K11-098

Ramos, Miriam S. (COE)

From: Murawski, Michael P. (COE)
Sent: Wednesday, July 13, 2011 9:57 AM
To: Ramos, Miriam S. (COE)
Cc: Meyers, Robert (COE)
Subject: FW: Lt. Alex Diaz de Villegas - MiamiDade County Administrative Order 7-2
Importance: High
Attachments: FL AG Opinion Dual-Office Special District 1.pdf; Outside Employment Request Legal Memo Dual-Office Special District.pdf

M:

Robert forwarded this to my attention yesterday and you and I briefly discussed it, please assign a "K" number, assign it to me, and close it out as "unfounded, no violation"

Thank you

From: Diaz Devillegas, Alexander [mailto:adiazdevillegas@mdpd.com]
Sent: Tuesday, July 12, 2011 8:52 PM
To: Murawski, Michael P. (COE)
Cc: Angelica, Michael B. (MDPD); diazdevillegas@comcast.net
Subject: RE: Lt. Alex Diaz de Villegas - MiamiDade County Administrative Order 7-2

Mr. Murawski,

Please find the requested items attached for your review.

Thank You,

Alexander Diaz de Villegas, Lieutenant
Miami Dade Police Department
South District
Field Training Coordinator
(305) 378-4339
Delivering Excellence Every Day

From: Murawski, Michael P. (COE) [mailto:MURAWSK@miamidade.gov]
Sent: Tuesday, July 12, 2011 5:12 PM
To: Diaz Devillegas, Alexander
Subject: RE: Lt. Alex Diaz de Villegas - MiamiDade County Administrative Order 7-2

Thank you, yes, if you can send me that memorandum I can place it in our file and close this matter out.

I appreciate your prompt response.

From: Diaz Devillegas, Alexander [mailto:adiazdevillegas@mdpd.com]
Sent: Tuesday, July 12, 2011 5:10 PM
To: Murawski, Michael P. (COE)
Cc: diazdevillegas@comcast.net; Angelica, Michael B. (MDPD)
Subject: RE: Lt. Alex Diaz de Villegas - MiamiDade County Administrative Order 7-2

Greetings Mr. Murawski,

I have previously addressed this issue with our department's legal advisors as well as the District's attorney during a similar anonymous complaint to the Commission on Ethics and Public Trust in 2007. At the time, the Commission on Ethics and Public Trust reviewed this complaint and found that I did not violate the dual-office holding prohibition and proceeded to forward the remaining expressed concerns to our department's Professional Compliance Bureau. At the time, I presented a "DUAL OFFICE-HOLDING" publication provided by the Florida Office of the Attorney General. In Section IV (page 5) of this publication it states:

"Article II, section 5(a), Florida Constitution, refers only to state, county, and municipal offices. It is not applicable to independent special district offices."

After a legal review of my Outside Employment Request submitted on, September 2, 2008, Police Legal Advisor Nicole Dixon issued a memorandum to Chief Victor Ramirez that stated in part that based on the provided information, she was persuaded that I did not violate the dual-office prohibition as the Chairman of the South-Dade Venture Community Development District because it was not considered a public office. Subsequently, my submitted Outside Employment Request was approved.

I am aware of Mr. Barrera's political and retaliatory-type motives for such a complaint and as such I firmly apologize for any inconveniences this inquiry may have posed on you or your office. Furthermore, I would be pleased to furnish any of the aforementioned documents that may assist you with the successful disposition of this matter. Please do not hesitate to contact me at 305-608-5888 if you should have any additional questions.

Regards,

Alexander Diaz de Villegas, Lieutenant
Miami Dade Police Department
South District
Field Training Coordinator
(305) 378-4339
Delivering Excellence Every Day

From: Murawski, Michael P. (COE) [mailto:MURAWSK@miamidade.gov]
Sent: Tuesday, July 12, 2011 2:58 PM
To: Diaz Devillegas, Alexander
Subject: FW: Lt. Alex Diaz de Villegas - MiamiDade County Administrative Order 7-2

Dear Mr. Diaz Devillegas:

We received the below e-mail through our ethics complaint hotline. Have you ever obtained an opinion from the County Attorney's Office as to whether or not your service as Chairman of the South Dade CDD violates AO7-2?

From: Abel Barrera [mailto:mr.abarrera@gmail.com]
Sent: Monday, July 11, 2011 12:26 PM
To: Ethics (COE)
Subject: Lt. Alex Diaz de Villegas - MiamiDade County Administrative Order 7-2

Hello

It has been brought to my attention that according to Administrative Order 7-2, Miami Dade County Employees cannot hold public office while being employed by Miami Dade County.

I would like to bring your attention to a Miami Dade County Employee that is violating Administrative Order 7-2. http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO7-2.pdf

Lt. Alex Diaz De Villegas is a Miami Dade County Police Officer; Lt. Alex Diaz De Villegas is the Chairman of the South Dade CDD a publicly elected postion. http://www.southdadecdd.com/board.htm
The Administrative order states under Personnel Action:
PERSONNEL ACTION:
No person shall be appointed or promoted to, or demoted or dismissed from, any County position or in any way favored or discriminated against with respect to employment in the classified service because of his or her political opinions or affiliations; but nothing precludes the dismissal of any employee who may be engaged in subversive activities. Furthermore, any employee of Miami-Dade County who qualifies as a candidate for election to any federal, state or municipal office shall immediately take a leave of absence from his or her County position until the date of the election and shall, if elected, immediately forfeit his or her County position. If the candidate is not elected, he or she shall immediately be reinstated to his or her former position. Any employee of Miami-Dade County who holds such an office, shall immediately forfeit his or her County position.

How can Alex Diaz De Villegas hold a county postion and a publicly elected postion at the same time? Does this not violate Administrative Order 7-2?

Alex Diaz De Villegas has used a tax payer funded magazine to promote other candidates. Page 4 of the Waterstone living magazine.
http://www.southdadecdd.com/documents/WL%20Fall%202010.pdf

NON-PERMISSIBLE ACTIVITIES:
No officer or employee of the County shall:
1.
Seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service.
2.
Use or promise to use, directly or indirectly, any official authority or influence, whether possessed or

anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the County, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. Use the authority of his or her position to secure support for, or oppose, any candidate, party, or issue in a partisan election or effect the results thereof.

Alex Diaz De Villegas frequently uses his county issued vehicle to conduct business for the South Dade CDD.

Sincerely,
Abel Barrera

Think Green. Please only print this e-mail if you need to.

Miami-Dade County is a public entity subject to Florida Statutes Chapter 119, Public Records. E-mail messages are subject to public records disclosure, and with limited exceptions are not exempt from chapter 119.

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section 5(a), Florida Constitution, and could not, therefore, serve in this position at the same time he or she was serving as a traffic infraction hearing officer without violating the dual office-holding provision of the Constitution. Such a conclusion was based on the duties of the special master which including hearing appeals initiated by taxpayers contesting the denial of tax exemptions and agricultural classifications for their properties by the county property appraiser. Similarly in Attorney General Opinion 05-29, this office stated that a special magistrate for a value adjustment board was an officer for purposes of Article II, section 5(a), Florida Constitution.

In an informal opinion to Susan Bingham, dated April 12, 1999, this office stated that hearing masters for the City of St. Petersburg, Florida, who conduct administrative hearings to determine whether probable cause exists to impound vehicles used in the perpetration of crimes, constitute "officers" for purposes of Article II, section 5(a), Florida Constitution, since the hearing master weighs evidence, makes determinations of probable cause, and issues orders for the payment of penalties or the continued impoundment of personal property.

More recently, Attorney General Opinion 02-78 concluded that a special master under Chapter 162, Florida Statutes, constituted an "officer" for purposes of the dual office-holding prohibition. Section 162.03(2), Florida Statutes, provides that "[a] special master shall have the same status as an enforcement board under this chapter" and this office had previously concluded that code enforcement board members are "officers."[23] As noted in the opinion, a special master under Chapter 162 may issue orders that have the force of law and may command whatever steps are necessary to bring a violation into compliance; he or she may subpoena violators and witnesses to attend hearings, subpoena evidence, and take testimony under oath.

IV. Are officers of special districts included within the dual office-holding prohibition?

Article II, section 5(a), Florida Constitution, refers only to state, county, and municipal offices. It is not applicable to independent special district offices. A special district is a governmental entity created by law to perform a special and limited governmental function.

For examples where the Attorney General's Office has stated that there was no violation of the dual office-holding prohibition when the state, county or municipal officer also served as an officer of a special district, *see*, Attorney General Opinions 71-324 (member of hospital district's governing body not an officer within constitutional dual office-holding prohibition), 73-47 (member of junior college district may serve as member of parks, planning and zoning commission), 75-153 and 80-16 (legislator may serve as member of community college district board of trustees), 78-74 (municipal parking board member may serve as member of community college district board of trustees); 85-24 (mayor may serve on community redevelopment district established by

Memorandum

MIAMI-DADE COUNTY

Date: August 25, 2008

To: Victor Ramirez, Chief
South Operations Division

From: Nicole Dixon, Police Legal Advisor
Legal and Departmental Affairs Section
Police Legal Bureau

Subject: Outside Employment Request for Lieutenant Alexander Diaz De Villegas

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On April 14, 2008, this writer submitted a memorandum stating that if Lieutenant Diaz De Villegas holds the position of Chairman for the South-Dade Venture Community Development District while as a police lieutenant, he is in violation of the dual office holding prohibition.

Subsequently, this writer received a call from Mike Pawelczyk, attorney for the South-Dade Venture Community Development with new information in regards to this issue. The Office of the Florida Attorney General's opinion is that officers of a special district are not included within the dual office holding prohibition. Office of the Attorney General, Informational pamphlet on Florida's Dual Officeholding Prohibition. Although, Attorney General Opinions are not binding, they are persuasive. This writer was also informed by Lieutenant Alexander Diaz De Villegas, that the Commission on Ethics and Public Trust office reviewed his case and found that Lieutenant Diaz De Villegas did not violate the dual office holding prohibition. This writer was not provided with a copy of this opinion and the Professional Compliance Bureau file does not have a copy.

Based upon new information that has been provided, I am persuaded that Lieutenant Diaz De Villegas does not violate the dual office prohibition as the Chairman for the South-Dade Venture Community Development District while as a police lieutenant. Therefore, the Outside Employment Request form for Lieutenant Alexander Diaz De Villegas should be reconsidered for approval, and should be resubmitted with a copy of the Commission's opinion.

Questions involving the dual office holding prohibition should be addressed on a case by case basis. This opinion should not be used as a template for approval of all Outside Employment Requests that deal with the dual office holding prohibition.

If you have any questions, I can be reached at 305-471-2550.

ND/

08 AUG 29 AM 9:33