

**CITY OF MIAMI  
CITY ATTORNEY'S OFFICE  
MEMORANDUM**

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**TO:** Mayor and Members of the City Commission  
**FROM:** Alejandro Vilarello, City Attorney  
**DATE:** April 7, 2003  
**RE:** Dual Office Holding, Article II, section 5(a) of the Florida Constitution and  
Miami-Dade County Public Health Trust  
MIA-03-005

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My office requested the opinion of the Attorney General of the State of Florida (Attachment "A" hereto) regarding the following:

WHETHER A PUBLIC OFFICER, SERVING ON  
A MUNICIPAL BOARD WHICH HAS  
DELEGATED SOVEREIGN AUTHORITY, MAY  
SERVE SIMULTANEOUSLY AS A TRUSTEE  
TO THE BOARD OF THE PUBLIC HEALTH  
TRUST OF MIAMI DADE COUNTY WITHOUT  
VIOLATING ARTICLE II, SECTION 5(a) OF  
THE FLORIDA CONSTITUTION.

The Attorney General's Office opined in AG 03-12, (Attachment "B" hereto) that a public officer may serve on the Board of Trustees of the public health trust due to their finding that a Trustee is not an officer for purposes of Article II, section 5(a) of the Florida Constitution based on the limited nature of the powers and duties described in Part II, Chapter 154, Florida Statutes.

Opinions of the Florida Attorney General are not legally binding on a court or this Office, but they are entitled to careful consideration, given a great weight in legislative construction and generally regarded as highly persuasive. *See Abreau v. Cobb, 670 So2d 1010 (Fla. 3d DCA 1996).*

Consequently, AGO 03-12, which has been reviewed by my office, is hereby approved and adopted as my response to inquiries on the referenced subject.

c: Joe Arriola, City Manager  
Priscilla Thompson, City Clerk

# City of Miami

ALEJANDRO VILARELLO  
City Attorney



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February 25, 2003

Charlie Crist  
Attorney General  
Department of Legal Affairs  
The Capitol  
Tallahassee, Florida 32399-1050

**Re: Request for Attorney General Opinion**

Dear Mr. Crist:

The following is to request your opinion on whether a public officer, serving on a municipal board which has delegated sovereign authority, may serve simultaneously as a Trustee to the Board of the Public Health Trust of Miami-Dade County, Florida without violating Article II, section 5(a) of the Florida Constitution. Our request for your opinion is premised on the fact that we believe that there are two previous Attorney General Opinions (AGO 78-36 and AGO 84-90) that are in conflict with reference to the question posed above.

Our office was asked to opine on whether a public officer's simultaneous service as Trustee of the Public Health Trust of Miami Dade County ("Trust") would violate the dual office holding provision of the Florida Constitution. Our conclusion is that a public officer may not serve as a Trustee to the Trust during his term as a public officer due to the fact that the Trust exercises sovereign powers in the carrying out its functions and it is not an advisory board as defined by Florida statutes.

In reaching our opinion we reviewed the following Attorney General Opinions ("AGO") and Florida Commission on Ethics ("CEO") opinions:

1. In AGO 78-36 the Attorney General opined that a member of the Board of Trustees of the Dade County Public Health Trust may also serve on the Board of Business Regulation since membership on the Board of Trustees does not constitute a public office. The Attorney General relied upon the fact that the term "office" as defined in case law, was "an idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract." (*Attached hereto as Exhibit "A"*) The Attorney General determined that the board did not have the independent authority that is characteristic of an office, but rather only such powers that had been granted to it by the County Commission.
2. In AGO 84-90 the Attorney General opined that office of the Mayor of the City of Ormond Beach and membership on the Volusia County Health Facilities Authority ("Authority") are offices of the municipality and the county, respectively, both positions are offices within the purview of Sec. 5(a), Art. II, of the Florida

**ATTACHMENT "A"**

Constitution and one person may not serve in both offices or positions simultaneously. The Attorney General stated that “the county’s governing body created the authority, appoints the members of the authority created for the county, may remove any members so appointed and may abolish it at any time, ... it is an agency or an instrumentality of the county and the members of the authority hold an office under the government and county.” (*Attached hereto as Exhibit “B”*) The Attorney General concluded that due to the governing body’s administration of the Authority, it was an extension of the governing body and its members would be subject to the dual office provisions of the Florida Constitution.

3. In CEO 75-2 the Ethics Commission opined that the Board of Trustees of the Lake-Sumter Community Health Center were public officers within the meaning of part II, Ch. 112, F.S. It was determined that the powers vested in the board were not solely advisory due to the fact that the board could disperse private and public funds and contract with other agencies. (*Attached hereto as Exhibit “C”*)
4. In CEO 75-102 the Ethics Commission found that the members of the Board of Trustees of the Marion County Hospital District were public officers within the provision of part III, Ch. 112, F.S. due to the powers vested in the Board. Such powers include “all the powers of a corporate body including the power to contract; to acquire, hold, lease, mortgage and convey real and personal property; and to borrow money and issue evidence of indebtedness.” (*Attached hereto as Exhibit “D”*)
5. In CEO 75-159 the Ethics Commission determined that where county tax moneys are expended for capital outlay and building repairs such hospital’s Board of Trustees is deemed to be a public body. It was opined that the authority of the Board of Trustees exceeds being merely advisory but rather it is regulatory and policy making in nature due to the powers vested in it. The Commission on Ethics also relied upon the definition of “public officer” as defined in Sec. 112.312(7)(b), F.S. (1974 Supp.) which states that public officers are “[m]embers of boards, commissions, authorities, special taxing districts, and the head of each state agency, however selected but excluding advisory board members.” (*Attached hereto as Exhibit “E”*)

We further studied the Miami-Dade County Code (“County Code”) in order to determine the powers vested in the Board of Trustees (*Attached hereto as composite Exhibit “F”*):

1. The Trust was established by Ordinance No. 73-69 adopted on July 30, 1973. This ordinance has been codified into Sections 25A through 25A-8 of the County Code. Authority to create the trust was granted by Florida Statutes Chapter 154.
2. County Code Section 25A-3 in pertinent part states that the Trust shall have a Board of Trustees (“Trustees”) composed of 21 voting members none of who are “employees” of the Trust. Trustees serve without compensation; only the Trust’s Chief Executive Officer is compensated. Trustees are nominated by a Nominating Committee to the Board of County Commissioners who make the final determination.
3. County Code Section 25A-2 in pertinent part states that the Trust shall be responsible for the operation, maintenance and governance of the designated facilities. Furthermore, the Trust shall have possession and operating control of, but not title to, all real property. Additionally, all personal property of the designated facilities shall be held in the Trust.

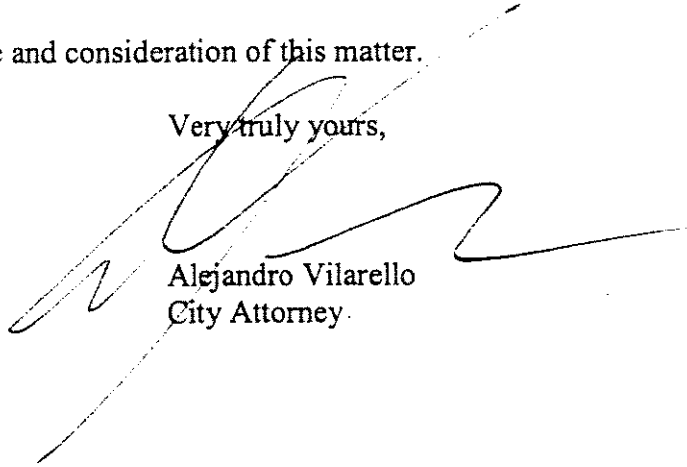
4. County Code Section 25A-3(f) in pertinent part states that the Trustees shall have "the powers, duties and responsibilities customarily vested in Trustees and, to the extent not in conflict therewith, shall also have the powers, duties and responsibilities customarily vested in the Board of Directors of a private corporation." It further states that the Board may make, adopt and amend bylaws and regulations but they shall not be valid until approved by the Board of County Commissioners.
5. County Code Section 25A-4 in pertinent part states that the Trustees powers and duties include the power to sue and be sued, to plead and be impleaded, to contract and be contracted with.

Furthermore, Florida Statute 112.313(12) (*Attached hereto as Exhibit "G"*) provides an exception to the dual office holding provisions of the Florida Constitution in that if the Public Health Trust is determined to be only an advisory board, then a public offer may serve on its Board. Florida Statute 112.312(1) (*Attached hereto as Exhibit "H"*) defines an "Advisory body" as any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or \$100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations. We opine that the Public Health Trust is not an advisory board as defined by Florida statutes, due to its vast independent authority delineated in the Miami-Dade County Code.

We are requesting that you reconcile the aforementioned opinions and provide us with a current opinion on whether an individual's simultaneous service as a public officer, serving on a municipal board which has delegated sovereign authority, and as Trustee to the Public Health Trust violates Article II, section 5(a) of the Florida Constitution.

We appreciate your time and consideration of this matter.

Very truly yours,



Alejandro Vilarello  
City Attorney

Enclosures  
AV/ive

Florida Attorney General **Advisory Legal Opinion***Number:* AGO 78-36*Date:* March 2, 1978*Subject:* Dual officeholding, two boards

Reubin O'D. Askew  
 Governor  
 Tallahassee

**QUESTION:**

May a member of the Board of Trustees of the Dade County Public Health Trust also serve on the Board of Business Regulation?

**SUMMARY:**

A member of the Board of Trustees of the Dade County Public Health Trust may also serve on the Board of Business Regulation, since membership on the board of trustees does not constitute a public office.

Section 5(a), Art. II, State Const., provides in pertinent part:

No person shall hold at the same time more than one office under the government of the state . . . except that . . . any officer may be a member of a . . . statutory body having only advisory powers.

It seems clear that a member of the Board of Business Regulation is an 'officer' within the purview of the above-quoted constitutional provision. Therefore, the important consideration is whether or not a member of the board of trustees of a public health trust is also an 'officer.'

Although the term 'office' has not been constitutionally defined, the Florida Supreme Court has stated:

The term 'office' implies a delegation of a portion of the sovereign power to, and the possession of it by,

**EXHIBIT****"A"**

the person filling the office. . . . The term office embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. [State ex rel. Holloway v. Sheats, 83 So. 503 (Fla. 1919); emphasis supplied.]

In AGO 074-232, I concluded that a town councilman could serve as a member of a planning commission since

the commission appears to be statutorily vested with no authority to exercise any aspect of the sovereign power of the state, the possession and exercise of such power being an identifying characteristic of an 'office.'

That opinion also noted that the exception of s. 5(a), Art. II, *supra*, with respect to statutory bodies having only advisory powers appeared to be a constitutional recognition and restatement of this long-established definition.

An examination of part II of Ch. 154, F. S., which authorizes the creation and establishment of public health trusts, reveals that such entities have not been statutorily vested with independent powers, but rather possess only such powers as the governing body of the county may choose to bestow. For example, s. 154.10, F. S., provides for the relationship of the county public health trust to the board of county commissioners, and provides that the

county governing body shall, by ordinance, by contract or lease with the public health trust, or by a combination of the foregoing, provide for each of the following:

- (1) A method whereby the public health trust shall account to the county governing body for all receipts and expenditures of money.
- (2) A method whereby the public health trust shall request, and the county governing body may approve, the appropriation and payment of county funds to support the lawful purposes of the trust.
- (3) A method whereby the public health trust shall request, and said county governing body may effectuate, the issuance of bonds or the borrowing of money, pursuant to authority vested in said governing body of

the county.

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(7) A procedure whereby the county governing body may approve or disapprove of contracts between the board of trustees and labor unions.

(8) A method whereby the county governing body may declassify facilities as 'designated facilities' and provide for the county to assume the ownership, operation, governance, or maintenance of such facilities. (Emphasis supplied.)

Similarly, s. 154.11, F. S., in setting forth the powers of the board of trustees of a county public health trust, states that its powers are 'subject to limitation by the governing body of the county in which such board is located . . . .' (Emphasis supplied.)

In light of the foregoing, therefore, I am not persuaded that a board of trustees of a county public health trust possesses the independent attributes of sovereignty which are characteristic of an office. Moreover, as was stated in AGO 071-324, it is a generally established principle that the right to hold office is a valuable one which should not be curtailed except by plain provisions of law. Attorney General Opinion 071-324 also quoted extensively from 42 Am. Jur. *Public Officers* s. 61, p. 928, providing:

. . . the rule that provisions imposing disqualifications should be strictly construed is applicable to those which prohibit dual office holding. They should not be extended by implication beyond the office or offices expressed, or to persons not clearly within their meaning. In other words, they should be construed in favor of eligibility.

Accordingly, in the absence of legislative or judicial determination, I am of the view that a member of the Board of Trustees of the Dade County Public Health Trust may also serve on the Board of Business Regulation.

Prepared by:

Staff

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Florida Attorney General



## Advisory Legal Opinion

*Number:* AGO 84-90

*Date:* September 21, 1984

*Subject:* Dual officeholding as mayor

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The Honorable Charles E. Bailey  
Mayor  
City of Ormond Beach  
Post Office Box 277  
Ormond Beach, Florida 32075-0277

Dear Mr. Bailey:

This is in response to your request for my opinion on substantially the following question:

DOES s 5(a), ART. II, STATE CONST., PROHIBIT THE MAYOR OF A MUNICIPALITY FROM SERVING SIMULTANEOUSLY ON THE GOVERNING BODY OF A COUNTY HEALTH FACILITIES AUTHORITY CREATED UNDER PART III OF CH. 154, F.S.?

Section 5(a), Art. II, State Const., in relevant part provides:

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.

The Mayor of the City of Ormond Beach is, of course, a municipal officer, see, s 5, Ch. 65-2034, Laws of Florida, and ss 2 and 4, Ch. 67-1842, Laws of Florida; thus, this office is within the purview of s 5(a), Art. II, State Const.

The Volusia County Health Facilities Authority was created and organized under Part III of Ch. 154, F.S., as a public body corporate and politic. It was created by the governing body of the county through ordinance or resolution after

**EXHIBIT****"B"**

tabber

that body had found the requisite need to exist for the authority to function in the county. See, s 154.207(1), F.S. The governing body of the county appoints the members of the authority and is empowered to remove any member of the authority for cause as specified in the statute. See, s 154.207(4), F.S. Moreover, the governing body of the county may abolish the authority at any time by ordinance or resolution. See, s 154.207(2), F.S. I am not aware of any judicial precedent establishing the status of a county health facilities authority for the purposes of s 5(a), Art. II, State Const., i.e., whether it is an agency or instrumentality of the county or falls under the government of the county for dual officeholding purposes. However, since the county's governing body created the authority (s 154.207[1], F.S.), appoints the members of the authority created for the county (s 154.207[4], F.S.), may remove any members so appointed (s 154.207[4], F.S.), and may abolish it at any time (s 154.207[2], F.S.), I am of the view that, until and unless judicially determined otherwise, the Volusia County Health Facilities Authority is, for the purposes of s 5(a), Art. II, State Const., an agency or instrumentality of the county and the members of the authority hold an office under the government of the county. An examination of the terms of ss 154.209-154.219 and 154.225, F.S., establishes that the authority and its members exercise sovereign powers, and for dual officeholding purposes I therefore conclude that the members of the county health facilities authority are officers of the county. It is clear from the terms of Part III of Ch. 154 that the authority is not a statutory body having only advisory powers and it and its members are not excepted from, but fall within, the purview of s 5(a), Art. II, State Const.

Since both the office of Mayor of the City of Ormond Beach and the office of member of the Volusia County Health Facilities Authority are offices of the municipality and the county, respectively, both positions are offices within the purview of s 5(a), Art. II, State Const., and one person may not serve in both offices or positions simultaneously.

Therefore, until and unless judicially determined otherwise, I conclude that the dual officeholding prohibition of s 5(a), Art. II, State Const., prohibits the Mayor of the City of Ormond Beach from simultaneously holding office or serving on the governing board of a county health facilities authority created and organized under Part III of Ch. 154, F.S.

Sincerely,

Jim Smith  
Attorney General

Prepared by:

Kent L. Weissinger  
Assistant Attorney General

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CEO 75-2 -- January 6, 1975

**NONPROFIT CORPORATIONS****APPLICABILITY OF PART III, CH. 112, F. S., TO BOARD OF TRUSTEES OF A  
NONPROFIT CORPORATION**

*To: Fredrick J. Catalano, Board of Trustees, Lake-Sumter Community Health Center, Eustis*

*Prepared by: Gene L. "Hal" Johnson*

**SUMMARY:**

Notwithstanding the exclusion of public officers acting solely in an advisory capacity from the public officer disclosure provisions, members of the Board of Trustees, Lake-Sumter Community Health Center, are subject to the disclosure provisions of the Code of Ethics as they apply to public officers, s. 112.312(7)(b), F. S., as amended by Ch. 74-177. In accordance with part IV, Ch. 394, F. S., and s. 6, By-laws of Lake-Sumter Mental Health Center, Inc., the trustees constitute Mental Health District Board 10 and as such are empowered to receive and disperse both private and public funds and to contract with other agencies to furnish necessary services. By virtue of this status, said trustees are not solely advisory but are within the meaning of the term "public officer."

**QUESTION:**

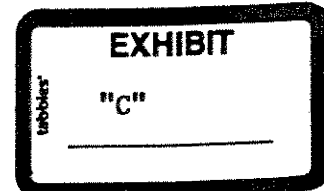
Are the members of the Board of Trustees of the Lake-Sumter Community Health Center public officers within the meaning of that term as found in part III, Ch. 112, F. S., as amended by Ch. 74-177, Laws of Florida, and therefore subject to the disclosure provisions applicable to public officers?

Your question is answered in the affirmative.

The members of the Board of Trustees of the Lake-Sumter Community Health Center are in a unique position. Not only are they trustees for the Mental Health Center, but they also constitute the Mental Health District Board 10 established in accordance with part IV, Ch. 394, F. S. See s. 6, By-laws of Lake-Sumter Mental Health Center, Inc.

As members of the Mental Health District Board, they can receive and disperse both private and public funds. They may also contract with other agencies to furnish necessary services. These powers, along with other powers enumerated in s. 6 of the By-laws of the Lake-Sumter Mental Health Center, Inc., establish that the trustees function as the Mental Health District Board is not solely advisory.

Based upon these functions, we must conclude that the trustees, by virtue of their status as the Mental Health District Board, are within the meaning of the term "public officer" as defined in s. 112.312(7)(b), F. S., as amended by Ch. 74-177, Laws of Florida, and are subject therefore to the disclosure provisions of the Code of Ethics as they apply to public officers.



CEO 75-102 -- April 28, 1975

**HOSPITAL DISTRICT BOARD OF TRUSTEES****APPLICABILITY OF CODE OF ETHICS**

To: *William G. O'Neill, Attorney, Marion County Hospital District, Ocala*

Prepared by: *Carol Ann Turner*

**SUMMARY:**

Pursuant to s. 112.312(7)(b), F. S. (1974 Supp.), board members are public officers with the exception of members of solely advisory boards. The Board of Trustees of the Marion County Hospital District exercises substantial regulatory and policymaking power; therefore, it does not fall within the advisory board exclusion, and its members are deemed to be public officers for purposes of disclosure under part III, Ch. 112, F. S. (1974 Supp.).

**QUESTION:**

Are members of the Board of Trustees of the Marion County Hospital District "public officers" and therefore subject to the disclosure provisions of part III, Ch. 112, F. S. (1974 Supp.)?

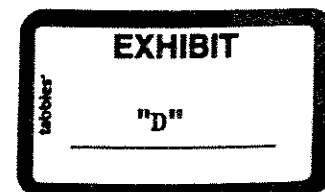
Your question is answered in the affirmative.

The term "public officer" is defined to include:

[m]embers of boards, commissions, authorities, special taxing districts . . . excluding advisory board members. [Section 112.312(7)(b), supra.]

The broad language of this definition indicates that all board members are within the definition of the term "public officer" unless the board is advisory in nature. An advisory board has been determined by the Ethics Commission to mean a board whose powers are solely advisory.

The law under which the Marion County Hospital District was created provides that the board of trustees shall have "all the powers of a body corporate" including the power to contract; to acquire, purchase, hold, lease, mortgage and convey real and personal property; and to borrow money and issue evidence of indebtedness. Chapter 65-1905, Laws of Florida. Such powers are clearly beyond the mere advisory. We are therefore of the opinion that the members of the Board of Trustees of the Marion County Hospital District are public officers within the meaning of that term as used in s. 112.3145(1)(a), F. S., and are thus subject to the disclosure provisions of part III, Ch. 112, supra.



CEO 75-159 -- August 6, 1975

**HOSPITAL BOARD OF TRUSTEES****APPLICABILITY OF DISCLOSURE LAW TO MEMBERS**

To: *(Name withheld at the person's request.)*

Prepared by: *Bonnie Johnson*

**SUMMARY:**

Although a hospital may operate largely from contributions and from revenue generated by its operation, where county tax moneys are expended for capital outlay and building repairs such hospital's Board of Trustees is deemed to be a public body. The board's duties include the control and management of the property, affairs, and funds of the hospital, and therefore the board does not meet the advisory board exclusion of s. 112.312(7)(b), F. S. (1974 Supp.). Members of the Board of Trustees therefore are deemed to be public officers subject to financial disclosure.

**QUESTION:**

Are members of the Board of Trustees of \_\_\_\_ Hospital public officers within the meaning of that term as used in part III, Ch. 112, F. S. (1974 Supp.), and therefore subject to disclosure provisions applicable to public officers?

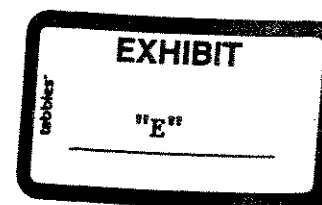
Your question is answered in the affirmative.

The statutory definition of the term "public officer" includes, among others, "[m]embers of boards, commissions, authorities, special taxing districts, and the head of each state agency, however selected but excluding advisory board members." Section 112.312(7)(b), F. S. (1974 Supp.).

Although \_\_\_\_ Hospital is not a special taxing district, and although the hospital operates largely from contributions and from revenue generated by its day to day operations, you confirm in your letter dated June 17, 1975, that county tax moneys are utilized for capital expenditures and building repairs as well as for the operation of the hospital emergency room and prenatal clinic program. Moreover, the bylaws of \_\_\_\_ Hospital provide, in Art. I, s. 2, that the hospital "[b]oard of Trustees, being the governing Body, shall have charge, control and management of the property, affairs and funds of \_\_\_\_ Hospital . . . ." Members of the board select and appoint the hospital administrator and have authority to fill, by election, any vacancies occurring on the board.

The Board of Trustees has further responsibility for appointments to the medical staff, the assignment of duties to such staff, and the adoption of amendments to or repeal of rules and regulations governing the staff. Such authority clearly exceeds the merely advisory; rather, the board is regulatory and policymaking in nature.

We therefore are of the opinion that the members of the Board of Trustees of \_\_\_\_ Hospital are public officers pursuant to s. 112.312(7)(b), F. S., and thus are subject to disclosure provisions of part III, Ch. 112, F. S., as applicable to public officers.



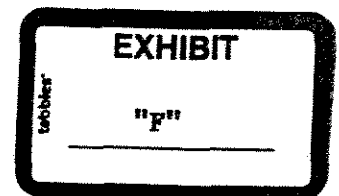
Chapter 25A  
**PUBLIC HEALTH TRUST\***

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\*Editor's note—Section 9 of Ord. No. 73-69, adopted July 30, 1973, provided that said ordinance be included in this Code, but did not specify the manner of inclusion, hence codification of §§ 1-7 as Ch. 25A, §§ 25A-1-25A-7, was at the discretion of the editors. Sections 8 and 10 of said ordinance, severability and effective date provisions, were omitted from codification.

Cross references—Public Health Department, § 2-74 et seq.; payment of costs of hospital care, treatment and maintenance, Ch. 25C.

State law reference—Public health trusts, F.S. § 154.001 et seq.



**Sec. 25A-1. Creation of Trust.**

There is hereby created and established by authority of Chapter 73-102, Laws of Florida 1973, as an agency and instrumentality of Miami-Dade County, a revocable statutory trust the terms of which may be modified by Miami-Dade County, which Trust shall be named and known as the "Public Health Trust of Miami-Dade County, Florida" (hereinafter also referred to as the "Trust"). The Trust shall be a public body corporate and politic which, through its governing body, may exercise all those powers either specifically granted herein or necessary in the exercise of those powers herein enumerated.

(Ord. No. 73-69, § 1, 7-30-73; Ord. No. 91-63, § 1, 6-18-91)

**Sec. 25A-2. Designated facilities and transfer of property in trust.**

(a) *Designated facilities.* The Trust, acting through its governing body as hereinafter defined, shall be responsible for the operation, maintenance and governance of the following facilities which are hereby declared to be "designated facilities" as that term is defined and used in Chapter 73-102, Laws of Florida 1973:

Jackson Memorial Hospital and all related facilities and real and personal property used in connection therewith either presently existing or which may come into existence in which Miami-Dade County has a legal interest and which are located within the area bounded by NW 15 Avenue on the west, NW 20 Street on the north, NW 7 Avenue on the east, and NW 14 Street on the south; and all facilities and real and personal property which the Trust may acquire pursuant to the terms of this chapter.

By resolution, the Board of County Commissioners may designate additional facilities or declassify and remove from the jurisdiction of the Trust facilities which have previously been designated.

(b) *Transfer of property in trust.* Pursuant to the provisions of this chapter, the Trust shall have possession and operating control of, but not title to, all real property within the meaning of "designated facilities," as that term is defined by this

chapter. Title to all items of personal property within the meaning of "designated facilities," as that term is defined by this chapter, shall be transferred to the Trust to be held in trust pursuant to the provisions of this chapter, provided however, that the Trust shall be empowered to sell or otherwise lawfully dispose of such personal property.

(Ord. No. 73-69, § 2, 7-30-73; Ord. No. 91-63, § 1, 6-18-91)

**Sec. 25A-3. Governing body.**

(a) *Composition.* The governing body of the Trust shall be a Board of Trustees composed of twenty-one (21) voting members none of whom shall be employees of the Trust. The voting membership shall include a member of the University of Miami Board of Trustees. The remaining voting membership shall be selected in accordance with Section 25A-3(d).

Additionally, the following shall be non-voting, ex officio members of the Board of Trustees: Three (3) County Commissioners who shall be appointed by the Mayor, hereinafter referred to as "Commissioner Trustees"; the County Manager or his or her designee; the Chief Executive Officer of the Trust; the Senior Vice President of Medical Affairs; Dean, University of Miami School of Medicine; the Senior Vice President of Patient Care Services; Dean, University of Miami School of Nursing; and the President of the Public Health Trust Medical Staff.

(b) *Qualifications.* Each member of the Board of Trustees shall be a United States citizen and a permanent resident and duly qualified elector of Miami-Dade County, unless the Board of County Commissioners waives the residency requirement by a two-thirds vote of its membership, and shall be of an outstanding reputation of integrity, responsibility, and commitment to serving the community. Before entering upon the duties of office, each appointee to voting membership on the Board of Trustees shall give bond in the amount of one hundred thousand dollars (\$100,000.00) to the Clerk of the Commission for the faithful performance of the duties of office and shall take the prescribed oath of office. Trustees shall serve without compensation but shall be entitled to



Board of County Commissioners, by a two-thirds (2/3) vote of its members, then in office, waives this requirement.

(f) *Organization, powers and duties of the Board of Trustees.* The Board of Trustees shall organize after the members thereof have qualified to serve and shall elect one (1) of its voting members as Chairperson and one (1) of its voting members as Vice-Chairperson and shall designate a Secretary who may or may not be a member of the Board, and such other officers as the Board of Trustees may determine to be necessary.

The Board of Trustees shall hold regular meetings in accordance with the bylaws of the Trust and the Board may hold such other meetings as it deems necessary. At the discretion of the Trust, meetings may be held and televised in the Commission chambers. Except as provided by law, all meetings of the Board shall be public and audio recorded and written minutes of the proceedings thereof shall be maintained by the Board. All actions taken at the meetings of the Board shall be promptly and properly recorded. Copies of all minutes and resolutions of the Board shall be forwarded to the Clerk of the Board of County Commissioners no later than ten (10) days subsequent to any meeting of the Board of Trustees.

In exercising the powers and carrying out the duties otherwise provided by this chapter, the Board of Trustees shall have the powers, duties, and responsibilities customarily vested in Trustees and, to the extent not in conflict therewith, shall also have the powers, duties and responsibilities customarily vested in the Board of Directors of a private corporation.

The Board of Trustees shall make, adopt and amend bylaws and rules and regulations for the Board's governance and for the operation, governance, and maintenance of designated facilities. Such bylaws and amendments thereto shall not be valid until approved by the Board of County Commissioners and shall not, without approval of the Commission, be inconsistent with ordinances of the County. The Board of Trustees shall be empowered to appoint a Chief Executive Officer of the Trust and to remove such an appointee. There shall be a special Trust Compensation Committee which shall consist of seven (7) voting members

including five (5) Trustees appointed by the Chair of the Public Health Trust, the Mayor or a Commissioner designated by the Mayor and a Commissioner appointed by the Mayor. The special Compensation Committee shall make recommendations to the Trust through the Trust Executive Committee regarding compensation for the Trust CEO.

As governing body of the Trust, the Board of Trustees shall exercise supervisory control over the operation, maintenance, and governance of all designated facilities and of all functions and activities taking place in connection with the operation of designated facilities.

(g) *Designation of office space and the hiring of staff.* It shall be within the discretion of the Trust to designate office space and to hire staff to direct and coordinate Trust activities.

(h) *Protection from personal liability.* The Trustees shall be included as insured within the terms of the comprehensive general and professional liability insurance policies of the County for the protection of individual members of County boards while such members are acting within the scope of their duties. The Trustees shall while acting within the scope of their duties also be entitled to personal liability protection, to the same extent that members of other County boards have such protection, from funds set aside by the County to satisfy claims not payable from insurance proceeds by virtue of loss deductible clauses in liability insurance policies. The Board of Trustees shall be empowered to obtain such additional Trustees' liability insurance as the Board shall determine to be necessary, and the expense of such insurance shall be an expense of the Trust.

(Ord. No. 73-69, § 3, 7-30-73; Ord. No. 76-65, § 1, 7-6-76; Ord. No. 80-81, § 1, 7-15-80; Ord. No. 82-116, § 1, 12-21-82; Ord. No. 83-43, § 1, 6-21-83; Ord. No. 88-6, § 1, 2-2-88; Ord. No. 91-63, § 1, 6-18-91; Ord. No. 93-144, § 1, 12-14-93; Ord. No. 94-67, § 1, 5-3-94; Ord. No. 98-40, § 1, 3-31-98; Ord. No. 02-5, § 1, 1-29-02)

**Annotations**—CAO's 76-26, 77-65, 77-68, 79-29, 80-28, 81-38.

#### **Sec. 25A-4. Powers and duties of the Trust.**

In connection with its responsibilities for the operation, maintenance, and governance of desig-

Board of County Commissioners, by a two-thirds ( $\frac{2}{3}$ ) vote of its members, then in office, waives this requirement.

(f) *Organization, powers and duties of the Board of Trustees.* The Board of Trustees shall organize after the members thereof have qualified to serve and shall elect one (1) of its voting members as Chairperson and one (1) of its voting members as Vice-Chairperson and shall designate a Secretary who may or may not be a member of the Board, and such other officers as the Board of Trustees may determine to be necessary.

The Board of Trustees shall hold regular meetings in accordance with the bylaws of the Trust and the Board may hold such other meetings as it deems necessary. At the discretion of the Trust, meetings may be held and televised in the Commission chambers. Except as provided by law, all meetings of the Board shall be public and audio recorded and written minutes of the proceedings thereof shall be maintained by the Board. All actions taken at the meetings of the Board shall be promptly and properly recorded. Copies of all minutes and resolutions of the Board shall be forwarded to the Clerk of the Board of County Commissioners no later than ten (10) days subsequent to any meeting of the Board of Trustees.

In exercising the powers and carrying out the duties otherwise provided by this chapter, the Board of Trustees shall have the powers, duties, and responsibilities customarily vested in Trustees and, to the extent not in conflict therewith, shall also have the powers, duties and responsibilities customarily vested in the Board of Directors of a private corporation.

The Board of Trustees shall make, adopt and amend bylaws and rules and regulations for the Board's governance and for the operation, governance, and maintenance of designated facilities. Such bylaws and amendments thereto shall not be valid until approved by the Board of County Commissioners and shall not, without approval of the Commission, be inconsistent with ordinances of the County. The Board of Trustees shall be empowered to appoint a Chief Executive Officer of the Trust and to remove such an appointee. There shall be a special Trust Compensation Committee which shall consist of seven (7) voting members

including five (5) Trustees appointed by the Chair of the Public Health Trust, the Mayor or a Commissioner designated by the Mayor and a Commissioner appointed by the Mayor. The special Compensation Committee shall make recommendations to the Trust through the Trust Executive Committee regarding compensation for the Trust CEO.

As governing body of the Trust, the Board of Trustees shall exercise supervisory control over the operation, maintenance, and governance of all designated facilities and of all functions and activities taking place in connection with the operation of designated facilities.

(g) *Designation of office space and the hiring of staff.* It shall be within the discretion of the Trust to designate office space and to hire staff to direct and coordinate Trust activities.

(h) *Protection from personal liability.* The Trustees shall be included as insured within the terms of the comprehensive general and professional liability insurance policies of the County for the protection of individual members of County boards while such members are acting within the scope of their duties. The Trustees shall while acting within the scope of their duties also be entitled to personal liability protection, to the same extent that members of other County boards have such protection, from funds set aside by the County to satisfy claims not payable from insurance proceeds by virtue of loss deductible clauses in liability insurance policies. The Board of Trustees shall be empowered to obtain such additional Trustees' liability insurance as the Board shall determine to be necessary, and the expense of such insurance shall be an expense of the Trust.

(Ord. No. 73-69, § 3, 7-30-73; Ord. No. 76-65, § 1, 7-6-76; Ord. No. 80-81, § 1, 7-15-80; Ord. No. 82-116, § 1, 12-21-82; Ord. No. 83-43, § 1, 6-21-83; Ord. No. 88-6, § 1, 2-2-88; Ord. No. 91-63, § 1, 6-18-91; Ord. No. 93-144, § 1, 12-14-93; Ord. No. 94-67, § 1, 5-3-94; Ord. No. 98-40, § 1, 3-31-98)

**Annotations**—CAO's 76-26, 77-65, 77-68, 79-29, 80-28, 81-38.

#### **Sec. 25A-4. Powers and duties of the Trust.**

In connection with its responsibilities for the operation, maintenance, and governance of design-

between the University and the County entered into on December 18, 1952, and as amended from time to time.

- (3) The Trust shall not, without prior approval of the County Commission, enter into or alter any contract the effect of which is to change substantially health care delivery policies established by the Board of County Commissioners.
- (4) The Trust shall not be authorized to enter into a contract with any labor union or other organization representing employees without first having obtained the approval of the Board of County Commissioners.

It is specifically provided that contracts and amendments thereto executed by the Trust, or other obligations incurred by the Trust, shall not be binding upon Miami-Dade County. In the event that the Trust shall be revoked, obligations of the Trust shall only be enforceable against Miami-Dade County to the extent that such obligations would have been enforceable with regard to personal property which was in the possession of the Trust and with regard to business income which would have come into the possession of the Trust had the Trust not been revoked.

The Trust shall comply with the formal bid requirements of Section 4.03(D) of the Charter of Miami-Dade County, Florida, and for such purpose the term "Board" as used in Section 4.03(D) shall be construed to be "Board of Trustees" and the term "manager" shall be construed to be "Chief Executive Officer of the Trust."

For all competitively bid contracts in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration, and/or repair, including painting or decorating of "designated facilities" that are public buildings or public works, the Trust shall comply with the provisions of Section 2-11.16 of the Code, as same may

be amended from time to time, and the administrative procedures adopted pursuant thereto.

- (d) *Property.* The Trust shall have the authority to purchase or otherwise obtain title in its own name to personal property and shall be authorized to sell or otherwise lawfully dispose of personal property. The Trust shall subject to prior approval of the County Commission be authorized to purchase or otherwise obtain real property, the title to which shall be vested in Miami-Dade County and the possession and operating control of which shall be held in Trust for Miami-Dade County under the provisions of this chapter.

The Trust shall not be authorized to sell, convey, mortgage, or otherwise impair or encumber the title to real property, provided however, that the Trust shall be authorized to lease real property either as lessee or lessor for any number of years and upon any terms and conditions. The leasing of any real property by the Trust as lessor shall be in accordance with the requirements of Section 125.35, Florida Statutes.

The Trust shall not, without having previously obtained the approval of the Commission, destroy, replace, or abandon real property. The Trust shall be authorized to maintain and repair designated facilities and may alter, modify, or made additions to designated facilities whenever such changes are necessary for the proper operation and maintenance of such facilities.

- (e) *Personnel.* The Trust shall be empowered to appoint, remove, and suspend employees or agents of the Trust, to fix their compensation, and to adopt personnel and management policies, subject to Board of County Commissioners approval or disapproval. Absent any action by the Board of County Commissioners, personnel and management policies established by the Board of Trustees shall be considered final. Employees who were initially County

- (i) *Intergovernmental cooperation.* The Trust shall have the authority to cooperate with and contract with any government agency or instrumentality, federal, state, county, or municipal. The operating relationship between the Trust and Miami-Dade County shall be set forth in an annual agreement the purpose of which shall be to implement applicable provisions of this chapter. If the Trust and Miami-Dade County have not executed an annual operating agreement sixty (60) days prior to September 1st of the forthcoming fiscal year, the Chief Executive Officer of the Trust and the County Manager shall meet for the purpose of executing an annual operating agreement. In the event an agreement is not reached, the Chief Executive Officer of the Trust and the County manager shall present unresolved issues to the Board of County Commissioners for approval or disapproval.
- (j) *Compliance with law.* The Trust shall comply with all laws and regulations of the United States, the State of Florida, and Miami-Dade County, including but not limited to the laws relating to the expenditure of funds and the keeping of records and inventories and the operation and governance of health care facilities.
- (k) *Establishment of alternative health care delivery systems.* The Trust shall be empowered to establish, participate in and/or contract with alternative health care delivery systems, including but not limited to prepaid health care plans.
- (l) *Funding and support of primary health care facilities.* The trust shall establish criteria and standards for the provision of financial and programmatic support of primary health care facilities operating within Miami-Dade County. The trust shall also formulate criteria and standards for the establishment of new primary health care facilities within the County.
- (1) Any funding allocated to the primary health care facilities complying with the established criteria and standards shall be allocated regardless of whether the trust owns or controls the facilities.
- (2) Any funding by the trust for the purpose of capital expenditures shall be allocated from the trust's Funded Depreciation Account. Any funding by the trust for the purpose of operating expenditures shall be allocated from the trust's general operating funds.
- (3) Any primary health care facility which does not comply with the criteria and standards established by the trust shall not be eligible for any funding from the trust or Miami-Dade County.

(Ord. No. 73-69, § 4, 7-30-73; Ord. No. 75-103, § 1, 11-4-75; Ord. No. 77-84, § 1, 11-15-77; Ord. No. 82-67, § 3, 7-20-82; Ord. No. 84-65, § 2, 7-17-84; Ord. No. 85-67, § 1, 9-18-85; Ord. No. 89-90, § 1, 9-26-89; Ord. No. 91-63, § 1, 6-18-91; Ord. No. 92-45, § 6(b), 6-2-92; Ord. No. 92-76, § 1, 7-21-92; Ord. No. 93-41, § 1, 5-18-93; Ord. No. 94-197, § 1, 11-1-94; Ord. No. 94-210, § 1, 11-15-94; Ord. No. 95-151, § 1, 9-14-95; Ord. No. 98-40, § 1, 3-31-98)

#### **Sec. 25A-5. Financial support for the Public Health Trust.**

The Trust shall establish a fiscal year which coincides with that of Miami-Dade County, and the County shall provide the Trust with financial support pursuant to the official County budget. The Trust shall timely submit to the Board of County Commissioners a Trust budget request pertaining to operating and capital expenditures, which request shall not be implemented until approved by the Board of County Commissioners.

The Trust budget request shall be prepared on official County budget forms in a format prescribed by the County Manager, shall be reviewed in a manner similar to that in which requests of other County departments are reviewed, and shall be incorporated in the proposed budget and timely submitted to the Commission each year. The methods by which Miami-Dade County shall provide financial support to the Trust shall be as hereinafter described. Nothing contained herein

essary for carrying out the Trust's responsibilities. Such supporting systems shall include but shall not be limited to budgeting and accounting, liability coverage, quality assurance and utilization management, risk management functions related to care and safety of patients and all others within designated facilities, printing, delinquent account collections, information and computer services, architectural design and construction support services, security, physical maintenance, purchasing and materials management, and legal services. Supporting services may also be purchased from individuals or organizations or obtained from the County in a manner consistent with the method of County funding of the Trust. Before obtaining any supporting services from a source other than Miami-Dade County, the Trust shall determine the availability, cost advantage, and management advantage of obtaining such services from the County on a fee-for-service basis.

- (a) *Purchasing and materials management.* The Trust shall develop procedures for purchasing supplies, equipment and services and for managing materials and shall implement such procedures.
- (b) *Security and legal services.* From the effective date of this chapter, the Trust shall continue to utilize the services of the County with regard to security and legal services.

(Ord. No. 73-69, § 6, 7-30-73; Ord. No. 91-63, § 1, 6-18-91)

#### **Sec. 25A-7. General provisions of the Trust.**

It is the intent of the Board of County Commissioners to create by this chapter and for the purposes set forth herein a Trust which may be modified or revoked in whole or in part by duly enacted ordinance of the Commission. The beneficiaries of that Trust shall be the people of Miami-Dade County who, with regard to the Trust, shall be represented only by the Board of County Commissioners.

The County Manager shall at all times be empowered to conduct an administrative audit of designated facilities. Legal opinions by the County

Attorney's Office pertaining to this chapter and Trust and to Chapter 73-102, Laws of Florida, 1973, shall be binding upon the Trust.

The transfer of assets to the Trust constitutes a taking over in part of the function of the Board of County Commissioners by the Public Health Trust of Miami-Dade County, Florida. Pursuant to this chapter, the Trust is not to be restricted in the free use of the designated facilities and it is contemplated that the Trust will use the facilities to the extent of their useful lives. The Trust is not required to make any payments or give any consideration to Miami-Dade County, however, the Trust shall be required to properly maintain the designated facilities, and, except as otherwise provided by this chapter, may make necessary improvements to such facilities.

(Ord. No. 73-69, § 7, 7-30-73; Ord. No. 91-63, § 1, 6-18-91)

#### **Sec. 25A-8. [Hospital exception.]**

Except where prohibited by state or federal law, any provision of the Code of Miami-Dade County, and any resolution or administrative order of the County requiring a contractor to execute or complete a form or affidavit as a condition of doing business with the Public Health Trust, shall not apply to the current, unexpired term of a contract that exists between a contractor and the Public Health Trust as a result of its acquisition of a new hospital.

(Ord. No. 01-106, § 1, 6-19-01)

## § 112.311

Note 11

## PUBLIC OFFICERS AND RECORDS

Title 10

### 11. — Suspended employees, conflict of interest

A suspended employee is not prohibited under the Standards of Conduct Law, from having personal interests or employment during his period of suspension, even though such interests might otherwise conflict with proper discharge of his duties (except for his suspension from the duties of his employment) and are prohibited by rule or policy duly adopted by the employer-department. Op.Atty.Gen., 073-146, May 8, 1973.

### 12. Violation of standards—In general

Violation of the Standard of Conduct Law (chapter 112, Part III) is not a crime. Op.Atty.Gen., 070-2, Jan. 15, 1970.

### 13. — Malpractice in office, violation of standards

A violation of the Standards of Conduct Law, § 112.311 et seq., are not sufficient, per se, to form the basis for an indictment or information charging the common law offense of malpractice in office. Op.Atty.Gen., 070-38, April 30, 1970.

### 14. — Injunction, violation of standards

The county solicitor does not have authority to enjoin recurring violation of Standards of Conduct Law, chapter 112, Part III. Op.Atty.Gen., 070-2, Jan. 15, 1970.

## 112.312. Definitions

As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(1) "Advisory body" means any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or \$100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations.

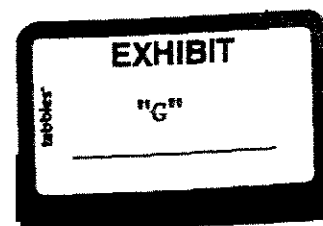
(2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

(3) "Breach of the public trust" means a violation of a provision of the State Constitution or this part which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of this part.

(4) "Business associate" means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or coowner of property.

(5) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

(6) "Candidate" means any person who has filed a statement of financial interest and qualification papers, has subscribed to the candidate's oath as required by s. 99.021, and seeks by election to become a public officer. This definition expressly excludes a committeeman or committeewoman regulated



such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) **Professional and occupational licensing board members.**—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) **Exemption.**—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

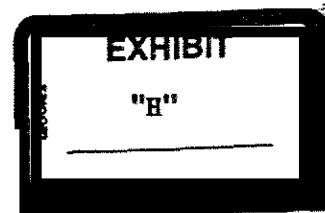
2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Department of State, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the





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# STATE OF FLORIDA

CHARLIE CRIST  
ATTORNEY GENERAL

March 28, 2003

Mr. Alejandro Vilarello  
Miami City Attorney  
444 Southwest 2nd Avenue  
Suite 945  
Miami, Florida 33130-1910

03-12

Dear Mr. Vilarello:

You have asked for my opinion on substantially the following question:

May a public officer serve simultaneously as a member of the Board of the Public Health Trust of Miami-Dade County without violating Article II, section 5(a), Florida Constitution?

Section 5(a), Article II, Florida Constitution, provides:

No person shall hold at the same time more than one office under the government of the state . . . except that . . . any officer may be a member of a . . . statutory body having only advisory powers.

While the term "office" has not been defined for purposes of the Constitution, the Florida Supreme Court has stated:

The term "office" implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office. . . . The term "office" embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract.<sup>1</sup>

The Public Health Trust of Miami-Dade County (the Trust) was created in 1973 pursuant to Part II, Chapter 154, Florida Statutes.<sup>2</sup> The legislative purpose for creation of public health trusts is expressed in section 154.07, Florida Statutes:

ATTACHMENT "B"



There may be created in and for each county of the state a public body corporate and politic, to be known as the "public health trust" of such county, for the purpose of exercising the powers described herein with respect to "designated facilities" as that term is hereinafter defined. No trust created hereunder shall transact any business or exercise any powers until the governing body of the county of such trust shall, by proper resolution, declare that there is a need for such trust to function and shall appoint the members thereof.

Legislative history for adoption of the public health trust legislation reveals that the purpose of this part is to respond to concerns expressed by county governing bodies regarding their inability to effectively manage the operations of hospitals and other health facilities. The legislation, Chapter 73-102, Laws of Florida, was meant to provide an administrative structure for the full-time management of health facilities by professional boards, thus alleviating non-health professionals from activities to which they could not devote sufficient attention.<sup>3</sup>

Each public health trust is authorized to operate and govern a designated facility.<sup>4</sup> Designated facilities may include, but are not limited to:

sanatoriums, clinics, ambulatory care centers, primary care centers, hospitals, rehabilitation centers, health training facilities, nursing homes, nurses' residence buildings, infirmaries, outpatient clinics, mental health facilities, residences for the aged, rest homes, health care administration buildings, and parking facilities and areas serving health care facilities.<sup>5</sup>

The governing body of each public health trust is a board of trustees consisting of not less than 7 nor more than 21 members who are appointed by the governing body of the county using criteria determined by the governing body.<sup>6</sup> Members of the board may be removed for cause by the governing body of the county, which also fills any vacancies that may occur.<sup>7</sup>

A review of Part II, Chapter 154, Florida Statutes, which authorizes the creation and establishment of public health trusts, reveals that such entities have not been statutorily vested with independent powers, but rather possess only such powers as the governing body of the county may choose to bestow. Section 154.10, Florida Statutes, provides for the relationship of the county public health trust to the board of county commissioners, and provides that the

county governing body shall, by ordinance, by contract or lease with the public health trust, or by a combination of the foregoing, provide for each

of the following:

- (1) A method whereby the public health trust shall account to the county governing body for all receipts and expenditures of money.
- (2) A method whereby the public health trust shall request, and the county governing body *may approve*, the appropriation and payment of county funds to support the lawful purposes of the trust.
- (3) A method whereby the public health trust shall request, and said county governing body *may effectuate*, the issuance of bonds or the borrowing of money, pursuant to authority vested in said governing body of the county.
- (4) Compliance by the public health trust with policies for countywide health care delivery *as established by the county governing body*.

\* \* \*

- (7) A procedure whereby the county governing body *may approve or disapprove* of contracts between the board of trustees and labor unions.
- (8) A method whereby the county governing body *may declassify* facilities as "designated facilities" and provide for the county to assume the ownership, operation, governance, or maintenance of such facilities. (e.s.)

Similarly, section 154.11, Florida Statutes, setting forth the powers of the board of trustees of a county public health trust, states that its powers are "*subject to limitation* by the governing body of the county in which such board is located . . . ." (e.s.)<sup>8</sup>

In 1978 Governor Askew requested this office's opinion on whether a member of the Board of Trustees of the Dade County Public Health Trust was an officer for purposes of the dual office-holding prohibition. In Attorney General's Opinion 78-36 my predecessor in office stated:

I am not persuaded that a board of trustees of a county public health trust possesses the *independent* attributes of sovereignty which are characteristic of an office. Moreover, as was stated in AGO 071-324, it is a generally established principle that the right to hold office is a valuable one which should not be curtailed except by plain provisions of the law.

Likewise, I am of the view that a member of the Board of Trustees of the Miami-Dade County Public Health Trust is not an officer for purposes of Article II, section 5(a), Florida Statutes, based on the limited nature of the powers and duties described in Part II, Chapter 154, Florida Statutes.

You have brought to my attention another opinion of this office, Attorney General's Opinion 84-90, which you believe conflicts with Attorney General Opinion 78-36 upon which the instant discussion relies. Attorney General Opinion 84-90 considers a health facilities authority under Part III, Chapter 154, Florida Statutes. Attorney General Opinion 78-36 is concerned with county public health trusts under Part II, Chapter 154, Florida Statutes. These entities have substantially different powers and duties, and these differences form the basis of the seemingly contrary conclusions of these opinions.<sup>9</sup>

You also bring to my attention several opinions of the Florida Commission on Ethics. Questions relating to the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, must be directed to the Ethics Commission. The Code of Ethics deals with matters separate and apart from considerations of office under the dual officeholding prohibition in Article II, section 5(a), Florida Constitution, and must be addressed by the Ethics Commission.<sup>10</sup>

In sum, it is my opinion that a public officer may serve simultaneously as a member of the Board of the Public Health Trust of Miami-Dade County without violating Article II, section 5(a), Florida Constitution, as that position does not appear to be an "office" within the scope of the constitutional dual officeholding prohibition.

Sincerely,



Charlie Crist  
Attorney General

CC/tgh

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<sup>1</sup> *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919).

<sup>2</sup> See, Sec. 25A-1, Ordinance No. 73-69, Miami-Dade County Code, stating that the Trust is created and established by the authority of Chapter 73-102, Laws of Florida.

Chapter 73-102, Laws of Fla., is codified as Part II, Chapter 154, Florida Statutes.

<sup>3</sup> See, Staff Evaluation of SB 611, Senate Standing Committee on Health and Rehabilitative Services.

<sup>4</sup> Section 154.08(1), Fla. Stat.

<sup>5</sup> Section 154.08(2), Fla. Stat.

<sup>6</sup> Section 154.09(1), Fla. Stat.

<sup>7</sup> Section 154.09(2), Fla. Stat.

<sup>8</sup> Section 154.11(1), Fla. Stat.

<sup>9</sup> Compare, s. 154.11, Florida Statutes, setting forth the powers of the board of trustees of public health trusts and making those powers "subject to limitation by the governing body of the county", with s. 154.209, Florida Statutes, detailing those powers given directly to health facilities authorities.

<sup>10</sup> See, s. 112.322(3)(a), Fla. Stat., providing that a public officer, candidate for public office, or public employee, when in doubt about the applicability and interpretation of Part III, Chapter 112, Fla. Stat., or s. 8, Art. II, Fla. Const., may request an advisory opinion to establish his or her standard of public duty; and s. 112.322(3)(b), Fla. Stat., making these opinions binding on the conduct of the requesting party.