

**MEMORANDUM**

Date: 13 December 2006  
To: Keith Farner, Council Member  
Through: Kathryn Mennella, Dir. Office of General Counsel *KLM*  
From: Kevin Seamon, Senior Paralegal *KS*  
Re: Dual Office-Holding

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**QUESTION:**

Must an appointed member of the Harris Chain of Lakes Restoration Council resign that position upon election to the Board of Trustees of the Lake County Water Authority?

**ANSWER:**

No. There is no statutory provision that mandates resignation by the Council member.

**DISCUSSION:**

*The Enabling Laws*

Section 373.467(1)(a), Florida Statutes, of the Harris Chain of Lakes Restoration Council ("Council") enabling law, provides, in pertinent part:

The council shall consist of nine voting members, which include: a representative of waterfront property owners, a representative of the sport fishing industry, an environmental engineer, a person with training in biology or another scientific discipline, a person with training as an attorney, a physician, a person with training as an engineer, and two residents of the county who do not meet any of the other qualifications for membership enumerated in this paragraph, each to be appointed by the Lake County legislative delegation. No person serving on the council may be appointed to a council, board, or commission of any council advisory

group agency. The council members shall serve as advisors to the governing board of the St. Johns River Water Management District.

Nothing in this provision prohibits a member of the Board of Trustees of the Lake County Water Authority ("LCWA") from appointment and service on the Council, provided the member otherwise satisfies the qualifications of section 373.467(1)(a). The only prohibition is that a serving Council member cannot also serve on any Council advisory body.

Likewise, the enabling law of the LCWA does not prohibit an elected Trustee from serving on other public bodies. See Ch. 2005-314, Laws of Fla.

#### The Dual Office-Holding Laws

Article II, section 5(a), Florida Constitution, states in pertinent part:

##### SECTION 5. Public officers.—

(a) ... 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 ... any officer may be a member of a... statutory body having only advisory powers.

This provision prohibits a state, county or municipal officer from concurrently holding another state, county or municipal office. The Florida Supreme Court has determined this provision does not apply to an officer of a special district. In Re: Advisory Opinion To The Governor—Dual Office-Holding, 630 So.2d 1055 (Fla. 1994); Op. Att'y Gen. Fla. 86-55 (1986) (the provision does not prohibit a water management district basin board member from simultaneously holding office as a mayor of a municipality). The Council is an advisory body within the St. Johns River Water Management District ("District"). § 373.467(1)(a), Fla. Stat. ; Op. Att'y Gen. Fla. 05-07 (2005) (the Council was created to advise the District). The District is an independent special taxing district. State ex rel.

City of Gainesville v. St. Johns River Water Mgmt. Dist., 408 So.2d 1067 (Fla. 1<sup>st</sup> DCA 1982) (water management districts are special taxing districts). Also, the LCWA is an independent special taxing district. Ch. 2005-314, Laws of Fla.; Sutron Corp. v. Lake County Water Auth., 870 So.2d 930 (Fla. 5<sup>th</sup> DCA 2004). Consequently, because a Council member is an officer of a special district, article II, section (5)(a), Florida Constitution, would not prohibit the Council member from simultaneously holding office as a Trustee of the LCWA.<sup>1</sup>

Additionally, the Resign-to-Run Law, sections 99.012 (3)(a), Florida Statutes, provides:

No officer may qualify as a candidate for another public office, whether state, district, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he or she presently holds.

The Resign-To-Run Law requires an elected or appointed officer at all levels of government to resign when seeking an elective office where the term of office would run concurrently with the current office. Orange County v. Gillespie, 239 So.2d 132 (Fla. 4<sup>th</sup> DCA 1970). However, the law provides an exception for “[p]ersons serving without salary as members of an appointive board or authority.” § 99.012(7)(b), Fla. Stat. A Council member falls within this exception because such member is appointed and serves without compensation. § 373.467(1)(a) and (6), Fla. Stat.; see Div. of Elections Op. 84-20 (an uncompensated, appointed member of a fire control district need not resign to

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<sup>1</sup> Even if the provision was applicable to a special district officer, the exclusion of a “statutory body having only advisory powers” would be applicable since the Council serves in such capacity. See Op. Att’y Gen. Fla 86-105 (local planning agency whose function is information gathering and advisory only falls within exception to dual office-holding prohibition); Op. Att’y Gen. Fla 72-179 (legislator may serve as member of ad hoc charter revision commission appointed by municipal governing body to serve in purely advisory capacity to study and recommend changes to municipal charter).

run for the county commission); Div. of Elections Op. 85-07 (1985) (an uncompensated, appointed trustee of a community college need not resign to run for the district school board); Div. of Elections Op. 84-27 (1984) (an uncompensated, appointed member of a planning and zoning board need not resign to run for city council).<sup>2</sup> Therefore, because of the exception in section 99.012(7)(b), a Council member is not obligated to resign to run for, and serve, in an elective office.<sup>3</sup>

### Conclusion

There is no statutory law that would preclude a Council member from simultaneously serving in an elective office.

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<sup>2</sup> The Division of Elections is charged with providing advisory opinions regarding any election laws. § 106.23(2), Fla. Stat.

<sup>3</sup> Also, even without the exception, section 99.012 would be inapplicable because a Council member has no specific term of office that could run concurrently with another office as required by the statute. Abramson v. Beer, 940 So.2d 586 (Fla. 4<sup>th</sup> DCA 2006) (because a civil traffic hearing officer has no specific term in office that would intersect with the judicial office he seeks, the Resign-To-Run law is inapplicable).