

From: Daniel Eckert <deckert@co.volusia.fl.us>
To: VolusiaExposed <volusiaexposed@cfl.rr.com>
Subject: Re: Lewis' assignment to Growth Management and Personnel Board
Date: Mon, 18 Jun 2012 16:27:00 -0400

Ladies and Gentlemen:

I respond to your e-mail below. Mr. Lewis **is eligible** to serve on the personnel board, **in my opinion**.

The Volusia Growth Management Commission is a county office, as the attorney general opined in 2008 and I wrote prior to that time. It therefore is a **public office**; however it is not an **elected one**. The prohibition of code section 86-40(f)(2) is that a member of the personnel board not be **"a candidate for public office or employment."**

Mr. Lewis is neither. He holds appointive, unpaid offices as a VGMC member and the Daytona State College Board of Trustees Chairman, the latter a district office not subject to the constitutional dual office holding provision.

An understanding that section 86-40(f)(2) permits Mr. Lewis to serve on the personnel board while holding the stated offices accords with its plain wording; and its evident legislative purpose, that the judgment of personnel board members should not be clouded in fact or appearance by desire for either favorable voter approval or a hiring decision. Neither of these concerns are present in the appointed offices which Mr. Lewis now holds. Mr. Lewis resigned from the personnel board in 2010 when he became a candidate for county council, an elective office. The county council re-appointed Mr. Lewis to the board after his candidacy concluded unsuccessfully. His eligibility for re-appointment never came into question by any member of the county council or the public. The code section is the county's own legislative restriction. The county council action constitutes a construction of the text in favor of eligibility, if its provisions were considered to be unclear.

Section 86-45(b)(1) of the code, pertaining to employee conduct, contains similar language. That section prohibits employees from becoming candidates for public office. Different policy considerations underlie the two sections, but the closeness in phrasing makes comparison relevant. Appointed offices have not been considered within the scope of section 86-45(b)(1), a like reading of section 86-40(f)(2).

Thank you for your inquiry.

Sincerely,

Daniel D. Eckert
County Attorney

>>> VolusiaExposed <volusiaexposed@cfl.rr.com>
6/14/2012 10:51 AM >>>

Mr. Byron (others)

VolusiaExposed.Com is currently working on an article that will discuss the Volusia County Personnel Board.

In our research for this article, we came across the following concern. We have the hope, that you will bring some clarity to our concerns.

Mr. Dwight Lewis is a member of both the Volusia County Personnel Board, as well as the Volusia County Growth Management Commission.

Per the attached application for the Growth Management Commission, there appears to be an advisement (see attached county application) that for that particular position, it is a "County Office" and will require the filing of a financial disclosure (a per Florida Law for government positions / offices).

Volusia County Merit Rules (86-40) - (see attached copy) - appears to state, that no applicant for the Personnel Board can hold "public office".

We (VolusiaExposed.Com) spoke with County employee, Diana Pettit regarding our concerns, and she appears to hold the opinion that a "county office" does not meet the requirements / definition of a "public office"....even though public office holders are required to file the mandated financial disclosure paperwork....

Is there a difference between a "county office" and a "public office", especially regarding the issue of Mr. Lewis being assigned to both the Growth Management Commission and the County Personnel Board? If so, please explain.

Your guidance on this issue is extremely appreciated, since, as you have in the past, pointed out to us, that sometimes "WatchDog" groups, are

so focused on discovering what's wrong, that we can't see what's right.

We are extremely interested in whether, Mr. Lewis' assignment to the County Personnel Board is in compliance with County Merit Rules. Especially, given that fact that his recent vote, was one of the deciding votes, in up holding a disciplinary charge against Beach Patrol Captain Rich Gardner.

Thank You

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Attachment

Bcc - several