



From: Bridgette N. Thornton, Deputy City Attorney for the City of Coral Gables and Yaneris Figueroa, Special Counsel to the City Attorney's Office

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "C. Leen", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Outlining The Limitations On The Prohibition Of Dual Office Holding As Set Forth In Article II, Section 5(a), Of The Florida Constitution

Date: June 28, 2013

As instructed, I researched whether it would be a violation of the Florida Constitution's prohibition on dual office holding for an individual to serve on both the City of Coral Gables' Planning and Zoning Board and Arts Advisory Panel. In sum, and as outlined below, it is my legal opinion that an individual may serve on the City's Planning and Zoning Board and the City's Arts Advisory Panel without violating the prohibition on dual office holding set forth in Article II, Section 5(a) of the Florida Constitution.

In relevant part, Article II, Section 5(a) of the Florida Constitution provides 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, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or *statutory body having only advisory powers.*" Fla. Const. Art. II, § 5(a) (emphasis added). There is no case law directly on point that addresses the question you posed; however, this issue was squarely addressed in Florida Attorney General Opinion 2008-15 dated April 4, 2008. There, the Florida Attorney General opined on whether "service on the Brevard County Investment Committee and the Valkaria Airport Advisory Board by an elected municipal council member violate[d] the dual office-holding prohibition contained in Article II, section 5(a), Florida Constitution[.]" Fla. Att'y Gen. Op. 2008-15, p. 1 (April 4, 2008). The Attorney General concluded that such service would not violate the dual office prohibition in the Florida Constitution. In reaching this conclusion, the Attorney General stated:

The Constitution contains no definition for the terms 'office' or 'officer' for purposes of the dual office-holding prohibition. However, Florida courts and this office have advised that it is the nature of the powers and duties of a particular position that determines whether it is an 'office' within the scope of the dual

office-holding prohibition or an 'employment' outside the scope of the provision. As the Florida Supreme Court has stated, an office 'implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office.' The term 'office' embraces the idea of tenure, duration, and duties in exercising a portion of the sovereign power, conferred or defined by law and not by contract, whereas an 'employment' does not 'comprehend a delegation of any part of the sovereign power.'

Id. (citing *State ex rei. Holloway v. Sheats*, 83 So. 508 (Fla. 1919)). The Attorney General further stated "[t]he term 'statutory' is defined to mean '[o]f or relating to legislation [,]and 'enacted, created, or regulated by statute.' These definitions do not limit 'statutes' to legislation enacted solely by the State Legislature, but appear to include within the scope of the term enactments by other lawmaking bodies such as municipalities and counties." *Id.* p. 2 (citing Black's Law Dictionary, p. 1451 (8th ed. 2004); Webster's New Collegiate Dictionary, p. 1137 (1975); and Black's Law Dictionary, p. 1448 (8th ed. 2004). As a result of the above definitions, the Attorney General reasoned that "it would appear that a county advisory board could be considered a 'statutory body having only advisory powers' within the constitutional exception if it has been created by legislative enactment of the governing body." *Id.* The Attorney General went on to state:

[w]hile my research has revealed no case law on this question and the area is not completely free from doubt, it is a generally established principle that the right to hold office is a valuable one which should not be curtailed in the absence of plain provisions of law. Thus, if ambiguity exists in construing provisions limiting the right to hold office, those provisions should be construed in favor of eligibility. In light of this principle, this office would read the term '*statutory*' for purposes of the constitutional dual office holding prohibition to include advisory bodies created by local legislative enactment.

Id. pp. 2-3 (emphasis added). The Attorney General then evaluated the creation of, as well as the powers and duties of, the Brevard County Investment Committee and the Valkaria Airport Advisory Board and noted that both boards were created by resolution of the board of county commissioners and the boards' powers were limited in nature such as not to reflect a delegation of sovereign powers. *Id.* pp. 3-4. As a consequence, the Attorney General concluded that:

The Brevard County Investment Committee and the Valkaria Airport Advisory Board appear to be statutory bodies having only advisory powers and neither of these positions would constitute an 'office' for purposes of Article II, section 5(a), Florida Constitution. Thus, [the advice requester could] continue to serve as a City Council Member in Palm Bay, Florida, as well as a member of the Brevard County Investment Committee and the Valkaria Airport Advisory Board without violating the constitutional dual office-holding prohibition.

Id. p.4.

The Attorney General's reasoning would most likely apply here. Based upon my research it appears that the City's Planning and Zoning Board was created through City of Coral Gables Ordinance Numbers 271, 1525, and 1884.¹ The City's present Zoning Code establishes that the Planning and Zoning Board "[i]n addition to any power or duty delegated by the City Commission or the City Manager . . . shall act as the recommending Board to the City Commission" in relation to a host of planning and zoning determinations. City of Coral Gables Zoning Code, Division 2, § 2-20i.

Similar to the City's Planning and Zoning Board, the City's Arts Advisory Panel, a subcommittee of the City's Cultural Advisory Board, was created by legislative enactment - namely City of Coral Gables Resolution Number 29040. The authority of the City's Arts Advisory Panel is expressly limited to making recommendations. More specifically, the City Zoning Code provides that the Arts Advisory Panel "shall make recommendations to the Cultural Development Board on acquisitions for individual artwork projects." City of Coral Gables Zoning Code, Div. 20, Art. 3, § 3-2002.

Accordingly, based upon the analysis set forth in Attorney General Opinion 2008-15, it is my conclusion that the Arts Advisory Panel appears to be a statutory body having only advisory powers and, therefore, would not constitute an "office" for purposes of Article II, Section 5(a) of the Florida Constitution. The Planning and Zoning Board, moreover, might be an advisory board as well; however, given that the Zoning Code establishes that the powers of the Zoning and Planning Board includes those powers or duties "delegated by the City Commission or the City Manager" it is plausible that those delegated powers and/or duties might provide the Planning and Zoning Board with a portion of the sovereign power, thereby, taking it out of the purview of an advisory board. Nonetheless, because it seems very likely that the City's Arts and Advisory Panel is an advisory board, an individual may serve on both the Planning and Zoning Board and the Arts and Advisory Panel without violating the prohibitions on dual office holding set forth in Article II, Section 5(a) of the Florida Constitution as even under such circumstances the Planning and Zoning Board would be the only "office" held by said individual. See Fla. Att'y Gen. Op. 2008-15. Please let me know if you have any questions or concerns.

¹ This memorandum cites to three ordinances as creating the Planning and Zoning Board because each of these ordinances appear to have given some authority to said Board. The oldest ordinance that could be located through an online search of the City's records is Ordinance Number 271 adopted February 16, 1937; however, it is unclear if this Ordinance was the initial enabling legislation for the Planning and Zoning Board. To determine the exact ordinance that initially created the Planning and Zoning Board a more exhaustive and time-intensive search of paper and microfiche records would likely be necessary, which was not feasible under the present time constraints.

Hernandez, Cristina

From: Thornton Richard, Bridgette
Sent: Friday, June 28, 2013 6:27 PM
To: Leen, Craig
Cc: Figueroa, Yanneris; Franqui, Susan; Hernandez, Cristina
Subject: Legal Opinion RE Dual Office Holding Attached
Attachments: Dual Office Holding Opinion.docx; Advisory Legal Opinion - Dual Office Holding, local advisory bodies.pdf

Craig,

The legal opinion regarding the dual office holding question you posed this afternoon is attached. Additionally, attached you will find the highlighted Attorney General Opinion upon which we relied. Please note that Susan was huge helping in securing the relevant legislation.

Have a nice trip!

Bridgette N. Thornton Richard
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LEGAL MEMORANDUM

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From: Bridgette N. Thornton Richard, Deputy City Attorney
& Yaneris Figueroa, Special Counsel to the City Attorney's Office

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position that determines whether it is an 'office' within the scope of the dual office-holding prohibition or an 'employment' outside the scope of the provision. As the Florida Supreme Court has stated, an office 'implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office.' The term 'office' embraces the idea of tenure, duration, and duties in exercising a portion of the sovereign power, conferred or defined by law and not by contract, whereas an 'employment' does not 'comprehend a delegation of any part of the sovereign power.'

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Accordingly, based upon the analysis set forth in Attorney General Opinion 2008-15, it is my conclusion that the Arts Advisory Panel appears to be a statutory body having only advisory powers and, therefore, would not constitute an "office" for purposes of Article II, Section 5(a) of the Florida Constitution. The Planning and Zoning Board, moreover, might be an advisory board as well; however, given that the Zoning Code establishes that the powers of the Zoning and Planning Board includes those powers or duties "delegated by the City Commission or the City Manager" it is plausible that those delegated powers and/or duties might provide the Planning

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