

Dual officeholding, director of courts

Number: INFORMAL

Date: March 12, 1997

Mr. John D. Sullivan
808 West Dampier Street
Inverness, Florida 34450

RE: DUAL OFFICEHOLDING--MUNICIPALITIES--COURTS--PUBLIC OFFICERS AND EMPLOYEES--simultaneous service as city council member and director of courts, applicability of dual officeholding prohibition. Art. II, s. 5(a), Fla. Const.

Dear Mr. Sullivan:

Thank you for contacting this office regarding the possible violation of the constitutional dual officeholding prohibition by your simultaneous service as an Inverness city council member and as the Director of Courts for Citrus County. Attorney General Butterworth has asked me to respond to your letter.

Article II, section 5(a), of the 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 that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, . . . constitutional convention, or statutory body having only advisory powers."

This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state, counties and municipalities.[1] The Constitution does not define the terms "office" or "officer" for purposes of the dual officeholding prohibition. The Supreme Court of Florida, however, has stated:

"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. An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes, perhaps, the most decisive difference between an employment and an office . . . "[2]

Membership on the governing body of a governmental entity, such as a county or municipality, clearly constitutes an office.[3] Thus, an Inverness City Council member is an officer for purposes of the constitutional provision.

Your letter indicates that the Director of Courts is responsible to the Administrative Circuit Judge and the duties of the position include budgeting, assigning court time and purchasing supplies. While I cannot definitively determine without additional information whether this position may

constitute an office for purposes of the Constitution, the duties you have described appear to be more in the nature of an employment which would not implicate the dual officeholding prohibition. However, you may wish to consult the Administrative Circuit Judge with whom you will be working to get a more complete understanding of the duties and responsibilities of the director's job in order to determine whether this position is an employment or an office.

In an effort to further assist you I am enclosing a copy of the Dual Officeholding pamphlet which this office prepares and a copy of Attorney General's Opinion 88-56. This opinion considers whether a deputy clerk of the circuit court is an officer and concludes that this position is an employment.

I trust that these informal comments and the information I am enclosing will assist you in resolving this matter.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosures

[1] Earlier State Constitutions contains similar prohibitions against dual officeholding. See, e.g., Art. VI, s. 18, Fla. Const. 1838, and Art. VI, s. 14, Fla. Const. 1861. Article II, section 5(a), of the 1968 Constitution substantially reproduces Article XVI, section 15 of the 1885 Constitution except that the current provision was expanded to include municipal officers. Court decisions under the 1885 Constitution had excluded such officers from its coverage.

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

[3] See Ops. Att'y Gen. Fla. 72-348 (1972) and 74-73 (1974), respectively.