



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.



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.

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.

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^d 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^d Addendum to the 2^d 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.

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^d 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.¹

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

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

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

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.

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.²

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.

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