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November 19, 2013

Council Member Richard Clark  
Jacksonville City Council  
117 W. Duval St., Suite 425  
Jacksonville, Florida 32202

**Re: Legal Opinion - City Council Members as Constitutional Officers or  
County Commissioners (Amended)**

Dear Council Member Clark:

**I. Background.**

In its most recent term, the Florida Legislature adopted a new Section 112.3142, Florida Statutes, which requires ethics training for certain defined "constitutional officers," including county commissioners.

**II. Question Asked.**

The question asked is whether City Council Members are considered "constitutional officers" or county commissioners for purposes of that statute.

**III. Short Answer.**

City Council Members are not "constitutional officers" or county commissioners for purposes of Section 112.3142, Florida Statutes.

**IV. Discussion.**

The answer is most easily understood as a matter of statutory construction as it relates to two laws. First, Section 112.3142(1), Florida Statutes, reads as follows:

Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members and superintendents of schools.

This section lists more than a dozen officers and categories of officers. The list does not include any term which might possibly include City Council Members. The list does not refer to municipal corporations or any of its officers. The list does not refer to officers of consolidated cities. The list does not refer to governing bodies of consolidated governments. The commonly relied upon rule of statutory construction, *expressio unius est exclusio alterius*, i.e., "[w]here a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned." *Locke v. Hawkes*, 595 So. 2d 32, 36M3 7 (Fla. 1992) quoting from, *Thayer v. State*, 33 5 So.2d 815, 817 (Fla.1976). In *Locke*, the Florida Supreme Court reviewed the list of bodies and boards within the definition of the word "agency" and, relying on the principle of *expressio unius*, held that if the list did not include the word "legislature" or phrase such as "each house of the legislature," then the statute clearly excluded the Legislature from the term "agency." On the other hand, Subsection (3) of the recently adopted Section 112.3142 specifically refers to "[e]ach house of the legislature," demonstrating the Legislature's ability to include itself in any legislation should it seek to include itself in any legislation.

Similarly, when the Legislature seeks to declare City Council members of the City of Jacksonville to be included in the class of officers known as "constitutional officers" or class of governing bodies of counties, including consolidated governments, the Florida Legislature knows how to do that. Section 5.05 of the Jacksonville Charter, adopted by the Florida Legislature, declares "Councilmen shall be considered elected constitutional officers *for purposes of* s. 8 of Article II of the Florida Constitution." Section 5.05, Jacksonville Charter (emphasis added). This section of the Jacksonville charter demonstrates that (1) the Legislature has in the past placed City Council members into the category "constitutional officer"; and (2) the Legislature placed the Council members into the category for a single purpose. The principle of *expressio unius* applies with special force where the Legislature, having once placed City Council Members into the category of "constitutional officer," and clearly left Council Members out of the category of "constitutional officer" in Section 112.3142(1). See also, Section 11.45(1)(b), Florida Statutes (defining "county agency" as the "legislative and governing body...of a consolidated...government"); 121.021(42)(a), Florida Statutes, defining "local agency employer" as "the...legislative governing body...of a consolidated...government"); Section 215.322(5), Florida Statutes, including in the class of "local government" impacted by the statute "a municipality...or...governing body of...a consolidated...government"); Section 218.31(16), Florida Statutes, defining "county agency" as a "governing body...of a consolidated...government"); and Section 318.18(13)(a), Florida Statutes, including within the affected governments "any unit of local government that is consolidated as provided by s.9, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968"). These cases demonstrate that the Legislature knows how to join governing bodies of consolidated governments into the same class as county commissioners. The Florida Legislature, undeniably, knows how to include in legislation either the City of Jacksonville or the City Council. The Legislature did not include the City Council members within Section 111.3142. The Legislature clearly did not intend to include the City Council members within Section 111.3142.

Similarly, "the common meaning of the term 'constitutional officers,' [a term which] refers to the five offices set forth in article VIII, section 1(d), Florida Constitution," *Snipes v. Telli*, 67 So.3d 415, 418 (Fla. 4th DCA 2011) affirmed, *Telli v. Broward County*, 49 So.3d 504 (Fla. 2012), does not include City Council Members. Constitutional officers include those specifically designated as "County Officers" by

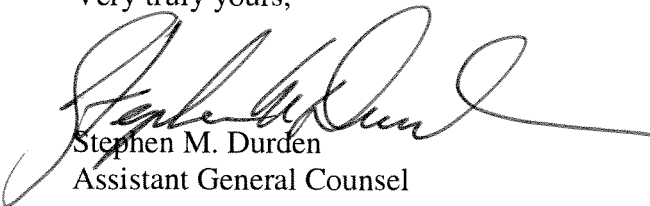
the Florida Constitution, i.e., sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court, as well as other offices created in the Florida Constitution, i.e., school board members and county commissioners. *Bath Club, Inc. v. Dade County*, 394 So.2d 110, 112 (Fla. 1981). As explained by the Attorney General, offices created by the Florida Constitution are constitutional officers. AGO 80-26. The Florida Constitution does not create the City Council of the City of Jacksonville. Consequently, City Council members are not constitutional officers, and the statute at issue, Section 112.3142, made no effort to declare that City Council members be placed in that category for its purposes.

**V. Conclusion.**

Common understanding of the term constitutional officer and proper construction of Section 112.3142 lead to the same conclusion. City Council members are not constitutional officers, nor are they county commissioners, under Section 112.3142 and, therefore, are not required to comply with the statute.

I trust that this opinion provides the guidance you seek. Of course, I am available to discuss this with you at your convenience.

Very truly yours,



Stephen M. Durden  
Assistant General Counsel

cc: Legal Opinion File