

Dual officeholding, dependent special district

Number: INFORMAL

Date: April 07, 1997

The Honorable Bob Starks
Representative, District 34
Room 223 The Capitol
Tallahassee, Florida 32399-1300

RE: DUAL OFFICEHOLDING--LEGISLATURE--AIRPORTS--MUNICIPALITY--legislator may not simultaneously serve on airport authority created as dependent special district of municipality which possesses authority to appoint and remove members and approve authority budget. Art. II, s. 5, Fla. Const.; Ch. 71-924, Laws of Florida.

Dear Representative Starks:

You ask whether you may accept a mayoral appointment to the Sanford Airport Authority while simultaneously serving as a member of the Florida Legislature.

Article II, section 5(a), Florida Constitution, provides in part that "[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein" While the constitutional provision does not define the term "office" or "officer," The Supreme Court of Florida has stated that an "office" implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office.[1]

Despite the broad scope of the dual officeholding prohibition, this office has advised district officeholders that the constitutional prohibition does not apply to district offices.[2] Thus, for example, this office in Attorney General Opinion 94-83 stated that membership on the Panama City-Bay County Airport Authority, created as a independent special district, did not constitute an officer for purposes of Article II, section 5(a), Florida Constitution. The authority was created by law to perform a limited function, its members were appointed by a diverse group of governmental agencies that had no oversight or control over the functions or actions of the authority.[3]

Care, however, must be taken in determining the nature and character of a district or authority to determine whether the governmental entity is an agency of the state, county or municipality such that its officers may be considered state, county or municipal officers for purposes of dual officeholding. For example, in Attorney General Opinion 84-90, this office considered whether a member of the Volusia County Health Facilities Authority was an officer of the county. While the authority was created and organized under Part III, Chapter 154, Florida Statutes, as a public body corporate and politic, it was created by the county by ordinance or resolution. The governing body of the county appointed the authority members, was empowered to remove the members, and was authorized to abolish the authority at any time. This office, therefore, concluded that the authority was an instrumentality of the county and its officers were county officers. Thus, the constitutional prohibition against dual officeholding prohibited the mayor from

also serving on the governing body of the county health facilities authority.

Similarly, in Attorney General Opinion 91-79, this office concluded that the Fort Walton Beach Area Bridge Authority, created as a dependent special district within the county, was an instrumentality of the county for dual officeholding purposes. Under the act creating the district, the county commission was charged with approving the authority's annual budget and for filling vacancies on the authority.[4]

Like the Panama City-Bay County Airport Authority, the Sanford Airport Authority was created by special act of the Legislature.[5] Unlike with the Panama City-Bay County Airport Authority, however, the Sanford Airport Authority was created as a dependent special district to the municipality. Its members are appointed by the city commission which has the authority to remove the members for misfeasance, malfeasance or willful neglect of duty.[6] In addition, the authority is required to submit its budget to the city commission for approval.[7]

In light of the above, it appears that the Sanford Airport Authority is an agency of the city and thus subject to the dual officeholding prohibition. Accordingly, Article II, section 5(a), Florida Constitution, would appear to prohibit you from serving as a state legislator and a member of the airport authority simultaneously.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919), see also *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

[2] See, e.g., Op. Att'y Gen. Fla. 71-324 (1971), 73-47 (1973), 75-153 (1975), 78-74 (1978), 80-16 (1980), 84-72 (1984), 85-24 (1985), and 86-55 (1986).

[3] *And see* Op. Att'y Gen. Fla. 94-42 (1994), concluding that membership on the Monroe County Career Service Council was in the nature of a district office and thus not subject to the constitutional prohibition since the council was created by law to perform a limited function, its members were appointed by a diverse group of governmental agencies that had no oversight or control over the functions or actions of the council.

[4] *Cf.* Op. Att'y Gen. Fla. 90-91 (1990), concluding that the Hillsborough County Hospital Authority, created by special act with all powers of a body corporate, whose members are appointed by the Hillsborough County Commission which possesses the power to fill vacancies on the authority, remove members for misfeasance, malfeasance or willful neglect of duty, and approve the authority's budget, was a county agency.

[5] See Ch. 71-924, Laws of Florida.

[6] See s. 4, Ch. 71-924, *supra*.

[7] See s. 12, Ch. 71-924, *supra*.