section 5(b), Florida Constitution. County commissioners are, under this same constitutional section, considered officers for purposes of the dual office holding prohibition.[2]

Article IV, section 7(a), Florida Constitution, authorizes the Governor to suspend any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties or commission of a felony. This section applies to county commissioners[3] and when read with Article X, section 3, Florida Constitution, and section 114.04, Florida Statutes, creates a logical plan for the removal of county officers, including county commissioners, and filling the resulting vacancies until the next election.

I am enclosing copies of several previously issued Attorney General Opinions which discuss the test for determining who may be a county officer and cite various constitutional and statutory provisions relating thereto.

I trust that these informal comments will be helpful to you in resolving this matter.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosures: AGO's 85-94 and 84-21

[1] See Art. VIII, sections 1(d) and 1(e), Fla. Const.

[2] See Op. Att'y Gen. Fla. 94-66 (1994), and authorities cited therein.

[3] *And see In re Advisory Opinion to the Governor*, 626 So. 2d 684 (Fla. 1993).