



## OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY\*  
William E. Clague, Assistant County Attorney  
Sarah A. Schenk, Assistant County Attorney\*\*  
Christopher M. De Carlo, Assistant County Attorney  
Geoffrey K. Nichols, Assistant County Attorney  
Pamela J. D'Agostino, Assistant County Attorney  
Anne M. Morris, Assistant County Attorney  
Katharine M. Zamboni, Assistant County Attorney  
Alexandria C. Nicodemi, Assistant County Attorney

### MEMORANDUM

Date: May 19, 2017

To: Charles Smith, County Commissioner, District 2

From: Mitchell O. Palmer, County Attorney *M. Palmer 5-19-17*

RE: **Public Safety Coordinating Council; CAO Matter No. 2017-0251**

---

#### Issue Presented:

In this Request for Legal Services, you have asked for a comprehensive overview of the legislative authorities, makeup and procedures of the Public Safety Coordinating Council (PSCC). You are, of course, the current chair of the PSCC.

#### Discussion:

The PSCC is a creature of state statute; specifically, Florida Statute 951.26. Each board of county commissioners is required to establish a PSCC. Such has been a requirement since 1987 (although the body was originally called the county correctional planning committee).

#### Membership

As to membership, the statute is straightforward. The membership of the PSCC shall be as follows:

- The state attorney, or an assistant state attorney designated by the state attorney
- The public defender, or an assistant public defender designated by the public defender
- The chief circuit judge, or another judge designated by the chief circuit judge
- The chief county judge, or another county judge designated by the chief county judge
- The chief correctional officer

\* Board Certified in Construction Law

\*\* Board Certified in City, County & Local Government Law

- The sheriff, or a member designated by the sheriff, if the sheriff is not the chief correctional officer (emphasis supplied)<sup>1</sup>
- The state probation circuit administrator, or a member designated by the state probation circuit administrator, to be appointed to a 4-year term
- The chairperson of the board of county commissioners, or another county commissioner as designee
- The director of the county's probation or pretrial intervention program, if the county has such a program, to be appointed to a 4-year term (emphasis supplied)
- The director of the local substance abuse treatment program, or a member designated by the director, to be appointed to a 4-year term
- Representatives from county and state jobs programs and other community groups who work with offenders and victims, appointed by the chairperson of the board of county commissioners to 4-year terms.<sup>2</sup>

While the statute provides an option for a county to join with a consortium of one or more other counties in forming a PSCC, I am unaware of Manatee County having ever done so. Interestingly, the makeup of the body—in the case of a consortium of counties—differs from the makeup in the case of a single county. The consortium approach calls for membership to include a police chief, a city commissioner and a school board member. Again, however, Manatee County has chosen not to join a consortium.

#### Terms of Office

Each of seats one through five above, as well as the seat occupied by the chairperson of the board of county commissioners (or his or her designee) is a permanent seat. All other seats are, of course, 4-year terms. Research reveals that the board of county commissioners has made various appointment to the PSCC over the years, with the most recent appointments having occurred on March 10, 2015. On that date, Circuit Judge Deno Economou, County Judge Charles Sniffen, Alfred James, Josh Cramer and Melissa Larkin Skinner were all appointed. Messer's James and Cramer are serving in the category of county and state jobs programs (the last category above), while Ms. Larkin Skinner is serving in the substance abuse treatment category.

Some of the 4-year seats have been "rolling" in nature, without the board of county commissioners taking formal action to appoint the members. I am not concerned with this practice, however, since, as a practical matter, there is no possibility of appointing someone other than the persons presently occupying the described positions.

---

<sup>1</sup> The sheriff was designated as the county's chief correctional officer in 1988, by virtue of Manatee County Ordinance 88-14 (codified at Section 2-2-9, Manatee County Code). I therefore conclude that the sixth seat listed above is a seat that should not be filled, since the sheriff is the chief correctional officer.

<sup>2</sup> Manatee County has also sanctioned the PSCC in Resolution R-12-212, adopted by the board of county commissioners on December 11, 2012. While the resolution parrots the statute in a number of respects, it also provides for the assignment of support personnel and for the option to adopt rules of procedure.

For example, if the state probation circuit administrator occupies his or her position for 20 years, then he or she will fill that seat, on a rolling basis, for five consecutive terms. Should he or she resign mid-term, then his or her replacement (and none other) will serve the balance of the term and thereafter serve on a rolling basis.

Thus, as a practical matter, every seat is permanent in nature—with the possible exception of the very last category dealing with representatives of jobs programs. This category, which is not position-specific, requires appointments by the chair of the county commission every 4 years. Clearly, this final category contemplates the possibility of multiple representatives, if there are multiple programs that exist within the county.

### Chairmanship

Florida Statute 951.26(1)(a)2. provides as follows: “The chairperson of the board of county commissioners, or another county commissioner as designee, shall serve as the chairperson of the council until the council elects a chairperson from the membership of the council.” The current chairperson of the board of county commissioners is Betsy Benac. In late 2016, she appointed you as her designee to serve on the PSCC for 2017. I interpret the above-quoted statute as providing that you are the default chair of the PSCC, until such time as the PSCC deems it appropriate to nominate and elect a different chairperson from within its membership.<sup>3</sup>

### Voting

The statute is silent on the issues of quorum and voting. Therefore, I can only advise that the typical rules of thumb for collegial bodies apply. The physical presence of a majority will constitute a quorum and a simple majority vote of those present is required for formal action.

You have also inquired as to whether “proxy” voting is permissible. As previously noted, several of the members are allowed by statute to designate a substitute to attend meetings and to act in his or her stead. To the extent that such is deemed to be a proxy, then proxy voting is allowed.

On the other hand, it is my opinion that any member or designated member who purports to vest some other member with authority to vote for him or her would be acting contrary to the statute. Examples of inappropriate designations would be the state attorney designating the public defender as his proxy or the circuit judge designating the county judge as his proxy.<sup>4</sup>

### Member Designations

The statute clearly allows any number of the PSCC members to designate a person to attend meetings and act in his or her stead. For example, you recently received a letter from the state

---

<sup>3</sup> Also see, Florida Attorney General Opinion 91-17 (the designee of the chair of the county commission also assumes the chair of the county correctional planning committee).

<sup>4</sup> Also see, Florida Attorney General Opinion 78-117 (in the absence of express statutory authority, the board of trustees of a community college district is not empowered to provide for proxy voting by the members of the board).

attorney, dated April 26, 2017, in which he designated one of his chief assistants to serve on the PSCC and vote on his behalf. This is a long-term designation and is perfectly allowable.

An ancillary question is whether a member of the PSCC can designate a stand-in on a one-time basis or on a meeting-by-meeting basis. While I would discourage such a practice (so as to foster consistency, if for no other reason), it nevertheless appears that this type of designation would also be allowable.

#### Rules of Procedure

The rules of procedure that govern the meetings of the board of county commissioners are set forth in Manatee County Resolution R-16-068. In the *Applicability* section on page 1 thereof, it is recited that the procedures shall govern not only the meetings of the board of county commissioners, but also the meetings of all subordinate boards, commissions or advisory committees, unless such subordinate body has adopted its own procedures.

No such separately-adopted procedures have come to my attention; hence, the PSCC must conduct its meetings in accordance with the procedures contained in Manatee County Resolution R-16-068. Thus, for example, in order to cast a vote, physical or electronic presence of council members is required.

#### Applicability of the Sunshine Law and the Public Records Act

Florida Statute 951.26(5) provides: "All meetings of the public safety coordinating council, as well as its records, books, documents, and papers, are open and available to the public in accordance with ss. 119.07 and 286.011."

#### Other Related Statutes

I am aware of the existence of Florida Statute 394.657. This statute provides for a differing makeup of the PSCC, but only if the PSCC is acting as the planning council for implementation of Criminal Justice, Mental Health and Substance Abuse Reinvestment Grants. In conversation with Criminal Justice Liaison Renese Remy, I am informed that while Manatee County has entertained the idea of pursuing such grants in the past, no grant application has ever actually been submitted.

I am also mindful of Chapter 11D-9.005, Florida Administrative Code, which addresses applications for federal Justice Assistance Grants (JAGs), as administered by the Florida Department of Law Enforcement (FDLE). Subsection (3)(a) of the administrative rule provides that each grant applicant is "encouraged" (but not required) to appoint an advisory board—the makeup of which differs from the PSCC—to coordinate drug abuse efforts undertaken with funds provided by the JAGs.

In conversations with both you and Ms. Remy, I have learned that the JAG grants are typically awarded annually and that Manatee County has been applying for and receiving such grants for at least 12 years. I also understand that the PSCC has been routinely designated as the grant

Charles Smith, County Commissioner, District 2

May 19, 2017

Page 5

advisory body by the board of county commissioners. The most recent occasion was on July 26, 2016, pursuant to Manatee County Resolution R-16-120.

It is the duty of the FDLE, pursuant to subsections (3)(e) and (5)(b) of the administrative rule, to reject any applications not meeting the requirements of the rule. I am not aware of the FDLE having ever rejected a grant application from Manatee County, clearly signaling the FDLE's comfort with the PSCC serving as the local advisory body.

**Conclusion:**

It is my hope that I have adequately addressed your various concerns. If I can lend any additional assistance, please advise.

Copies to:

Board of County Commissioners (Districts 1, 3, 4, 5, 6 and 7)

Ed Hunzeker, County Administrator

Dan Schlandt, Deputy County Administrator

Karen Windon, Deputy County Administrator

Cheri Coryea, Director, Neighborhood Services

Renese Remy, Criminal Justice Liaison, Neighborhood Services