

Law Enforcement Officer, complaint review board

Number: INFORMAL

Date: April 07, 1997

Chief Dennis R. White
Sebastian Police Department
1201 Main Street
Sebastian, Florida 32958

Dear Chief White:

Thank you for considering this office as a source for assistance regarding the convening of complaint review boards pursuant to section 112.532(2), Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Part VI of Chapter 112, Florida Statutes, establishes the so-called "Policemen's Bill of Rights" by prescribing certain rights for law enforcement officers under investigation. Section 112.532(2), Florida Statutes, provides:

"(2) COMPLAINT REVIEW BOARDS.—A complaint review board shall be composed of three members: One member selected by the chief administrator of the agency or unit; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies or units having more than 100 law enforcement officers or correctional officers shall utilize a five-member board, with two members being selected by the administrator, two members being selected by the aggrieved officer, and the fifth member being selected by the other four members. The board members shall be law enforcement officers or correctional officers selected from any state, county, or municipal agency within the county. There shall be a board for law enforcement officers and a board for correctional officers whose members shall be from the same discipline as the aggrieved officer. The provisions of this subsection shall not apply to sheriffs or deputy sheriffs."

In considering the function of the complaint review boards, the court in *Ujcic v. City of Apopka*,^[1] stated that subsection (2)

"appears abruptly in the statute like an uncharted island in the early morning fog over a vast ocean. No reference is made to a review board in any other portion of the statute, and the subsection is silent as to the duties, powers, or functions of a review board. The abrupt and puzzling appearance of the subsection was recognized earlier by Florida's attorney general, who noted that courts have complained about the vagueness of the statute. Op. Att'y Gen. Fla. 076-38 (Feb. 18, 1976). The statute remains without legislative clarification."

The Supreme Court of Florida in *Migliore v. City of Lauderhill*,^[2] after reviewing the provisions of section 112.532, Florida Statutes, concluded that the complaint review boards were not created to review disciplinary action against police officers. The Court adopted as its own an opinion from the Fourth District Court of Appeal in which the district court had concluded "[s]ections

112.533 and 112.532(2) are to be utilized for disposition of complaints made by outside persons and are not intended to provide a forum for any issue other than whether a particular complaint has a basis in fact."[3]

The district court had considered whether two police officers could use the complaint review board process in section 112.532(2), Florida Statutes, to review their dismissals from the force. The court concluded that section 112.533, Florida Statutes, represented the only elaboration of the duties of a complaint review board mandated under section 112.532(2). Interpreting the language of section 112.533 as "providing a law enforcement officer with a means of vindicating his actions and his reputation against unjust and unjustifiable claims made against him by persons outside the agency which employs him," the court stated that "[s]ections 112.533 and 112.532(2) are to be utilized for disposition of complaints made by outside persons and are not intended to provide a forum for any issue other than whether a particular complaint has a basis in fact."[4]

The Supreme Court affirmed the district court's conclusion that complaint review boards authorized by section 112.532(2), Florida Statutes, were not created to review disciplinary action against police officers but may be used for the disposition of complaints made by persons outside the agency. Section 112.533, Florida Statutes, has been expanded to include both internal as well as external complaints as evidenced by the language that "[e]very agency employing law enforcement officers shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such employing agency from any person."

Thus, Part VI, Chapter 112, Florida Statutes, establishes certain rights *for law enforcement and correctional officers* under investigation by their employing agencies and section 112.532, Florida Statutes, specifically, as interpreted by the courts in *Migliore*, affords *such officers* a means of vindicating their actions and reputations against unjustified claims made against them by persons outside their employing agencies. Based upon such interpretation of the foregoing statutes that the purpose of such legislative enactments is to afford and safe-guard certain rights and privileges to law enforcement and correctional officers under investigation, this office has stated that a municipality is required by section 112.532(2), Florida Statutes, to convene and utilize a complaint review board for the disposition of complaints filed against municipal police officers by persons outside the municipal police department *upon the request of the officers who are the subject of the complaint*.

Based upon the court's decision in *Migliore*, this office concluded in Attorney General Opinion 87-35 that a law enforcement officer is entitled to a hearing before a complaint review board regarding a complaint filed against such officer by a person outside his or her employing agency. However, as the courts have determined that the statute affords the officer with such rights and in the absence of a more definitive statement by the courts as to the nature of such boards, this office could not conclude that a complaint review board must be convened in all instances to investigate and resolve complaints filed against a municipal police officer; rather the statute only required that the convening of such boards be available *to the officer* who is the subject of the complaint as a means of vindicating his actions if he or she so chooses. Such boards, however, are advisory only and may only recommend a course of action.[5]

I am enclosing copies of the above opinions and court decisions for your review. I trust, however, that the above informal advisory comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosures

[1] 581 So. 2d 218 (Fla. 5th DCA 1991).

[2] 431 So. 2d 986 (Fla. 1983).

[3] 415 So.2d 62, 64 (Fla. 4th DCA 1982).

[4] *Id.*

[5] See *City of Hallandale v. Inglima*, 346 So. 2d 84, 86 (Fla. 4th DCA 1977) (decision of complaint review board is not adjudicatory but advisory only). And see Op. Att'y Gen. Fla. 86-91 (1986).