

**CITY OF TALLAHASSEE  
2024 CHARTER REVIEW COMMITTEE**

**Ethics-related Charter Amendments**

At the February 29, 2024 meeting, Committee Member Paine brought forward several proposals related to amending the Ethics provisions codified in the City Charter. During the discussions, the committee requested that copies of the City Attorney's opinions on the two subjects, authored by the previous City Attorney, be distributed to the committee for review.

In response, City Attorney Toman has provided two opinions from 2021 and 2023, with a notation that the City Attorney's Office continues to support these prior opinions.

**Attachments:**

Attach A - 2021 CAO opinion – IEB Jurisdiction over Outside Agencies Attach

B - 2023 CAO opinion – IEB Investigation of Whistleblower Complaints



OFFICE OF THE CITY ATTORNEY

November 16, 2021

City of Tallahassee Independent Ethics Board  
300 S. Adams Street  
Tallahassee, FL 32301

Re: Board Jurisdiction Concerning Outside Agencies

Dear Members of the Independent Ethics Board:

Based on my review of the November 16, 2021, legal memorandum of your legal counsel to your Chair, Mr. Carlos A. Rey, you have apparently directed your legal counsel to provide an opinion regarding whether independently created boards upon which City Commissioners serve as members are subject to the jurisdiction of the Independent Ethics Board. Based on the plain language of the City Charter, my opinion as to your inquiry is answered in the negative. Because I have previously opined on this question, I wanted to provide you my opinion as the official charged with the responsibility under Section 29 of the City Charter with providing legal opinions to City officials as to their respective powers and duties.

**Sec. 61. - Ethics Code and Ethics Board to be established.**

Ethics Code. The City Commission shall, within six (6) months of the enactment of this charter provision, enact an ethics, or conflicts of interest, code *with jurisdiction over the officers and employees of the City of Tallahassee, whether elected or appointed, paid or unpaid, and over the members, officers and employees of any boards, commissions, or committees thereof.* The ethics code may, as allowed by law, supplement state ethics laws.

As stated above in the City Charter, the jurisdiction of the Ethics Board is limited to officers and employees of the **City of Tallahassee** and members, officers, and employees of **City of Tallahassee** boards, commissions, and committees. Unless passed by referendum of the voters pursuant to Florida Statutes, Section 166.031, this jurisdiction cannot be expanded by either the City Commission or the Independent Ethics Board. Both the Blueprint Interlocal Agency (Blueprint) and the Community Redevelopment Agency (CRA) are independent legal entities. Their board members and employees are not subject to the jurisdiction of the Independent Ethics Board.

Both governmental entities have the authority to hire their own employees under Florida law and have done so. See Florida Statutes, Section 163.01(5) and (7)(a) for Blueprint and Sections 163.356(3)(c) 163.357(1)(b) for CRA. Entering into agreements with the City of Tallahassee to provide for benefit administration does not convert these separate local legal

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City Attorney

JACQUELINE "JACK" PORTER  
Commissioner  
  
JAMES O. COOKE, IV  
City Treasurer-Clerk

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DENNIS R. SUTTON  
Inspector General

DIANNE WILLIAMS-COX  
Commissioner

**City of Tallahassee Independent Ethics Board**  
**November 16, 2021**  
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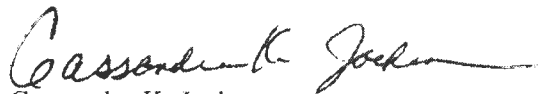
entities' employees into City of Tallahassee employees. As for City Commissioners serving as Board members of these legally separate and independent entities, the City Commissioners are subject to the City's ethics code and the jurisdiction of the Independent Ethics board to the extent that the local ethics code has requirements that are operative regardless of particular office, i.e., the local full financial disclosure requirement. As for the acceptance of gifts, a City Commissioner could not accept a gift from a CRA or Blueprint vendor who is also a City vendor because of the prohibition under Section 2-15, City of Tallahassee Code, of accepting gifts from City vendors. However, a City Commissioner could accept a gift from a CRA or Blueprint vendor that was not a City vendor if the gift did not exceed \$100.00 in value as this is permitted by Florida's Ethics Code to which a City Commissioner is subject as a reporting individual. See Florida Statutes, Section 112.3148(4).

Additionally, it is the State Ethics Commission before whom a complaint regarding misuse of position when acting as a Blueprint or CRA Board member or employee should be brought, not the Independent Ethics Board as the Board members would not be acting as City Commissioners or employees. See Section 2-8, Tallahassee Code of Laws, "No public official or employee of the city shall use or attempt to use his or her official position or any city property or resource which may be within his or her trust, or perform or fail to perform, his or her official duties, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special privilege, benefit, or exemption for himself or herself or others".

In conclusion, City Commissioners serving in the capacity of board members of Blueprint and the CRA **and** employees of Blueprint and the CRA are not subject to the Independent Ethics Board's jurisdiction and can be made subject thereto only by referendum of the electors.

Thank you for the opportunity to clarify these matters.

Sincerely,



Cassandra K. Jackson  
City Attorney

cc: Mayor and City Commissioners  
Reese Goad, City Manager



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Mayor and Commissioners  
FROM: Cassandra K. Jackson, City Attorney  
DATE: June 15, 2023  
SUBJECT: Development of Proposed Ordinance to Authorize Ethics Board to Receive and Investigate Whistleblower Complaints

The City of Tallahassee Independent Ethics Board has requested that the City Commission consider adopting an ordinance that would authorize the Ethics Board to serve as the “appropriate local official” for receiving and investigating whistleblower complaints pursuant to Florida Statutes, Section 112.3187, in those limited circumstances where the Inspector General cannot do so. Currently, the Office of Inspector General cannot serve as the “appropriate local official” in cases that involve the Mayor and his staff, City Commissioners and their staff, and those within the Inspector General’s Office.

As you are aware, the Tallahassee Independent Ethics Board was created by referendum of the City of Tallahassee voters amending the City Charter in 2014. It is an *appointive* board. See City Charter, Section 61 a., which provides:

“There is hereby created an independent, *appointed*, ongoing citizens Ethics Board of seven members...”

The Board has certain enumerated powers as stated in Section 61 b:

“The Ethics Board shall: (i) assist the City Commission in the development of the ethics code; (ii) adopt bylaws and due process procedures for the administration of the Ethics Board; (iii) manage a citywide ethics hotline for receipt of allegations of local corruption, fraud, waste, mismanagement, campaign finance and ethics violations; (iv) manage and coordinate the mandatory training of local officials,

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officers, employees, and board members in state and local ethics; (v) have the authority to refer ethics and corruption matters to appropriate enforcement agencies; (vi) recommend proposed ordinances, resolutions, or charter amendments to the City Commission in all areas of ethics and corruption, including but not limited to: conflicts of interests, financial disclosure, voting conflicts, hotline policies, ethics education, ethics in procurement, campaign ethics and financing, and lobbying; such legislative proposals shall be filed with and considered by the City Commission; (vii) have the authority to investigate complaints and to levy those civil penalties as may be authorized by the City Commission for violations of the City's ethics code; and (viii) employ staff serving in the Ethics Office....”

Florida Statutes, Section 166.021(4), provides that the City has broad home rule powers but general law has specified certain areas in which a municipality may not move forward except by referendum of the voters. Changes in matter prescribed by the City Charter relating to appointive boards is included in this list:

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution.... *However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031.* Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

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Thus, if the City Commission desired to add an additional responsibility, such as designation of the Ethics Board as an “appropriate local official” under Florida Statutes, Section 112.3187, such would require a referendum of the voters pursuant to Florida Statutes, Section 166.031. This would be an additional duty affecting a matter, i.e., the existing duties, prescribed by law relating to an appointive board. As detailed above, the duties of the Ethics Board do not include Whistleblower responsibilities under Florida Statutes, Section 112.3187.

*See*, AGO 92-35, “Section 166.021(4), F.S., specifically provides that nothing in Ch. 166, F.S., the Municipal Home Rule Powers Act, shall be construed to permit any changes in a special law or municipal charter which affect . . . *matters* prescribed by the charter *relating to appointive boards* . . . without approval by referendum of the electors as provided in s. 166.031.” Thus, any special law or charter provision relating to appointive boards would be unaffected by the Municipal Home Rule Powers Act, and any amendment or modification of such a special act or charter provision would require referendum approval as prescribed by s. 166.031, F.S.[2] It is my opinion that the structure and powers of the Jacksonville Police and Fire Pension Board of Trustees fall within the scope of matters relating to appointive boards[,] as contemplated by the statute.[3] Therefore, pursuant to s. 166.021(4), F.S., any such change can only be made at the local level after approval by a referendum as provided in s. 166.031, F.S.[4].”

Please let me know if you have any questions.

CKJ/pb

Attachment

cc: Reese Goad, City Manager  
James O. Cooke, IV, City Treasurer-Clerk  
Dennis R. Sutton, Inspector General  
Dwight Floyd, Executive Director, Tallahassee Independent Ethics Board

**ATTACHMENT**

**Jacksonville Police & Fire Pension Board of Trustees**

**Number:** AGO 92-35

**Date:** January 04, 1996

**Subject:**

Jacksonville Police & Fire Pension Board of Trustees

Mr. Robert D. Klausner  
General Counsel  
Jacksonville Police and Fire Pension Board of Trustees

RE: MUNICIPALITIES–POLICE AND FIREFIGHTERS–PENSION FUNDS–SPECIAL ACTS–MUNICIPAL CHARTERS–TRUST FUNDS–APPOINTED OFFICERS–TRAVEL–BUDGETING– PERSONNEL RULES–authority of municipality to change charter provision relating to police and fire pension fund; authority of municipality to adopt travel, accounting, personnel, purchasing and budgeting provisions relating to police and fire pension fund. s. 166.021, F.S.; Ch. 90-442, Laws of Fla.

QUESTION:

1. May the current structure and powers of the Jacksonville Police and Fire Pension Board of Trustees, as established by special act of the Legislature and codified in the Jacksonville City Charter be altered by local ordinance or by a subsequent act of the State Legislature or by charter amendment approved in a referendum by the electors pursuant to s. 166.021(4), F.S.?
2. Is the Jacksonville Police and Fire Pension Board of Trustees authorized to set its own policy for: (a) reimbursement for travel; (b) accounting; (c) personnel rules; (d) purchasing policies?
3. Is the Jacksonville Police and Fire Pension Board of Trustees required to submit its annual budget to the Jacksonville City Council for approval?

SUMMARY:

1. The structure and powers of the Jacksonville Police and Fire Pension Board of Trustees may be altered by a subsequent act of the Legislature or, as provided in s.166.021(4), F.S., by charter amendment after approval by referendum.
2. The Jacksonville Police and Fire Pension Board of Trustees must utilize the provisions of s. 112.061, F.S., regarding reimbursement of board members for per diem and travel expenses. However, the board is authorized to establish its own accounting regulations, personnel rules and purchasing policies.
3. The pension board of trustees is not required to submit its annual budget to the Jacksonville City Council for approval.



## AS TO QUESTION 1:

Chapter 90-442, Laws of Florida, makes provision in the Charter of the City of Jacksonville for the Jacksonville Police and Fire Pension Board of Trustees (the board).[1] The board is made up of five members: two must be legal residents of the City of Jacksonville and are appointed by the city council; one must be a police officer who is elected to the board by a majority of the police officers who are members of the pension fund; one must be a firefighter who is similarly chosen; and the last board member must be chosen by a majority of the previous four members. The name of the fifth member must be submitted to the city council, which is required, merely as a ministerial act, to appoint him or her as the fifth member of the board. Thus, a majority of the members of the pension board are appointed.

Section 166.021(4), F.S., specifically provides that nothing in Ch. 166, F.S., the Municipal Home Rule Powers Act, "shall be construed to permit any changes in a special law or municipal charter which affect . . . matters prescribed by the charter *relating to appointive boards* . . . without approval by referendum of the electors as provided in s. 166.031." (e.s.) Thus, any special law or charter provision relating to appointive boards would be unaffected by the Municipal Home Rule Powers Act, and any amendment or modification of such a special act or charter provision would require referendum approval as prescribed by s. 166.031, F.S.[2]

It is my opinion that the structure and powers of the Jacksonville Police and Fire Pension Board of Trustees fall within the scope of matters relating to appointive boards[,] as contemplated by the statute.[3] Therefore, pursuant to s. 166.021(4), F.S., any such change can only be made at the local level after approval by a referendum as provided in s. 166.031, F.S.[4]

Further, as was done with the enactment of Ch. 90-442, Laws of Florida, which amended Ch. 67-1320, Laws of Florida, the Legislature itself may amend previously enacted legislation.[5]

## AS TO QUESTION 2:

### (a) Travel Expenses and Per Diem

You ask whether the Jacksonville Police Officers and Firefighters Pension Board of Trustees is authorized to establish its own policy for the reimbursement for travel by board members.

Pursuant to s. 2, Ch. 90-442, Laws of Florida,[6] "[b]oard members shall not receive any compensation as such, but may receive *expenses and per diem as provided by law*." (e.s.) This is the sole provision in the special act relating to the reimbursement of expenses and per diem for board members.[7]

The term "by law" has been construed to mean a statute adopted by both houses of the Legislature.[8] Thus, the members of the Jacksonville Police Officers and Firefighters Pension Board of Trustees are bound, by the clear terms of the special act, to follow those provisions of state law relating to expenses and per diem. The state statutory provisions relating to travel expenses and per diem for public officers, employees, and authorized persons are contained in s. 112.061, F.S.



Therefore, it is my opinion that the members of the Jacksonville Police Officers and Firefighters Pension Board of Trustees have no authority to set their own policy regarding the reimbursement of travel expenses and per diem but are bound by the provisions of s. 112.061, F.S.

(b) Accounting Policies

Regarding the authority of the board of trustees to establish internal accounting policies for the Jacksonville Police and Fire Pension Fund,[9] the special act makes the board the sole entity responsible for administering the fund.[10] Chapter 90-442, Laws of Florida, also sets forth a number of specific procedures relating to the administration of the fund. These provisions authorize the board to:

"(8) Make rules and regulations for the administration of the pension plan[11] which are not inconsistent with the terms and provisions of law.

\* \* \*

(11) Determine all questions relating to the administration of the pension fund in order to promote the uniform administration of the pension fund and to effectuate its purposes and provisions.

\* \* \*

(14) Cause a general investigation to be made by a competent actuary and at least once every 3 years or as required by law thereafter of the retirement, disability, separation, mortality, interest, and employee earning rates; recommend, as a result of such investigation, the tables to be adopted for all required actuarial calculations; cause an annual determination to be made by a competent actuary of the liabilities and reserves of the pension plan and the annual determination of the amount of the contributions required by the city; and maintain the funds of the pension plan on a sound actuarial basis. A copy of this actuarial study shall be furnished to the city council by the board immediately upon its receipt.

(15) Cause an audit of the affairs of the pension plan to be made annually by an independent certified public accountant, and submit a copy thereof to all interested parties as soon as possible after the end of the fiscal year."

The board is also made specifically subject to the provisions of Chs. 175 and 185, F.S., which deal with municipal firefighters' pension trust funds and municipal police officers' retirement trust funds, respectively, and Part VII, Ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act." To the extent these statutes establish procedures in addition to those set forth in the special act, the board of directors of the Jacksonville trust fund should comply with these additional requirements. However, my examination of these chapters indicates that the administration procedures set forth therein closely follow and do not conflict with those in Ch. 90-442, Laws of Florida.[12]

Thus, within this framework, the Jacksonville Police and Fire Pension Board of Trustees is authorized to establish accounting policies for administration of the fund.

(c) Personnel Rules

Chapter 90-442, Laws of Florida, authorizes the pension board to "[e]mploy and fix the compensation of an administrator and any consultants, attorneys, actuaries, accountants, and other employees or contractors as the board may require." [13] In addition to the this specific grant of employment authority, the board possesses the more general power to exercise "such powers as it may reasonably determine to be necessary or appropriate to the performance of its duties . . . ." [14]

A state administrative agency or officer possesses no inherent power and may exercise only such authority as is expressly conferred by law or must be necessarily implied from such an express grant of power. [15] Implied powers accorded administrative agencies must be indispensable to powers expressly granted, that is, those powers which are necessarily or fairly or reasonably implied as an incident to those powers expressly granted. [16]

The power to adopt and implement personnel rules would appear to be necessarily or fairly or reasonably implied from the power of employment. Therefore, it is my opinion that the Jacksonville Police and Fire Pension Fund Board of Trustees is authorized to adopt personnel rules and regulations for its employees.

I would note that, pursuant to Ch. 90-442, Laws of Florida, "the provisions of ss. 112.311-112.3175 [F.S.]" apply to the members of the board. [17] These statutes comprise Part III, Ch. 112, F.S., the Code of Ethics for Public Officers and Employees. Thus, the personnel rules adopted and implemented by the pension board must include and make applicable to members of the board these statutory provisions.

(d) Purchasing Policies

With regard to purchases, the pension fund board is authorized to "[e]nter into contracts, leases, or other transactions" by the terms of the special act. [18] In addition, the board has the power to "[a]uthorize and direct the payment from the pension fund of all expenses and fees incurred in the administration of the pension fund." [19] While you have not indicated what types of purchases are contemplated by this question, I assume from your letter that you are concerned with the needs of the board for such things as office equipment rather than policies for making authorized investments of the pension fund. [20]

Based on the previous discussion of implied powers, it is my opinion that the power to adopt and implement administrative rules relating to purchases of such things as office supplies made by the board may be implied from the express powers to contract and pay for expenses incurred in managing the pension fund.

AS TO QUESTION 3:

You ask whether the Jacksonville Police and Fire Pension Board of Trustees is required to submit its budget to the Jacksonville City Council for approval.

Chapter 90-442, Laws of Florida, establishes the pension board of trustees as an independent

agency under the city charter.[21] No provision of the special act, Chs. 175 or 185, F.S., or Part VII, Ch. 112, F.S., requires the board of trustees to submit its budget to the city for review.[22]

In the absence of any requirement that the Jacksonville Police and Fire Pension Board of Trustees submit its budget to the city for approval, and in light of the expressed independent nature of the board, it is my opinion that the board's budget is not required to be approved by the City of Jacksonville.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/t

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[1] Section 2, Ch. 90-442, Laws of Florida, creates a new article 22 of the Jacksonville City Charter, Ch. 67-1320, Laws of Florida.

[2] See AGO 83-39 (appointment of alternate members with voting power to an appointive municipal civil service board created by special law is a matter that can only be accomplished by the governing board of the municipality by a charter amendment with the approval by referendum of the electors of the municipality as prescribed by s. 166.031, F.S.) and AGO's 77-135, 75-136, 75-158, and 73-478; *cf.* *Resedean v. Civil Service Board of the City of Pensacola*, 332 So.2d 150, 151-152 (1 D.C.A. Fla., 1976).

[3] See AGO 84-12, which defines the word "matter" for purposes of s. 166.021(4), F.S., as "that with regard to or about which anything takes place or is done." As that opinion states, the word is of the broad signification and "[w]hen the Legislature uses a term of general import or wide meaning, it must be interpreted broadly enough to embrace within it all the things to which its generality reasonably extends."

[4] See *also* AGO 84-12, concluding that a municipality is without authority to amend a city charter provision to change the name of the city's appointive planning and zoning board of appeals without the approval by referendum pursuant to s. 166.031, F.S.; and AGO 83-39, concluding that adding alternate members to an appointive board created by special law could only be accomplished by a charter amendment with the approval by referendum of the electors.

[5] See *Neu v. Miami Herald Publishing Co.*, 462 So.2d 821 (Fla. 1985). *And see generally* 82 C.J.S. *Statutes* s. 243b. (the power to amend statutes generally resides in the lawmaking body and may not be delegated to others; and one Legislature cannot limit or enlarge the general power of a subsequent Legislature in the matter of amendments).

[6] Section 22.02(2), Art. 22, of the Jacksonville City Charter.

[7] Section 112.06(1)(b)2., F.S., provides that "[t]he provisions of any special or local law,



present or future, shall prevail over any conflicting provisions in this section, but only to the extent of the conflict." *Compare*, the provisions in Ch. 90-442, Laws of Florida, with those of s. 12, Ch. 79-561, Laws of Florida, which authorize the members of the Santa Rosa County Civil Service Board to be paid "an amount to be determined by joint resolution of the Board of County Commissioners of Santa Rosa county and the Santa Rosa County School Board to defray expenses in the discharge of official duties. . . ."

[8] See, Advisory Opinion to Governor, 22 So.2d 398 (Fla. 1945); AGO 84-51 (ordinance of noncharter county not a "law" within the purview of s. 5[c], Art. II, State Const.); AGO 84-39 (municipal ordinance not a "law" within the meaning of s. 8, Art. I, State Const.); AGO 79-109 (governing body of charter county prohibited in absence of statutory authorization from providing by ordinance for imposition of civil penalties by agencies of county); *Broward County v. Plantation Imports, Inc.*, 419 So.2d 1145 (4 D.C.A. Fla., 1982) (holding that provisions of a county ordinance authorizing assessment of penalties by county agency was unconstitutional, and agreeing with conclusion reached in AGO 79-109).

[9] The Jacksonville Police and Fire Pension Fund was created by Ch. 18615, Special Acts of Florida, 1937.

[10] See s. 2, Ch. 90-442, Laws of Florida, which sets forth s. 22.04(1), Art. 22, of the Jacksonville City Charter.

[11] The terms "[p]ension plan" and "pension fund" are used interchangeably in the special act and are defined in s. 22.03(4), Art. 22, of the city charter to mean "the Jacksonville Police and Fire Pension Fund as created by Chapter 18615, Special Acts of Florida, 1937."

[12] See, e.g., s. 185.06(3), F.S. which places "[t]he sole and exclusive administration of, and the responsibilities for, the proper operation of the [municipal police officers'] retirement trust fund . . . in the board of trustees"; and s. 175.071(4), F.S., which places "sole and exclusive administration" of the municipal firefighters' pension trust fund with the board of trustees.

[13] Section 2, Ch. 90-442, Laws of Florida, setting forth s. 22.04(5), Art. 22, of the Jacksonville City Charter.

[14] Section 2, Ch. 90-442, Laws of Florida, setting forth the text following s. 22.04(15), Art. 22, of the Jacksonville City Charter.

[15] See, e.g., *Gessner v. Del-Air Corporation*, 17 So.2d 522 (Fla. 1944), *Lang v. Walker*, 35 So. 78, 80 (Fla. 1903), AGO's 78-135, 78-94, 75-299, and 71-28. *And see generally* 67 C.J.S. *Officers* ss. 190, 192 (1978) and 73 C.J.S. *Public Administrative Law and Procedure* s. 50 (1983).

[16] See, e.g., *State v. Atlantic Coast Line R. Co.*, 47 So. 969, 974 (Fla. 1908); *Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So.2d 75, 76 (1 D.C.A. Fla. 1874). *And see generally* 1 Am. Jur.2d *Administrative Law and Procedure* s. 44 (1962).

[17] Section 2, Ch. 90-442, Laws of Florida, providing for s. 22.02(4), Art. 22, of the Jacksonville

City Charter.

[18] Section 2, Ch. 90-442, Laws of Florida, setting forth s. 22.04(4), Art. 22, of the Jacksonville City Charter.

[19] *Id.* s. 22.04(12) of the charter.

[20] The special act clearly regulates investment in certain obligations of United States, bonds and accounts. In addition, the authorized purchases of annuities or other benefits or investments for the fund, must be made in compliance with the provisions of Chs. 175 and 185, F.S. See ss. 175.081 and 185.061, F.S., which provide that when the boards of trustees of a municipal firefighters' or police officers' pension trust funds purchase annuity or life insurance contracts certain enumerated principles must be observed.

[21] See Title and s. 1, Ch. 90-442, Laws of Florida. *And see* ss. 175.311 and 185.31, F.S., which make the boards of municipal firefighters' and police officers' trust funds independent of the municipalities for which they serve.

[22] *Compare* Ch. 90-442, Laws of Florida, which does require, in s. 22.04(14), Art. 22, that the board:

"Cause a general investigation to be made by a competent actuary and at least once every 3 years or as required by law thereafter of the retirement, disability, separation, mortality, interest, and employee earning rates; recommend, as a result of such investigation, the tables to be adopted for all required actuarial calculation; cause an annual determination to be made by a competent actuary of the liabilities and reserves of the pension plan and the annual determination of the amount of the contributions required by the city; and maintain the funds of the pension plan on a sound actuarial basis. *A copy of this actuarial study shall be furnished to the city council by the board immediately upon its receipt.*" (e.s.)

Thus, the special act does require the board to be accountable to the Council of the City of Jacksonville with regard to this actuarial study. I would also note that prior to adoption in its present form Ch. 90-442, Laws of Florida, contained a requirement that the board of trustees establish an annual budget for approval by the city council. This provision was deleted.



February 23, 2024

Members of the Charter Review Advisory Committee

Dear Committee Members:

As the City of Tallahassee conducts the first review of the City Charter in well over a decade, we strongly encourage the Charter Review Advisory Committee to consider additional amendments beyond the five recommended by the City Commission. The City shows its commitment to its citizens both through careful enactment of public policy and by proving its trustworthiness to its citizens through ethical behavior. To strengthen the ethical environment in the City, the Charter review should broadly consider improvements to the Charter's ethics provisions. We suggest the following two as a critical start:

- Fill the gap in whistleblower protections. Tallahassee offers whistleblower protections, to employees who bring ethics complaints against their supervisors and city officers. However, there are no protections for whistleblower complaints against City Commissioners or the Auditor/Inspector General. That gap must be filled, and the only way to do it is through a charter amendment.
- Give the Independent Ethics Board jurisdiction to consider complaints against Commissioners in their *ex officio* capacities as members of intergovernmental agencies such as Blueprint. It's only common sense that they should be held to the same standards of Tallahassee's ethics ordinance when they serve on such committees as a required part of their official City duties. We scratched our heads in disbelief when the former City Attorney opined that Commissioners are not covered. The Independent Ethics Board has taken the opposite, and we believe, correct, position. The only way to avoid potential litigation, is for the charter to clearly state that Tallahassee's ethics ordinance applies to Commissioners' service on intergovernmental agencies.

Both of the above recommendations reflect the position of the Tallahassee Independent Ethics Board.

Citizens for Ethics Reform would go even further.

Tallahassee has had nine years of experience with the charter initiative that we successfully put on the ballot in 2014. Two of our members have served either as chair or attorney for the Ethics Board.

The nine years of experience suggests additional changes to the charter:

- Like the recently created Naples Ethics Board, we believe Tallahassee's Ethics Board should have complete jurisdiction regarding whistleblower complaints. Unlike the City Auditor/Inspector General (who currently has limited jurisdiction), under the City Charter

Catherine Baer - Peter Butzin - Jerry Currington, Esq. - Richard Herrington, Esq. - Ben Wilcox



Tallahassee's Ethics Board exists for the sole purpose of recommending ethics and lobbying reforms, providing ethics training, and adjudicating ethics complaints.

Moreover, two bills, SB 7014, and HB 1597, are advancing in the Legislature. The Senate version would virtually eliminate enforcement of the Florida ethics statute and Tallahassee's stronger ethics ordinance. If enacted, whistleblower complaints may become the only effective alternative for enforcing ethical infractions in those cities that have independent ethics boards. This can only be fixed through a charter amendment.

- While the 2014 charter amendment provides the Independent Ethics Board with the ability to recommend improvements to Tallahassee's extraordinarily weak lobby registration and disclosure requirements, it does not provide the Board with the power to enforce those requirements. We believe that the charter should be amended to provide the Independent Ethics Board with the jurisdiction and power to regulate lobbyists.

At the last meeting of the Charter Review Advisory Committee, several members expressed concern that they may not have sufficient time to consider additional charter amendments.

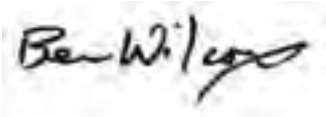
We have expressed disappointment that the City Commission has attempted to limit the scope of the topics and that the review should be completed by March 6, 2024.

Assuming that the City conducts its own two public readings of proposed charter amendments, the deadline for the CRAC's completing its work could be extended to July. We urge you to request the Commission to adopt this deadline.

Sincerely,



Peter A. Butzin



Ben Wilcox,  
On Behalf of Citizens for Ethics Reform

DRAFT Charter Amendment

February 29, 2024

1 AN AMENDMENT TO THE CHARTER OF THE CITY OF  
2 TALLAHASSEE, FLORIDA; AMENDING SECTION 61;  
3 CLARIFYING JURISDICTION AND DUTIES; PROVIDING FOR  
4 SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

5  
6 BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF  
7 TALLAHASSEE, FLORIDA:

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9 SECTION 1. Section 61 of the Charter of the City of  
10 Tallahassee is hereby amended to read as follows:

11  
12 **Sec. 61. Ethics Code and Ethics Board to be established.**

13 a. Ethics Code. The City Commission shall, within six (6) months  
14 of the enactment of this charter provision, enact an ethics,  
15 or conflicts of interest, code with jurisdiction over the  
16 officers and employees of the City of Tallahassee, whether  
17 elected or appointed, paid or unpaid, and over the members,  
18 officers and employees of any boards, commissions, ~~or~~  
19 committees, or outside governmental agencies where City  
20 Commissioners serve on the board of directors thereof. The  
21 ethics code may, as allowed by law, supplement state ethics  
22 laws.

23 b. Ethics Board. There is hereby created an independent,  
24 appointed, ongoing citizens Ethics Board of seven members,  
25 whose membership shall consist of registered City of  
26 Tallahassee electors who have appropriate subject matter  
27 expertise none of whom may be an officer or employee of local  
28 government. Each of the following persons or entities shall  
29 make an appointment of one of five Board members to wit: the

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30 City Commission, the Public Defender for the Second Judicial  
31 Circuit, the State Attorney for the Second Judicial Circuit,  
32 the President of Florida State University and the President  
33 of Florida A&M University. Two Board members shall be  
34 appointed by the Ethics Board. Initial appointments shall be  
35 made within 90 days of the approval of this Charter provision  
36 and all subsequent appointments shall be made within 60 days  
37 of a vacancy occurring. The City Commission shall provide by  
38 ordinance for the length and staggering of the terms of  
39 Ethics Board members.

40 The Ethics Board shall: (i) assist the City Commission in the  
41 development of the ethics code; (ii) adopt bylaws and due process  
42 procedures for the administration of the Ethics Board; (iii) manage  
43 a citywide ethics hotline for receipt of allegations of local  
44 corruption, fraud, waste, mismanagement, campaign finance and  
45 ethics violations; (iv) manage and coordinate the mandatory  
46 training of local officials, officers, employees, and board  
47 members in state and local ethics; (v) have the authority to refer  
48 ethics and corruption matters to appropriate enforcement agencies;  
49 (vi) recommend proposed ordinances, resolutions, or charter  
50 amendments to the City Commission in all areas of ethics and  
51 corruption, including but not limited to: conflicts of interests,  
52 financial disclosure, voting conflicts, hotline policies, ethics  
53 education, ethics in procurement, campaign ethics and financing,  
54 and lobbying; such legislative proposals shall be filed with and  
55 considered by the City Commission; (vii) have the authority to  
56 investigate complaints and to levy those civil penalties as may be  
57 authorized by the City Commission for violations of the City's  
58 ethics code; ~~and~~ (viii) be designated by the City Commission as an  
59 "appropriate local official" with the authority to receive and  
60 investigate complaints and disclosures under F.S. 112.3187 as it  
61 may be amended from time to time; and (ix) employ staff serving in

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62 the Ethics Office. A structure shall be established for the Ethics  
63 Board that ensures independence and impartiality, and provides for  
64 the maximum practicable input from citizens and community  
65 organizations. The Ethics Board shall be funded by the City  
66 Commission within its discretionary budgetary authority at a level  
67 sufficient to discharge the Board's responsibilities.

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69 SECTION 2. Severability. The provisions of this amendment are  
70 declared to be severable, and if any section, sentence, clause, or  
71 phrase of this amendment shall, for any reason, be held to be  
72 invalid or unconstitutional, such decision shall not affect the  
73 validity of the remaining sections, sentences, clauses, and  
74 phrases of this amendment, but shall remain in effect, it being  
75 the legislative intent that this amendment shall stand  
76 notwithstanding the invalidity of any part.

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78 SECTION 3. Effective Date. This Charter Amendment shall take  
79 effect upon adoption by the electors of the City of Tallahassee,  
80 Florida.

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### Agenda Item Details

Meeting	Jan 26, 2022 - City Commission Meeting & Summary
Category	13. POLICY FORMATION AND DIRECTION
Subject	13.09 Independent Ethics Board Jurisdiction Concerning Outside Agencies -- Cassandra K. Jackson, City Attorney
Type	Action, Discussion
Fiscal Impact	No
Recommended Action	Option 1. Accept and approve the City Attorney's opinion as the City's position on the jurisdiction of the Board.

For more information, please contact: Cassandra K. Jackson, City Attorney (850) 891-8554

#### *Statement of Issue*

At the Independent Ethics Board's ("Board") September 2021 meeting, Board member, Ernie Paine sought a legal opinion regarding whether City advisory committee members and the City of Tallahassee Community Redevelopment Agency ("CRA") and the Blueprint Intergovernmental Agency ("Blueprint") Board members and their employees are subject to the jurisdiction of the Board. On November 16, 2021, the Board's counsel, John Reid, provided a legal opinion to the Board's chair. By letter dated November 23, 2021, the Board Chair, Carlos Rey, requested that the City Commission respond on the stated issues. This agenda item provides the City Commission the City Attorney's legal opinion on the jurisdictional issues.

#### *Recommended Action*

Option 1. Accept and approve the City Attorney's opinion as the City's position on the jurisdiction of the Board.

#### *Fiscal Impact*

No immediate fiscal impact.

### Supplemental Material/Issue Analysis

#### *History/Facts & Issues*

At the Independent Ethics Board's ("Board") September 2021 meeting, Board member, Ernie Paine sought a legal opinion regarding whether City advisory committee members and the City of Tallahassee Community Redevelopment Agency (CRA) and the Blueprint Intergovernmental Agency Board members and their employees are subject to the jurisdiction of the Board. On November 16, 2021, the Board's counsel, John Reid, provided a legal opinion to the Board's chair. By letter dated November 23, 2021, the Board Chair, Carlos Rey, requested that the City Commission respond on the stated issues. This agenda item provides the City Commission the City Attorney's legal opinion on the jurisdictional issues.

It is the opinion of the City Attorney that whether the Board has jurisdiction over an advisory board or a local government agency and its employees is determined by either City ordinance, the City Charter, State law and/or the respective creating interlocal agreement.

#### **Board Jurisdiction Over Advisory Board Members**

With regard to City of Tallahassee advisory boards, both the City Charter and Tallahassee Code of Laws (Code) address the Board's jurisdiction. The applicable City Charter provision is Section 61 in pertinent part below:

*“Ethics Code. The City Commission shall, within six (6) months of the enactment of this charter provision, enact an ethics, or conflicts of interest, code with jurisdiction over the officers and employees of the City of Tallahassee, whether elected or appointed, paid or unpaid, and over the members, officers and employees of any boards, commissions, or committees thereof.”*

This Charter section specifically provides for the Board’s jurisdiction over City of Tallahassee boards, commissions, and committees. Additionally, Section 2-4 of the Code defines public official to include “members appointed by the City Commission to serve on any advisory, quasi-judicial, or any other board, commission or committee of the City”. Consistently with the Charter, Section 2-4 additionally contains the definition of “covered individual” to include the defined “public official.” Thus, it is clear that the Board has jurisdiction over members of City of Tallahassee boards, commissions, and committees and the City employees that serve them.

### **Lack of Board Jurisdiction Over Independent Legal Entities**

As stated in the City Charter, Section 61, the jurisdiction of the Ethics Board is limited to officers and employees of the City of Tallahassee and members, officers, and employees of City of Tallahassee boards, commissions, and committees. Thus, in my opinion, unless passed by referendum of the voters pursuant to Florida Statutes, Section 166.031, this jurisdiction cannot be expanded by either the City Commission or the Independent Ethics Board. Both Blueprint and the CRA are independent legal entities. Their board members and employees are not subject to the jurisdiction of the Independent Ethics Board. However, the law is abundantly clear that all Florida government officials, officers, and employees are subject to the Florida Ethics Code. See Section 112.311(5):

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

Thus, Tallahassee residents have an historically knowledgeable and responsive recourse for the redress of ethical concerns regarding local government independent agencies such as the CRA or Blueprint.

Both the CRA and Blueprint were created pursuant to authority granted by state statute as independent legal entities. Florida Statutes, Section 163.357, Governing Body as Community Redevelopment Agency, provides in subsection (1)(b) that “the members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality.” As for Blueprint, Florida Statutes, Section 163.01(7)(a) provides that an interlocal agreement may provide for a separate legal entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement. Part 1, Section 1 of the Second and Restated Interlocal Agreement Between Leon County and the City of Tallahassee, dated December 2015, provides for the creation of Blueprint as a separate legal entity to implement the agreements of the parties as specified in the interlocal agreement.

Additionally, both CRA and Blueprint have the authority to hire their own employees under Florida law and have done so. See Florida Statutes, Section 163.01(5) for Blueprint and Section 163.356(3)(c) for CRA. Entering into agreements with the City of Tallahassee to provide for benefit administration does not convert these separate local legal entities’ employees into City of Tallahassee employees. As for City Commissioners serving as Board members of these legally separate and independent entities, the City Commissioners are subject to the City’s ethics code and the jurisdiction of the Independent Ethics Board to the extent that the local ethics code has requirements that are operative regardless of particular office, i.e., the local full financial disclosure requirement. As for the acceptance of gifts, a City Commissioner could not accept a gift from a CRA or Blueprint vendor who is also a City vendor because



of the prohibition under Section 2-15, City of Tallahassee Code, of accepting gifts from City vendors. However, a City Commissioner could accept a gift from a CRA or Blueprint vendor that was not a City vendor if the gift did not exceed \$100.00 in value as this is permitted by Florida's Ethics Code to which a City Commissioner is subject as a reporting individual. See Florida Statutes, Section 112.3148(4).

Finally, it is the State Ethics Commission before whom a complaint regarding misuse of position when acting as a Blueprint or CRA Board member or employee should be brought, not the Independent Ethics Board as the Board members would not be acting as City Commissioners or employees. See Section 2-8, Tallahassee Code of Laws, "No public official or employee of the city shall use or attempt to use his or her official position or any city property or resource which may be within his or her trust, or perform or fail to perform, his or her official duties, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special privilege, benefit, or exemption for himself or herself or others".

In conclusion, in my opinion until legislatively or judicially determined otherwise, City Commissioners serving in the capacity of board members of Blueprint and the CRA and employees of Blueprint and the CRA are not subject to the Independent Ethics Board's jurisdiction and can be made subject thereto only by referendum of the electors.

#### ***Options***

1. Accept and approve the City Attorney's opinion as the City's position on the jurisdiction of the Board.
2. Do not accept and approve the City Attorney's opinion as the City's position on the jurisdiction of the Board.

#### ***Attachments/References***

Attachment 1 Legal Memorandum



[Attachment 1 Legal Memorandum.pdf \(231 KB\)](#)



## CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE

### LEGAL MEMORANDUM

**TO:** Mr. Carlos A. Rey  
Chair

**Date:** November 16, 2021

**FROM:** John Laurance Reid, Esquire  
Board Counsel

**Cc:** Mr. Dwight A. Floyd  
Independent Ethics Officer

**SUBJECT:** Board's jurisdiction over boards, commissions, or committees.

At this Board's September meeting, Board Member Ernie Paine sought an opinion regarding whether certain boards operating for the benefit of the citizens of Tallahassee fall within the jurisdiction of the City of Tallahassee Independent Ethics Board.

#### GENERAL BACKGROUND

In November 2014, the electors of the City of Tallahassee overwhelmingly voted to amend the municipal charter, creating the Tallahassee Independent Ethics Board and requiring a municipal ethics code. This board has been operational since 2015, and the current ethics code was adopted by the City Commission in late 2019. *See* Ord. No. 19-O-36AA (12-04-2019).

The charter amendment, *inter alia*, established the City of Tallahassee Independent Ethics Board, directed the City Commission to enact an ethics code, and granted jurisdiction to the Ethics Board over public officers and city employees as well as over city boards, commissions, and committees.

The City of Tallahassee has numerous advisory boards, partners with Leon County in the operations of the Blueprint Intergovernmental Agency, formerly known as the Blueprint 2000 Intergovernmental Agency, and operated the Community Redevelopment Agency. These groups of boards are treated differently under the Tallahassee Ethics Code, so this analysis shall be divided into three (3) parts.

#### CITIZEN BOARDS, COMMISSIONS, OR COMMITTEES

##### Background

As previously stated, the voters of Tallahassee amended the charter to require the creation of an ethics code and independent ethics board with jurisdiction over public officers, city employees, and boards, commissions, or committees. *See* § 61.a., TALLAHASSEE CHARTER.



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In December 2019, the Tallahassee City Commission adopted significant amendments to the municipal ethics code, which included definitions of terms. The term "public official" was created to mean members of the city commission and commission-appointed aides, mayor and mayor's appointed assistants and aides, city manager, city attorney, city auditor, city treasurer-clerk, **members appointed by the city commission to serve on any advisory, quasi-judicial, or any other board, commission or committee of the city.**" § 2-4, TALLAHASSEE CODE OF ORDINANCES. (*emphasis added.*)

The City of Tallahassee, either the City Commission as a whole or the Mayor, appoints members to the following advisory committees, some which also hold quasi-judicial powers:

- Affordable Housing Advisory Committee
- Airport Advisory Committee
- Animal Shelter Advisory Board
- Architectural Review Board
- Audit Committee
- Board of Adjustment and Appeals
- Board of Pension Trustees, 175/185 Plans
- Board of Trustees Chapter 175 Supplemental Share Plan
- Board of Trustees Chapter 185 Supplemental Share Plan
- Canopy Roads Advisory Committee
- Capital Area Community Action Agency
- Citizen Police Review Board
- Council on Culture & Arts
- Downtown Improvement Authority
- DRC Redevelopment Area Downtown Redevelopment Commission
- Environmental Board
- Frenchtown/Southside CRA Advisory Committee
- Midtown Stakeholders Committee
- Minority, Women and Small Business Enterprise
- Municipal Code Enforcement Board & Magistrate
- Palmer Munroe Teen Center Advisory Board
- Parks and Recreation Advisory Board
- Planning Commission/Local Planning Agency
- Science Advisory Committee
- Senior Citizens Advisory Board
- Sinking Fund Commission
- Smith-Williams Service Center Advisory Board
- Special Events Advisory Committee
- Tallahassee Housing Authority
- Tallahassee Human Relations Committee
- Tall-Leon County Commission on Status of Women and Girls
- Transit Advisory Committee

Members of the aforementioned boards, commissions, or committees fall within the definition of "public officials." As a result, these members are subject to the jurisdiction of this Board as it applies to those prohibited acts applicable to "public officials," which include misuse of public position (sec. 2-8), solicitation or acceptance of gifts (sect. 2-15), and disclosure or use of non-public information (sec. 2-17) Additionally, board members are required to undergo ethics training provided by the Independent Ethics Officer. *See* § 2-14, TALLAHASSEE CODE OF ORDINANCES.

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### **Conclusion**

The members of Tallahassee citizen boards, commissions, and committees meet the definition of "public officials." As a result, these individuals fall within the jurisdiction of the Tallahassee Independent Ethics Board.

### **BLUEPRINT INTERGOVERNMENTAL AGENCY**

The Blueprint 2000 Intergovernmental Agency which since 2015 is known simply as Blueprint Intergovernmental Agency (hereinafter referred to as "Blueprint"), is a joint agency between Leon County government and the City of Tallahassee within the Department of Planning, Land Management and Community Enhancement (PLACE).

In November 2000, the electors of Leon County voted to extend a local option one-cent sales tax previously approved in 1989. The vote in 2000 created the Blueprint 2000 program, which is the operation we know Blueprint to be today.

### **Authorization and Background**

The Blueprint Intergovernmental Agency, formerly Blueprint 2000 Intergovernmental Agency, is authorized by state law and created by interlocal agreement.

On October 27, 2000, the Leon County Commission and Tallahassee City Commission executed an interlocal agreement creating the Blueprint 2000 Intergovernmental Agency as authorized by state law. *See* § 163.01(7), FLA. STAT. (2000). The agency was created for the purpose of governing the "project management structure for the project planning and construction of the Blueprint 2000 projects" identified in the agreement. *See* 2000 Interlocal Agreement at ¶ 2. The interlocal agreement has since been amended and/or reaffirmed on seven (7) separate occasions, most recently in 2017.

The initial interlocal agreement established a board of directors comprised of all members of the Leon County Board of County Commissions and the Tallahassee City Commission. The most recent version of the interlocal agreement, entitled Second Amended and Restated Interlocal Agreement and executed on December 09, 2015, which was subsequently affirmed on May 09, 2017, made no changes to the composition of the Blueprint Board of Directors.

The initial interlocal agreement authorized Blueprint to hire staff. A staff director would be hired by both the County Administrator and City Manager, but either could terminate the staff director without the other's input. The agreement further stated that the staff director and Blueprint staff "shall have the option of being County employees or City employees." Interlocal Agreement at ¶ 4.

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The Second Amended interlocal agreements, consistent with the first Amended version, changes this classification, instead stating that “The Blueprint Manager and staff shall have the option of being County employees or City employees, ***only for the purposes of employee benefit administration.***” See 2<sup>d</sup> Amended and Restated Interlocal Agreement at Part V, § 2.A. (12-09-2015) (*emphasis added*).

On May 09, 2017, the Second Addendum to the Second Amended and Restated Interlocal Agreement reaffirmed the new language identified in the 2015 agreement. See 2<sup>d</sup> Addendum to the 2<sup>d</sup> Amended and Restated Interlocal Agreement at § 2.A. (05-09-2017).

On January 16, 2020, the Tallahassee City Attorney's office opined on whether Blueprint employees fall under the jurisdiction of the Tallahassee Independent Ethics Code and answered in the negative. The opinion was silent to members of the Blueprint Board of Directors.

### **Blueprint Board of Directors**

As it applies to city commissioners acting as the Board of Directors of Blueprint, these members are within the personal jurisdiction of the Independent Ethics Board. Some acts, however, that would be prohibited in the context of the City of Tallahassee may not be applicable to Blueprint.

Specifically, a City Commissioner who misuses the public position of the Board of Directors of Blueprint is in violation of the Ethics Code because the membership of the Blueprint Board of Directors is indistinguishable from the office of City Commissioner. The membership of the Board is not comprised of persons in their individual capacities but rather by operation of their elected offices. A city commissioner who would misuse the public position of Blueprint Director also misuses the public position of City Commissioner.

A city commissioner who serves on the Blueprint Board of Directors would still be prohibited from accepting or soliciting a gift from “a vendor, lessee of city property, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the city, or from any potential vendor or lessee that is currently engaged in procurement or negotiations with the city or a bid protest.” See § 2-14, TALLAHASSEE CODE OF ORDINANCES. This prohibition remains; however, the code would not expand to also include vendors, lessees, or lobbyists registered with Blueprint but not the City of Tallahassee. Whether the city commissioner accepts the gift in her or his capacity as city commissioner or Blueprint Director is immaterial. The applicability of section 2-14 is dependent on the status of the donor.

A city commissioner is also prohibited from disclosing or using non-public information. This prohibition would apply to information gained by way of membership on the City Commission as well as membership on the Blueprint Board of Directors as the two are indistinguishable.

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### **Blueprint Staff**

The issue of staff is more complicated, because the parties to the interlocal agreement changed the language describing the employees' status.

State law provides for “[a]n interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.” § 163.01(7)(a), FLA. STAT. (2021) (*emphasis added*).

Here, the plain language of the Amended and Second Amended Interlocal Agreements states the purpose of the interlocal agreement is to “create ... a legal entity constituting a public body corporate and politic under Section 163.01 of Chapter 163, Part I, Florida Statutes, as amended[.]” *See* Am. Interlocal Agreement, Part I, § 1 (02-01-2003); 2<sup>d</sup> Am. Interlocal Agreement, Part I, § 1 (12-09-2015). This conclusion is further supported by the fact that Blueprint has regularly engaged in litigation absent involvement by the City of Tallahassee.

State law further authorizes entities created by interlocal agreement to hire staff. *See* § 163.01(7)(b), FLA. STAT. (2021) (“The entity may, in addition to its other powers, be authorized in its own name to make and enter into contracts; to employ agencies or employees; to acquire, construct, manage, maintain, or operate buildings, works, or improvements; to acquire, hold, or dispose of property; and to incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.”) The staff of an entity created by interlocal agreement is not employed by operation of law, because the act is discretionary. An entity created by interlocal agreement may hire staff, or it may choose not to do so.

In this matter, the First and Second Amended Interlocal Agreements explicitly stated that Blueprint will be staffed by those who choose to be “County employees or City employees, only for purposes of employee benefit administration.” The Blueprint staff members are, however, identified as city employees on the City of Tallahassee website.<sup>1</sup>

Blueprint's governing documents further stress the importance for Blueprint to remain independent of Leon County and the City of Tallahassee. As with the Tallahassee Independent Ethics Board, the chain of command for staff does not extend to the City leadership except that the City Manager may terminate the Blueprint Director.

### **Blueprint Code of Ethics and Standard of Conduct**

The Blueprint Board of Directors previously adopted a Blueprint and OEV Staff Code of Ethics and Standard of Conduct, effective on February 16, 2004 and revised on February 21, 2017. The language mirrors that found in the state ethics code (Ch. 112, Part III, *Florida Statutes*) and some provisions of the Tallahassee Ethics Code. All Blueprint staff receive this ethics code and

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<sup>1</sup> Job Descriptions | Employment (talgov.com) (<https://www.talgov.com/employment/hr-job-descriptions.aspx>)



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are required to submit a signed statement acknowledging receipt and avail themselves to its applicability.

The statement of purpose for the Blueprint Code of Ethics reads, "This policy shall apply to all employees of the Blueprint Intergovernmental Agency (Agency) and the Office of Economic Vitality (OEV)[.]" § 108.01, Blueprint and OEV Staff Code of Ethics and Standard of Conduct. (2017). The statement further states that "Members of the Board of Directors and City and County staff who serve on Blueprint 2000 committees are subject to the adopted policies of their respective entities." *Id.*

The Blueprint Ethics Code concludes that "[t]he investigation and prosecution of any alleged violation of this Code of Ethics shall be in accordance with the Florida Statutes or local ordinances." § 108.13, Blueprint and OEV Staff Code of Ethics and Standard of Conduct. (2017).

Questions remain regarding this Independent Ethics Board's jurisdiction over Blueprint employees.

(1) Does the qualifying language in the Amended and Second Amended Interlocal Agreements, specifically that the staff are municipal employees "only for the purposes of employee benefit administration," exempt these individuals as city employees for purposes of section 61 of the Tallahassee Charter? What was the intent of adding this new language?

(A) Do Blueprint employees participate in the City of Tallahassee's group health insurance plan?

(B) Do Blueprint employees participate in the City of Tallahassee's pension plan, which is explicitly reserved for city employees, and do they receive a matching contribution from the City?

(2) Do the Blueprint staff who are employed by the city serve on Blueprint 2000 committees?

(A) Do all Blueprint staff participate in Blueprint 2000 committees, or is that group a subset of all staff?

### **Conclusion**

Tallahassee City Commissioners serving on the Board of Directors for the Blueprint Intergovernmental Agency fall under the jurisdiction of the Tallahassee Independent Ethics Board. The question as to jurisdiction over Blueprint staff is less clear.

A recommended solution pertaining to the ambiguity related to Blueprint staff would be to simply inquire of the Tallahassee City Commission its intention. If the City Commission intends for those Blueprint staff paid by the City of Tallahassee to be subject to the Tallahassee Ethics

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Code, the applicable ordinances could be amended to better clarify this matter. Likewise, if the Tallahassee City Commission wishes for Blueprint staff to be outside this Board's jurisdiction, that could also be better clarified.

If a complaint were filed against a Blueprint staff person alleging a violation of the Tallahassee Ethics Code, this Board will ultimately make its own findings as to jurisdiction, which could be subject to legal challenge initiated by the Respondent.

### **CITY OF TALLAHASSEE COMMUNITY REDEVELOPMENT AGENCY**

The purpose of the CRA is to create a public entity to implement the community redevelopment activities in low- and moderate-income neighborhoods as authorized by state law. *See* Ch. 163, Part III, FLA. STAT. (2021).

The City of Tallahassee Community Redevelopment Agency (CRA) was created in August 1998 and its board was established the following month. The CRA membership originally consisted of the City of Tallahassee's Mayor and four City Commissioners as well as four (4) Leon County Commissioners. On May 24, 2018, the interlocal agreement was amended to remove the county commissioners. This change is reflected in municipal ordinance. *See* § 6-52, TALLAHASSEE CODE OF ORDINANCES; *see also* Ord. No. 20-O-16 § 1 (04-08-2020). According to its 2020 annual report, the Tallahassee CRA has five (5) full-time employees and one (1) part-time intern.

### **CRA Governing Body**

As of 2018, the CRA is made up solely of the City of Tallahassee's mayor and four (4) city commissioners. As with their membership on the Blueprint Board of Directors, these members fall within the jurisdiction of the Tallahassee Independent Ethics Board.

The CRA is authorized to add citizens to its membership, although they currently do not do so. *See* § 163.357(1)(c), FLA. STAT. (2021) (a "governing body which consists of five members may appoint two additional persons to act as members of the community redevelopment agency.") On April 05, 2021, the Tallahassee City Attorney's office opined on such hypothetical, stating that citizens appointed to the CRA are not subject to the jurisdiction of the Tallahassee Independent Ethics Board, but are subject to the jurisdiction of the Florida Commission on Ethics.

Currently, the CRA members are the same as the Tallahassee City Commission, so the members have all relevant powers depending on the capacity in which they sit. If the Tallahassee City Commission were to amend its ordinance to add citizens to the CRA, the question as to whether those individuals are subject to the Tallahassee Ethics Code could and should be addressed at that time.

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### **CRA Staff**

The City of Tallahassee CRA currently employs five (5) full-time employees and one (1) part-time intern. The Tallahassee CRA is a separate public body corporate and politic. *See* § 163.356(1), FLA. STAT. (2021) (“any county or municipality may create a public body corporate and politic to be known as a ‘community redevelopment agency.’”); *See also* § 163.357(1)(b), FLA. STAT. (2021) (“The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality.”) The CRA employees, however, are currently identified as city employees on the City of Tallahassee’s website.<sup>2</sup>

While not an advisory board, the Tallahassee CRA is required to advise the Tallahassee City Commission on certain matters. Pursuant to state law, the City Commission may not delegate the powers to designate areas as slums or blighted areas, to grant final approval to community redevelopment plans, to authorize the issuance of bonds, to approve the acquisition, demolition, removal, or disposal of property, to approve development of community policing innovations, or to exercise eminent domain. § 163.358, FLA. STAT. (2021).

As with Blueprint, a possible solution regarding the uncertainty related to CRA staff would be for the Tallahassee City Commission to clearly state its legislative intent as it applies to these individuals. An amendment to the applicable ordinances could easily clear up any ambiguity.

### **Conclusion**

The CRA members are public officials within the jurisdiction of the Tallahassee Independent Ethics Board. The CRA staff are intended to be separate from the City of Tallahassee, including its exercise of powers delegated to it by the City Commission. These individuals, however, are listed by the City of Tallahassee as city employees, which would avail them to the jurisdiction of the Tallahassee Independent Ethics Board.

As with the facts presented regarding Blueprint, the Tallahassee City Commission could clarify this issue, explicitly stating whether the ethics code is intended to include these employees. Absent commission action, this Board would issue a finding of jurisdiction, if and only when an ethics complaint was filed against an employee operating under the City of Tallahassee CRA.

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<sup>2</sup> Job Descriptions | Employment (talgov.com) (<https://www.talgov.com/employment/hr-job-descriptions.aspx>)



## CITY OF TALLAHASSEE INDEPENDENT ETHICS BOARD

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October 17, 2023

Tallahassee Mayor and City Commissioners  
300 S. Adams Street  
Tallahassee, Florida 32301

Dear Mayor and City Commissioners,

I bring you greetings on behalf of the Tallahassee Independent Ethics Board. On September 19, 2023, the Tallahassee Independent Ethics Board voted to seek an audience with the City Commission to follow up on a recommendation that would authorize the Ethics Board to serve in a limited capacity as an appropriate local official for whistleblower complaints. We ask that you include this recommendation in the current Charter amendment process.

On February 16, 2022, the Ethics Board participated in a City Commission ethics workshop. We presented several recommendations, some of which you adopted. One of the recommendations was that the City Commission grant authority for the Tallahassee Independent Ethics Board to operate as an appropriate local official to designate complaints as whistleblowers in accordance with Florida Statute 112.3187 when the Inspector General lacked jurisdiction to do so. You directed the Board to follow up with the Inspector General. We did and concluded that we would best serve this Commission and the public if we were granted authority to act in this limited capacity. The Ethics Board prepared and submitted a recommended ordinance consistent with these goals.

On July 5, 2022, the Ethics Board sent a letter to you by email updating you on our recommendation. We copied the City Manager, Inspector General, and City Attorney. We assumed that we did not get a response because of the pending November 2022 election, and on October 7, 2022, the ethics officer contacted the City Manager and confirmed this.

On April 7, 2023, the Ethics Officer contacted the City Manager to request the recommendation be placed on a City Commission agenda. The City Manager directed his staff to assist with placement on the June 14, 2023, meeting agenda; however, as the deadline approached for submitting agenda items, we were pulled from the Commission agenda. We were told the City Attorney wished to respond in writing before presenting this matter to the City Commission.

A few days after the agenda was pulled, the City Attorney's Office provided a memo that stated that the recommendation could only be approved through a referendum. The City Attorney cited a Florida statute

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DWIGHT A. FLOYD  
ETHICS OFFICER  
300 S. ADAMS ST., BOX A-25  
TALLAHASSEE, FL 32301-1731  
850-545-5756

CARLOS REY  
BOARD CHAIR  
  
KRISTEN COSTA  
BOARD VICE CHAIR

ERNE PAINE  
BOARD MEMBER  
  
PATRICK KELLY  
BOARD MEMBER

RICA CALHOUN  
BOARD MEMBER  
  
ADAM KOMISAR  
BOARD MEMBER

JOHN L. REID  
BOARD COUNSEL

October 17, 2023

Page 2

Carlos Rey

and included an opinion by the State Attorney General's Office. In follow-up, the Ethics Board Attorney prepared a legal memorandum and opined that such change was permitted by ordinance. The memorandum provided numerous opinions from the State Attorney General's Office, which gave approval of an act similar to the Board's request through a City ordinance.

Because we had two differing legal opinions, we sought an advisory opinion of the State Attorney General's Office on this specific issue. We included both the Board Attorney's and the City Attorney's opinions. Unfortunately, the State Attorney General responded that they required a request from the City before they would offer an opinion. The State Attorney General's response also stated that they spoke with the City Attorney, who communicated that the City was not interested in receiving an opinion, ultimately shutting the door on an objective finding.

We understand and accept the City Commission's deference to opinions granted by its legal counsel, and we respect the City Commission's decision to follow her guidance. So, for practicality and to further a reasonable solution, we ask that the recommendation granting the whistleblower authority to the Ethics Board on matters outside the Inspector General's jurisdiction be included in the current Charter amendment process.

The City Charter requires we present an annual report to the City Commission. We have asked the City Manager to allow us to make that presentation at a November Commission meeting. We also request that we be permitted to discuss the above recommendation when we present the annual report.

If you have any questions or concerns, I will make myself available.

Sincerely,

**Carlos Rey**

Carlos Rey, Chair

Attachment: Follow-up letter dated July 1, 2023  
Memo by the City Attorney  
Memo by the Board Attorney  
Response from the State Attorney General's Office

CC: Tallahassee Independent Ethics Board  
Tallahassee Independent Ethics Officer



## CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE

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July 1, 2022

Tallahassee City Commission  
Tallahassee City Hall  
300 S. Adams Street  
Tallahassee, FL 32301

**RE: Recommendations for Code of Ordinances  
Draft Ordinance No.: 22-ORD-01**

Dear Mayor and Commissioners,

I hope this correspondence finds you well. Enclosed please find for your review and consideration draft amendments to the municipal Code of General Ordinance pertaining to whistleblower complaints in limited circumstances.

### **BACKGROUND**

As you recall, the Tallahassee City Commission on February 16, 2022 allowed the Independent Ethics Board to participate in an ethics workshop, which included, *inter alia*, whistleblower complaints. Specifically, the issue addressed was whether the ethics board should have any role in whistleblower complaints, which currently fall under the purview of the Inspector General, and if so, to what extent.

The Office of the Inspector General does an exceptional job at handling whistleblower complaints. The Tallahassee Independent Ethics Board supports the Inspector General's office continuing to serve as the "appropriate local official" for receiving and investigating whistleblower. As discussed at the workshop, the Tallahassee Independent Ethics Board is well-suited to address whistleblower complaints in those limited circumstances where the Inspector General cannot do so. Currently, the Office of Inspector General cannot serve as the "appropriate local official" in cases that involve the Mayor and his staff, City Commissioners and their staff, and those within the Inspector General's office.

In order to qualify as an "appropriate local official," the official or official entity must be affiliated with the governmental entity and must have the authority to "investigate, police, manage, or otherwise remedy the violation or act by the violating governmental entity." Igwe v. City of Miami, 208 So. 3d 150, 154 (Fla. 3d DCA 2016). The Tallahassee Independent Ethics Board meets this definition.

The Tallahassee Charter enumerates those powers designated to the Tallahassee Independent Ethics Board, one being to "have the authority to investigate complaints and to levy those civil penalties as may be authorized by the City Commission for violations of the City's ethics code[.]" See § 61, TALLAHASSEE CHARTER.

Tallahassee Independent Ethics Board  
Recommendations for Code of Ordinances  
July 1, 2022  
Page 2 of 2

The Tallahassee Independent Ethics Board has thoroughly reviewed this issue to determine how it may be helpful to the City by filling in gaps within the current whistleblower process. Attached please find a legal opinion by our Board Counsel which helped the Board reach its conclusions and recommendations. As previously stated, the Office of Inspector General is very capable in handling complaints where it has jurisdiction; therefore, we do not recommend our Board having any overlapping jurisdiction in those matters.

### **PROPOSED LANGUAGE**

The proposed substantive language is divided into three sections.

Section 1 amends the definitions section of the municipal ethics code in two places. First, it expands those sections contained within ethics code to incorporate those changes made by the City Commission on April 20, 2022. Additionally, the definition of “Tallahassee Independent Ethics Board” is amended to include a new section 2-23, which is created to authorize limited jurisdiction over whistleblower complaints.


Section 2 creates a new section, authorizing the Tallahassee Independent Ethics Board to process and investigate whistleblower complaints in limited circumstances. As previously stated, the Ethics Board would only have jurisdiction over whistleblower complaints when the Respondent falls in categories outside the jurisdiction of the Office of Inspector General.

Section 3 amends the current ordinance addressing whistleblower complaints by identifying those areas where the Office of Inspector General lacks jurisdiction. This change is not substantive as it merely codifies the jurisdictional limits already imposed on the Office of the Inspector General.

### **CONCLUSION**

If you or your staff have any questions regarding these proposed ordinances and/or request our appearance at a public meeting for discussion and explanation, the Tallahassee Independent Ethics Board will gladly accommodate your wishes.

Sincerely,

  
CARLOS A. REY  
Chair

Enclosures

cc: Mr. Dwight A. Floyd  
Independent Ethics Officer

Tallahassee Charter Officers

Tallahassee Independent Ethics Board  
DRAFT Ordinance

June 2022  
22-ORD-01

DRAFT ORDINANCE NO.:  
22-ORD-01

1 AN ORDINANCE OF THE CITY OF TALLAHASSEE,  
2 FLORIDA; AMENDING SECTION 2-4; IDENTIFYING THOSE  
3 SECTIONS WITHIN THE ETHICS CODE; AUTHORIZING THE  
4 ETHICS BOARD TO ACCEPT COMPLAINTS UNDER SECTION  
5 2-23; CREATING SECTION 2-23; DESIGNATING THE  
6 ETHICS BOARD AS APPROPRIATE LOCAL GOVERNMENTAL  
7 OFFICIAL FOR WHISTLEBLOWER COMPLAINTS IN LIMITED  
8 CIRCUMSTANCES; ESTABLISHING PROCEDURES FOR  
9 ACCEPTING AND PROCESSING WHISTLEBLOWER  
10 COMPLAINTS; AMENDING SECTION 2-84; CLARIFYING  
11 JURISDICTION OF OFFICE OF INSPECTOR GENERAL FOR  
12 WHISTLEBLOWER COMPLAINTS; PROVIDING FOR  
13 SEVERABILITY; REPEALING CONFLICTING ORDINANCES;  
14 AND PROVIDING AN EFFECTIVE DATE.  
15

16 BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF  
17 TALLAHASSEE, FLORIDA:  
18

19 SECTION 1. Section 2-4 of the Code of Ordinances of the  
20 City of Tallahassee is hereby amended to read as follows:  
21

22 **Sec. 2-4. Definitions.**

23 The following words, terms, and phrases, when used in the  
24 city ethics code, sections 2-3 through 2-19 ~~2-17~~, shall have the  
25 meaning ascribed to them in this section, except where the  
26 context clearly indicates a different meaning:

27 *Benefit* means anything of value, including but not limited  
28 to compensation, reward, pecuniary gain that is not equally  
29 available to similarly situated members of the general public.

Page 1 of 6

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



**Tallahassee Independent Ethics Board**  
**DRAFT Ordinance**

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30           *City* means the City of Tallahassee, Florida.

31           *Compensation* means fee, retainer, contract payment, salary,  
32 wages, reward, any other payment of money, or any other  
33 consideration of any kind, either monetary or nonmonetary.  
34 "Compensation" does not include reimbursement of actual out-of-  
35 pocket expenses.

36           *Covered individual* means:

37           (1) Each public official;

38           (2) Each employee and each member of a city board,  
39 commission, or council who is required by F.S. §  
40 112.3145, to file an annual financial disclosure,  
41 including any employee with purchasing authority  
42 exceeding \$35,000.00; and

43           (3) Each employee who is a procurement employee.  
44 "Procurement employee" means any city employee who has  
45 participated in the preceding 12 months through  
46 decision, approval, disapproval, recommendation,  
47 preparation of any part of a purchase request,  
48 influencing the content of any specification or  
49 procurement standard, rendering advice, investigation,  
50 or auditing or in any other advisory capacity in the  
51 procurement of contractual services or commodities, if  
52 the cost of such services or commodities exceeds or is  
53 expected to exceed \$10,000.00 in any fiscal year.

54           *Ethics officer*, as provided in the City Charter, Section  
55 62, shall report to and be under the exclusive jurisdiction of  
56 the ethics board. If the ethics board determines, in its sole  
57 discretion, that the ethics officer is to be a city employee,  
58 such designation shall be only for the purpose of providing  
59 administrative services, such as human resources, payroll, and  
60 information technology services.

**Tallahassee Independent Ethics Board**  
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61        *Exemption* means to be free of, or excused from, an  
62 obligation or duty required of others similarly situated.

63        *Gift* means gift as defined in F.S. § 112.312(12), as may be  
64 amended from time to time.

65        *Indirect gift* means indirect gift as defined in Rule 34-  
66 13.310(8), Florida Administrative Code, as may be amended from  
67 time to time.

68        *Public official* means members of the city commission and  
69 commission-appointed aides, mayor and mayor's appointed  
70 assistants and aides, city manager, city attorney, city auditor,  
71 city treasurer-clerk, members appointed by the city commission  
72 to serve on any advisory, quasi-judicial, or any other board,  
73 commission or committee of the city.

74        *Relative*, unless otherwise specified in ethics code, means an  
75 individual who is related to a public official or employee of  
76 the city as father, mother, son, daughter, brother, sister,  
77 uncle, aunt, first cousin, nephew, niece, husband, wife,  
78 domestic partner, father-in-law, mother-in-law, son-in-law,  
79 daughter-in-law, brother-in-law, sister-in-law, stepfather,  
80 stepmother, stepson, stepdaughter, stepbrother, stepsister,  
81 half-brother, half-sister, grandparent, great grandparent,  
82 grandchild, great grandchild, step grandparent, step great  
83 grandparent, step grandchild, step great grandchild, person who  
84 is engaged to be married to the public official or employee of  
85 the city or who otherwise holds himself or herself out as or is  
86 generally known as the person whom the public official or  
87 employee of the city intends to marry or with whom the public  
88 official or employee of the city intends to form a household, or  
89 any other natural person having the same legal residence as the  
90 public official or employee of the city.

**Tallahassee Independent Ethics Board**  
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91        *Resource* means information gained principally through one's  
92 position with the city and not available to the general public.

93        *Special privilege* means economic benefit of any kind that  
94 inures to the person and is not equally available to similarly  
95 situated members of the general public.

96        *Tallahassee Independent Ethics Board* means the board as  
97 provided in the City Charter, established in section 2-2 and  
98 authorized to process complaints as described in sections  
99 section 2-22 and 2-23.

100        *Vendor* means any person or entity who has a pending bid  
101 proposal, an offer or request to sell goods or services, sell or  
102 lease real or personal property, or who currently sells goods or  
103 services, or sells or leases real or personal property, to the  
104 city. For the purposes of this definition, a vendor  
105 representative includes an owner, director, or manager.  
106

107        SECTION 2. Section 2-23 of the Code of Ordinances of the  
108 City of Tallahassee is hereby created to read as follows:  
109

110        **Sec. 2-23. Whistleblower complaints.**

111        (a) When a complainant protected by the Florida's Public  
112 Whistle-blower's Act, F.S. §§ 112.3187-112.31895, as may be  
113 amended from time to time, files a sworn complaint disclosing  
114 information under F.S. § 112.3187(5), and alleging wrongdoing by  
115 the mayor or their staff, a city commissioner or their staff, or  
116 the inspector general or their staff, the ethics board shall be  
117 the appropriate local governmental official under F.S. §  
118 112.3187(8) (b) or (c).

119        (b) The complainant shall file the sworn complaint with  
120 the ethics board within 60 days after the adverse action  
121 prohibited by F.S. § 112.3187(4). The ethics officer shall  
122 conduct a preliminary investigation of the complaint within 15

**Tallahassee Independent Ethics Board**  
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123 days of receipt. If the matter is not resolved within 90 days of  
124 the completion of the preliminary investigation, the ethics  
125 officer shall initiate those administrative remedies provided by  
126 the ethics board for handling sworn complaints.

127 (c) The procedures of this section are a condition  
128 precedent to bringing a civil action pursuant to F.S. §  
129 112.3187(8) (c).

130

131 SECTION 3. Section 2-84 of the Code of Ordinances of the  
132 City of Tallahassee is hereby amended to read as follows:

133

134 **Sec. 2-84. Whistleblower complaints.**

135 (a) If a city employee protected by the Florida's Public  
136 Whistle-blower's Act, F.S. §§ 112.3187–112.31895, as may be  
137 amended from time to time, maintains that any of the actions  
138 prohibited by F.S. § 112.3187(4), has occurred, a city employee  
139 may file a complaint with the office of inspector general, the  
140 appropriate designated local official, under F.S. §  
141 112.3187(8)(b) within 60 days after the action prohibited by  
142 F.S. § 112.3187(4). The inspector general's office shall conduct  
143 a preliminary investigation of the complaint within 15 days of  
144 receipt. If the matter is not resolved within 90 days of the  
145 completion of the preliminary investigation, the inspector  
146 general shall refer the matter to the Department of  
147 Administrative Hearings (DOAH), unless the employee agrees  
148 otherwise in writing. The DOAH hearing officer shall make  
149 findings of fact and conclusions of law for a final decision by  
150 the city appointed official to whom the employee reports.  
151 Participation in this process, including the impartial DOAH  
152 proceeding, is a condition precedent to bringing a civil action  
153 pursuant to F.S. § 112.3187(8) (c).

154 (b) If the adverse action is alleged to have been taken by  
155 the mayor or their staff, a city commissioner or their staff, or

**Tallahassee Independent Ethics Board**  
**DRAFT Ordinance**

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156 the inspector general or their staff, the complaint shall be  
157 filed with the ethics officer, pursuant to section 2-23.

158  
159 SECTION 4. Severability. The provisions of this Ordinance  
160 are declared to be severable, and if any section, sentence,  
161 clause, or phrase of this Ordinance shall, for any reason, be  
162 held to be invalid or unconstitutional, such decision shall not  
163 affect the validity of the remaining sections, sentences,  
164 clauses, and phrases of this Ordinance, but shall remain in  
165 effect, it being the legislative intent that this Ordinance  
166 shall stand notwithstanding the invalidity of any part.

167  
168 SECTION 5. Repeal of conflicting ordinances. Any and all  
169 ordinances or parts of ordinances in conflict herewith are  
170 hereby repealed to the extent of such conflict.

171  
172 SECTION 6. Effective Date. This Ordinance shall take effect  
173 immediately upon its passage.

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## CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE

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### LEGAL MEMORANDUM

**TO:** Mr. Carlos A. Rey  
Chair

**Date:** January 18, 2022

**FROM:** John Laurance Reid, Esquire  
Board Counsel

**Cc:** Mr. Dwight A. Floyd  
Independent Ethics Officer

**SUBJECT:** Whistleblower complaints and the Ethics Board.

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At the February 2021 meeting, this Board discussed the whistleblower complaint process within the City of Tallahassee following the significant changes made to local ordinances by the Tallahassee City Commission in July 2020.

At that time, this Board concluded that the receipt of alleged whistleblower complaints and their subsequent investigations were within the sole jurisdiction of the Tallahassee Office of the Inspector General. Furthermore, the municipal charter and local ordinances, under the authority of state law, explicitly designated this role to the Inspector General and any expansion to the Tallahassee Independent Ethics Board would require amendment to the current ordinances.

At the December 2021 meeting, this Board sought options as to how the Tallahassee Independent Ethics Board could accept and process whistleblower complaints in light of the changes made by the Tallahassee City Commission in July 2020.

### BACKGROUND

#### Florida's Whistleblower's Act.

Under Florida's Whistleblower's Act, an individual avails himself or herself to the protections of the statute when he or she engages in statutorily protected activity, which is limited to the disclosure of information pertaining to one (1) of the two (2) following actions:

- (1) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
- (2) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

Whistleblower complaints and the Ethics Board.  
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§112.3187(5), FLA. STAT. (2021).

Furthermore, the complaint within a municipal government rises to be statutorily protected only if disclosed to “a chief executive officer as defined in s. 447.203(9)<sup>1</sup> *or other appropriate local official.*” §112.3187(6), FLA. STAT. (2021) (*emphasis added*). Currently, Tallahassee does not designate the Tallahassee Independent Ethics Board as an appropriate local official; however, the City Commission could extend authority to this Board if it wished.

The assignment of an appropriate local official and proper establishment of an administrative procedure for whistleblower complaints are significant, because these factors are necessary as conditions precedent for any aggrieved employer wishing to bring a civil suit against the City of Tallahassee. *See* §112.3187(8)(b), FLA. STAT. (2021).

#### Appropriate Local Official

The term “appropriate local official” is not defined by statute. The Florida Attorney General has opined on the issue, arguing that more than one person can serve as an appropriate local official if the entity has “the authority to investigate, police, manage, or otherwise remedy the violation or act” by the violating governmental entity as required by state law. OP. ATT’Y GEN. FLA. 96-40; *see also* §112.3187(6), FLA. STAT. (2021).

In Palm Beach County, the county commission adopted ordinances designating both the Inspector General and the county’s ethics commission to serve as the “appropriate local official” for purposes of whistleblower complaints. The Florida Attorney General stated that both entities holding the single role of an appropriate local official was permissible under the state statute. *See* OP. ATT’Y GEN. FLA. 2010-48.

Additionally, the Florida Attorney General opined that a collegial body may serve as the “appropriate local official” for purposes of the state’s whistleblower statute; however, the opinion warned that considerations of Florida’s Sunshine and Public Record Laws must be contemplated. The Hillsborough Transit Authority (HART) had designated itself as the appropriate local official for purposes of Florida’s whistleblower statute. The opinion stated that such designation was permissible but warned about how the strict requirements of Florida’s Sunshine and Public Records Law may affect that role. As public officials, members of the HART Board of Directors were prohibited from discussing official business outside of a publicly noticed meeting open to the public. As a result, the Florida Attorney General advised the Authority that its designation as the appropriate local official for whistleblower complaints “may not be advisable.” OP. ATT’Y GEN. FLA. 2012-20.

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<sup>1</sup> “‘Chief executive officer’ for the state shall mean the Governor and for other public employers shall mean the person, whether elected or appointed, who is responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer.” § 447.203(9), FLA. STAT. (2021).

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The quandary faced by the Hillsborough Transit Authority is somewhat avoided by the Tallahassee Independent Ethics Board. Pursuant to state law, official ethics complaints made to this Board are confidential and exempt from public records laws and are not subject to public disclosure until a finding of probable cause, either in the affirmative or negative. *See* §112.324(2)(a), FLA. STAT. (2021).

The Hillsborough Transit Authority is body politic and corporate that exists by virtue of its own charter, not that of another political subdivision (county or municipality) and is authorized by state law. *See* Art. I, §§ 1 and 3, Hillsborough Transit Authority (HART) Charter (1980); *see also* § 163.567, *et seq.*, FLA. STAT. (2021). Pursuant to its own powers vested by its Charter, the Board of Directors designated itself as the official local official for purposes of whistleblower complaints for employees of the transit authority. The issue of the HART Board is distinguishable from the Tallahassee Independent Ethics Board as the former is the sole policy decisionmakers for its entity, while this Board falls within the City of Tallahassee.

The Florida Attorney General has advised that a local ethics board may in fact serve as the appropriate local official for purposes of Florida's whistleblower statute. The Town of Longboat Key had established a municipal ethics commission and sought, *inter alia*, to designate it as its appropriate local official for accepting and processing whistleblower complaints. The Florida Attorney General said that the appropriate local official need not be a single person or office and that the Longboat Key ethics commission could serve in that role if designated. OP. ATT'Y GEN. FLA. 96-40.

While opinions of the Florida Attorney General are nonbinding, Florida courts have agreed. In *Rustowicz v. N. Broward Hosp. Dist.*, the Fourth District Court of Appeal agreed with the Attorney General's opinions, finding that the Board of Directors for the North Broward Hospital District constituted an appropriate local official. 174 So. 414, 424-25 (Fla. 4<sup>th</sup> DCA 2015).

Likewise, the Third District Court of Appeal held that the Miami City Commission qualified as an appropriate local official for purposes of whistleblower complaints. *Igwe v. City of Miami*, 208 So. 3d 150, 154 (Fla. 3<sup>d</sup> DCA 2016).

#### Tallahassee's Whistleblower's Act.

On July 08, 2020, the Tallahassee City Commission adopted Ord. 20-O-22AA, which, *inter alia*, created the Office of the Inspector General and created procedures for whistleblower complaints submitted by city employees. While the Independent General reports directly to the Tallahassee City Commission, the office is operationally independent from other city appointed officials. § 2-76, *Tallahassee Code of Ordinances* (2022). For a city employee to gain the protections of state and local whistleblower protections, he or she must follow the process identified in § 2-84, *Tallahassee Code of Ordinances* (2022).



Whistleblower complaints and the Ethics Board.  
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In the case of Tallahassee, the City Commission explicitly and unambiguously designates the Inspector General as the “appropriate local official” for whistleblower complaints. § 2-80(6), *Tallahassee Code of Ordinances* (2022). Local ordinances do not grant this designation to the Tallahassee Independent Ethics Board.

If a city employee were to initiate a complaint, including one made verbally, that falls within the enumerated grounds<sup>2</sup> for whistleblower protection, the Tallahassee Independent Ethics Board would not be authorized by the Tallahassee City Commission to take any action consistent with whistleblower complaints; however, the protections against retaliation would attach to the complainant. *See Igwe* 208 So. 3d at 154 (whistleblower protections attach when the employee reports the violation to an entity empowered to investigate, police, manage, or otherwise remedy the violation). The Florida Supreme Court has held that Florida’s Whistleblower’s Act is “a remedial act, [and] the statute should be construed liberally in favor of granting access to the remedy.” *Irven v. Dep’t of Health & Rehabilitative Servs.*, 790 So. 2d 403, 405-06 (Fla. 2001).

State law grants authority to local governments to adopt their own whistleblower procedures. *Id.*; *see also* §112.3187(8)(b), FLA. STAT. (2021). The Tallahassee City Commission satisfied this requirement.

Specifically, the employee must file a complaint with the Office of the Inspector General within 60-days of an adverse action taken in response to statutory protected activity. The Inspector General must conduct a preliminary investigation within 15-days of the complaint being filed. If the matter is not resolved within 90-days, the complaint shall be referred to the Florida Division of Administrative Hearings for resolution, unless the complainant agrees to keep the matter within the city. The administrative law judge shall make findings of fact and conclusions of law for a final decision to be made by the city. This process is a condition precedent to the employee bringing a civil action against the City. *Id.* A civil action must be filed within 180-days of the prohibited act and only after all administrative remedies have been exhausted. *See* §112.3187(8)(c), FLA. STAT. (2021).

The definition of adverse personnel action is found in state law and includes “discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contract.” §112.3187(3)(c), FLA. STAT. (2021). For purposes of whistleblower claims, the term “agency” includes a municipal government entity. *See* §112.3187(3)(a), FLA. STAT. (2021).

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<sup>2</sup> NATURE OF INFORMATION DISCLOSED. - The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

§112.3187(5), FLA. STAT. (2021).

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In sum, a city employee who later files a civil claim against the City would likely survive a motion to dismiss on jurisdictional grounds for failure to exhaust administrative remedies, because he or she notified this Board. The city employee, however, would not be automatically entitled to the administrative remedies established by local ordinances unless implemented through the Office of the Inspector General.

#### Concurrent Ethics and Whistleblower Complaint Investigations.

The matter before this Board is whether a city employee bringing an ethics complaint may also avail him or herself to the retaliation protections of the whistleblower statute through the City of Tallahassee. The answer to this question is in the negative with a caveat.

The employee may not obtain whistleblower status from the Tallahassee Independent Ethics Board; the granting of whistleblower status is explicitly limited to the Office of the Inspector General. The employee could, however, claim retaliation as well as compliance with the state statute later in litigation if a relevant complaint is inadvertently filed with the Tallahassee Independent Ethics Board. As a result, this Board has an obligation to timely refer matters subject to whistleblower protection to the Office of the Inspector General so as to avail the complainant to the procedures established under local ordinance.

A city employee who files an ethics complaint that also falls under the whistleblower conduct may bring a concurrent complaint with Office of the Inspector General for the same conduct alleged and seek protection through that office. Additionally, a city employee could seek whistleblower status after the adverse action is taken if the subject matter of the ethics complaint involves the activities defined in statute and the adverse action is reported to the Inspector General within 90-days of the adverse personnel action.

It is important to note that not every ethics complaint would entitle the complainant to whistleblower protections, nor would every whistleblower complaint involve conduct subject to the Tallahassee Ethics Code. For instance, conduct that violates the prohibition against the misuse of public position under the Tallahassee Ethics Code does not necessarily constitute malfeasance, and vice versa.

If a city employee were to file an ethics complaint that reports either (1) a “violation or suspected violation of any federal, state, or local law, rule, or regulation ... which creates and presents a substantial and specific danger to the public’s health, safety, or welfare”, or (2) “[a]ny act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, ... or gross neglect of duty”, such complaint would subject the complainant to the protections of the state and local whistleblower acts. *See* §112.3187(5), FLA. STAT. (2021).

Currently, local ordinances require the Tallahassee Independent Ethics Board to suspend its action when the allegations contained within a complaint are filed or being considered by a “federal, state, or local law enforcement agency or the state ethics commission.” § 2-22,

Whistleblower complaints and the Ethics Board.  
January 18, 2022  
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*Tallahassee Code of Ordinances (2022)*. This Board is not obligated to suspend its action when a matter is under investigation with the Office of the Inspector General. The Tallahassee Independent Ethics Board and Office of the Inspector General may run concurrent investigations regarding the same allegations and/or conduct.

### **CONCLUSION**

In July 2020, the Tallahassee City Commission properly adopted ordinances establishing procedures to conduct the mission of the state's whistleblower statute. The ordinances explicitly and unambiguously designated the Inspector General as the "appropriate local official" for purposes of accepting and investigating whistleblower complaints.

For the Tallahassee Independent Ethics Board to be authorized as an appropriate local official to receive and process whistleblower complaints under state law, the Tallahassee City Commission must amend the Code of General Ordinances, granting authority for the Tallahassee Independent Ethics Board to operate in conjunction with the Office of the Inspector General as an appropriate local official or separately in a limited capacity.



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Mayor and Commissioners

FROM: Cassandra Jackson, City Attorney

DATE: June 15, 2023

SUBJECT: Development of Proposed Ordinance to Authorize Ethics Board to Receive and Investigate Whistleblower Complaints

The City of Tallahassee Independent Ethics Board has requested that the City Commission consider adopting an ordinance that would authorize the Ethics Board to serve as the "appropriate local official" for receiving and investigating whistleblower complaints pursuant to Florida Statutes, Section 112.3187, in those limited circumstances where the Inspector General cannot do so. Currently, the Office of Inspector General cannot serve as the "appropriate local official" in cases that involve the Mayor and his staff, City Commissioners and their staff, and those within the Inspector General's Office.

As you are aware, the Tallahassee Independent Ethics Board was created by referendum of the City of Tallahassee voters amending the City Charter in 2014. It is an *appointive* board. See City Charter, Section 61 a., which provides:

"There is hereby created an independent, *appointed*, ongoing citizens Ethics Board of seven members..."

The Board has certain enumerated powers as stated in Section 61 b:

"The Ethics Board shall: (i) assist the City Commission in the development of the ethics code; (ii) adopt bylaws and due process procedures for the administration of the Ethics Board; (iii) manage a citywide ethics hotline for receipt of allegations of local corruption, fraud, waste, mismanagement, campaign finance and ethics violations; (iv) manage and coordinate the mandatory training of local officials,

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Mayor  
  
REESE GOAD  
City Manager

DIANNE WILLIAMS-COX  
Mayor Pro Tem  
  
CASSANDRA K. JACKSON  
City Attorney

JACQUELINE "JACK" PORTER  
Commissioner  
  
JAMES O. COOKE, IV  
City Treasurer-Clerk

CURTIS RICHARDSON  
Commissioner  
  
DENNIS R. SUTTON  
Inspector General

JEREMY MATLOW  
Commissioner

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officers, employees, and board members in state and local ethics; (v) have the authority to refer ethics and corruption matters to appropriate enforcement agencies; (vi) recommend proposed ordinances, resolutions, or charter amendments to the City Commission in all areas of ethics and corruption, including but not limited to: conflicts of interests, financial disclosure, voting conflicts, hotline policies, ethics education, ethics in procurement, campaign ethics and financing, and lobbying; such legislative proposals shall be filed with and considered by the City Commission; (vii) have the authority to investigate complaints and to levy those civil penalties as may be authorized by the City Commission for violations of the City's ethics code; and (viii) employ staff serving in the Ethics Office....”

Florida Statutes, Section 166.021(4), provides that the City has broad home rule powers but general law has specified certain areas in which a municipality may not move forward except by referendum of the voters. Changes in matter prescribed by the City Charter relating to appointive boards is included in this list:

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution.... *However, nothing in this act shall be construed to permit* any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or *any changes in a special law or municipal charter which affect* the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, *matters prescribed by the charter relating to appointive boards*, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

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Thus, if the City Commission desired to add an additional responsibility, such as designation of the Ethics Board as an “appropriate local official” under Florida Statutes, Section 112.3187, such would require a referendum of the voters pursuant to Florida Statutes, Section 166.031. This would be an additional duty affecting a matter, i.e., the existing duties, prescribed by law relating to an appointive board. As detailed above, the duties of the Ethics Board do not include Whistleblower responsibilities under Florida Statutes, Section 112.3187.

*See*, AGO 92-35, “Section 166.021(4), F.S., specifically provides that nothing in Ch. 166, F.S., the Municipal Home Rule Powers Act, shall be construed to permit any changes in a special law or municipal charter which affect . . . *matters* prescribed by the charter *relating to appointive boards* . . . without approval by referendum of the electors as provided in s. 166.031.” Thus, any special law or charter provision relating to appointive boards would be unaffected by the Municipal Home Rule Powers Act, and any amendment or modification of such a special act or charter provision would require referendum approval as prescribed by s. 166.031, F.S.[2] It is my opinion that the structure and powers of the Jacksonville Police and Fire Pension Board of Trustees fall within the scope of matters relating to appointive boards[,] as contemplated by the statute.[3] Therefore, pursuant to s. 166.021(4), F.S., any such change can only be made at the local level after approval by a referendum as provided in s. 166.031, F.S.[4].”

Please let me know if you have any questions.

CKJ/pb

Attachment

cc: Reese Goad, City Manager  
James O. Cooke, IV, City Treasurer-Clerk  
Dennis R. Sutton, Inspector General  
Dwight Floyd, Executive Director, Tallahassee Independent Ethics Board

**ATTACHMENT**

**Jacksonville Police & Fire Pension Board of Trustees**

**Number:** AGO 92-35

**Date:** January 04, 1996

**Subject:**

Jacksonville Police & Fire Pension Board of Trustees

Mr. Robert D. Klausner  
General Counsel  
Jacksonville Police and Fire Pension Board of Trustees

**RE: MUNICIPALITIES-POLICE AND FIREFIGHTERS-PENSION FUNDS-SPECIAL ACTS-MUNICIPAL CHARTERS-TRUST FUNDS-APPOINTED OFFICERS-TRAVEL-BUDGETING- PERSONNEL RULES-authority of municipality to change charter provision relating to police and fire pension fund; authority of municipality to adopt travel, accounting, personnel, purchasing and budgeting provisions relating to police and fire pension fund. s. 166.021, F.S.; Ch. 90-442, Laws of Fla.**

**QUESTION:**

1. May the current structure and powers of the Jacksonville Police and Fire Pension Board of Trustees, as established by special act of the Legislature and codified in the Jacksonville City Charter be altered by local ordinance or by a subsequent act of the State Legislature or by charter amendment approved in a referendum by the electors pursuant to s. 166.021(4), F.S.?
2. Is the Jacksonville Police and Fire Pension Board of Trustees authorized to set its own policy for: (a) reimbursement for travel; (b) accounting; (c) personnel rules; (d) purchasing policies?
3. Is the Jacksonville Police and Fire Pension Board of Trustees required to submit its annual budget to the Jacksonville City Council for approval?

**SUMMARY:**

1. The structure and powers of the Jacksonville Police and Fire Pension Board of Trustees may be altered by a subsequent act of the Legislature or, as provided in s.166.021(4), F.S., by charter amendment after approval by referendum.
2. The Jacksonville Police and Fire Pension Board of Trustees must utilize the provisions of s. 112.061, F.S., regarding reimbursement of board members for per diem and travel expenses. However, the board is authorized to establish its own accounting regulations, personnel rules and purchasing policies.
3. The pension board of trustees is not required to submit its annual budget to the Jacksonville City Council for approval.

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AS TO QUESTION 1:

Chapter 90-442, Laws of Florida, makes provision in the Charter of the City of Jacksonville for the Jacksonville Police and Fire Pension Board of Trustees (the board).[1] The board is made up of five members: two must be legal residents of the City of Jacksonville and are appointed by the city council; one must be a police officer who is elected to the board by a majority of the police officers who are members of the pension fund; one must be a firefighter who is similarly chosen; and the last board member must be chosen by a majority of the previous four members. The name of the fifth member must be submitted to the city council, which is required, merely as a ministerial act, to appoint him or her as the fifth member of the board. Thus, a majority of the members of the pension board are appointed.

Section 166.021(4), F.S., specifically provides that nothing in Ch. 166, F.S., the Municipal Home Rule Powers Act, "shall be construed to permit any changes in a special law or municipal charter which affect . . . matters prescribed by the charter relating to appointive boards . . . without approval by referendum of the electors as provided in s. 166.031." (e.s.) Thus, any special law or charter provision relating to appointive boards would be unaffected by the Municipal Home Rule Powers Act, and any amendment or modification of such a special act or charter provision would require referendum approval as prescribed by s. 166.031, F.S.[2]

It is my opinion that the structure and powers of the Jacksonville Police and Fire Pension Board of Trustees fall within the scope of matters relating to appointive boards[,] as contemplated by the statute.[3] Therefore, pursuant to s. 166.021(4), F.S., any such change can only be made at the local level after approval by a referendum as provided in s. 166.031, F.S.[4]

Further, as was done with the enactment of Ch. 90-442, Laws of Florida, which amended Ch. 67-1320, Laws of Florida, the Legislature itself may amend previously enacted legislation.[5]

AS TO QUESTION 2:

(a) Travel Expenses and Per Diem

You ask whether the Jacksonville Police Officers and Firefighters Pension Board of Trustees is authorized to establish its own policy for the reimbursement for travel by board members.

Pursuant to s. 2, Ch. 90-442, Laws of Florida,[6] "[b]oard members shall not receive any compensation as such, but may receive *expenses and per diem as provided by law.*" (e.s.) This is the sole provision in the special act relating to the reimbursement of expenses and per diem for board members.[7]

The term "by law" has been construed to mean a statute adopted by both houses of the Legislature.[8] Thus, the members of the Jacksonville Police Officers and Firefighters Pension Board of Trustees are bound, by the clear terms of the special act, to follow those provisions of state law relating to expenses and per diem. The state statutory provisions relating to travel expenses and per diem for public officers, employees, and authorized persons are contained in s. 112.061, F.S.



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Therefore, it is my opinion that the members of the Jacksonville Police Officers and Firefighters Pension Board of Trustees have no authority to set their own policy regarding the reimbursement of travel expenses and per diem but are bound by the provisions of s. 112.061, F.S.

(b) Accounting Policies

Regarding the authority of the board of trustees to establish internal accounting policies for the Jacksonville Police and Fire Pension Fund,[9] the special act makes the board the sole entity responsible for administering the fund.[10] Chapter 90-442, Laws of Florida, also sets forth a number of specific procedures relating to the administration of the fund. These provisions authorize the board to:

"(8) Make rules and regulations for the administration of the pension plan[11] which are not inconsistent with the terms and provisions of law.

\* \* \*

(11) Determine all questions relating to the administration of the pension fund in order to promote the uniform administration of the pension fund and to effectuate its purposes and provisions.

\* \* \*

(14) Cause a general investigation to be made by a competent actuary and at least once every 3 years or as required by law thereafter of the retirement, disability, separation, mortality, interest, and employee earning rates; recommend, as a result of such investigation, the tables to be adopted for all required actuarial calculations; cause an annual determination to be made by a competent actuary of the liabilities and reserves of the pension plan and the annual determination of the amount of the contributions required by the city; and maintain the funds of the pension plan on a sound actuarial basis. A copy of this actuarial study shall be furnished to the city council by the board immediately upon its receipt.

(15) Cause an audit of the affairs of the pension plan to be made annually by an independent certified public accountant, and submit a copy thereof to all interested parties as soon as possible after the end of the fiscal year."

The board is also made specifically subject to the provisions of Chs. 175 and 185, F.S., which deal with municipal firefighters' pension trust funds and municipal police officers' retirement trust funds, respectively, and Part VII, Ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act." To the extent these statutes establish procedures in addition to those set forth in the special act, the board of directors of the Jacksonville trust fund should comply with these additional requirements. However, my examination of these chapters indicates that the administration procedures set forth therein closely follow and do not conflict with those in Ch. 90-442, Laws of Florida.[12]

Thus, within this framework, the Jacksonville Police and Fire Pension Board of Trustees is authorized to establish accounting policies for administration of the fund.

(c) Personnel Rules

Chapter 90-442, Laws of Florida, authorizes the pension board to "[e]mploy and fix the compensation of an administrator and any consultants, attorneys, actuaries, accountants, and other employees or contractors as the board may require." [13] In addition to the this specific grant of employment authority, the board possesses the more general power to exercise "such powers as it may reasonably determine to be necessary or appropriate to the performance of its duties . . . ." [14]

A state administrative agency or officer possesses no inherent power and may exercise only such authority as is expressly conferred by law or must be necessarily implied from such an express grant of power. [15] Implied powers accorded administrative agencies must be indispensable to powers expressly granted, that is, those powers which are necessarily or fairly or reasonably implied as an incident to those powers expressly granted. [16]

The power to adopt and implement personnel rules would appear to be necessarily or fairly or reasonably implied from the power of employment. Therefore, it is my opinion that the Jacksonville Police and Fire Pension Fund Board of Trustees is authorized to adopt personnel rules and regulations for its employees.

I would note that, pursuant to Ch. 90-442, Laws of Florida, "the provisions of ss. 112.311-112.3175 [F.S.]" apply to the members of the board. [17] These statutes comprise Part III, Ch. 112, F.S., the Code of Ethics for Public Officers and Employees. Thus, the personnel rules adopted and implemented by the pension board must include and make applicable to members of the board these statutory provisions.

(d) Purchasing Policies

With regard to purchases, the pension fund board is authorized to "[e]nter into contracts, leases, or other transactions" by the terms of the special act. [18] In addition, the board has the power to "[a]uthorize and direct the payment from the pension fund of all expenses and fees incurred in the administration of the pension fund." [19] While you have not indicated what types of purchases are contemplated by this question, I assume from your letter that you are concerned with the needs of the board for such things as office equipment rather than policies for making authorized investments of the pension fund. [20]

Based on the previous discussion of implied powers, it is my opinion that the power to adopt and implement administrative rules relating to purchases of such things as office supplies made by the board may be implied from the express powers to contract and pay for expenses incurred in managing the pension fund.

AS TO QUESTION 3:

You ask whether the Jacksonville Police and Fire Pension Board of Trustees is required to submit its budget to the Jacksonville City Council for approval.

Chapter 90-442, Laws of Florida, establishes the pension board of trustees as an independent

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agency under the city charter.[21] No provision of the special act, Chs. 175 or 185, F.S., or Part VII, Ch. 112, F.S., requires the board of trustees to submit its budget to the city for review.[22]

In the absence of any requirement that the Jacksonville Police and Fire Pension Board of Trustees submit its budget to the city for approval, and in light of the expressed independent nature of the board, it is my opinion that the board's budget is not required to be approved by the City of Jacksonville.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/t

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[1] Section 2, Ch. 90-442, Laws of Florida, creates a new article 22 of the Jacksonville City Charter, Ch. 67-1320, Laws of Florida.

[2] See AGO 83-39 (appointment of alternate members with voting power to an appointive municipal civil service board created by special law is a matter that can only be accomplished by the governing board of the municipality by a charter amendment with the approval by referendum of the electors of the municipality as prescribed by s. 166.031, F.S.) and AGO's 77-135, 75-136, 75-158, and 73-478; cf. *Resedean v. Civil Service Board of the City of Pensacola*, 332 So.2d 150, 151-152 (1 D.C.A. Fla., 1976).

[3] See AGO 84-12, which defines the word "matter" for purposes of s. 166.021(4), F.S., as "that with regard to or about which anything takes place or is done." As that opinion states, the word is of the broad signification and "[w]hen the Legislature uses a term of general import or wide meaning, it must be interpreted broadly enough to embrace within it all the things to which its generality reasonably extends."

[4] See *also* AGO 84-12, concluding that a municipality is without authority to amend a city charter provision to change the name of the city's appointive planning and zoning board of appeals without the approval by referendum pursuant to s. 166.031, F.S.; and AGO 83-39, concluding that adding alternate members to an appointive board created by special law could only be accomplished by a charter amendment with the approval by referendum of the electors.

[5] See *Neu v. Miami Herald Publishing Co.*, 462 So.2d 821 (Fla. 1985). *And see generally* 82 C.J.S. *Statutes* s. 243b. (the power to amend statutes generally resides in the lawmaking body and may not be delegated to others; and one Legislature cannot limit or enlarge the general power of a subsequent Legislature in the matter of amendments).

[6] Section 22.02(2), Art. 22, of the Jacksonville City Charter.

[7] Section 112.06(1)(b)2., F.S., provides that "[t]he provisions of any special or local law,

present or future, shall prevail over any conflicting provisions in this section, but only to the extent of the conflict." *Compare*, the provisions in Ch. 90-442, Laws of Florida, with those of s. 12, Ch. 79-561, Laws of Florida, which authorize the members of the Santa Rosa County Civil Service Board to be paid "an amount to be determined by joint resolution of the Board of County Commissioners of Santa Rosa county and the Santa Rosa County School Board to defray expenses in the discharge of official duties. . . ."

[8] See, Advisory Opinion to Governor, 22 So.2d 398 (Fla. 1945); AGO 84-51 (ordinance of noncharter county not a "law" within the purview of s. 5[c], Art. II, State Const.); AGO 84-39 (municipal ordinance not a "law" within the meaning of s. 8, Art. I, State Const.); AGO 79-109 (governing body of charter county prohibited in absence of statutory authorization from providing by ordinance for imposition of civil penalties by agencies of county); *Broward County v. Plantation Imports, Inc.*, 419 So.2d 1145 (4 D.C.A. Fla., 1982) (holding that provisions of a county ordinance authorizing assessment of penalties by county agency was unconstitutional, and agreeing with conclusion reached in AGO 79-109).

[9] The Jacksonville Police and Fire Pension Fund was created by Ch. 18615, Special Acts of Florida, 1937.

[10] See s. 2, Ch. 90-442, Laws of Florida, which sets forth s. 22.04(1), Art. 22, of the Jacksonville City Charter.

[11] The terms "[p]ension plan" and "pension fund" are used interchangeably in the special act and are defined in s. 22.03(4), Art. 22, of the city charter to mean "the Jacksonville Police and Fire Pension Fund as created by Chapter 18615, Special Acts of Florida, 1937."

[12] See, e.g., s. 185.06(3), F.S. which places "[t]he sole and exclusive administration of, and the responsibilities for, the proper operation of the [municipal police officers'] retirement trust fund . . . in the board of trustees"; and s. 175.071(4), F.S., which places "sole and exclusive administration" of the municipal firefighters' pension trust fund with the board of trustees.

[13] Section 2, Ch. 90-442, Laws of Florida, setting forth s. 22.04(5), Art. 22, of the Jacksonville City Charter.

[14] Section 2, Ch. 90-442, Laws of Florida, setting forth the text following s. 22.04(15), Art. 22, of the Jacksonville City Charter.

[15] See, e.g., *Gessner v. Del-Air Corporation*, 17 So.2d 522 (Fla. 1944), *Lang v. Walker*, 35 So. 78, 80 (Fla. 1903), AGO's 78-135, 78-94, 75-299, and 71-28. *And see generally* 67 C.J.S. *Officers* ss. 190, 192 (1978) and 73 C.J.S. *Public Administrative Law and Procedure* s. 50 (1983).

[16] See, e.g., *State v. Atlantic Coast Line R. Co.*, 47 So. 969, 974 (Fla. 1908); *Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So.2d 75, 76 (1 D.C.A. Fla. 1874). *And see generally* 1 Am. Jur.2d *Administrative Law and Procedure* s. 44 (1962).

[17] Section 2, Ch. 90-442, Laws of Florida, providing for s. 22.02(4), Art. 22, of the Jacksonville

City Charter.

[18] Section 2, Ch. 90-442, Laws of Florida, setting forth s. 22.04(4), Art. 22, of the Jacksonville City Charter.

[19] *Id.* s. 22.04(12) of the charter.

[20] The special act clearly regulates investment in certain obligations of United States, bonds and accounts. In addition, the authorized purchases of annuities or other benefits or investments for the fund, must be made in compliance with the provisions of Chs. 175 and 185, F.S. See ss. 175.081 and 185.061, F.S., which provide that when the boards of trustees of a municipal firefighters' or police officers' pension trust funds purchase annuity or life insurance contracts certain enumerated principles must be observed.

[21] See Title and s. 1, Ch. 90-442, Laws of Florida. *And see* ss. 175.311 and 185.31, F.S., which make the boards of municipal firefighters' and police officers' trust funds independent of the municipalities for which they serve.

[22] *Compare* Ch. 90-442, Laws of Florida, which does require, in s. 22.04(14), Art. 22, that the board:

"Cause a general investigation to be made by a competent actuary and at least once every 3 years or as required by law thereafter of the retirement, disability, separation, mortality, interest, and employee earning rates; recommend, as a result of such investigation, the tables to be adopted for all required actuarial calculation; cause an annual determination to be made by a competent actuary of the liabilities and reserves of the pension plan and the annual determination of the amount of the contributions required by the city; and maintain the funds of the pension plan on a sound actuarial basis. *A copy of this actuarial study shall be furnished to the city council by the board immediately upon its receipt.*" (e.s.)

Thus, the special act does require the board to be accountable to the Council of the City of Jacksonville with regard to this actuarial study. I would also note that prior to adoption in its present form Ch. 90-442, Laws of Florida, contained a requirement that the board of trustees establish an annual budget for approval by the city council. This provision was deleted.



## CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE

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### MEMORANDUM

**TO:** Mr. Carlos A. Rey  
Chair

**Date:** June 16, 2023

**FROM:** John Laurance Reid, Esquire  
Board Counsel

**Cc:** Mr. Dwight A. Floyd  
Independent Ethics Officer

**SUBJECT:** Legal concerns with Proposed Ordinance to Authorize Ethics Board to Receive and Investigate Whistleblower Complaints.

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The City of Tallahassee Independent Ethics Board has been exploring the idea of processing complaints under the state's whistleblower statute for nearly eighteen (18) months. The issue was scheduled for consideration by the full City Commission on Wednesday, June 14, 2023; however, the agenda item was pulled from consideration on June 13, 2023 due to concerns by the City Attorney's Office that the proposal may run counter to state law.

On June 15, 2023, the City Attorney issued a memorandum, raising legitimate concerns with this Board's proposal. These concerns are worthy of discussion and may require further action by the Independent Ethics Board.

### BACKGROUND

On January 18, 2022, the undersigned submitted to this Board a legal memorandum regarding how to address ethics complaints that raise issues overlapping with those that trigger statutory whistleblower protections.

The Independent Ethics Officer and the undersigned then attended a City Commission Workshop on February 16, 2022 to discuss the issue. The City Commission appeared open to providing for the Independent Ethics Office to receive whistleblower complaints when the Inspector General's Office lacked jurisdiction to do so. The City Attorney raised concerns at this meeting that providing for the Independent Ethics Board to process whistleblower complaints would require a referendum and change to the municipal charter. Nevertheless, the City Commission directed this office to work with the Tallahassee Inspector General to determine how these goals could be achieved.

Following the February 2022 workshop, the Independent Ethics Officer and the undersigned engaged in numerous conversations and meetings with the Inspector General and his staff. The proposal returned to this Ethics Board was the result of those collaborations.

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On July 01, 2022, the Independent Ethics Officer, upon direction of this Board, sent a letter to the Mayor and City Commissioners, asking that this Board's proposed ordinances regarding the whistleblower issue be considered by the City Commission. Pursuant to the municipal charter, all ordinances proposed by this Board are required to be filed with and considered by the City Commission. § 61, *Tallahassee Charter* (2023).

As previously stated, the proposed ordinances were scheduled for discussion before the City Commission at its regularly scheduled meeting on Wednesday, June 14, 2023, but were removed from the agenda the day prior to the meeting. On June 15, 2023, the City Attorney issued her memorandum outlining her concerns with this Board's proposed ordinances.

### CITY ATTORNEY'S LEGAL CONCERNS

As stated during the February 2022 workshop and again in her memorandum this week, the City Attorney believes that allowing the Independent Ethics Board to process whistleblower complaints would run afoul of state law. The applicable statute reads as follows:

The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, *nothing in this act shall be construed to permit ... any changes in a special law or municipal charter which affect* the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, *matters prescribed by the charter relating to appointive boards*, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031.

§166.021(4), FLA. STAT. (2022) (*emphasis added*).

The City Attorney's memorandum also cites to and provides a copy of an Attorney General's opinion where a proposed change to ordinance which in effect changed the municipal charter was deemed improper. Specifically, the AGO found that any change to the current structure and powers of the Jacksonville Police and Fire Pension Board of Trustees, which were established by special act of the state Legislature and codified in the municipal charter, must be done by amending the charter via referendum. OP. ATT'Y GEN. FLA. 92-35.

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### **FURTHER CLARIFICATION**

The Independent Ethics Board would benefit from seeking an advisory opinion from the Florida Attorney General. Pursuant to state law, the Florida Attorney General may provide a written official legal opinion on any question of law relating to the official duties of a unit of local government upon written request by that body. *See* §16.01(3), FLA. STAT. (2022).

When the request comes from a board or commission, the Office of the Attorney General asks that the request be made by a majority vote of the board and commission and that documentation of that majority vote be submitted, accompanied by a legal opinion prepared by the board or commission's counsel.<sup>1</sup>

### **RECOMMENDATION**

Based on the legitimate concerns raised by the City Attorney regarding a proposed ordinance providing for the Independent Ethics Board to process whistleblower complaints, it is the recommendation of the undersigned that this Board make an official inquiry to the Office of the Florida Attorney General. An initial review of opinions showed that this question is commonly posed to the Attorney General; however, a quick review did not reveal an opinion directly on point with the facts present here.

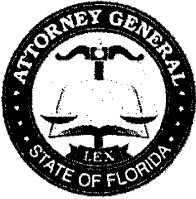
The Attorney General previously opined that the Palm Beach County Commission on Ethics could receive whistleblower complaints along with the county's Inspector General when those powers were designated by local ordinance. While the whistleblower authority was granted to the Ethics Commission through ordinance and not charter, the opinion did not explicitly address that issue. *See* OP. ATT'Y GEN. FLA. 2010-48.

This Board is in recess during the month of July, so the Board can act at its August monthly meeting on a resolution authorizing the inquiry as well as edit and/or approve a legal opinion provided by the undersigned.

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<sup>1</sup> <https://www.myfloridalegal.com/attorney-general-opinions/frequently-asked-questions-about-attorney-general-opinions>





ASHLEY MOODY  
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September 14, 2023

Dwight A. Floyd  
Tallahassee Independent Ethics Officer  
435 North Macomb Street, 3<sup>rd</sup> Floor  
Tallahassee, Florida 32301

John Laurance Reid, Board Counsel  
Tallahassee Independent Ethics Board  
Law Office of John Reid PLLC  
PO Box 6272  
Tallahassee, Florida 32314-6272

Dear Mr. Floyd and Mr. Reid,

On behalf of the Tallahassee Independent Ethics Board ("Board"), an "independent, appointed, ongoing citizens Ethics Board of seven members"<sup>1</sup> which is distinct from the governing board of the City of Tallahassee ("City"), you request an opinion addressing substantially the following question:

If the City proposed to authorize the Board to serve as the "appropriate local official" for receiving and investigating whistleblower complaints pursuant to section 112.3187, Florida Statutes, would the City be required by section 166.021(4), Florida Statutes, to seek approval for such action by referendum of the electors as provided in section 166.031, Florida Statutes?

Thus, the *Board* seeks clarification regarding the *City's* consideration of potentially implementing a change in the scope of the Board's responsibilities. The City Attorney has informed this office that the City does not seek an opinion concerning this matter.

Section 16.01(3), Florida Statutes, provides in pertinent part that, notwithstanding any other provision of law, the Attorney General "may, upon the written requisition of a . . . state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer." (Emphasis added.) Here, while the Board seeks clarification regarding a potential change in the scope of its

<sup>1</sup> City of Tallahassee Charter, § 61.

responsibilities it has asked the City to implement, it is the City (and not the Board) that would have to inquire about accomplishing a change to the Board's responsibilities. Moreover, a request for an opinion in response to the inquiry you presented would principally involve interpreting a discrete provision of the City's charter; therefore, issuing such an opinion would not be consistent with the Attorney General's policy for issuing opinions.<sup>2</sup>

Under these circumstances, this office is unable to provide an opinion in response to the Board's request. I trust you will understand that the inability of the Attorney General to further comment stems from the statutory constraints described. Please feel free to contact me directly at (850) 728-4662 should you have any questions about the Attorney General's opinions process.

Sincerely,



Teresa L. Mussetto  
Senior Assistant Attorney General

TLM/tcc

Signature:   
Carlos Rey (Oct 18, 2023 14:47 EDT)  
Email: carlosrey.jd@gmail.com

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<sup>2</sup> See AG Opinions, Requesting an Attorney General Opinion (stating, “[t]he following are examples of the kinds of questions the Attorney General may decline to address: ... questions involving an interpretation only of local codes, charters, ordinances, or regulations”) (available at <https://www.myfloridalegal.com/attorney-general-opinions/frequently-asked-questions-about-attorney-general-opinions>) (last visited September 13, 2023).