

Sheriff



Larry Ashley, Okaloosa County Sheriff

1250 Eglin Parkway • Shalimar, Florida 32579-1234
Phone: (850) 651-7410 • Email: sheriff@sheriff-okaloosa.org

Information Request: January 13, 2011

Ref: Agency Legal Fees. **UPDATE**

On January 13, 2011 Mr. Steven Menchel clarified the request for public records regarding agency Legal Fees.

For clarification of my request I submit the following:

++ I understand that the OCSO did not represent Mrs. Thorton in her lawsuit against the Sheriff's Office – Please advise who are the Sheriff's Office representing attorneys and the total legal fees expended defending the Sheriff's Office against the law suit filed by Sabra Thorton.

The sheriff's office has no records concerning this request. There has been no law suit filed against the sheriff's office by Mrs. Thornton.

++ In reference to the total legal fees to defend Larry Ashley in reference to the Hatch Act- Please provide me with a copy of both letters referenced in the August 17th 2009 Bill Number 73556 invoice from Allen, Norton & Blue, P.A.

See Attached.

Please verify that the \$120.00 represents the total monies spent, both directly and indirectly, for defense of Larry Ashley and the Hatch Act by the Okaloosa County Sheriff's Office.

This request has already been satisfied in the previous response.

++ In reference to the requested information in the George Funti case –

Please provide:

- A- The names of the attorneys who represented the Sheriff's Office in this case?
These records are maintained by Hunt Insurance Group, the firm that manages the Florida Sheriff's Self-Insurance Fund.



The Okaloosa County Sheriff's Office is accredited by the Commission for Florida Law Enforcement Accreditation.

"The Okaloosa County Sheriff's Office provides equal access and equal opportunity in employment and services and does not discriminate"

Sheriff



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B- The total legal fees expended by the Okaloosa County Sheriff's Office and/or by the Sheriff's Office Liability Insurance Fund in this case?

The first part of this request has already been satisfied in the previous response. The second part of the request is for records not maintained by the Sheriff's Office.

C- If a payout was made by the Sheriff's Office Liability Insurance Fund in this case what is the total payout in this case?

There are no records relating to this request at this time.

NOTE: On Monday January 10, 2011, I spoke with a representative at Hunt Insurance Group, and was informed that they do in fact separate all fees on a case/claim by case/claim basis.

Hunt Insurance Group administers the Florida Sheriff's Self-Insurance Fund in which the Okaloosa County Sheriff's Office participates. The sheriff's office does not maintain the records you cite in this portion of the request.



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Sheriff



Okaloosa County



July 15, 2009

Wayne Evans, Attorney at Law
Allen Norton & Blue
906 N Monroe Street
Tallahassee, FL 32303-6143

RE: Hatch Act

Dear Wayne:

Thank you for providing us with the FSA resolution regarding the applicability of the Hatch Act to Florida Sheriffs. I would appreciate some additional assistance regarding this matter. First, have you received any final resolution regarding the Charlotte and Collier County cases involving the Hatch Act? As I understand, you were in correspondence with the Office of Special Counsel concerning whether the Act was going to be enforced against those sheriffs' offices.

Second, could you provide me with a legal advisory opinion regarding the applicability of the Hatch Act to sheriffs in Florida? As I told you on the phone, a number of our deputies are considering whether to run for sheriff next year. I don't want to lose any of them unnecessarily if the Hatch Act does not require them to resign in order to run for office. Such a requirement would eliminate some of them from being able to participate in the election since they could not afford to resign their jobs and give up their income for a year or more while they ran for office. I believe that an opinion from you will go a long way in clarifying this matter for all concerned.

Thank you for your consideration of this request. Please give me a call at your convenience if I can provide any further information regarding this matter.

Very truly yours,

Ed Spooner, Sheriff

- 1250 N. Eglin Parkway, Shalimar, FL 32579-1234 ☆ Phone (850) 651-7410 ☆ Fax (850) 609-3048
- 296 Brackin Street, Crestview, FL 32539-2909 ☆ Phone (850) 689-5650 ☆ Fax (850) 689-5556

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LAW OFFICES
ALLEN NORTON & BLUE
 PROFESSIONAL ASSOCIATION

CORAL GABLES / MIAMI OFFICE
 121 MAJORCA AVE
 SUITE 300
 CORAL GABLES, FL 33134-4508
 305-445-7801
 FACSIMILE 305-442-1578

JACKSONVILLE OFFICE
 800 WEST MONROE STREET
 SUITE 100
 JACKSONVILLE, FL 32202
 904-562-4480
 FACSIMILE 904-562-4999

ORLANDO OFFICE
 1477 WEST FAIRBANKS AVE
 SUITE 100
 WINTER PARK, FL 32789-7113
 407-571-2152
 FACSIMILE 407-571-1496

TALLAHASSEE OFFICE
 906 NORTH MONROE STREET
 SUITE 100
 TALLAHASSEE, FL 32303-6143
 850-561-3503
 FACSIMILE 850-561-0332

TAMPA OFFICE
 324 SOUTH HYDE PARK AVE
 HYDE PARK PLAZA, SUITE 225
 TAMPA, FL 33606-4127
 813-251-1210
 FACSIMILE 813-253-2006

REPLY TO: Tallahassee

FACSIMILE TRANSMITTAL RECORD

DATE: August 4, 2009
OF PAGES: 7 (including cover)
SENT TO: Sheriff Ed Spooner
COMPANY: Okaloosa County Sheriff's Office
SENT TO FAX #: 850-609-3048
FROM: R. W. Evans, Esq.
CHARGE: 5131-000
COMMENTS: Please see attached letter and exhibit. Thank you.

**FOR PROBLEMS OR QUESTIONS CONCERNING THIS TRANSACTION,
 CALL Pamela Gordon Vaught AT (850) 561-0332**

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 THANK YOU.**

LAW OFFICES
ALLEN NORTON & BLUE
 PROFESSIONAL ASSOCIATION

CORAL GABLES / MIAMI OFFICE:

121 MAJORCA AVE
 SUITE 300
 CORAL GABLES, FL 33134-4308
 305-445-7801
 FACSIMILE 305-442-1578

JACKSONVILLE OFFICE

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

ORLANDO OFFICE

1477 WEST FAIRBANKS AVE
 SUITE 100
 WINTER PARK, FL 32789-7113
 407-571-2152
 FACSIMILE 407-571-1496

TALLAHASSEE OFFICE

406 NORTH MONROE STREET
 SUITE 100
 TALLAHASSEE, FL 32303-6143
 850-561-3503
 FACSIMILE 850-561-0322

TAMPA OFFICE

324 SOUTH HYDE PARK AVE
 HYDE PARK PLAZA, SUITE 225
 TAMPA, FL 33606-4127
 813-251-1210
 FACSIMILE 813-251-2006

REPLY TO: Tallahassee

August 4, 2009

Sheriff Ed Spooner
 Okaloosa County Sheriff's Office
 1250 Eglin Parkway
 Shalimar, Florida 32579-2307

Dear Sheriff Spooner:

Thank you for your letter of July 15, 2009. We have received no final resolution regarding the Office of Special Counsel (OSC) inquiries regarding Sheriff Rambosk and Sheriff Cameron. I have informed OSC that the Hatch Act does not apply to Florida Sheriffs because they are not included in the executive branch of the State of Florida. The OSC has yet to provide any authority which disputes our conclusion which is based on Florida law.

The Hatch Act applies to an individual employed by a state or local agency, which is defined by 5 U.S.C. § 1501(2) as "the executive branch of a State, municipality, or other political subdivision of a State" *Special Counsel v. Bissell*, 61 M.S.P.R. 637, 641 (MSPB 1994). Although the interpretation of the Hatch Act is a question of federal law, state law applies to determine whether the agency is within the executive branch. *Id.*

The Board has held that under the plain meaning of the Hatch Act, the Board has jurisdiction only over employees who work for agencies within the executive branch of their state. *Bissell*, 61 M.S.P.R. at 641. Although the OSC has concluded that the Sheriff is in the executive branch¹, noticeably absent from any review by the OSC of Cameron's positions as chief deputy or executive officer is an analysis of this jurisdictional threshold.

Under Florida law, a sheriff is an independent constitutional officer.² Contrary to the conclusion of the OSC, a sheriff is not included in the executive branch; indeed, a sheriff is not part of the legislative or judicial branch as well. Rather, a sheriff is a public officer and county official who performs a variety of functions, including judicial duties as prescribed by statute.

The Florida Constitution sets forth the framework of state and local government. Article II, Section 3 establishes three branches of state government: legislative, executive and judicial. This section codifies the separation of powers doctrine by prohibiting any person belonging to one branch from exercising powers relating to either of the other branches.

¹ Letter to Cameron, July 30, 2000.

² Article VII, § 1(d), Fla.Const.

August 4, 2009

Page 2

Article IV of the Constitution addresses the executive branch. In particular, Article IV, Sections 1-5 provide that the executive branch shall consist of the governor, lieutenant, and cabinet members. Section 6 of Article IV establishes 25 executive agencies.³ Notably, the office of sheriff is not mentioned as an executive department. Indeed, Article IV does not reference the office of sheriff in any provision for the obvious reason that a sheriff is not included in this branch of government.

Articles III and V relate to the legislature and the judiciary, respectively. Similar to Article IV, these articles are silent with respect to the office of sheriff.

Article VIII of the Constitution refers to local government without differentiating among executive, legislative or judicial branches. County officers are identified as the sheriff, the tax collector, the property appraiser, the supervisor of elections and the clerk of circuit court. *Id.* at § 1(d). A sheriff, therefore, is a county official not affiliated with any state branch. *See Hufford v. Rodgers*, 912 F.2d 1338 (11th Cir. 1990)(holding that Sheriff as a county official rather than state was not entitled to Eleventh Amendment immunity).⁴

A sheriff's duties, however, relate to the judicial branch. Section 26.49, Fla.Stat., establishes the sheriff as the executive officer of the circuit court of the county. Section 34.07, Fla.Stat., provides that the sheriff of the county, as the executive officer of the courts, is required to serve and execute all civil and criminal processes of the court and "do and perform all duties in and about said court. . .". As a result of a sheriff's close ties to the judicial process, Chapter 30, Florida Statutes, which relates generally to sheriffs, has been included in Title V of the Florida Statutes relating to the judicial branch. *See* Exh. A attached.

Furthermore, the Attorney General of the State of Florida has opined that sheriffs are officers of the court.⁵ Similarly, Florida's appellate courts have also recognized the sheriff's role in the judicial process. *See Tirado v. Reese*, 478 So.2d 883, 884 (Fla. 2d DCA 1985), "On the other hand the sheriff, as executive officer of the circuit court and warden of the county jail populated largely by pretrial detainees, may fairly be expected to monitor courtroom obligations of his charges."; *see also Buchanan v. Jimenez*, 155 So.2d 724 (Fla. 3d DCA 1963)(holding that sheriff, notwithstanding role as court's executive officer, could not seek appellate review of the court's orders, judgments or decrees).

The critical factor in determining whether an agency is within the executive branch is to examine "not what function the agency performs, but rather which branch of the State government controls (the agency) . . . and/or how the State has perceived that agency's place in State

³ See also § 20.04, Fla.Stat., which describes the structures of the executive branch. The statute omits any reference to the office of sheriff.

⁴ In reviewing statutes of general application to Florida sheriffs, the Court stated "We discern in these statutes no intent for state officials to control or supervise the sheriff." 912 So.2d at 1341-1342.

⁵ Op. Att'y. Gen. Fla. 84-96.

August 4, 2009

Page 3

government." *Bissell*, 61 M.S.P.R. at 643. Thus, in examining Florida law, it is readily apparent that a sheriff is perceived to be tied to the judicial, rather than the executive, branch of state government.

In view of the substantial authority relating to the judicial nature of duties performed by sheriffs, the OSC's position that the sheriff is within the executive branch is clearly untenable. Moreover, because Article II, Section 3, prohibits one branch of government from exercising the powers of another, the sheriff could not constitutionally exercise these judicial duties if the office was included in the executive branch. In other words, the position of the OSC would be violative of the separation of powers doctrine through the encroachment on the judicial branch. *See Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla. 1991)(holding that statute placing the judicial branch within the definition of "state agency" violated the doctrine of separation of powers).

The decision of the Board in *Bissell* further supports our contention that a Florida sheriff is not included in the executive branch. In *Bissell*, the Board found that the Tennessee Public Service Commission (TPSC) was not an agency of the State of Tennessee, noting that commissioners were independently elected, the executive branch had no control over the agency's funding, and that employees of the TPSC were specifically excluded from the rules and regulations of the Tennessee Civil Service Commission. *Id.* at 645. The Board also relied upon opinions of the Tennessee Commissioner of Finance and Administration and of the Attorney General indicating that the State of Tennessee did not consider or perceive the TPSC to be included in the executive branch. *Id.* at 645-646.

There is no meaningful distinction between a Florida sheriff and the TPSC for purposes of determining whether the sheriff is included in the executive branch. As in the case of the TPSC, the sheriff is an independent elected officer. The sheriff's budget is derived from a budget approved by the county commission;⁶ the executive branch of the State of Florida does not fund the office of the sheriff.

Additionally, as an independent constitutional officer, the sheriff has the discretion concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing and compensation of personnel.⁷ Neither the governor nor the county commission is authorized to dictate to a sheriff how the funds shall be expended.⁸

Moreover, we are unaware of any decisions holding that a sheriff is included in the executive branch for purposes of the application of the Hatch Act. To the contrary, a majority of the Board held in *Special Counsel v. Philips*, 104 M.S.P.R. 570 (M.S.P.B. 2007) that the Act did not apply to an employee of a Missouri sheriff's department because the sheriff was not part of the executive branch.

⁶ Section 30.49, Fla.Stat. (2008).

⁷ Section 30.53, Fla.Stat. (2008).

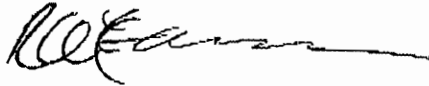
⁸ Op. Att'y Gen. Fla. 2006-33.

August 4, 2009
Page 4

Apparently, the OSC has assumed that when federal funds are received by a sheriff, the Hatch Act applies. This contention was expressly rejected by the Board in *Bissell* in which the Board held “[W]hether federal funds have been received by a State agency is irrelevant in the determination of whether the OSC has proved that the State body involved meets the requirement that it be part of the executive branch of State government.” 61 M.S.P.R. at 648-649.

Therefore, it is my opinion that the Hatch Act does not apply to Florida Sheriffs and members of their agencies. Please do not hesitate to call me if I can provide any further information.

Sincerely,



R. W. Evans

RWE:pgv
Enclosure.

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NUMERICAL TITLE AND CHAPTER INDEX

VOLUME 1—CHAPTERS 1-212

TITLE I

CONSTRUCTION OF STATUTES

Definitions.....	1
Common law in force; repealed statutes.....	2

TITLE II

STATE ORGANIZATION

Admission into union; concessions; state boundaries.....	6
County boundaries.....	7
Congressional districts.....	8

TITLE III

LEGISLATIVE BRANCH; COMMISSIONS

Senate and House of Representatives.....	10
Legislative organization, procedures, and staffing.....	11
Miscellaneous entities.....	13
Interstate cooperation; commissioners on uniform state laws, part I	
Law revision council, part II	

TITLE IV

EXECUTIVE BRANCH

Governor.....	14
Secretary of State.....	15
Attorney General.....	16
Chief Financial Officer.....	17
Commissioner of Agriculture.....	19
Organizational structure.....	20
Emergency continuity of government.....	22
Miscellaneous executive functions.....	23
Florida Mutual Aid Act, part I	
Paperwork reduction, part II	
Customer service standards, part III	
State lotteries.....	24

TITLE V

JUDICIAL BRANCH

Supreme Court.....	25
Circuit courts.....	26
State attorneys; public defenders; related offices.....	27
Court reporters; witness coordination, part I	
State attorneys, part II	
Public defenders and other court-appointed counsel, part III	
Capital collateral representation, part IV	
Clerks of the circuit courts.....	28
Court system funding.....	29
Sheriffs.....	30
County courts.....	34
District courts of appeal.....	35
Judges: general provisions.....	38
Proceedings relating to children.....	39
General provisions, part I	
Reporting child abuse, part II	
Protective investigations, part III	
Family builders program, part IV	
Taking children into custody and shelter hearings, part V	
Petition, arraignment, adjudication, and disposition, part VI	