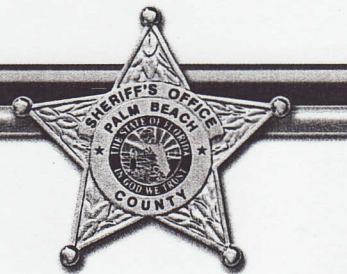


PALM BEACH COUNTY
SHERIFF'S OFFICE

RIC L. BRADSHAW, SHERIFF



COLONEL JOE BRADSHAW
DEPARTMENT OF LEGAL AFFAIRS
PHONE: (561) 688-3173

FAX: (561) 688-3175

E-MAIL: bradshawj@pbso.org

June 15, 2011

The Honorable Karen T. Marcus, Chair
Board of County Commissioners
P.O. Box 1989
West Palm Beach, FL 33402-1989

Dear Chairman Marcus:

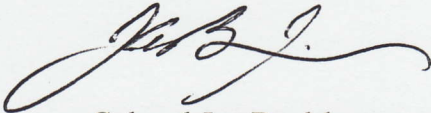
On behalf of the Sheriff, I am responding to your recent correspondence requesting that the Palm Beach County Sheriff's Office enter into an interagency agreement with Palm Beach County to extend the jurisdiction of the Commission on Ethics and the Inspector General to the Sheriff's Office. Enclosed is a legal opinion written by the General Counsel to the Florida Sheriff's Association, representing all Sheriffs in Florida, regarding the legality of entering into such an agreement.

As set forth in that opinion, a review of case law precedent and Attorney General opinions make it apparent that the County Code of Ethics cannot be applied to the Sheriff under any circumstance because the investigation of law enforcement and corrections officers is preempted by Florida law. Further, any oversight of the Sheriff's Office by the Commission on Ethics and the Inspector General exceeds the County's authority and improperly encroaches upon the constitutional office of the Sheriff. The opinion notes that since the Palm Beach County Code of Ethics essentially replicates State ethics laws, the Sheriff and Sheriff's Office employees are already subject to comparable ethical standards as set forth in Chapter 112, Florida Statutes. In addition, members of the Sheriff's Office are subject to numerous internal policies governing ethical standards and receive training accordingly.

The Sheriff is acutely aware of the importance of high ethical standards for all members of the Palm Beach County Sheriff's Office. We are confident that state law and our internal policies provide the requisite level of guidance and instruction to Sheriff's Office employees. Complaints of violations of state ethics laws and our policies are investigated by the Sheriff's

Office through our Internal Affairs Division, at a minimum, and criminally if necessary. In fact, members of the Sheriff's Office have been terminated for ethical violations and prosecuted criminally. Therefore, as the enclosed opinion sets forth, since the County is pre-empted by Florida law with regard to the investigation of law enforcement and corrections officers, the Sheriff cannot enter into an interagency agreement with the County to extend jurisdiction of the Palm Beach County Commission on Ethics and the Inspector General to the Palm Beach County Sheriff's Office.

Very truly yours,



Colonel Joe Bradshaw
Department of Legal Affairs
JAB:pac

Enclosure

cc: Sheriff Ric Bradshaw
Board of County Commissioners
Robert Weisman, County Administrator
Denise Neiman, County Attorney

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

ORLANDO OFFICE
1477 WEST FAIRBANKS AVENUE
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
SUITE 100
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

June 15, 2011

Col. Joseph A. Bradshaw, Jr.
Palm Beach County Sheriff's Office
Post Office Box 24681
West Palm Beach, Florida 33416-4681

Re: Palm Beach County Ethics Code

Dear Col. Bradshaw:

You requested an opinion as to whether the Palm Beach County Code of Ethics, Palm Beach County Ordinance 2009-051 ("Ordinance"), which establishes the Palm Beach County Commission on Ethics ("PBCOE"), and an Inspector General who is responsible for investigating alleged violations of the Code of Ethics, could apply to the Palm Beach County Sheriff's Office ("PBSO"). In particular, you have advised that the Chair of the Board of County Commissioners has requested the Sheriff to enter into an interagency agreement with Palm Beach County ("County") to extend the jurisdiction of the PBCOE and Inspector General to the PBSO.

This issue is critically important to Florida Sheriffs. The following opinion, therefore, represents not only our legal analysis, but also the position of the Florida Sheriffs Association of which I am General Counsel.

In reviewing established case precedent, it is apparent that the Code of Ethics cannot be applied to the PBSO under any circumstances because investigations of law enforcement and corrections officers are preempted by Florida law. Furthermore, any oversight of the PBSO by the PBCOE and the Inspector General exceeds the County's authority and improperly encroaches upon the constitutional office of the Sheriff.

Finally, it should be noted that Palm Beach County Code of Ethics primarily replicates state ethics laws. Therefore, regardless of whether the Palm Beach County Code of Ethics applies, the Sheriff and members of the PBSO are subject to comparable ethical standards as set forth in Chapter 112, Florida Statutes.

Preemption by State Law

Generally, counties within the State of Florida are authorized to legislate on any matter upon which the Florida Legislature may enact legislation or general laws. However, counties may not enact ordinances inconsistent with those general laws passed by the Florida Legislature. *Townley v. Marion County*, 343 So. 2d 1312, 1313 (Fla. 1st DCA 1977). See also Art. VIII, Section 1(f), Fla. Const. A county ordinance may not conflict with any controlling provisions of a general law and if any doubt exists, such doubt is to be resolved against the ordinance. *Campbell v. Monroe County*, 426 So. 2d 1158, 1161 (Fla. 3d DCA 1983).

The Code of Ethics, which is largely duplicative of the state ethics laws, as will be explained more thoroughly in this opinion, is administered by the PBCOE which is empowered to investigate complaints and issue subpoenas for this purpose. Specifically, the Commission is authorized to subpoena relevant witnesses and compel their attendance and testimony, as well as require by subpoena the production of documents. Palm Beach County Code, Chapter 2, Article V, § 2-260.

The Inspector General also enjoys investigatory authority. According to the Code of Ethics, the Inspector General has the authority to investigate county matters, review and audit county agencies, and prepare reports and recommendations to the Board of County Commissioners based upon the investigations. As in the case of the PBCOE, the Inspector General has the power to subpoena witnesses and require the production of records in the course of investigations. Palm Beach County Code, Chapter 2, Article XII, § 2-423.

In reviewing the Ordinance, it does not appear that it was intended to apply to the Sheriff and members of the Palm Beach County Sheriff's Office. Indeed, if the Ordinance was so constructed, it is clear that not only would investigations of members of the Sheriff's Office exceed the authority of the Commission and the Inspector General, but that the constitutionality of the Ordinance would be compromised.

Similar issues were presented to the Fifth District Court of Appeal in *Demings v. Orange County Citizens Review Board*, 15 So. 3d 604 (Fla. 5th DCA 2009), in which the court addressed the authority of a local board to review and investigate citizen complaints of excessive force and abuse of power. The Orange County Citizens Review Board, which was established by county ordinances and the Orange County Charter, initiated an independent investigation regarding a complaint of excessive use of force by a deputy sheriff. The board issued a subpoena to the deputy ordering him to appear before the board. The deputy challenged the board's authority to issue the subpoena, and the Sheriff filed a complaint for declaratory judgment, similarly contesting the board's authority to independently investigate the complaint against the deputy. *Id.* at 606-07.

The Fifth District Court of Appeal held that the review board could not compel the attendance of the Sheriff's employees to appear for questioning. The court based its decision on several factors. Initially, the court found that the legislature had preempted the investigation of complaints against law enforcement and corrections officers when it enacted the Law Enforcement Officers and Correctional Officers' Bill of Rights, sections 112.531 – 112.534, Florida Statutes. The Bill of Rights, concluded the Court "conveys a clear and definite directive that when a complaint is made against a local law enforcement officer, *the employing agency is the only local governmental entity authorized to investigate the complaint.*" *Id.* at 608, citing § 112.533, Fla. Stat. (Emphasis added). Based upon its reading of the Bill of Rights, the court held that the investigation authorized by chapter 112 shall be the exclusive procedure for investigating complaints against local law enforcement "notwithstanding any other law or ordinance to the contrary". *Id.* at 609, quoting § 112.533(1)(a), Florida Statutes. The court also observed that section 112.533 directs any local governmental entity that receives or initiates a complaint against a local law enforcement officer to forward it to the employing agency for investigation in accordance with the Bill of Rights. *Id.*

Thus, even assuming that the Sheriff agreed to submit the PBSO to the jurisdiction of the PBCOE and the Inspector General, neither the PBCOE nor the Inspector General could investigate deputies regardless of any assurance that their investigations would comply with the Bill of Rights. In responding to an inquiry relating to the authority of a board created by a city to investigate complaints of officer misconduct, the Attorney General opined that there was no provision for the Board to utilize investigative procedures contained in the Bill of Rights or to operate as a receiving entity for complaints against law enforcement officers. Inf. Op. Att'y Gen. to Robert Cintron, Jr., March 22, 2004; see *Demings*, 15 So. 3d at 609. See also Op. Att'y Gen. Fla. 2006-35 (2006) (finding that the Miami-Dade Police Department was the exclusive agency responsible for receiving and investigating complaints against officers.)

Thus, based upon the *Demings* decision and the opinions of the Attorney General, it is clear that neither the Inspector General nor the PBCOE could investigate complaints against deputy sheriffs for violating ethics laws or misusing their official positions even if the investigatory procedures followed the Bill of Rights. The PBSO, however, would investigate ethics complaints based upon violations of agency policy. Specifically, sustained violations of the ethics laws could constitute violations of numerous general orders, including misuse of public position¹, violation of laws, policies or rules and regulations relating to the Office of the Sheriff², unlawful compensation³, and the PBSO Code of Ethics⁴. Therefore, because complaints of misconduct involving the ethics laws would be promptly addressed by PBSO investigation, county intervention is not only improper but is also unnecessary.

¹ Rules and Regulation IX (33).

² Rules and Regulation IX (53).

³ Rules and Regulation IX (54)

⁴ Rules and Regulation IX (59).

Encroachment into the Office of the Sheriff

In *Demings*, the court was also concerned with the intrusion by the county into the constitutional office of the sheriff by establishing a board with oversight authority over the Orange County Sheriff's Office. *Id.* at 609-612. The court recognized that as an independent constitutional officer, the sheriff did not derive his authority from the county charter or the board of county commissioners and was not accountable to the board for his conduct in the office or subject to the board's direction in fulfillment of his duties. *Id.* at 609. Ultimately, the sheriff was independently accountable to the electorate of Orange County. *Id.* at 610. Given this constitutional framework, the court found that the county could not interfere with the sheriff's independent exercise of his duty to investigate misconduct by his deputies by mandating his participation in the review board proceedings, either personally or through his deputies. *Id.*

No meaningful distinction can be drawn between the citizens review board in *Demings* and the PBCOE established by the Ordinance. In both cases, the county has attempted to intrude into a sheriff's constitutional office by interfering with his operation of the agency. In light of *Demings*, Sheriff Bradshaw could not confer oversight authority upon the PBCOE by interagency agreement and accede to investigations of his deputies because the county is precluded from investigating into his deputies.

In effect, the proposed interagency agreement would blur the lines between the respective constitutional offices of the county and the Sheriff, and relegate the status of PBSO members to that of county employees. For example, Section 2-446 of the Palm Beach County Code of Ethics provides that the county administrator is to establish "a mandatory [ethics] training schedule for all officials and employees" which shall include mandatory periodic follow-up sessions. (Emphasis added). All deputies and employers of the PBSO would be subject to these mandatory training provisions whether they needed it or not, as determined by the county administrator.

Pursuant to Section 125.73(1), Florida Statutes, however, the county administrator is responsible for the administration of only those departments of the county which the board has the authority to control. *See also, Alachua County v. Powers*, 351 So. 2d 32, 40 (Fla. 1st DCA 1977) (holding that county administrator's budget responsibilities extend only to departments under county commission's jurisdiction). If the Sheriff agreed to submit to the Code of Ethics, he would be conceding the County to the training of PBSO members such that they would be essentially relegated to the status of county employees⁵.

Moreover, deferring to the county as proposed by the County conflicts with established precedent defining the distinct roles of the county and the sheriff. The power of the counties to legislate is "confined to the authority to carry on county government." *Op. Att'y Gen. Fla. 84-71* (1984). With regard to the interplay between the county and a sheriff, "[t]he county

⁵ Ethics training is currently provided by the PBSO to new employees at orientation and to current employees during in-service training.

June 15, 2011

Page 5

commissioners' jurisdiction over the sheriff is limited. The sheriff is a constitutional county officer, and as a [constitutional] county officer his duties, power, and compensation must be prescribed by law." *Id.* Concerning personnel matters, the sheriff rather than the county is responsible for the "neglects and defaults of his deputies." *Evans v. Hardcastle*, 339 So. 2d 1150 (Fla. 2d DCA 1976), citing § 30.07, Fla. Stat.; see also § 30.53, Fla. Stat.

In *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1st DCA 1977) the First District Court of Appeal was confronted with a similar instance of a county exceeding its authority at the expense of a local constitutional officer. Alachua County intended to enact a county ordinance creating a uniform pay plan for all county employees. The Alachua County clerk of court sought a declaratory judgment as to whether or not the proposed ordinance would be applicable to the clerk of the court's office. The First District Court of Appeal held that Alachua County's proposed ordinance did not apply to the several constitutional officers within Alachua County, because the Board of County Commissioners lacked the authority to control the administration of the elected independent constitutional officers and their employees. *Id.* at 43.

The Court reasoned that the clerk is a county officer pursuant to Article VIII, Section 1(d), Florida Constitution, and as an officer the clerk is delegated a portion of the sovereign power of the state. *Id.* at 42. Based on his constitutional and statutory authority, the clerk was responsible for the "efficient and effective operation of his office", which necessarily included matters relating to the deputy clerks in his office. *Id.*

Similarly, in 2002, the Florida Attorney General was asked whether "the Brevard County Commission [could] initiate independent financial and performance audits of county constitutional officers..." The Attorney General responded in the negative, stating that to successfully require the constitutional officers to abide by the Brevard County procedures concerning audits, a county would have to abolish the constitutional officers and transfer their functions to the county by charter. Op. Att'y Gen. Fla. 2002-29 (2002).

It is quite apparent, therefore, that although a county may pass ordinances applicable to "all county employees", such ordinances may not infringe on the rights and powers of the elected independent constitutional officers within the county. An interagency agreement would be a backdoor approach to circumvent the county's limitations on intruding upon the Sheriff's constitutional and statutory rights to manage his office. Accordingly, the Sheriff should decline to enter into such an agreement.

Ethics Standards under Florida Law

In comparing the Ordinance with the standards of conduct set forth in Chapter 112, Florida Statutes, it is readily apparent that the provisions of the Ordinance are primarily

redundant to the ethics laws which apply to the Sheriff and members of the PBSO⁶. Indeed, in many respects, the Ordinance mirrors section 112.313, Florida Statutes.

For example, Section 2-443(a) of the Ordinance prohibits the misuse of public office or employment by an official or employee who takes or fails to take action in a manner which he or she reasonably knows would result in a financial benefit. A similar proscription may be found in section 112.313(6), Florida Statutes which prohibits a public officer or employee from corruptly using his or her official position to secure a special privilege, benefit, or exemption for himself or herself.

Section 2-443(c) of the Ordinance prohibits contractual relationships between an official or employee and the county. Pursuant to Section 112.313(3), (7) Florida Statutes, an official or employee is similarly prohibited from doing business with his or her agency or holding conflicting employment or contractual relationships.

Section 2-443(e) of the Ordinance prohibits an official or employee from accepting travel expenses from a county contractor, vendor, service provider, or bid proposer. Section 2-444(c) also prohibits receipt of a gift because of official public action taken, to be taken or which could be taken. As previously stated, section 112.313 (2), Florida Statutes, prohibits any public officer or employee from improperly soliciting or accepting gifts upon the understanding that the action of the officer or employee would be influenced thereby. Section 112.313(4) further prohibits unauthorized compensation that is given to influence some action by the officer or employee in his or her official capacity.

Section 2-443(g) of the Ordinance prohibits an applicant for employment from making any false statement, submitting a false document, or knowingly withholding information about wrongdoing in connection with employment by his or her services to the county. In the PBSO employment application, an applicant is informed that false representations in the application could result in termination of employment.

Section 2.443(h) of the Ordinance prohibits a current or former official or employee from disclosing or using information that is unavailable to members of the general public and gained by reason of his or her official position for his or her personal benefit. Similarly, section 112.313(8), Florida Statutes, prohibits the disclosure of information not available to the public for the personal gain or benefit of an official or employee.

Section 2-444(a),(b) of the Ordinance also prohibits employees from receiving gifts of a value of \$100 or more from lobbyists. Similar provisions may be found in Section 112.313(2),(4) Florida Statutes, which, as previously stated, prohibit solicitation or acceptance of gifts with the understanding that some action of the public officer or employee would be influenced, or from

⁶ See §112.312(2) Florida Statute defining "agency" to include any political subdivision or local agency, and §112.313 relating to standards of conduct for public officers and employees of agencies.

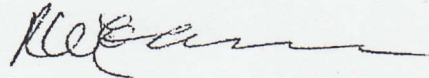
receiving unauthorized compensation given to influence some action by the officer or employee in his or her official capacity. Section 2-444(d) of the Ordinance tracks section 112.3148, Florida Statutes, by requiring officials who receive gifts in excess of \$100 to report these gifts.

Finally, Section 2-445 of the Ordinance, which establishes an anti-nepotism law, is comparable to Section 112.3135, Florida Statutes. Both the ordinance and the statute prohibit employment or promotion of relatives.

The standards of conduct established by the Florida Legislature that govern the actions of the Sheriff and members of the PBSO, therefore, are substantial and far-reaching. Issues of misconduct may be reported to the Florida Commission on Ethics, where they will be thoroughly investigated and resolved⁷. Similar complaints could also be investigated by the PBSO, and if criminal in nature, referred to the State Attorney's Office or the Florida Department of Law Enforcement for investigation. Therefore, there is no compelling reason for the Sheriff to enter into an interagency agreement with the County to submit to the jurisdiction of the PBCOE.

In conclusion, the Palm Beach County Code of Ethics cannot be applied to the PBSO. The Palm Beach County Code of Ethics is preempted by Florida law with regard to the investigation of law enforcement and corrections officers. Furthermore, if applied to members of the PBSO, the Ordinance encroaches upon the Sheriff's independent authority to operate his agency. Lastly, due to the comprehensive ethical standards established by the Florida Legislature in Chapter 112, Florida Statutes, an inter-agency agreement with the county is simply unnecessary.

Sincerely,



R.W. Evans

RWE/lcr

⁷ See §112.322, Florida Statutes