

From: Larry Ashley
Sent: Monday, January 09, 2012 4:17 PM
To: TMcLaughlin@nwfdailynews.com
Subject: Jurisdiction and Legal Concerns
Attachments: Airport Jurisdiction and Liability Concerns .pdf - Adobe Acrobat Pro.pdf

Thanks Tom,

I appreciate the questions and coverage on this issue. My responses to your questions are below and typed in green. I have also attached my e-mail correspondence and the legal opinions that I forwarded to the BOCC on Friday Jan. 6th

Please don't hesitate to forward us any additional questions you may have.

With Regards,



Larry Ashley

Larry R. Ashley, Sheriff
Okaloosa County Sheriff's Office
1250 N. Eglin Parkway
Shalimar, FL 32579

Office: 850-651-7410
Fax: 850-609-3048
E-mail: sheriff@sheriff-okaloosa.org



From: Tom McLaughlin [mailto:TMcLaughlin@nwfdailynews.com]
Sent: Monday, January 09, 2012 1:43 PM
To: Larry Ashley
Subject:

01/09/2012

Here are my questions:

Where in the proposed interlocal agreement is there wording that leads the Sheriff's Office to believe that off duty officers would be employed at the airport by the police force there?

Mr. Donovan has not shared nor afforded the Sheriff's Office a copy of his proposed MOU. The Sheriff's Office however has received information regarding Mr. Donovan's proposed use of off duty municipal police

officers at the airport from our agency's airport law enforcement supervisor, Lt. Mark Schniepp and others involved in the process.

It is Mr. Donovan's opinion that the airport police force shares jurisdictional boundaries with all five of the municipalities that it intends to enter the agreement with by virtue of their proximity to Eglin Air Force Base and Northwest Florida Regional Airport's location on the base itself.

We believe that this concern is far too complex a legal issue to be solely dependent upon the airport directors opinion especially since it conflicts with the recent Florida Attorney General's opinion as well as our own legal opinion from attorney Wayne Evans with the Florida Sheriff's Association. The county airport leases property from the federal government and has no proprietary or ownership jurisdiction on Eglin Air Force Base. The federal government has, via Eglin AFB, exclusive jurisdiction and has not ceded that jurisdiction to the state, county, or airport except for the actual terminal property which is leased to the county. As a lease holder the county airport exercises no law enforcement authority, jurisdiction or control over federal lands outside the lease.

What are the jurisdictional issues you see?

My e-mail correspondence and the attached legal opinions referenced were forwarded to the BOCC and speak clearly for themselves. They are attached here as well.

Are there other areas of concern for the Sheriff's Office? Those were the two Mr. Donovan mentioned as areas where the Sheriff's Office "didn't have their facts right."

Our only concern is to ensure that the BOCC has all the information available to them before deciding on this issue. We also want to ensure that Okaloosa County's business is conducted in accordance with established law.

We feel the proposed use of municipal police officers outside their jurisdictional boundaries would leave the county, participating municipalities, individual officers, and the airport exposed to real and unnecessary risks and liabilities.

As Sheriff, it is my responsibility and obligation to ensure that we adhere to the law.

Also,

Why wouldn't there be contact with the airport director before your email was sent Friday afternoon?
Why was the email sent so late on a Friday afternoon?

I sent it on Friday, the day after receiving the BOCC agenda on Thursday and noticing a proposed item (5D) set to come before the Board this coming Tuesday. **That was my first knowledge of the existence of this proposal.** Since I am familiar with the law in regards to municipal police jurisdiction, I wanted to ensure that all Board members had ample opportunity to review our concerns and supporting legal opinions so that they could ask questions before deciding and acting on the requested agenda item.

Mr. Donovan said he would have been happy to discuss any issues with you or a member of your staff but never heard from anyone.

At no time were we asked to participate in the airports transition process; therefore, a discussion with Mr. Donovan would not have resolved our legal concerns as this is a decision for the Board of County Commissioners and we wanted them to be fully informed before acting on this item.

In addition Mr. Donovan has ample opportunity to discuss any concerns he may have had with Lt. Mark Schniepp with the Sheriff's Office. Lt. Schniepp works daily at the airport directly with the Airport Operations Manager and also attends weekly staff meetings with Mr. Donovan.

Having publicly made our agency available to assist the airport in this transition on more than one occasion, neither I, Lt. Schniepp nor anyone from our staff has been asked to help, assist, or participate with the establishment of, or the transition to, an airport police authority. If Mr. Donovan had questions or concerns he certainly could have brought them to Lt. Schniepp or any member of our staff's attention. Despite our offers, at no time were we asked for information or assistance.

And finally what ever happened to your offer to provide support to the airport and Mr. Donovan in setting up the airport police department? Mr. Donovan said there has been no contact between you and him since the county commission meeting at which you made that offer.

Let me reiterate and be very clear. I stated publicly at the Okaloosa Commission meeting that I stood ready to assist the Board and the Airport in this transition in whatever way possible. Multiple airport transition meetings have been held. At no time, have I or my staff been asked to attend or assist in this endeavor. We have been excluded from the process, however, my offer still stands.

Thanks

Tom McLaughlin
Staff Writer
Northwest Florida Daily News

315-4435

From: Larry Ashley
Sent: Friday, January 06, 2012 2:47 PM
To: James Campbell; Don Amunds; Wayne Harris; Bill Roberts; Dave Parisot
Cc: Jim Curry; John Dowd
Subject: Airport Jurisdiction and Liability Concerns
Attachments: Sheriff's Office Legal Opinion re Municipal Authority Jan. 6th 2012.pdf; AG Legal Opinion for FWBPD Re-Airport.pdf; Nabors, Giblin & Nickerson Legal Opinion For Airport.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Commissioners,

Our agency received the BOCC agenda yesterday and have noticed item # 5 D which is scheduled for next Tuesday's BOCC meeting.

5d. Request approval of and authorize the Chairman to execute Interlocal Agreements with area police agencies to provide temporary law enforcement assistance, training and continuing support services for the newly formed airport police department.

Because there are real jurisdictional and liability concerns regarding this issue, we wanted to make sure you have the benefit of the attached Attorney General's opinion and Sheriff's Office legal opinion before acting on the stated agenda request. We believe that Florida Statute, the Florida Constitution, and this recent AG opinion as well as our own Sheriff's Office legal opinion with attached legislative intent presents a serious challenge to the current plan for establishing initial airport police operations while utilizing off duty municipal police officers outside of their jurisdictional authority. For contrast purposes we have also attached the Nabors, Giblin, & Nickerson Law Firm opinion offered to the County Airport regarding this issue. Considering the obvious conflicts that the AG and Sheriff's legal opinions find with the County opinion, **we do not believe that municipal police officers and the municipalities themselves can be indemnified when operating outside the scope of their statutory authority and jurisdiction.** This would be especially true if these municipal officers will be asked to work in an off duty capacity while acting as personal subcontractors for law enforcement services rendered with or without the approval of the municipal governing authority . **The attached AG opinion and legislative intent seems to make clear that the use of police officers from municipal jurisdictions that do not adjoin the airport proper would not be permissible under state statute or Article VIII of the Florida Constitution.** We believe the county, each municipality, and any individual officer working in an on or off duty capacity while conducting law enforcement activities outside of the territorial boundaries of the municipality for which they are sworn and bonded will assume significant liability if they choose to participate in the proposed policing model. Authorizing a municipality to perform law enforcement services in the county, based upon approval of the county commission, appears to unlawfully encroach upon a sheriff's constitutional authority. A county is precluded by law from transferring a Sheriff's law enforcement functions absent abolition of the constitutional office. As Sheriff, I feel it my duty to make you aware of the existence of this information in the event that you have not seen it and to ensure that you are fully informed before making any decision regarding this matter.

Accordingly, it is my opinion that pursuant to section 166.049 Florida Statutes, the City of Fort Walton Beach is authorized to enter into an interlocal agreement for the provision of law enforcement services only with other municipalities which adjoin the city located within the same county.

As the duly elected Constitutional Sheriff of Okaloosa County, Florida and on behalf of the citizens I represent, I feel obligated to legally challenge any effort, (intentional or otherwise) that seeks to intrude upon the Constitutional, Statutory, and Jurisdictional Authority of the Office of Sheriff. The prohibition against this course of action and intrusion upon this constitutional authority is expressly prohibited for the purpose of protecting our citizens from disenfranchisement which would leave them without representation and/or avenues of appeal. An example of this could include inappropriate law enforcement action taken by a municipal officer outside their jurisdiction in which the effected non- municipal citizen has no recourse. A Crestview resident who finds fault with a Fort Walton Beach municipal law enforcement service at the County Airport has little representation for that service in so far as they have no say in whom is elected as a Fort Walton Beach City Council member or whom that Council chooses as the Fort Walton Beach City Manager or Police Chief. If the Crestview resident is dissatisfied with the law enforcement services from a Fort Walton Beach municipal officer at the County Airport, whom should they complain to and whom can they hold accountable. Whereas all county residents have the representation of the Sheriff, not all county residents have the representation of municipal law enforcement agencies and their governing bodies.

I continue to be available to discuss legal alternatives to any manpower shortages you may experience while the airport establishes its police authority. Whatever your decision, the Okaloosa County Sheriff's Office continues to offer its support and assistance to you and the Okaloosa Airport in standing up an airport police authority according to established law. If you should require additional information or discussions regarding this matter, please do not hesitate to call on me.

Wishing you and your staffs a productive and prosperous New Year,



Larry Ashley

Larry R. Ashley, Sheriff
Okaloosa County Sheriff's Office
1250 N. Eglin Parkway
Shalimar, FL 32579

Office: 850-651-7410
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SUITE 100
WINTER PARK, FL 32789-7113
407-471-2152
FACSIMILE 407-571-1496

LAW OFFICES
ALLEN, NORTON & BLUE
PROFESSIONAL ASSOCIATION
906 NORTH MONROE STREET
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TALLAHASSEE, FLORIDA 32303
850-561-3503
FACSIMILE 850-561-0332

JACKSONVILLE OFFICE
800 WEST MONROE STREET
SUITE 100
JACKSONVILLE, FL 32202
904-562-4480
FACSIMILE 904-562-4499

TAMPA OFFICE
324 SOUTH HYDE PARK AVENUE
HYDE PARK PLAZA, SUITE 350
TAMPA, FL 33606-4127
813-251-1210
FACSIMILE 813-253-2006

REPLY TO: TALLAHASSEE

January 6, 2012

Sheriff Larry Ashley
Okaloosa County Sheriff's Office
1250 Eglin Parkway
Shalimar, FL 32579-2307

Re: Municipality's Authority to Provide Law Enforcement Services

Dear Sheriff Ashley:

You requested an opinion as to whether a municipality in Okaloosa County could contract with the Okaloosa Board of County Commissioners ("County") to provide law enforcement services to the County's airport facilities. Because there is no express authority for municipalities to conduct law enforcement activities at the airport, the city would exceed its authority by agreeing to provide such services. In particular, section 125.0101, Florida Statutes, concerning interlocal agreements, does not authorize a city to contract with a county to provide services within the county and outside the city's jurisdictional limits.

Municipality's Limited Authority

At the outset, it should be noted that unlike a county, a municipality is not a subdivision of the state empowered with attributes of sovereignty in the performance of governmental functions. Rather it is "a legal entity consisting of a population and defined area, with such governmental functions and . . . authority as may be conferred by law". *Barry v Garcia*, 573 So.2d 932, 937 (Fla. 3d DCA 1991), quoting *Tampa v. Easten*, 198 So. 753, 754 (1940). The express enumeration of powers conferred upon municipalities is an exclusion of all other powers not expressly delegated to them or which may be necessarily implied from those expressly delegated. *Barry*, 573 So.2d at 937.

It necessarily follows that municipal law enforcement officers are similarly restricted regarding their jurisdictional authority. It is well settled that a city police officer lacks any authority beyond the city's jurisdictional limits, unless otherwise expressly

authorized by the Legislature. See *Ramer v. State*, 536 So. 2d 915 (Fla. 1988); Op. Att'y Gen. Fla. 71-72 (1971).

One exception may be found in section 166.0495, Florida Statutes, which provides limited authority for a municipality to provide law enforcement services to another municipality. According to section 166.0495, a city may enter into an interlocal agreement for the provision of law enforcement services to an adjoining municipality.

The question arises as to whether section 125.0101, which addresses agreements between a county and municipality or special district, authorizes a city to provide particular services to the county, including law enforcement. When reviewing the statute in its entirety, as well as its legislative history, it is quite apparent that the statute was intended to provide authority to counties to provide services to municipalities but not conversely for cities to provide services to counties.

Significantly, section 125.0101(1) provides, "It is the legislative intent of this act to permit *counties* to contract for services with municipalities and special districts as provided by s. 4, Article VIII of the State Constitution." (Emphasis added). According to Article VIII, section 4, of the Florida Constitution, any function or power of a county, municipality, or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transfer or an approval by voter of the electors of transferee, or as otherwise provided by law.

To the extent that section 125.0101 provides the implementing legislation for counties and cities to contract for law enforcement services, there is further indication in the body of the statute that counties were intended to provide services to a city. Section 125.0101(2), for example, states that any services provided be funded as agreed upon between the county and municipality. However, the statute precludes the county from imposing any special service charge or assessment or to levy a tax. Thus, this provision of the statute clearly anticipated that services would be provided by the county to a municipality for which some costs would be incurred.

Section 125.0101(3) authorizes municipalities to enter into service contracts with counties. Nothing in this statute, however, provides that cities are authorized to extend the enumerated services to the county.

While the statute is not a model of clarity, any ambiguity may be resolved by referring to the title as well as the legislative history. The title of an act is properly considered in determining legislative statutory intent. See *Larimore v. State*, 2 So.3d, 101, 112 (Fla. 2008) ("The entire statute is predicated on the inmate being in custody, as is evidenced by its very title . . .").

Section 125.0101 is titled, "County may contract to provide services to municipalities and special districts." This heading, therefore, is a clear guidepost of the Legislature's intent to provide authority to counties to offer services to municipalities and special districts, including law enforcement functions. A copy of the act is attached.

Similar intent may be gleaned from the statute as it was originally enacted. Significantly, the title to the entire bill reads in pertinent part, "An act relating to *counties*; creating s. 125.0101, Florida Statutes, empowering *counties* to provide certain services to certain municipalities and special districts pursuant to a contract; requiring municipal or special district funding.." (Emphasis added). Although the title to an act is not dispositive of its effect, it may be considered in determining legislative intent. *Parker v State*, 406 So.2d 1089, 1092 (Fla. 1981).

Giving additional credence to the apparent intent of the Legislature to provide authority to counties rather than the cities to extend law enforcement services is the legislative staff report which reviewed the act. After summarizing the proposed changes, the Senate committee analyzed the economic impact to the government as follows: "Municipal and special district costs associated with administration might be lowered by contracting with the county."¹ Thus, the legislative staff contemplated a potential cost savings to a municipality or special district as a result of services provided by the county. Conspicuously absent is any mention of savings by a county for services provided by a municipality. A copy of the staff report is attached.

Although it may be argued that section 125.0101 provides some room for interpretation, at best the statute is ambiguous concerning a city's authority to provide services to a county. As in the case of county commissions, however, where there is doubt as to the existence of authority, it should not be assumed. See *Gressner v. Del-Air Corp.*, 17 So. 2d 522 (Fla. 1944).

Constitutional Office of the Sheriff

Furthermore, a particular concern with permitting municipalities to contract with a county commission to provide law enforcement services within the county is the intrusion into the constitutional office of sheriff. A sheriff is the chief law enforcement officer in the county. *Weitzenfeld v. Dierks*, 312 So.2d 194, 196 (Fla. 1975). In the event of overlapping jurisdiction with a municipal police department, the Attorney General has opined that "the power of the sheriff throughout the county is paramount and the police should give way to the sheriff." Op. Att'y. Gen. Fla 71-195 (1975). Giving a municipality license to provide law enforcement services throughout the county, which

¹ S. Fechtel, Senate Staff Analysis and Economic Impact Statement, CB/SB 383, Ch. 80-46 (Fla. 1980).

have been expressly reserved for the Sheriff, would undermine the sheriff's authority as chief law enforcement officer.

As a constitutional officer, a sheriff is elected by the voters of the county and, accordingly, is responsible to them for his policies and decisions. See *Demings v. Orange County Citizens Review Bd.*, 15 So. 3d 604, 610 (Fla. 5th DCA 2009). Authorizing a city to perform law enforcement services in the county, based upon the approval of the county commission, appears to unlawfully encroach upon a sheriff's constitutional authority. See *Weitzenfeld*, 312 So.2d at 195 (holding that county did not have power to dictate how appropriated funds could be expended by the sheriff); *Demings* 15 So.3d at 614 (board established by county ordinance could not interfere with sheriff's independent authority to investigate misconduct by deputies); *Dade County v. Kelly*, 99 So. 2d 856, 859 (Fla. 1957) (county precluded from transferring sheriff's law enforcement functions absent abolition of constitutional office).

Liability

Finally, the consequences of an invalid agreement between the city and the county to provide law enforcement services at the airport must be considered. If the city is determined to have exceeded its authority by contracting with the county, the legality of any law enforcement action taken by city officers on airport facilities would also come into question. Arguably, the officer, city, and county could be liable if it was ultimately determined that the officer had no authority to act.

In *Blackshear v. City of Miami Beach*, 799 F. Supp. 2d 1338 (S.D. Fla. 2010), for example, the City of Miami Beach and one of its officers were sued for false arrest and civil rights violations as a result of arrest made by the officer in unincorporated Miami-Dade County for obstruction of justice without violence. The District Court for the Southern District of Florida denied motions to dismiss the lawsuit, holding that the officer had no official authority to arrest outside his municipality. *Id.* at 347.

Although an interlocal agreement between a city and a county would create apparent authority for a city police officer to arrest at an airport, the legality of the officer's actions would nonetheless be in question. If a court found the agreement to be unlawful, such that no such authority to arrest existed, liability would likely follow.

January 6, 2012
Page 5

Conclusion

In sum, a municipality lacks statutory authority to contract with the County to provide law enforcement services at the airport. In the event that such an agreement was deemed invalid, liability for law enforcement actions taken by a municipal officer could arise for the officer, city, and the county.

Sincerely,

A handwritten signature in black ink, appearing to read "R.W. Evans", with a long horizontal flourish extending to the right.

R.W. Evans

RWE/lcr
Attachments

Cc: Marsha Weaver

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 216.141, Florida Statutes, is amended to read:

216.141 Budget system procedures; planning and programming by state agencies.--

(6) No later than July 1, 1982 ~~1980~~, all data processing equipment utilized in implementing the provisions of this section shall be transferred to an agency within the executive branch of state government.

Section 2. This act shall take effect July 1, 1980, and if it becomes a law after that date shall operate retroactively to that date.

Approved by the Governor May 30, 1980.

Filed in Office Secretary of State June 2, 1980.

CHAPTER 80-47

Committee Substitute for Senate Bill No. 383

An act relating to counties; creating s. 125.0101, Florida Statutes, empowering counties to provide certain services to certain municipalities and special districts pursuant to a contract; requiring municipal or special district funding; providing exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 125.0101, Florida Statutes, is created to read:

125.0101 County may contract to provide services to municipalities and special districts.--

(1) It is the legislative intent of this act to permit counties to contract for services with municipalities and special districts as provided by Article VIII, Section 4, Florida Constitution.

(2) In addition to the powers enumerated in this chapter, the legislative and governing body of a county shall have the power to contract with a municipality or special district within the county for fire protection, law enforcement, library services and facilities, beach erosion control, recreation services and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, and other essential facilities and municipal services. Such services shall be funded as agreed upon between the county and the municipality or special district. This section shall not be construed to authorize the county to impose any service charge or special assessment, or to levy any tax within the municipality or special district; nor shall this section be construed to authorize the creation of a municipal service taxing unit within such area.

(3) Municipalities and special districts are hereby authorized and empowered to enter into service contracts pursuant to this section.

(4) Except as otherwise provided herein, the powers granted by this section shall not be deemed to be a limitation of powers already existing but shall be deemed to be cumulative.

Section 2. This act shall not apply to any county operating under a home rule charter adopted pursuant to ss. 10, 11 and 24 of Article VIII of the Constitution of 1885, as preserved by Article VIII, s. 6(e) of the Constitution of 1968.

Section 3. This act shall take effect October 1, 1980.

Approved by the Governor May 30, 1980.

Filed in Office Secretary of State June 2, 1980.

CHAPTER 80-48

Committee Substitute for Senate Bill No. 425

An act relating to the John and Mable Ringling Museum of Art; amending s. 265.26(1)-(4), Florida Statutes, and adding subsection (8) to said section; increasing the membership of the board of trustees of the museum, designating the museum as the official art museum of the state and providing purposes thereof; providing for appointment of committees; revising provisions relating to employment of a director and other employees and to power of the board to enter into contracts; authorizing the Board of Trustees of the museum to accept credit card payments, to establish accounts for deposit of credit card invoices, and to establish a policy for acceptance of tour vouchers; providing for conditional repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (2), (3) and (4) of section 265.26, Florida Statutes, are amended and subsection (8) is added to said section, to read:

265.26 Trustees of Ringling Museum of Art.--

(1)(a) There is hereby created ~~within the Department of State a~~ Board of Trustees of the John and Mable Ringling Museum of Art, which shall consist of ~~nine~~ five members, of whom ~~four~~ two members shall be residents of Sarasota or Manatee Counties and ~~five~~ two shall be from ~~five~~ two different counties in the state. ~~Of the four members from Sarasota and Manatee Counties, there shall be at least one member from each of said counties. one of whom shall be a resident of Sarasota County and one of whom shall be a resident of Manatee County.~~ Each member shall have been a resident and citizen of the state for a period of at least 10 years. Their terms of office shall be 4 years, except the first members, two of whom shall be appointed for a term of 1 year, two of whom shall be appointed one for a term of 2 years, two of whom shall be appointed one for a term of 3 years and two

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Richardson</u>	^{MR} <u>Burnside</u> ^{SB.}	1. <u>ECCA</u>	<u>FAV/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Interlocal Service Contracts

BILL No. AND SPONSOR:
CS/SB 383 by ECCA and
Senator Fechtel

I. SUMMARY:

A. Present Situation:

Article 8, Section 4, Florida Constitution, says "...any function or power of the county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law." (emphasis added)

A circuit court judge has recently ruled that an ordinance which authorized a city to execute an interlocal agreement between the city and the county sheriff was unconstitutional because it did not provide that the ordinance shall become effective only upon favorable referendums by the electors of the city and county (Barnes v. City of Palm Beach Gardens, Case No. 79-567 CA(L)-01, Fifteenth Judicial Circuit of Florida). The judge observed that the Attorney General had refused to approve a contract between the city and the sheriff as an interlocal agreement under s. 163.01, F.S. The case was appealed to and heard by Florida's Supreme Court, but no ruling has been issued.

B. Effect of Proposed Changes:

This bill is an implementation of Article 8, section 4, Florida Constitution. It provides a procedure by which a county may contract with a municipality or special district for certain services. Such services are funded as agreed upon between the county and the municipality or special district. This does not authorize the county to impose a charge or tax or to create a municipal service taxing unit within a municipality or special district.

This bill does not apply to any county operating under a home rule charter adopted pursuant to ss. 10, 11 and 24 of Article 8 of the Constitution of 1885, as preserved by Article 8, s. 6 (e) of the Constitution of 1968.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that duplication of service can be eliminated and economies of scale realized by contracting for services with the county, the taxpayer should benefit. The potential savings is indeterminable.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Richardson
Staff Director: Burnside
Subject: Interlocal Service Contracts

Bill No. And Sponsor:
CS/SB 383 by ECCA and
Senator Fechtel

B. Government:

Municipal and special district costs associated with administration might be lowered by contracting with the county.

III. COMMENTS:

Section 163.01, F.S., provides for joint exercise of power among local governments by contract in the form of an interlocal agreement. The agreement may enable one party to provide all of the service (s. 163.01(6), F.S.). A local government may exercise jointly with another local government any power or authority which they share in common and which each might exercise separately (s. 163.01(4), F.S.). This law does not authorize the delegation of the constitutional or statutory duties of county or city officers (s. 163.01(14), F.S.).

The appellate courts in Florida have not addressed the relationship between the constitutional language and s. 163.01, F.S. The Attorney General's Office, however, has issued formal and informal opinions which have questioned a number of interlocal agreements on the grounds that they were delegations of duty in violation of s. 163.01(14), F.S., and, as such, must be approved by the voters of the transferor and transferee in accordance with the Constitution. The following actions taken pursuant to interlocal agreement were considered delegations of duty in violation of s. 163.01(14), F.S.:

- 1) Performance of law enforcement duties inside of a city by the police force of another city (AGO 77-35 and AGO 74-220).
- 2) The transfer of traffic control functions and duties relating to city streets from a city to the county (informal opinion sent to the City of West Palm Beach on May 18, 1979).
- 3) The transfer of possession of a wastewater treatment plant from a city to the county (informal opinion sent to the City of Hollywood on September 27, 1979).

This act was approved by the Governor on May 30, 1980 and now appears as Chapter 80-47, Laws of Florida.

DATE: April 14, 1980

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Richardson	^{MR} Burnside ^{SB}	1. ECCA	
2. _____	_____	2. _____	
3. _____	_____	3. _____	

SUBJECT: Interlocal Service Contracts

BILL No. AND SPONSOR:
SB 383 by Senator
Fechtel

I. SUMMARY:

A. Present Situation:

Article 8, Section 4, Florida Constitution, says "...any function or power of the county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law," (emphasis added)

A circuit court judge has recently ruled that an ordinance which authorized a city to execute an interlocal agreement between the city and the county sheriff was unconstitutional because it did not provide that the ordinance shall become effective only upon favorable referendums by the electors of the city and county (Barnes v. City of Palm Beach Gardens, Case No. 79-567 CA(L)-01, Fifteenth Judicial Circuit of Florida). The judge observed that the Attorney General had refused to approve a contract between the city and the sheriff as an interlocal agreement under s. 163.01, F.S. The case was appealed to and heard by Florida's Supreme Court, but no ruling has been issued.

B. Effect of Proposed Changes:

The bill authorizes counties to contract with a municipality or special district to provide fire protection and law enforcement within the municipality or special district. Services are funded by the municipality or special district. This does not authorize a county to impose a charge or tax or to create a municipal service taxing unit within such area.

The service contract may be sought by resolution of the governing body of the municipality or special district; however, the municipality or special district must hold a referendum on the question of whether to contract for services if ten percent of electors of the municipality or special district petition for a referendum.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that duplication of service can be eliminated and economies of scale realized by contracting for services with the county, the taxpayer should benefit. The potential savings is indeterminable.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Richardson
Staff Director: Burnside
Subject: Interlocal Service Contracts

Bill No. And Sponsor:
SB 383 by Senator Fechtel

B. Government:

Municipal and special district costs associated with administration might be lowered by contracting with the county.

III. COMMENTS:

Section 163.01, F.S., provides for joint exercise of power among local governments by contract in the form of an interlocal agreement. The agreement may enable one party to provide all of the service (s. 163.01(6), F.S.). A local government may exercise jointly with another local government any power or authority which they share in common and which each might exercise separately (s. 163.01(4), F.S.). This law does not authorize the delegation of the constitutional or statutory duties of county or city officers (s. 163.01(14), F.S.).

The appellate courts in Florida have not addressed the relationship between the constitutional language and s. 163.01, F.S. The Attorney General's Office, however, has issued formal and informal opinions which have questioned a number of interlocal agreements on the grounds that they were delegations of duty in violation of s. 163.01(14), F.S., and, as such, must be approved by the voters of the transferor and transferee in accordance with the Constitution. The following actions taken pursuant to interlocal agreement were considered delegations of duty in violation of s. 163.01(14), F.S.:

- 1) Performance of law enforcement duties inside of a city by the police force of another city (AGO 77-35 and AGO 74-220).
- 2) The transfer of traffic control functions and duties relating to city streets from a city to the county (informal opinion sent to the City of West Palm Beach on May 18, 1979).
- 3) The transfer of possession of a wastewater treatment plant from a city to the county (informal opinion sent to the City of Hollywood on September 27, 1979).

IV. AMENDMENTS:

None

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 383

Legislative intent is added, specifying that this bill implements Article 8, section 4, Florida Constitution, by providing a procedure by which counties may contract with municipalities or special districts to provide certain services within the municipality or special district.

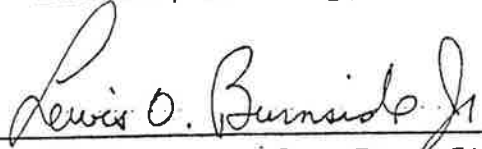
The types of services which can be contracted for are expanded from law enforcement and fire protection to include a host of other municipal services.

The requirement that the municipality or special district entirely fund the contractual service is changed to allow the parties to the contract to agree upon funding.

Deleted is the requirement that, upon receipt of a petition of 10% of its electors, a municipality or special district must hold a referendum on the question of whether to contract for law enforcement or fire protection services.

Counties operating under a home rule charter adopted pursuant to section 10, 11 and 24 of Article 8 of the Constitution of 1885, as preserved by Article 8, section 6(e) of the Constitution of 1968, are exempted from this act.

Committee on Economic, Community, and Consumer Affairs


Lewis O. Burnside, Jr., Staff Director

COMMITTEE ON COMMUNITY AFFAIRS
HOUSE OF REPRESENTATIVES

STAFF ANALYSIS

April 22, 1980

CS/HB 388

Sponsor: Rep. Myers

Companion/Similar: SB 383

Other Committees of Reference:

1. None

2. _____

Relating to: Counties

I. Summary:

A. Present Situation -- Pursuant to Article VIII, Section 4, Florida Constitution, "any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district. . . ."
These functions and powers may be contracted only after an approval by vote or the electors of both the transferor and transferee, "or as otherwise provided by law."

B. Probable Effect of Proposed Changes -- This bill will create s.125.0101, and provides an expression of legislative intent, authorizing additional powers for counties to contract with municipalities and special districts for fire protection, law enforcement and other municipal services, as provided by Art. VIII, s.4, Florida Constitution.

However, this bill excludes counties operating under a home rule charter adopted pursuant to ss.10,11 and 24 of _____ Art. VIII of the Constitution of 1885 as preserved by Article VIII, s.6(e) of the Constitution of 1968.

II. Fiscal Impact:

Municipal services will be funded as agreed upon between county and the municipality or special district.

III. Analysis prepared by: William K. Callam *W.K.C.*

IV. Staff Director's review: William R. Kynoch *WRK*

V. Copy to Sponsor: 4-22-80 *JW*

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COMMITTEE ON COMMUNITY AFFAIRS
HOUSE OF REPRESENTATIVES

STAFF ANALYSIS

April 18, 1980

HB 388 Sponsor: Rep. Myers
Companion/Similar: SB 383 Other Committees of Reference:
Relating to: Counties 1. None
2. _____

I. Summary:

- A. Present Situation -- Pursuant to Article VIII, Section 4, Florida Constitution, "any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district...." These functions and powers may be contracted only after an approval by vote or the electors of both the transferor and transferee, "or as otherwise provided by law."
- B. Probable Effect of Proposed Changes -- This bill will create s. 125.0101, authorizing additional powers for counties to contract with municipalities and special districts for fire protection and law enforcement.

The bill provides further for a petition referendum, whereupon the receipt of 10 percent of the electors of the municipality or special district there shall be held a referendum on the question of whether the municipality or special district should contract with the county for the provision of these services.

II. Fiscal Impact:

The municipality or special district would pay the cost for the services provided by contracts pursuant to this act.

III. Comments:

The sponsor has provided three amendments which are attached. They provide

1. Inclusion of other municipal services in addition to fire protection and law enforcement;
2. Election procedures to implement the referendum section; and
3. An expression of legislative intent.

IV. Staff analysis prepared by: William K. Callam *wkc*

V. Staff Director's review: William R. Kynoch *WRK*

VI. Copy to Sponsor: 4/18/80 *CWK*

Florida Attorney General Advisory Legal Opinion

Number: AGO 2011-24
Date: December 9, 2011
Subject: Interlocal agreement, law enforcement

Mr. Hayward Dykes, Jr.
City Attorney
City of Fort Walton Beach
Post Office Box 6944
Destin, Florida 32550

RE: MUNICIPALITIES - INTERLOCAL AGREEMENTS - LAW ENFORCEMENT -
authority of municipality to provide law enforcement services to
adjoining municipalities. s. 166.0495, Fla. Stat.

Dear Mr. Dykes:

On behalf of the City of Fort Walton Beach, you ask the following
question:[1]

Does section 166.0495, Florida Statutes, authorize the City of Fort
Walton Beach to enter into an interlocal agreement to provide law
enforcement services only to adjoining municipalities in the same
county or may it enter into an interlocal agreement to provide law
enforcement services to any municipality, adjoining or not, located
within the same county in which the city is located?

In sum:

Section 166.0495, Florida Statutes, authorizes a municipality to
enter into an interlocal agreement for the provision of law
enforcement services with only those municipalities which adjoin the
municipality and are located within the same county as the
municipality.

Section 166.0495, Florida Statutes, provides:

"A municipality may enter into an interlocal agreement pursuant to s.
163.01 with an *adjoining municipality or municipalities within the
same county* to provide law enforcement services within the
territorial boundaries of the other *adjoining municipality or
municipalities*. Any such agreement shall specify the duration of the
agreement and shall comply with s. 112.0515, if applicable. The

authority granted a municipality under this section is in addition to and not in limitation of any other authority granted a municipality to enter into agreements for law enforcement services or to conduct law enforcement activities outside the territorial boundaries of the municipality." (e.s.)

Section 166.0495, Florida Statutes, was enacted by Chapter 97-62, Laws of Florida. The title to the act states that it relates to municipal government, "authorizing municipalities to enter into interlocal agreements to provide law enforcement services within the boundaries of adjoining municipalities within the same county[.]" While the title to an act is not dispositive of its effect, it may be considered in determining the intent of the Legislature.[2] The legislative history of Chapter 97-62, Laws of Florida, provides additional insight as to the Legislature's intent in its enactment. [3] The sponsor of the bill, explaining its purpose, stated that the bill would allow municipalities to enter into an interlocal agreement with a neighboring law enforcement entity in an "adjoining community within the same county." Further, she explained that it applied to "adjoining municipalities within the same county only," then continued that the act did not authorize "skipping over . . . [;] it has to be an adjoining community." [4] The language in the statute has not been amended since its enactment.

There is a rule of grammatical construction that a qualifying phrase will modify all items listed in a series unless there is no comma between the last of the series and the qualifying phrase. [5] In this instance, however, there are two qualifying terms, "adjoining" and "within the same county," which modify the intervening terms "municipality or municipalities" which do not appear to qualify as a "series" of terms. A "series" is "a group of usu. [usually] three or more things or events standing or succeeding in order and having a like relationship to each other." [6] The phrase "municipality or municipalities" appears to be in the nature of a phrase representing selectivity between the singular and plural, rather than a series of choices having a like relationship to each other. Thus, the phrase "adjoining municipality or municipalities within the same county" must be read in a common sense manner to mean that any municipality entering into an interlocal agreement for law enforcement services must meet the criteria of adjoining the municipality providing the law enforcement service and be located within the same county. [7] The Legislature's intent as expressed in the title of the legislation and in the history surrounding enactment of the bill supports this interpretation.

Accordingly, it is my opinion that pursuant to section 166.0495, Florida Statutes, the City of Fort Walton Beach is authorized to enter into an interlocal agreement for the provision of law enforcement services only with other municipalities which adjoin the city and are located within the same county.

Sincerely,

Pam Bondi
Attorney General

PB/tals

[1] You have posed two additional questions: whether the city and the Okaloosa County Airport may enter into an interlocal agreement for the city to provide law enforcement on the county airport property; and whether Florida law requires a city to provide law enforcement services to its citizens or whether it may rely upon county law enforcement only. You have been informed that the governing body of the Okaloosa County Airport must join in the request in order for this office to address your second question and that the sheriff would necessarily have to join in the request to have your third question considered; no communication to that effect has been received by this office.

[2] See *Parker v. State*, 406 So. 2d 1089 (Fla. 1981) (one indicator of the Legislature's intent is the title of the law enacting the statute); *Finn v. Finn*, 312 So. 2d 726 (Fla. 1975) (title of act is not part of basic act but has function of defining scope of act); *Berger v. Jackson*, 23 So. 2d 265 (Fla. 1945) (generally, title of an act may be considered in determining the intent of the Legislature; title of act is to be given due weight); *Speights v. State*, 414 So. 2d 574 (Fla. 1st DCA 1982) (although not part of statute, title is valuable aid in determining legislative intent); and Op. Att'y Gen. Fla. 57-314 (1957) (where heading is furnished by Legislature, consideration of heading is proper in determining intent of Legislature).

[3] See *Reynolds v. State*, 842 So. 2d 46, 49 (Fla. 2002) (legislative intent is the polestar that guides statutory construction analysis).

[4] Senate Committee on Community Affairs, March 5, 1997, Sen. Virginia "Ginny" Brown-Waite, CS/SB 378, Tape 1 of 3. See also Senate Floor Debate, April 17, 1997, Sen. Virginia "Ginny" Brown-Waite, Tape 4 of 6 ("This bill gives municipalities the choice of contracting either with the sheriff's office or with an adjoining municipality for police services.").

[5] See *Mendelsohn v. State of Florida, Department of Health*, Case No. 1D11-3278, August 31, 2011 (Fla. 1st DCA 2011), citing *Kasischke v. State*, 991 So. 2d 803, 812-13 (Fla. 2008) (citing 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* s. 47.33 [7th ed. 2007]).

[6] Webster's Third New International Dictionary (unabridged, 1981), p. 2073.

[7] *Cf. Jarrett v. State*, 926 So. 2d 429 (Fla. 2d DCA 2006), in which the jurisdiction of a city police officer employed by the Town of Indian Shores rendering law enforcement services pursuant to an interlocal agreement with the Town of Redington Shores was challenged on technical grounds that the agreement had not been recorded in both jurisdictions; while the proximity of the towns was not at issue, the towns are geographically adjacent. See <http://wms.mapwise.com/fmo2/>.

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Reply to Tallahassee

December 7, 2011

By Electronic Transmission
and U.S. Mail

Greg Donovan, A.A.E.
Airports Director
Okaloosa County Airports
1701 State Road 85 North
Eglin AFB, Florida 32542

Re: Agreement Between Okaloosa County and Local Municipalities to Provide
Temporary Law Enforcement Services at its Airports

Dear Mr. Donovan:

In follow up to the opinion provided to you on November 23, 2011, you have requested that this firm consider whether Okaloosa County may temporarily obtain airport police services from local municipalities through either mutual aid-type agreements or interlocal agreements, pending the establishment and manning of its own airport police force. Our review of the matter examined possible dual office holding issues as well as the County's authority to contract for law enforcement services provided by municipal police departments in areas outside of those cities' jurisdictional boundaries. Based upon our review and analysis, set out below, we have concluded that entering into such agreements with local municipal police agencies would be within the statutory and home rule authority of Okaloosa County and that the prohibition against dual office holding should not be an impediment so long as certain conditions are observed.

A. Introduction

Okaloosa County (hereafter, the "County") has begun a transition of law enforcement services at its airport facilities from the Okaloosa County Sheriff's Office to a newly formed airport police agency which will be dedicated to providing police and security services within the jurisdictional boundaries of the County's various airport facilities. In the interim period between the termination of its agreement with the Sheriff and the commencement of services provided by its own airport police force, the County would like to obtain temporary airport law enforcement services through agreements with several local municipal police departments. In evaluating this proposal, two issues arise. First, does a municipal police officer have the authority to act in the

Greg Donovan, A.A.E.
Airports Director
December 7, 2011
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capacity of a law enforcement officer outside the jurisdictional boundaries of the municipality for which he serves? Second, if a municipal police officer acts in such extra-jurisdictional capacity, is he or she in violation of Florida's Constitutional prohibition against dual office holding? As stated above, and as explained more fully in the analysis that follows, we are of the opinion that a municipal police officer may exercise law enforcement powers in an extra-jurisdictional and extraterritorial capacity provided it is pursuant to an appropriate mutual aid or interlocal agreement conferring such authority, and further, that such exercise of law enforcement powers is not a violation of the prohibition against dual office holding if the parties observe the conditions outlined below.

B. Extra-jurisdictional Exercise of Police Powers

With respect to the first issue referenced above, we begin by reviewing Article XIII, Section 2(c), Florida Constitution, which provides that the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law." Therefore, the general grant of municipal home rule powers found elsewhere in the Florida Constitution and statutes does not, in and of itself, extend to the exercise of extraterritorial power.¹ The powers of a municipality, including its police powers, generally cease at the municipal boundaries and cannot, absent statutory authorization, be exercised outside the city's limits.²

This principle has been echoed by Florida's Attorney General on a number of occasions. In a 1971 opinion, for example, the Attorney General opined that a municipal police officer could not conduct an investigation outside the corporate limits of the city unless such officer worked in partnership with a law enforcement agency having jurisdiction over both the subject matter and the place of the investigation. The Attorney General reached this conclusion on the basis that a municipal police officer lacks any power or authority as a police officer in any part of the state beyond the corporate limits of the city where the officer is employed.³ Likewise, in a 1996 opinion, the Attorney General recognized that "the Legislature has provided statutory

¹ See also Section 166.021(3)(a), Fla. Stat. (2011).

² See generally Ramer v. State, 530 So. 2d 915 (Fla. 1988)(city police officer lacked authority to seize vehicle on private property outside city limits); Collins v. State, 143 So. 2d 700 (Fla. 2nd DCA 1962) cert. denied, 148 So. 2d 280 (Fla. 1962) (city police officers lacked authority or power to make arrest outside their jurisdiction).

³ See Op. Att'y Gen. Fla. 71-72 (1971).

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authority for municipal police officers to exercise their powers extraterritorially under certain circumstances. For example, *section 901.25, Florida Statutes*, authorizes a municipal police officer to make arrests outside the officer's jurisdiction, if the officer is in fresh pursuit."⁴ In the same opinion the Attorney General concluded that, although the Legislature has authorized municipal police agencies to act extraterritorially to conduct specific law enforcement activities on a limited basis under mutual aid agreements, "there is no statutory authority for the complete transfer of law enforcement services from one municipality to another where supervision and control of the services are vested in the municipality providing such services."⁵ However, a year later, in an apparent attempt to respond to the Attorney General's 1996 conclusion, the Legislature enacted Chapter 97-62, Laws of Florida (1997) (codified at Section 166.0495, Florida Statutes), which now authorizes one municipality to provide law enforcement services to another municipality within the same county by means of an interlocal agreement.

Similarly, the Legislature has granted authority to any county to contract with a municipality within the county for a variety of services, including law enforcement services.⁶ The relevant statute provides:

In addition to the powers enumerated in this chapter, the legislative and governing body of a county shall have the power to contract with a municipality or special district within the county for fire protection, *law enforcement*, library services and facilities, beach erosion control, recreation services and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, and other essential facilities and municipal services. Such services shall be funded as agreed upon between the county and the municipality or special district. This section shall not be construed to authorize the county to impose any service charge or

⁴ Op. Att'y Gen. Fla. 96-78 (1996).

⁵ Id.

⁶ See Section 125.0101(2), Florida Statutes (2011). See also Section 125.01(p), Florida Statutes (which more generally authorizes counties to enter into agreements with other governmental agencies within or outside the boundaries of the county for the joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions).

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special assessment or to levy any tax within the municipality or special district, nor shall this section be construed to authorize the creation of a municipal service taxing unit within such area.⁷

Although the text within the body of this cited statutory section is unambiguous in stating that a county may *contract with a municipality for law enforcement services*, its heading may lead some to question the scope of authority actually granted to counties and municipalities under the statute. That section heading reads:

§ 125.0101. County may contract to provide services to municipalities and special districts.—⁸

The section heading appears to restrict or conflict with the clearly stated intent of the body of the section, thus requiring some further analysis. A review of subsection (1) of the statute provides some guidance in that regard. That subsection provides that “[i]t is the legislative intent of this act to permit counties to contract for services with municipalities and special districts *as provided by s. 4, Art. VIII of the State Constitution.*”⁹ The referenced constitutional provision, in turn, states:

SECTION 4. Transfer of Powers.—By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Clearly, this constitutional grant of authority contemplates the ability of counties and municipalities to contract with one another, either for the provision of services to municipalities by counties or, conversely, for the provision of services to counties by municipalities. Nowhere in the constitutional language is there a restriction placed upon counties such that they may provide but not receive services by contract with municipalities. Therefore, to give the

⁷ Section 125.0101(2), Florida Statutes (2011) (emphasis supplied).

⁸ (emphasis supplied).

⁹ Section 125.0101(1), Florida Statutes (2011) (emphasis supplied).

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December 7, 2011
Page 5

Legislature's plainly stated intent to allow for contracting as contemplated in the constitutional provision its full effect, the only reasonable conclusion to be drawn is that the section heading can have no operational impact.

Florida courts have held as much: "the statutory section headings, inserted by the statutory revisors and/or legislative service bureau as a convenient visual reference to the content, are not themselves a part of the statute."¹⁰ Though phrases in a statutory section heading may be "confusing and worthy of corrective legislation, [they] are not part of and do not modify the unambiguous text of the statute."¹¹ Where the unambiguous text of a statute reveals an intent that is contrary to the meaning conveyed by a statute's caption, the caption simply has no "legal intendment."¹² Because the section heading for section 125.0101, Florida Statutes, is contrary to the clearly expressed legislative intent found in the body of the section, the heading, consistent with the authority cited above, necessarily must be given no legal effect.

Thus, we conclude that Section 125.0101, Florida Statutes, in implementing Article VIII, Section 4 of the Florida Constitution, provides all necessary authority for the County to enter into a contract or contracts with a municipality or municipalities within the County whereby it or they will provide law enforcement services to the County's airports, and whereby the necessary power is transferred to that or those municipal police agencies so that they may enforce laws extraterritorially on behalf of the County. We further conclude that this should be accomplished through the execution of one or more interlocal agreements, rather than by a mutual aid-type agreement, based upon the reasoning from the Attorney General's 1996 Opinion cited above - - that governmental entities may act to the mutual benefit of each other under limited circumstances but may not completely transfer the authority to act to another such entity through the vehicle of a mutual aid agreement.¹³

¹⁰ Askew v. MGIC Dev. Corp. of Fla., 262 So. 2d 227, 228 (Fla. 4th DCA 1972).

¹¹ Merritt Square Corp. v. State, 354 So. 2d 143, 144 (Fla. 1st DCA 1978), citing Askew, *supra*; McCulley Ford, Inc. v. Calvin, 308 So. 2d 189 (Fla. 1st DCA 1974), *cert. denied*, 314 So. 2d 592 (Fla. 1975).

¹² Agner v. Smith, 167 So. 2d 86, 89 (Fla. 1st DCA 1964).

¹³ See also Op. Att'y Gen. Fla. 2005-26 (2005) (same, interpreting Part I, Chapter 23, Florida Statutes, the Florida Mutual Aid Act).

C. Prohibition Against Dual Office Holding

In addressing the second of the issues encompassed by this legal opinion, the starting point should be with the constitutional prohibition, itself. Article II, Section 5(a) of the Florida Constitution provides, in pertinent 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, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

The Florida Supreme Court has distinguished holding an “office” from “employment” in that “[t]he 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.”¹⁴ Applying this distinction to police officers, the Court has stated that “[i]t can hardly be questioned that a patrolman on a city police force is clothed with sovereign power of the city while discharging his duty,” and is therefore an officer.¹⁵ As such, the constitutional prohibition against holding dual offices applies to city police officers, as has been recognized in a number of court opinions.¹⁶

Despite that the prohibition against holding dual offices applies to city police officers, however, the courts have addressed circumstances in which a law enforcement officer performing dual roles is not considered to be in violation of the constitutional provision. In Vinales, for example, the question before the Court was “whether a temporary nonpaying appointment of two City of Miami police officers as investigators of the State Attorney for the 11th Judicial Circuit for the purpose of completing a valid investigation violated the article II,

¹⁴ Ex rel Holloway v. Sheats, 83 So. 508, 509 (Fla. 1919).

¹⁵ Curry v. Hammond, 16 So. 2d 523, 523-24 (Fla. 1944).

¹⁶ See, e.g., Vinales v. State, 394 So.2d 993 (Fla. 1981); Rampil v. State, 422 So. 2d 867 (Fla. 2nd DCA 1982).

Greg Donovan, A.A.E.
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section 5(a) prohibition against dual office holding.”¹⁷ The Court, adopting the language of the trial court, held:

[T]hat section does not apply to temporary appointment for law enforcement purposes where no additional remuneration is paid to the police officer. We think that it is clear that the constitutional language is directed toward an accumulation of offices for the private benefit of the officeholder. Even though the broad prohibition advanced by the defendants could possibly be read into the Florida Constitution, we find that nothing in the wording of the prohibition so dictates. Where a constitutional provision is susceptible to more than one meaning, the meaning adopted by the legislature is conclusive. (citations omitted) In the present instance, the legislature, by the enactment of Section 27.251, Florida Statutes (Supp. 1978), has chosen specifically to authorize the appointment of municipal police officers for some purposes as investigators for the state attorney. Although this statute was enacted subsequent to the matters presently before us, the legislature has thus construed the applicable section of our state constitution as one which does not prohibit dual office holding on a temporary basis without remuneration for the purpose of criminal investigations.¹⁸

The following year, the Second District Court of Appeal, in Rampil, further refined this conclusion by holding that it is unnecessary for a law enforcement officer’s second position to be temporary to avoid the dual office holding prohibition.¹⁹ In that case, a person employed as a St. Petersburg detective was also an unpaid deputy sheriff. The court found that the detective, investigating a crime in Largo, did not act outside of his jurisdiction because he was also a Pinellas County deputy sheriff, and that he did not violate the prohibition against dual office holding because he was not paid for acting in the capacity of a deputy sheriff.²⁰

¹⁷ Vinales, 394 So. 2d at 993-94.

¹⁸ Id. (emphasis supplied)

¹⁹ Rampil, 422 So. 2d at 868.

²⁰ Id.

Greg Donovan, A.A.E.
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Applying the holdings in Vinales and Rampil to the County's proposal, it is clear that city police officers providing law enforcement services at the County's airports would not be in violation of the Florida Constitution's dual office holding prohibition, so long as the individual officers are not paid for acting in that capacity in addition to being paid their existing salaries earned as city police officers. This conclusion is supported not only by the holdings in the cases cited, but by the reasoning upon which the holdings rest. First, the Vinales court pointed out that the purpose of the constitutional prohibition was to prevent an accumulation of offices for the private benefit of the officeholder. If city police officers earn no additional salary or other remuneration for policing the County's airports, they receive no private benefit, and are therefore acting consistently with the purpose of the constitutional provision. Second, the Legislature has interpreted the constitutional language to permit such activity. Similar to the situation in Vinales, where the Legislature had enacted a law that permitted city police officers to act as investigators for the state attorney's office, the Legislature has enacted laws which permit city police officers to act extra-territorially to enforce the laws and ordinances of another jurisdiction by acting pursuant to a mutual aid agreement²¹ or an interlocal agreement.²² Finally, the Rampil court held that despite the permanent nature of the police detective's appointment as a deputy sheriff, the absence of remuneration in the second office dictated that the dual office holder was not in violation of the constitutional prohibition. Under the County's proposal, not only would individual city police officers receive no additional remuneration, they would not even hold nominal title to a second office as was the case in Rampil. The city police officers would merely be acting under an agreement or agreements between governmental entities for the provision of law enforcement services, but would be acting within their office as city police officers.

For these reasons, provided individual police officers assigned to duties at the airport receive no remuneration in addition to their regular police department salaries, the County's proposal will not be inconsistent with the Florida Constitution's prohibition against dual office holding.

D. Conclusion

In conclusion, we are of the opinion that Okaloosa County has sufficient legislative authorization pursuant to Sections 125.0101 and 125.01(p), Florida Statutes, to enter into a contract or contracts with local city police agencies for the temporary provision of law

²¹ See Section 23.1225, Florida Statutes.

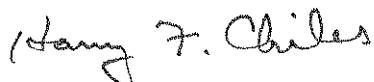
²² See Sections 125.0101 and 166.0495, Florida Statutes.

Greg Donovan, A.A.E.
Airports Director
December 7, 2011
Page 9

enforcement services at its various airport facilities. Furthermore, for the reasons stated above, we conclude that such provision of law enforcement services to the County by city police units will not conflict with the constitutional prohibition against dual office holding so long as any city police officer providing such services does not receive remuneration in addition to that earned as an employee of his or her respective city police department.

If you should have questions or concerns about the foregoing analysis and conclusions we have reached, or if you would care to discuss in further detail, please do not hesitate to contact me. Otherwise, your attention to these matters is most appreciated.

Sincerely,



Harry F. Chiles
William C. Garner
For the Firm

HFC:WCG:lll

cc: James D. Curry
John R. Dowd, Esquire
Kay Godwin