

Hillsborough County civil service board's powers

Number: INFORMAL

Date: March 27, 1996

The Honorable Victor Crist
Hillsborough County Legislative Delegation
Post Office Box 1110
Tampa, Florida 33601

RE: COUNTIES--CIVIL SERVICE--COUNTY OFFICERS AND EMPLOYEES--powers exercised by Hillsborough County Civil Service Board under special act. Ch. 85-424, Laws of Fla.

Dear Representative Crist:

On behalf of the Hillsborough County Legislative Delegation, you ask several questions regarding the powers and duties of the Civil Service Board of Hillsborough County.

You state that the Hillsborough County Civil Service Board (board), created by special act of the Legislature, serves as an "umbrella" for some two dozen agencies in Hillsborough County in recruiting, qualifying, and classifying prospective employees who want to be employed as "classified" or "career service" employees.[1] In addition, the board is authorized to hear appeals of employees who have been suspended or dismissed. According to your letter, the questions raised in the instant inquiry are a result of a recent performance audit of the board and a subsequent study of the board by a citizens' committee appointed by the Hillsborough County Legislative Delegation to review the audit and other aspects of the board.

Question One

Your first question concerns the interpretation of the term "uniform administration" as that term is used in the board's enabling legislation. Section 1 of Ch. 85-424, Laws of Florida, provides:

"It is the purpose of this act to establish a system for the formulation and implementation of procedures to ensure the uniform administration of the classified service on the following merit principles:

(1) Recruitment, selection, compensation, benefits and advancement of employees on the basis of their relative job-related ability, knowledge, skills and personal capabilities, including open consideration of qualified applicants for initial appointment"

You state that the board presently has differing plans for the various appointing agencies subject to the civil service act. According to your letter, the only time in the past that separate pay plans were utilized was when the school board was part of the county's civil service system. Chapter 77-567, Laws of Florida, specifically authorized two plans, one for the school board and another for all other county employees. The 1977 law, however, was repealed by Chapter 82-301, Laws of Florida. The question has, therefore, been raised whether the adoption of separate pay plans

for different agencies is consistent with the act's requirement of "uniform administration" of employees' compensation.

The term "uniform" has generally been defined to mean "applying alike to all within a class." [2] I find nothing in the act, however, that would preclude the board from establishing different personnel classes based on the responsibilities and functions of a particular group of employees provided such classification is reasonable and all persons under the same conditions and in the same circumstances are treated alike. Differing job responsibilities and requirements may necessitate such classifications.

Moreover, the act specifically recognizes that employees will be paid based on ability, knowledge, skills, and personal capabilities. The act would not appear to prevent a range of compensation available within a particular class. Thus, the fact that employees of the same class working in different agencies are paid different salaries does not, in and of itself, violate the requirement for uniform administration as long as such salaries are within the pay range established for that class. Nothing in the act, however, would appear to authorize the payment of salaries outside the range established for a particular class.

Accordingly, as long as compensation scales are consistent within a class, the requirements of the act would appear to be satisfied. If, however, the Legislature determines that additional restrictions on the board's power to establish procedures for the compensation of employees within the civil service system are warranted, amendatory legislation may be adopted.

Question Two

Section 7(3)(a) of the civil service board's enabling legislation authorizes the board "[t]o adopt and amend rules and regulations for the uniform administration of this act following a minimum of 30 days' notice of the proposed rule to each appointing authority." You state that in the past the board has waived or granted exceptions to the rules when it believes the appointing authority has a unique situation that should be addressed out-side of an existing rule. The question has been raised as to whether the board possesses the power to do so.

Agencies are to be accorded wide discretion in the exercise of their rule-making authority. [3] While administrative agencies are bound to honor their own substantive rules until they are amended or abrogated, [4] they may modify, relax or suspend the operation of a rule such as one that regulates procedure before the agency. [5] Florida courts have recognized that an administrative agency possesses the implied authority to deviate from its rule provided such deviation is adequately explained and is necessary to carry out its expressly granted powers, and there is no statute or ordinance precluding the agency from exercising such implied authority. [6]

This office has not been apprised of any law, code or ordinance precluding the civil service board from exercising such implied power. [7] If the board seeks to waive the procedures set forth by rule, however, it may be advisable for the board to establish a standardized procedure for granting such waivers or exceptions that would preclude any charge that the board is acting arbitrarily.

Question Three

Section 11(4) of the enabling legislation provides that any employee who has satisfactorily completed the initial probationary period and is thereafter suspended or dismissed from employment may request a hearing to appeal said disciplinary action by making a written request to the civil service board within ten calendar days from the official date of receipt of the final notice to discipline.

In the statutes, a distinction has been recognized between dismissal and demotion. For example, for state employment "demotion" is defined as "moving an employee from a position in one class to a different position in another class having a lesser degree of responsibility." [8] In contrast, "dismissal" is defined as "a disciplinary action taken by an agency against an employee resulting in termination of his employment for a violation of agency standards or for cause[.]" [9] Similarly, in authorizing the Public Service Commission to hear appeals, section 447.207(8), Florida Statutes, refers to "suspension, reduction in pay, transfer, layoff, demotion, or dismissal."

The enabling legislation for the civil service board distinguishes between "demotion" and "dismissal" by separately defining those terms in Section 5. [10] As the act itself contains separate and distinct definitions for the terms "demotion" and "dismissal," this office cannot state the two terms are synonymous.

Accordingly, the grant of power to the board to hear appeals from suspensions and dismissals does not by its terms encompass demotions. However, the Legislature may wish to clarify the board's authority in this area.

Question Four

Section 7(3)(o) of the board's enabling legislation provides that the board may "perform all other acts as may be necessary to accomplish the purpose of this act." You inquire as to whether there are any limitations on the power granted to the civil service board.

As noted above, wide discretion is accorded administrative agencies in the exercise of the statutory authority that has been clearly conferred upon the agency or may be fairly implied and is consistent with the general statutory duties of the agency. [11] Thus, the board's exercise of authority is limited by the requirement that it must be used to accomplish the purposes set forth in the act.

Accordingly, while the board may exercise such powers as are necessary to carry out the powers and duties prescribed in the civil service act, it may not enlarge upon such powers and duties by exercising a substantive power not expressly granted.

I hope that the above informal comments may be of some assistance to the legislative delegation in addressing its concerns.

Sincerely,

Robert A. Butterworth

Attorney General

RAB/tgk

[1] See Ch. 85-424, Laws of Florida, as amended by Chs. 86-408, 86-409, 87-545 and 94-407, Laws of Florida.

[2] 90 C.J.S. *Uniform* p. 1042. *And see* Black's Law Dictionary *Uniform* p. 1701 (4th rev. ed. 1968) (when all persons under the same conditions and in the same circumstances are treated alike, and classification is reasonable and naturally inherent in the subject-matter).

[3] *See generally Department of Natural Resources v. Wingfield Development Company*, 581 So. 2d 193 (Fla. 1st DCA 1991); *Fairfield Communities v. The Florida Land and Water Adjudicatory Commission*, 522 So. 2d 1012 (Fla. 1st DCA 1988).

[4] *See Gadsden State Bank v. Lewis*, 348 So. 2d 343 (Fla. 1st DCA 1977).

[5] *See generally* 73 C.J.S. *Public Administrative Law and Procedure* s. 101 (1983).

[6] *Hall v. Career Service Commission*, 478 So. 2d 1111 (Fla. 1st DCA 1985); *E.M. Watkins & Company, Inc. v. Board of Regents*, 414 So. 2d 583 (Fla. 1st DCA 1982). *But see* Op. Att'y Gen. Fla. 94-44 (1994), stating that Ch. 120, Fla. Stat., contemplates that an agency will follow its rules adopted thereunder until amended or repealed and failure to follow such rules may subject the agency to legal attack; whether such deviation is harmless, however, is a judicial matter. The opinion recognized that earlier judicial decisions such as *Watkins* and *Hall* considered the language of then s. 120.65(12)(b), Fla. Stat., in concluding that agencies had the authority to deviate from its rules; the opinion, however, notes that the statute has been amended and no longer appears to permit such deviation.

[7] *See* Op. Att'y Gen. Fla. 94-44 (1994), discussed *supra* at n. 6, stating that the provisions of chapter 120 preclude an agency adopting rules thereunder from deviating from such rules.

[8] Section 110.203(19), Fla. Stat. (1995). *And see* Black's Law Dictionary *Demotion* 519 (4th rev. ed. 1968) (a reduction to lower rank or grade, or to lower type of position).

[9] Section 110.203(22), Fla. Stat. (1995). *And see* Black's Law Dictionary *Dismissal* 555 (4th rev. ed. 1968) (a release or discharge from employment).

[10] *Compare* s. 5(9), Ch. 85-424, Laws of Florida, as amended, defining "demotion" to mean "a change of an employee from a position in one class to a position in another class having a lesser degree of responsibility and lower pay grade," with s. 5(10) defining "dismissal" as "the discharge of an employee from the service by the appointing authority." *And see* s. 5(22), defining "suspension" as "the removal of an employee from the service for a temporary period of time."

[11] *See Florida Commission on Human Relations v. Human Development Center*, 413 So. 2d

1251 (Fla. 1st DCA 1982).