

FACTS

The Florida Public Service Commission ("PSC") consists of a membership of five PSC Commissioners, who are appointed by the Governor after first being nominated by the PSC Nominating Council ("the Nominating Council"). Each Commissioner is appointed to serve a four year term, and the terms of the Commissioners are staggered such that no more than two vacancies on the PSC are created by expiration in any one year. Any Commissioner who desires to be reappointed to the PSC is required to file with the Nominating Council, at least 180 days prior to the expiration of that Commissioner's term, a statement indicating his or her desire to serve an additional term.

Pursuant to this statutory scheme, the terms of PSC Commissioners Thomas M. Beard and Luis J. Lauredo were scheduled to expire in January, 1994. In a letter dated June 1, 1993, Commissioner Beard notified both the Governor and the Nominating Council that he had decided **not** to seek reappointment as a PSC Commissioner (A-1). On June 25, 1993, Commissioner Lauredo wrote a letter notifying the Governor and the Nominating Council that he intended to apply to serve an additional term as a PSC Commissioner (A-2). Subsequently, in a letter dated August 4, 1993, Commissioner Beard notified the Governor that he was resigning from office as a PSC Commissioner effective August 13, 1993 (A-3), approximately five months prior to the scheduled expiration of Mr. Beard's term.

Whenever a vacancy on the PSC occurs for a term expiring in January due to operation of law, the Nominating Council is required to submit nominations to fill that vacancy to the Governor by October 1 of the prior year. Section 350.031(5), Florida Statutes (1993). For vacancies which occur for reasons other than the expiration of a Commissioner's term (i.e. the death, resignation, or removal from office of a

Commissioner), the Nominating Council is required to submit its nominations to the Governor within 60 days after the date that the vacancy occurs. Id. Since Commissioner Beard's resignation was effective August 13, 1993, the Nominating Council was required to submit nominations to the Governor by October 12, 1993 in order to find a replacement to fill the remainder of Mr. Beard's term.

On September 8, 1993, the Nominating Council convened a meeting for purposes of selecting a list of nominees to be sent to the Governor to fill the three vacancies on the PSC (the unexpired portion of Commissioner Beard's current term, and the vacancies created by the expiration, through operation of law, of the terms of Commissioner Beard and Commissioner Lauredo). After interviewing and voting upon qualified applicants, the Nominating Council unanimously passed a motion placing the names of David Deutch, Ronald Bruce, Thomas Mims, and Diane Kiesling on the final list of nominees to be forwarded to the Governor to fill these vacancies on the PSC (A-4, 5). A "draft" list of these nominees was prepared for certification to the Governor, but was never, in fact, delivered.

When notified of the actions taken by the Nominating Council at the September 8 meeting, the Governor's Office immediately objected to the prospect of being provided with a list of only four nominees. In a September 13, 1993 letter to Mr. Andy Blank, the Chairman of the Nominating Council, J. Hardin Peterson, the Governor's General Counsel, stated that the Governor's Office believed that Chapter 350, Florida Statutes, "requires submission of at least six nominees to the Governor to fill the two vacancies which will occur on the Public Service Commission" (A-6). Mr. Peterson advised Mr. Blank that there was adequate time to reconvene a meeting of the Nominating Council for purposes of nominating additional candidates for appointment by the Governor, and

threatened litigation in the event that additional nominations were not submitted (A-6, 7).

In response to these objections, the Nominating Council held a meeting on September 28, 1993 in order to consider additional nominations for the pending vacancies on the PSC (A-8). The minutes of that meeting reflect that the Nominating Council voted to create two slates of nominees to be submitted to the Governor for appointment to the PSC. The first slate of nominees would be submitted for the Commission seat vacated by Mr. Beard, and was designated by the Nominating Council as "the unexpired and full-term vacancy beginning in 1994 for the seat presently vacant" (A-9). The second slate of nominees would be submitted for the Commission seat held by Mr. Lauredo, but scheduled for expiration, which was designated by the Nominating Council as "the full-term vacancy beginning in 1994 for the seat presently occupied" (A-9).

After interviewing candidates, the Nominating Council voted at the September 28 meeting to submit the names of seven nominees to the Governor. In addition to the four nominees selected at the September 8 meeting, the Nominating Council voted to submit the names of Leon Jacobs, Luis Lauredo, and John Sheahen to the Governor for possible appointment to the PSC (A-10). Three persons would be nominated to fill the remainder of Commissioner Beard's unexpired term. The same three persons would be nominated to fill the vacancy created by the expiration of Commissioner Beard's term. The remaining four persons would be nominated to fill the vacancy created by the expiration of Commissioner Lauredo's term. On September 29, 1993, the nominations made by the Nominating Council were certified to the Governor as follows:

Unexpired Term	Vacancy #1	Vacancy #2
Ronald Lee Bruce David O. Deutch William T. Mims	Ronald Lee Bruce David O. Deutch William T. Mims	Ennis L. Jacobs Diane Kiesling Luis J. Lauredo John R. Sheahen

See Letter of September 29, 1993 (A-11).

On November 23, 1993, the Governor selected Commissioner Lauredo for reappointment as a PSC Commissioner (A-12). This was in accordance with the nominations submitted and certified to the Governor by the Nominating Council. However, on November 24, 1993, the Governor appointed Diane Kiesling to fill the vacancy for the remainder of Commissioner Beard's unexpired term and the vacancy created by the statutory expiration of Commissioner Beard's term (A-13, 14). This action was taken by the Governor despite the fact that Ms. Kiesling's name was not certified for nomination to the Governor for either of those vacant positions. As a result of the Governor's nominations, Ms. Kiesling has filed qualifying papers with the State of Florida seeking to exercise the office of PSC Commissioner (A-15), and the Secretary of State has issued certificates appointing Ms. Kiesling to the vacant positions (A-16, 17).

Because the Nominating Council believed that the Governor's appointments of Ms. Kiesling were improper and invalid, and because the Governor failed to make appointments from the list of nominees submitted to him within 60 days of receiving those nominations, the Nominating Council convened yet another meeting on December 13, 1993. As noticed, this meeting was held in order for the Nominating Council "to make its appointment to the vacancy on the Florida Public Service Commission created by the resignation of Mr. Tom Beard, and to make its appointment to vacancy number 1 on the Commission which results from the expiration of the term in January, 1994 of

the position formerly held by Mr. Beard. These appointments will be made from the groups of nominees sent to the Governor on September 29, 1993" (A-18). At this meeting, the Nominating Council appointed Petitioner to both of the PSC terms at issue (A-19), and issued Notices of Appointment formalizing those decisions (A-20, 21). Mr. Bruce's name appears on the list of nominations certified and submitted to the Governor for both vacancies.

The Nominating Council filed a Petition for Writ of Quo Warranto in this Court on December 15, 1993. That action is currently docketed before the Court as Case Number 82, 882. The Petition filed by the Nominating Council seeks essentially the same relief sought by the Petitioner in this proceeding: the issuance of a Writ of Quo Warranto declaring Ms. Kiesling ousted from office. Ms. Kiesling has filed a Response to the Nominating Council's Petition, and has also filed a Motion to Dismiss that Petition.¹ In her Motion to Dismiss, Ms. Kiesling argues that the Nominating Council lacks standing to pursue an action in Quo Warranto seeking her ouster from office, in that only a person claiming title to that office is statutorily authorized to seek the issuance of a Writ of Quo Warranto, after first requesting that the Attorney General of Florida institute such an action.

When notified of this dispute, the Office of the Attorney General issued a letter, dated December 23, 1993, to the attorney for the Nominating Council. That letter states, in relevant part, that "[i]f requested by the appropriate party, **Ronald Bruce**, this office would decline to undertake any action" (A-22) (emphasis added). On January 10, 1994, Petitioner's counsel formally requested that the Attorney General commence a proceeding

¹ The Governor has filed a brief in Case Number 82, 882 as an Amicus Curiae.

in Quo Warranto setting forth Mr. Bruce's name as the person rightfully entitled to hold the office of PSC Commissioner (A-23-26). On January 13, 1994, the Attorney General responded, stating that "I must decline to bring an action in Quo warranto on behalf of [Ronald Lee Bruce]" (A-27). Thus, Petitioner has initiated this proceeding against Ms. Kiesling, in the name of the State of Florida.

ARGUMENT

1. Quo Warranto is the Appropriate Remedy to Test Petitioner's Claim to Office, and Petitioner has Standing to Maintain this Proceeding.

Petitioner maintains that he is rightfully and lawfully entitled to claim the office of PSC Commissioner, based upon his appointment to that office by the Nominating Council on December 13, 1993. However, Petitioner is at this time unable to assume the duties of his office due to Ms. Kiesling's improper appointment by the Governor. Petitioner seeks the issuance of a Writ of Quo Warranto ousting Ms. Kiesling from office, and quo warranto is the appropriate form of relief under the facts and circumstances presented by this case. "The rule is well settled in Florida that quo warranto is the proper remedy to test the right of a person to hold an office or franchise or exercise some right or privilege, the peculiar powers of which are derived from the State." Winter v. Mack, 194 So. 225, 228 (Fla. 1940)(emphasis added). Accord Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364, 369 (Fla. 1955)("If the issue had been limited solely to trying title to an office, quo warranto would have been the remedy.")

Petitioner has standing to maintain this proceeding, and has fully complied with all jurisdictional prerequisites to the commencement of this action. Pursuant to Florida law, "quo warranto is the proper remedy to determine the right of an individual to hold public office. It may be instituted only by the Attorney General of Florida, or by a person claiming title to the office." Tobler v. Beckett, 297 So.2d 59, 61 (Fla. 2d DCA 1974)(emphasis added). When a quo warranto proceeding is instituted by the person claiming title to an office, that person must first request that the Attorney General commence the requested action in the name of the State of Florida.

Section 80.01, Florida Statutes (1993), establishes a procedure to be followed by parties claiming entitlement to office and seeking the commencement of quo warranto proceedings by the Attorney General. Pursuant to that statute:

Any person claiming title to an office which is exercised by another has the right, on refusal by the Attorney General to commence an action in the name of the state upon the claimant's relation, or on the Attorney General's refusal to file a petition setting forth his name as the person rightfully entitled to the office, to file an action in the name of the state against the person exercising the office, setting up his own claim.

Section 80.01, Florida Statutes (1993). See also Butterworth v. Espey, 523 So.2d 1278 (Fla. 2d DCA 1988)("Even if, as those appellants argue, the Attorney General refused to bring the suit, those appellants are not entitled to bring the suit unless they claim entitlement to the office"). In the present action, Petitioner formally requested that the Attorney General commence this proceeding (A-23-26), and the Attorney general refused to take such action (A-27).² Therefore, Petitioner has the right to institute this action, in the name of the State of Florida, setting up his own claim to office.

2. Petitioner is Rightfully Entitled to Assume the Office of Commissioner on the Florida Public Service Commission.

The PSC is not a constitutional body. It is a creature of statute that exists solely to perform a function of the legislative branch of state government, the regulation of public utilities. The Florida Legislature has established a comprehensive statutory procedure governing the operation of the PSC and directing the manner in which Commissioners are to be appointed to serve on the PSC. The legislative intent with

² Petitioner's standing to maintain this action under Chapter 80 was also recognized in a letter from the Attorney General's Office to counsel for the Nominating Council dated December 23, 1993. In that letter, the Attorney General's Office stated that "[i]f requested by the appropriate party, Ronald Bruce, this office would decline to undertake any action" (A-22)(emphasis added).

regard to the operation of the PSC and the appointment of PSC Commissioners is clearly and unambiguously set forth in Section 350.001, Florida Statutes (1993), which states emphatically that:

The Florida Public Service Commission has been and shall continue to be an arm of the legislative branch of government. It is the desire of the Legislature that the Governor participate in the appointment process of commissioners to the Public Service Commission. The Legislature accordingly delegates to the Governor a **limited authority** with respect to the Public Service Commission by authorizing him to participate in the selection of members **only from the list provided by the Florida Public Service Commission Nominating Council** in the manner prescribed by s. 350.031.

(emphasis added). In the event that a dispute exists concerning the construction of the statutes set forth in Chapter 350, this Court is obligated to grant substantial deference to the intent of the Legislature, as expressed in Section 350.001, Florida Statutes (1993). See Lowry v. Parole and Probation Commission, 473 So.2d 1248, 1249 (Fla. 1985)("Where reasonable differences arise as to the meaning or application of a statute, the legislative intent must be the polestar of judicial construction").

This is not the first time that this Court has been asked to review the scope of the Governor's authority to appoint PSC Commissioners pursuant to Chapter 350, Florida Statutes. In Chiles v. Public Service Commission Nominating Council, 573 So.2d 829, 832 (Fla. 1991), Governor Chiles sought the issuance of a writ of prohibition preventing the Nominating Council from making appointments to two seats on the PSC that became vacant in January, 1991, due to the failure of former Governor Martinez to such appointments prior to December 1, 1990. The Governor argued that the Nominating Council's actions in making such appointments limited his executive authority to appoint state officers, and maintained that Section 350.031, Florida Statutes was unconstitutional "because it directly conflicts with the governor's general and express powers of

appointment." Id. at 831-32.

In Chiles, this Court rejected the contentions of the Governor, based primarily upon the statement of legislative intent set forth in Section 350.001, Florida Statutes. "We reject these contentions because we find that the Public Service Commission is an entity of the legislative branch and, as such, the legislature has the authority to establish by law how legislative branch officials, including these Public Service Commission members, may be selected." Id. at 832 (emphasis added). Moreover, the Court also expressly affirmed the constitutionality of the statutory method provided for the appointment of PSC Commissioners. "[T]he legislature may constitutionally establish the appointment method for its officers set forth 350.031, Florida Statutes." Id. at 832-33. Thus, this Court's holding in Chiles affirms the proposition, clearly expressed as the intent of the Florida Legislature in Section 350.001, Florida Statutes, that the Governor is to have only a **limited authority** with regard to the appointment of PSC Commissioners.

Due to this **limited authority**, the Governor may not make appointments to fill vacancies on the PSC if those appointments contravene the statutory appointment process created by the Legislature and entrusted to the Nominating Council. Pursuant to that appointment process, the Governor, at the invitation of the Legislature, serves only to **assist** the Legislature in staffing one of the Legislature's own agencies. By appointing Ms. Kiesling to fill a vacancy for which she was not nominated by the Nominating Council, the Governor has attempted to usurp a legislative branch prerogative, and has, in the process, acted beyond the limits of the authority delegated to him by the Legislature in Chapter 350, Florida Statutes (1993).

The manner in which the Governor is to exercise this **limited authority** is

delineated in Section 350.031, Florida Statutes (1993). That statute provides, in relevant part, as follows:

(5) It is the responsibility of the council to nominate to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission. The council shall submit the recommendations to the Governor by October 1 of those years in which the terms are to begin the following January, or within 60 days after a vacancy occurs for any reason other than the expiration of a term.

(6) The Governor shall fill a vacancy occurring on the Public Service Commission by appointment of one of the applicants nominated by the council only after a background investigation of such applicant has been conducted by the Florida Department of Law Enforcement. If the Governor has not made an appointment by December 1 to fill a vacancy for a term to begin the following January, then the council, by majority vote, shall appoint by December 31 one person from the applicants previously nominated to the Governor to fill the vacancy. If the Governor has not made the appointment to fill a vacancy occurring for any reason other than the expiration of the term by the 60th day following receipt of the nominations of the council, the council by majority vote shall appoint within 30 days thereafter one person from the applicants previously nominated to the Governor to fill the vacancy.

Section 350.031(5, 6), Florida Statutes (1993)(emphasis added).

As the highlighted language referenced above clearly indicates, the Nominating Council is to make no fewer than three nominations to the Governor for each vacancy occurring on the PSC. Thus, the statute treats each vacancy as a discrete and separate entity. The statute does not provide for the Nominating Council to nominate three times as many persons as there are vacancies and submit a single pool of nominees, from which the Governor may make appointments at will. The Legislature has created such nominating processes in the past, and had the Legislature intended to create such a pool with regard to PSC nominations and appointments, it could have done so again. That the Legislature is cognizant of such arrangements is illustrated by Section 947.02(3), Florida Statutes (1993), which provides that with regard to the appointment, by the Governor

and Cabinet, of members of the Parole Commission:

If more than one seat is vacant, the committee shall submit a list of eligible applicants, without recommendation, containing a number of names equal to three times the number of vacant seats; **however, the names submitted shall not be distinguished by seat, and each submitted applicant shall be considered eligible for each vacancy.**

(emphasis added).

Moreover, the Nominating Council is statutorily required to "establish policies and procedures to govern the process by which applicants are nominated." Section 350.031(3), Florida Statutes (1993). As established by the Nominating Council, these procedures clearly reflect the fact that, with regard to the final selection of nominees to be submitted to the Governor for appointment, each vacancy is to be treated as a separate and distinct entity. Section V of the Nominating Council's Rules of Procedure provided as follows:

Upon conclusion of all investigations and after those applicants designated as "most qualified" have been interviewed, the council shall select, by majority vote of its entire membership, the nominees to be submitted to the Governor. **Each vacant seat on the Commission shall constitute a separate group.** The council shall nominate not fewer than three persons **in each group.** The names of the nominees **in each separate group** shall be certified to the Governor in alphabetical order together with a copy of the investigative information relating to each such nominee. **The Governor shall appoint one nominee from each group.**

(A-30)(emphasis added). These procedural rules clearly demonstrate that the Nominating Council treats each such vacancy as a separate entity.

As previously noted, the Nominating Council is statutorily obligated to establish policies and procedures governing the process by which applicants are nominated. Section 350.031(3), Florida Statutes (1993). The council is also required by statute to provide the Governor with no fewer than three nominees **for each vacancy occurring** on the PSC. Section 350.031(5), Florida Statutes (1993). The Nominating Council has

interpreted these statutory requirements in a manner that treats each vacancy on the PSC as a separate entity, for which a separate list of nominees is to be submitted to the Governor for appointment. It is a well settled principle of Florida law that "the contemporaneous construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight. The courts will not depart from such a construction unless it is clearly unauthorized or erroneous." PW Ventures, Inc. v. Nichols, 533 So.2d 281, 283 (Fla. 1988). Accord Samara Development Corp. v. Marlow, 556 So.2d 1097, 1099 (Fla. 1990).

In providing the Governor with a **limited authority** to participate in the process of the appointment of PSC Commissioners, the Florida Legislature stated unequivocally that the Governor is authorized "to participate in the selection of members **only from the list** provided" by the Nominating Council. Section 350.001, Florida Statutes (1993). Ms. Kiesling was appointed by the Governor to fill both the unexpired portion of Commissioner Beard's term, and the term created by the expiration of Mr. Beard's office by operation of law in January, 1994. However, Ms. Kiesling was not nominated by the Nominating Council for either of those positions. The list of nominees submitted by the Governor for those positions included only the following names: Ronald Lee Bruce, David O. Deutch, and William T. Mims (A-11). In appointing a person not on the list of nominees provided by the Nominating Council, the Governor has usurped a legislative privilege, and exceeded his limited grant of authority under Chapter 350, Florida Statutes (1993).

Since the Governor ignored the nominations submitted to him by the Nominating Council, and thereby failed to make a valid appointment for a vacancy occurring on the PSC in January by December 1, or for the vacancy created by Commissioner Beard's

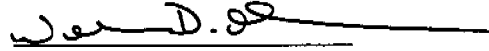
resignation, the Nominating Council held a meeting on December 13, 1993 for purposes of filling those vacancies (A-18). This procedure is authorized by Section 350.031(6), Florida Statutes (1993), and was previously determined to be constitutional by this Court in Chiles supra. At that meeting, in accordance with the requirements of Section 350.031(6), only the names of those nominees previously submitted to the Governor were considered by the Nominating Council for appointment (A-18). After the council voted on the list of nominees, Ronald Lee Bruce was appointed to fill both of the vacancies for which the Governor had improperly appointed Ms. Kiesling (A-19-21). Based upon this appointment by the Nominating Council, and also based upon the authority of the council to make such an appointment under Section 350.031(6), Florida Statutes (1993), Mr. Bruce is rightfully and legally entitled to assume office as a PSC Commissioner, and Ms. Kiesling must be ousted from her claim to that office.

CONCLUSION AND PRAYER FOR RELIEF

The Nominating Council, in furtherance of its statutory obligation to provide the Governor with a list of not fewer than three nominees for each vacancy occurring on the PSC, provided the Governor with three separate lists of nominees for three separate and distinct vacancies. Ms. Kiesling was nominated by the Council to fill only one of those vacancies, the full term vacancy occupied at the time of appointment by Commissioner Luis Lauredo. By appointing Ms. Kiesling to a position for which she was not nominated, the Governor exceeded the limited authority he has been granted to participate in the process of the selection of legislative branch officials, thereby usurping the authority of the Nominating Council. Therefore, Petitioner respectfully requests that this Court issue a Writ of Quo Warranto declaring Ms. Kiesling ousted from the office of PSC Commissioner, and adjudging Ronald Lee Bruce as the lawful holder of that

office.

Respectfully submitted this 18th day of January, 1994.



F. Philip Blank
William D. Anderson
Blank, Rigsby & Meenan, P.A.
204 South Monroe Street
P.O. Box 11068
Tallahassee, FL 32302
(904) 681-6710

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by hand delivery on Diane K. Kiesling, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, this 18th day of January, 1994.

APPENDIX

THOMAS M. BEARD
Commissioner



FLETCHER BUILDING
101 EAST GAINES STREET
TALLAHASSEE, FL 32399-0851
(904) 488-6943

Public Service Commission

June 1, 1993

The Honorable Lawton Chiles
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Governor Chiles:

I am writing this letter to you in compliance with Florida Statute 350.01(2)(b)(3) which directs that any person serving on the Public Service Commission notify the Nominating Council at least 180 days prior to the expiration of their term of the desire to seek reappointment.

Serving in the role of Commissioner and especially as Chairman of the Florida Public Service Commission has been a gratifying and challenging experience. It has given me the chance to learn and to be a part of directing what is in the long-term best interests of the citizens of this state. I have worked with the finest staff of any commission in the country. I am thankful to have had the opportunity.

As you are aware, during the last session, a bill became law that restricts the employment options of a Public Service Commissioner. The law is restrictive enough that it would prevent me from returning to the job I held before I became a commissioner. While a grandfather clause was placed in the legislation it does not apply to any commissioners appointed or reappointed in the future. For this reason, I have decided not to seek reappointment to the Commission.

I have enjoyed serving as a Commissioner and working in state government. I wish you and your administration the best in solving the problems that face this state.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Beard".

Thomas M. Beard
Commissioner

TMB:brf

cc: Public Service Commission Nominating Council

(Faint, illegible text)

Luis J. Lauredo
Commissioner



Fletcher Building
101 East Gaines Street
Tallahassee, FL 32399-0855
(904) 488-7001
FAX # (904) 488-0914

Public Service Commission

June 25, 1993

Honorable Andy Blank
Chairman, Public Service Commission
Nominating Council
Seaboard Warehouse Terminal, Inc.
3455 N.W. 54th Street
Miami, Florida 33142

Dear Chairman Blank:

Pursuant to the requirements of Subsection 350.01(3), Florida Statutes, I am providing notice to the Public Service Commission Nominating Council that at this time, it is my intent to apply to serve an additional term on the Florida Public Service Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Luis J. Lauredo", written in a cursive style.

Luis J. Lauredo
Commissioner

LJL/h

cc: Honorable Lawton Chiles
Nominating Committee
Paul Nichols, Joint Legislative Management Committee ✓



Public Service Commission

August 4, 1993

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, Florida

Dear Governor;

This letter is to inform you that I am resigning from office as a Commissioner of the Florida Public Service Commission, effective at the close of business on August 13, 1993.

My tenure over the last six and one-half years has been challenging and I am grateful to have had the opportunity to serve in state government. With my recent marriage, I feel that it is time for me to move back into the private sector to pursue other interests.

I wish your administration, and more especially the other Commissioners and staff of the Commission, the best in the months ahead.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Beard".

Thomas M. Beard

cc: Commissioners

A handwritten word "File" written in a cursive style.

PUBLIC SERVICE COMMISSION
NOMINATING COUNCIL

MEETING MINUTES

SEPTEMBER 8, 1993

The Florida Public Service Commission Nominating Council met on Wednesday, September 8, 1993 at 9:00 a.m., in Miami at the Airport Marriott, First Floor Meeting Room Salon, 1201 N.W. LeJeune Road. The Nominating Council postponed starting, waiting for Mr. Evans to arrive. After waiting over an hour Chairman Andy Blank called the meeting to order. The following members were present:

Andy Blank, Chairman
Benjamin Anderson
Nick Easterling
Senator Foley
Senator Kiser
Representative Mackenzie
Ross McSwain

Chairman Blank introduced the Council Members and the meeting was called to order at 10:10 a.m.

Chairman Blank gave instructions for conducting the interviews. Voting will take place after all applicants have been heard. It will require 5 votes, which is a majority of the Nominating Council, for an applicant to be placed on the list of nominees to the Governor.

Senator Foley inquired about applicants being permitted to be present in the audience during the interview of another applicant. This subject will be placed on the agenda at a future meeting.

Interviews began at 10:15 a.m. A listing of each applicant and scheduled interview time is attached.

Upon completion of the first ballot, only one name, Ronald Lee Bruce received 5 votes.

Senator Kiser made a motion to review all the names of persons receiving 4 votes. Ross McSwain made a substitute motion to take the voting once again in order of their interview. The substitute motion was called first and 5 of the 7 members voted affirmatively.

After completion of the second vote the Council had selected 3 nominees.

Senator Kiser moved to place the name of Diane Kiesling on the ballot. Seconded by Representative Mackenzie. Ross McSwain moved to reconsider the name of John Sheahan. Senator Kiser seconded. There were no other motions. The names of Diane Kiesling and John Sheahan were voted on again. Diane Kiesling received 6 votes and John Sheahan again received 3 votes.


Senator Kiser moved the names of David Deutch, Ronald Bruce, Thomas Mims and Diane Kiesling be put on the final list to the Governor. Representative Mackenzie Seconded. Passed unanimously.

Senator Foley moved to include the questions on Ethics Commission Form 6 as part of the Public Service Commission application. Passed unanimously.

Representative Mackenzie moved to select Nick Easterling as Vice Chairman of the PSC Nominating Council. Ross McSwain seconded. Passed unanimously.

Chairman Blank thanked the candidates for their interviews, the Council members for their participation and the staff for their assistance in coordinating the process.

There being no other items of business, Chairman Blank adjourned the Council meeting at 5:00 p.m.



Andy Blank, Chairman
Florida Public Service Commission
Nominating Council



LAWTON CHILES
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

September 13, 1993

Mr. Andy Blank
Chairman, Public Service Nominating Council
3455 NW 54 Street
Miami, Florida 33142

Dear Andy:

The Governor is very troubled about the lack of nominations to fill the two vacancies which will occur on the Public Service Commission.

Chapter 350.031(5), Florida Statutes, provides that "It is the responsibility of the council to nominate to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission." The submission of four names for both vacancies does not comply with this statutory mandate.

Governor Martinez was faced with a similar problem in the appointment of judges to fill three vacancies which had occurred in the 15th Judicial Circuit. The Judicial Nominating Commission for that circuit submitted six nominees to fill three vacancies. Governor Martinez asked for an advisory opinion which was rendered to the Governor, In re Advisory Opinion to the Governor, 551 So.2d 1205. I attach a copy of that opinion for your review.

The Governor's Office feels that this precedent requires submission of at least six nominees to the Governor to fill the two vacancies which will occur on the Public Service Commission. I hope you understand that this is brought to your attention in the spirit of cooperation between your council and the Governor's Office. There is certainly adequate time to permit the Public Service Nominating Council to reconvene and submit the required minimum number of nominees.

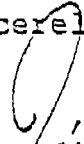
We look forward to working with you in accomplishing these

Page 2
Mr. Andy Blank
September 13, 1993

important appointments. Please understand that should the council not voluntarily submit a minimum of two additional names we will not hesitate to seek judicial relief. Looking forward to your prompt follow up on this request.

With kind regards,

Sincerely,


J. Hardin Peterson
General Counsel

JHP/rls
Attachment

ANDER CRENSHAW
President



Representative Elaine Bloom, Chairperson
Senator W. D. Childers, Vice-Chairperson
Senator Roberto Casas
Senator James A. Scott
Representative Jim Davis
Representative Timothy F. Ireland

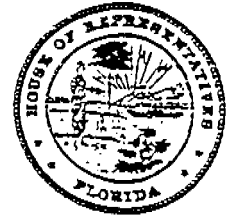
THE FLORIDA LEGISLATURE

JOINT LEGISLATIVE MANAGEMENT COMMITTEE

FRED BREEZE, EXECUTIVE DIRECTOR

ADMINISTRATIVE SERVICES DIVISION

BO JOHNSON
Speaker



PERSONNEL
Room 701G, Claude Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (904) 488-6603

MEETING NOTICE

Public Service Commission Nominating Council

Date: Tuesday, September 28, 1993
Time: 9:00 A.M.
Place: Senate Committee Room 309, The Capitol

The Council will meet to consider additional nominations for pending vacancies on the Florida Public Service Commission. The Council will also consider such administrative matters as may come before it.

PUBLIC SERVICE COMMISSION
NOMINATING COUNCIL

MEETING MINUTES

SEPTEMBER 28, 1993

The Florida Public Service Commission Nominating Council met on Tuesday, September 28, 1993 at 9:00 a.m. in Room 309 in The Capitol, Tallahassee, Florida. The Nominating Council met to consider additional nominations for pending vacancies on the Florida Public Service Commission. Chairman Andy Blank called the meeting to order. The following members were present:

Andy Blank, Chairman
Nick Easterling, Vice Chairman
Benjamin Anderson
Robert Evans
Senator Mark Foley (Arrived at 10:45 a.m.)
Donald Kaplan
Senator Curt Kiser
Representative Ann Mackenzie
Ross McSwain

Chairman Blank explained that it was the different interpretations of the 1989 Advisory Opinion that prompted him to ask the Council to meet again to decide whether or not to add additional names to the slate for the Governor.

Mr. Evans asked if all 16 candidates were notified of this meeting. Council staff had personally called each of the 16 candidates.

Mr. McSwain moved to reimburse the candidates travel expense for this meeting since this was an additional meeting. There are funds available for this. Senator Kiser seconded, passed with 7 members for, 1 against.

Mr. McSwain moved to reconsider the previous vote to close the nominations to the Governor. Senator Kiser seconded, passed unanimously.

Mr. McSwain moved to create two slates: First slate for the unexpired and full-term vacancy beginning in 1994 for the seat presently vacant. Second slate for the full-term vacancy beginning in 1994 for the seat presently occupied. Mr. McSwain added: The second slate would be different names than the first slate. The first three selected names of nominees will go on the first slate and the second three selected names of nominees will go on the second slate. Representative Mackenzie seconded, passed with 5 members for, 3 against.

Mr. Evans moved to interview all present candidates who are here today. Mr. McSwain seconded, passed with 8 members for, and 1 against.

Interviews began at 11:25 a.m. Those interviewed:

Sandra Douglas
Pamela Poulin
William Leonard
Leon Jacobs
Avis Payne
Kimberly Dismukes
Suzanne Summerlin
John Sheahan
David Maloney
Luis Lauredo

Those not in attendance:

Richard Harvey
Richard Holzinger
Sal Jesuele
Heidi Sanchez
Steven Wallach

Upon completion of the first ballot, the names of three additional candidates were announced: Leon Jacobs, Luis Lauredo, John Sheahan.


The first three nominees will be on the slate for the unexpired and full-term Vacancy #1:

Ronald Bruce
David Deutch
William Mims

The second four nominees will be on the slate for the full-term Vacancy #2:

Leon Jacobs
Diane Kiesling
Luis Lauredo
John Sheahan

There being no other items of business, Chairman Blank adjourned the Council meeting at 1:40 p.m.



Andy Blank, Chairman
Florida Public Service Commission
Nominating Council



THE FLORIDA LEGISLATURE
PUBLIC SERVICE COMMISSION NOMINATING COUNCIL



September 29, 1993

The Honorable Lawton Chiles
Governor of the State of Florida
The Governor's Office
PL 05 The Capitol
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

Pursuant to Section 350.031, Florida Statutes, the Florida Public Service Commission Nominating Council met on September 8 and 28, 1993, to make nominations for the unexpired term of retired Commissioner Thomas Beard and for the two Public Service Commission vacancies occurring in January 1994. On behalf of the Council, I certify that the following persons were nominated for the positions as listed. The Council's vote on each person is given next to the nominee's name.

Unexpired Term
Ronald Lee Bruce 5/2
David O. Deutch 6/1
William T. Mims 6/1

Vacancy #1
Ronald Lee Bruce 5/2
David O. Deutch 6/1
William T. Mims 6/1

Vacancy #2
Ennis L. Jacobs 7/2
Diane Kiesling 6/1
Luis J. Lauredo 9/0
John R. Sheahan 6/3

If you or your staff have any questions or require further information, please contact Doris Burns of the Council office at 487-8301.

Sincerely,

Andy Blank, Chairman
PSC Nominating Council

Enclosures

cc: James T. Moore, Commissioner, FDLE
PSC Nominating Council Members



THE GOVERNOR OF THE STATE OF FLORIDA

LAWTON CHILES

November 23, 1993

Mr. Luis J. Lauredo
Public Service Commission
Room 120, 101 East Gaines Street
Tallahassee, Florida 32399-0885

Dear Luis:

Based upon your continued interest in good government and creditable past service, I am pleased to reappoint you as a member of the Florida Public Service Commission for a term ending January 1, 1998.

You will soon receive your qualifying papers from the Department of State. These papers should be filed with the Secretary of State, Room 1801, The Capitol, Tallahassee, Florida 32399, within thirty days of the date of their receipt. If you have any questions about the financial disclosure form, please contact the Commission on Ethics, Post Office Box 6, Tallahassee, Florida 32302, or telephone 904/488-7864. Other inquiries may be directed to the Appointments Office at 904/488-2183.

I appreciate your willingness to continue to serve in this position.

With warm personal regards, I am

Sincerely,


LAWTON CHILES

LC/osb



THE GOVERNOR OF THE STATE OF FLORIDA

LAWTON CHILES

November 24, 1993

Ms. Diane K. Kiesling
Route 2, Box 313
Monticello, Florida 32344

Dear Ms. Kiesling:

Based upon your qualifications and interest in good government, I am pleased to appoint you as a member of the Florida Public Service Commission for a term ending January 1, 1994.

You will soon receive your qualifying papers from the Department of State. These papers must be filed with the Secretary of State, Room 1801, The Capitol, Tallahassee, Florida 32399, within thirty days of the date of their receipt. If you have any questions about the financial disclosure form, please contact the Commission on Ethics, Post Office Box 6, Tallahassee, Florida 32302, or telephone 904/488-7864. Other inquiries may be directed to the Appointments Office at 904/488-2183.

I appreciate your willingness to serve in this position.

With kind personal regards, I am

Sincerely,

Lawton Chiles
LAWTON CHILES

LC/osb



THE GOVERNOR OF THE STATE OF FLORIDA

LAWTON CHILES

November 24, 1993

Ms. Diane K. Kiesling
Route 2, Box 313
Monticello, Florida 32344

Dear Ms. Kiesling:

Based upon your qualifications and interest in good government, I am pleased to appoint you as a member of the Florida Public Service Commission for a term ending January 1, 1998.

You will soon receive your qualifying papers from the Department of State. These papers must be filed with the Secretary of State, Room 1801, The Capitol, Tallahassee, Florida 32399, within thirty days of the date of their receipt. If you have any questions about the financial disclosure form, please contact the Commission on Ethics, Post Office Box 6, Tallahassee, Florida 32302, or telephone 904/488-7864. Other inquiries may be directed to the Appointments Office at 904/488-2183.

I appreciate your willingness to serve in this position.

With kind personal regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Lawton Chiles".

LAWTON CHILES

LC/osb

STATE OF FLORIDA

COUNTY OF LEON

I DO SOLEMNLY SWEAR that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Public Service Commissioner
on which I am now about to enter, so help me God.

Sworn to and subscribed before me this 2nd

day of December, 19 93

(1) *Diane K. Kiesling*
(Sign as you desire commission issued)

(2) *Brenda R. Ferris*
(Signature of Officer Administering Oath or of Notary Public — State of Florida)

(3) Brenda R. Ferris
(Print, Type, or Stamp Commissioned Name of Notary Public)



BRENDA R. FERRIS
NOTARY COMMISSION # CC 217575 EXPIRES
AUGUST 11, 1996
BONDED THRU TROY FAIN INSURANCE, INC.

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

SECRETARY OF STATE
THE CAPITOL, TALLAHASSEE, FLORIDA 32399-0250

I accept the office of Public Service Commissioner

_____. The above is the oath of office taken by me.

In addition to the above office I also hold the office of _____
(Name office or None)

My mailing address is

(4) Route 2, Box 313
Street or Post Office Box

Monticello, Florida 32344
City, State, Zip Code

(5) *Diane K. Kiesling*
(Sign as you desire commission issued)

NOTE: Please print or type name as signed above Diane K. Kiesling

Person taking oath sign on line (1) above. Sign acceptance on line numbered (5) after giving address on line (4). Line (2) is for signature of attesting officer.

State of Florida



Department of State Division of Elections

I, Jim Smith, Secretary of State of the State of Florida, do hereby certify that Diane K. Kiesling, is duly appointed as a member of the Florida Public Service Commission, for a term beginning on the Second day of December, A.D., 1993, until the First day of January, A.D., 1994, and is subject to be confirmed by the Senate during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Third day of December, A.D., 1993



DSDE B07 (7-91)

Handwritten signature of Jim Smith in cursive.

Jim Smith
Secretary of State

State of Florida



Department of State Division of Elections

I, Jim Smith, Secretary of State of the State of Florida, do hereby certify that Diane K. Kiesling, is duly appointed as a member of the Florida Public Service Commission, for a term beginning on the Second day of January, A.D., 1994, until the First day of January, A.D., 1998, and is subject to be confirmed by the Senate during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Third day of December, A.D., 1993



DSDE B07 (7-91)

Handwritten signature of Jim Smith in cursive.

*Jim Smith
Secretary of State*

NOTICE OF COMMITTEE MEETING

Florida Public Service Commission Nominating Council

December 13, 1993

10:00 A.M. Salon D

Miami Airport Marriott Hotel
1201 N.W. LeJeune Road
Miami, FL 33126

=====
The Council will meet to make its appointment to the vacancy on the Florida Public Service Commission created by the resignation of Mr. Tom Beard, and to make its appointment to vacancy number 1 on the Commission which results from the expiration of the term in January, 1994 of the position formerly held by Mr. Beard. These appointments will be made from the groups of nominees sent to the Governor on September 29, 1993.

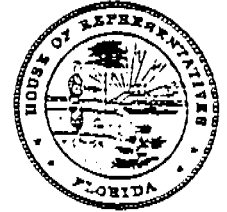
FLORIDA PUBLIC SERVICE COMMISSION NOMINATING COUNCIL

December 13, 1993
 Salon D Meeting Room, Miami Airport Marriott
 1201 N.W. Lejeune Road, Miami, Florida

Members	Unexpired Vacancy	Vacancy #1
Benjamin Anderson	<u>Bruce</u>	<u>Bruce</u>
Nick Easterling	<u>Deutch</u>	<u>Deutch</u>
Robert Evans	<u>Bruce</u>	<u>Bruce</u>
Senator Foley	<u>Mims</u>	<u>Mims</u>
Donald Kaplan	<u>Bruce</u>	<u>Bruce</u>
Senator Kiser	<u>Mims</u>	<u>Mims</u>
Rep. Mackenzie	<u>Bruce</u>	<u>Bruce</u>
Ross McSwain	<u>Bruce</u>	<u>Bruce</u>
Andy Blank	<u>Bruce</u>	<u>Bruce</u>

Bruce - 6
 Deutch - 1
 mims - 2

THE FLORIDA LEGISLATURE
PUBLIC SERVICE COMMISSION NOMINATING COUNCIL



NOTICE OF APPOINTMENT
TO: RONALD LEE BRUCE

This is to advise you that by virtue of the authority vested in the Florida Public Service Commission Nominating Council pursuant to Chapter 350, *Florida Statutes*, you have this day been appointed to the Florida Public Service Commission. This appointment shall be for a term beginning DECEMBER
14, 1993, and expiring on JANUARY 1, 1994, with all the powers and duties incident to such office.

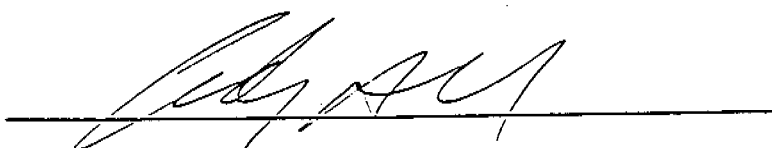
The appointment is subject to your acceptance and subject to confirmation by the Senate of the State of Florida.

Before entering upon the duties of his or her office, each commissioner shall subscribe to an oath of office as provided in Section 350.05, *Florida Statutes*.

Dated DECEMBER 13, 1993.

Florida Public Service Commission Nominating Council

By


Andy Blank, Chairman



THE FLORIDA LEGISLATURE
PUBLIC SERVICE COMMISSION NOMINATING COUNCIL



NOTICE OF APPOINTMENT
TO: RONALD LEE BRUCE

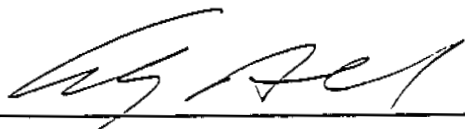
This is to advise you that by virtue of the authority vested in the Florida Public Service Commission Nominating Council pursuant to Chapter 350, *Florida Statutes*, you have this day been appointed to the Florida Public Service Commission. This appointment shall be for a term of 4 years, commencing JANUARY 1, 1994, with all the powers and duties incident to such office.

The appointment is subject to your acceptance and subject to confirmation by the Senate of the State of Florida.

Before entering upon the duties of his or her office, each commissioner shall subscribe to an oath of office as provided in Section 350.05, *Florida Statutes*.

Dated DECEMBER 13, 1993.

Florida Public Service Commission Nominating Council

By 
Andy Blank, Chairman



OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
*Attorney General
State of Florida*

December 23, 1993

Mr. Michael Dodson
111 West Madison Street
Claude Pepper Building, Room 712
Tallahassee, Florida 32399-1900

Dear Mr. Dodson:

It is my understanding that an issue has arisen concerning the possible involvement of this office in a Quo Warranto action between the Governor's Office and your client. If requested by the appropriate party, Ronald Bruce, this office would decline to undertake any action.

Sincerely,

Richard E. Doran
Assistant Deputy Attorney General

RED/dmm

BLANK, RIGSBY & MEENAN, P.A.

ATTORNEYS AT LAW

204 SOUTH MONROE STREET, TALLAHASSEE, FLORIDA 32301
TELEPHONE: (904) 681-6710 • FACSIMILE: (904) 681-6713

WILLIAM D. ANDERSON
JAY O. BARBER
F. PHILIP BLANK
TIMOTHY J. MEENAN
R. TERRY RIGSBY
TIMOTHY G. SCHOENWALDER
GEOFFREY D. SMITH

SPECIAL CONSULTANT*
THOMAS C. WOODS
*NOT A MEMBER OF THE FLORIDA BAR

January 10, 1994

BY HAND DELIVERY

Robert A. Butterworth, Jr.
Attorney General of Florida
The Capitol
Tallahassee, FL 32399

RE: Initiating Quo Warranto Proceeding Pursuant to
Chapter 80, Florida Statutes

Dear Attorney General Butterworth:

This office represents Mr. Ronald Lee Bruce, who was formally nominated on September 28, 1993 by the Florida Public Service Commission Nominating Council ("the Nominating Council") for appointment to the Florida Public Service Commission ("PSC"), to serve as a PSC Commissioner. That nomination was certified to Governor Chiles on September 29, 1993. Governor Chiles did not appoint Mr. Bruce a Commissioner to the PSC. However, a review of the relevant statutes governing the appointments of PSC Commissioners reveals that Governor Chiles acted in contravention of state law, and that Mr. Bruce is lawfully entitled to claim the office of PSC Commissioner. As such, this letter serves as a formal request that you, as the Attorney General of the State of Florida, commence an action in Quo Warranto against the person improperly exercising that office, Ms. Diane K. Kiesling. This request is made pursuant to the provisions of Section 80.01, Florida Statutes (1993), a copy of which is attached for your review.

Section 350.031(5), Florida Statutes (1993), states that it is the responsibility of the Nominating Council "to nominate to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission" (emphasis added). The Governor is required to fill these vacancies "by appointment of one of the applicants nominated by the council." Section 350.031(6), Florida Statutes (1993).

The terms of office of PSC Commissioners Thomas M Beard and Luis J. Lauredo were each set to expire in January, 1994. However, in August, 1993, Mr. Beard announced his resignation, prior to the expiration of his term. On September 29, 1993, the Nominating Council certified its nominations to Governor Chiles, for both the remainder of Mr. Beard's unexpired term and for the two vacancies created by the statutory expiration of the terms of both Mr. Beard and Mr. Lauredo, as follows:

Unexpired Term	Vacancy #1	Vacancy #2
Ronald Lee Bruce David O. Deutch William T. Mims	Ronald Lee Bruce David O. Deutch William T. Mims	Ennis L. Jacobs Diane Kiesling Luis J. Lauredo John R. Sheahen

On November 23, 1993, Governor Chiles appointed Luis Lauredo to fill the vacancy that would be created when Mr. Lauredo's term expired in January. However, on November 24, 1993, Governor Chiles appointed Diane Kiesling to fill the vacancy for the remainder of Mr. Beard's unexpired term, as well as to fill the vacancy created when Mr. Beard's term expired in January, 1994. We believe the Governor's actions are in direct contravention of Chapter 350, Florida Statutes, and ignored the nominations certified by the Nominating Council, thereby usurping the statutory authority of the Council.

Section 350.031(6), Florida Statutes, provides that when the Governor fails to make an appointment from the nominations submitted by the Nominating Council by December 1 to fill a vacancy for a term to begin the following January, "then the council, by majority vote, shall appoint by December 31 one person from the applicants previously nominated to the Governor to fill the vacancy." The authority of the Nominating Council to make such appointments was previously affirmed by the Florida Supreme Court in Chiles v. Public Service Commission Nominating Council, 573 So.2d 829 (Fla. 1991). Since the Governor failed to make a valid appointment from the list of nominees submitted by the Nominating Council to fill the remainder of Mr. Beard's unexpired term, as well as the position created by the expiration of Mr. Beard's term, the Nominating Council met on December 13, 1993, and appointed Mr. Bruce to those terms pursuant to the requirements of Section 350.031(6), Florida Statutes. However, Mr. Bruce has been unable to assume his rightful office due to the Governor's appointment of Ms. Kiesling.

It is upon this set of facts and circumstances that Mr. Bruce contends that he is legally entitled to claim the office of PSC Commissioner. Based upon this claim of entitlement, and pursuant to Section 80.01, Florida Statutes (1993), we respectfully request that your office commence an action in Quo Warranto to establish Mr. Bruce's lawful claim to office. Due to the urgent nature of this situation, and in order to avoid any further prejudice to Mr. Bruce's interests in this matter, we would respectfully request that you office provide a response to this request by the close of business on **Monday, January 17, 1994**. If we have received no response by that time, we will assume that your office has refused to commence an action in Quo warranto, and we will commence such an action in the name of the State, as provided for in Chapter 80, Florida Statutes.

Attorney General Butterworth
January 10, 1994
Page Three

Please direct all future correspondence in this matter to my office, on behalf of Mr. Bruce. If you have any questions or comments regarding this matter, or if I can be of any further assistance to you, please do not hesitate to call.

Respectfully,


F. Philip Blank

FPB:wda

cc: Ronald Lee Bruce

CHAPTER 80

QUO WARRANTO

- 80.01 Quo warranto; refusal of Attorney General to institute.
- 80.02 Quo warranto; control of Attorney General over proceedings instituted by him.
- 80.031 Procedure.
- 80.032 Judgment of ouster.
- 80.04 Quo warranto; effect of judgment.

80.01 Quo warranto; refusal of Attorney General to institute.—Any person claiming title to an office which is exercised by another has the right, on refusal by the Attorney General to commence an action in the name of the state upon the claimant's relation, or on the Attorney General's refusal to file a petition setting forth his name as the person rightfully entitled to the office, to file an action in the name of the state against the person exercising the office, setting up his own claim. The court shall determine the right of the claimant to the office, if he so desires. No person shall be adjudged entitled to hold an office except upon full proof of his title to the office in any action of this character.

History.—s. 2, ch. 1874, 1872; RS 1782; GS 2259; RGS 3582; CGL 5447; s. 30, ch. 67-254.

80.02 Quo warranto; control of Attorney General over proceedings instituted by him.—When the Attorney General commences an action setting forth the name of the person rightfully entitled, or when petition is filed upon the relation of a party claiming title, the Attorney General shall not dismiss the action without the

consent of the claimant, but the court shall investigate the claim and determine the right, if so desired by the person on whose relation the petition is filed, and the claimant may have counsel of his choice to control the action in his behalf.

History.—s. 4, ch. 1874, 1872; RS 1784; GS 2261; RGS 3584; CGL 5449; s. 30, ch. 67-254.

80.031 Procedure.—The rules about pleading and procedure in mandamus apply to actions for quo warranto as near as may be.

History.—s. 30, ch. 67-254.

80.032 Judgment of ouster.—When any petition is well-founded, a judgment of ouster may issue without further amendments to the extent that the petition is well-founded.

History.—s. 30, ch. 67-254.

80.04 Quo warranto; effect of judgment.—When an individual institutes an action without the consent of the Attorney General, the judgment is conclusive as between the parties other than the state. The judgment is not a bar to any quo warranto by the state nor shall a judgment instituted by the Attorney General be a bar to actions by any claimant other than the parties thereto. The party receiving judgment shall be entitled to exercise the office until removed by quo warranto or until his rights thereto shall otherwise cease.

History.—s. 3, ch. 1874, 1872; RS 1783; GS 2260; RGS 3583; CGL 5448; s. 30, ch. 67-254.

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OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH

*Attorney General
State of Florida*

F. Philip Blank, Esq.
Blank, Rigsby & Meenan, P.A.
204 South Monroe Street
Tallahassee, Florida 32301

Re: Request to Initiate Quo Warranto Action

Dear Mr. Blank:

You have requested this office to commence an action in Quo Warranto on behalf of Ronald Lee Bruce.

After reviewing your letter and giving the matter careful consideration, I must decline to bring an action in Quo Warranto on behalf of your client. This response should not in any way be construed to constitute a legal opinion on the merits of this matter.

Sincerely,

Robert A. Butterworth
Attorney General

FLORIDA PUBLIC SERVICE COMMISSION
NOMINATING COUNCIL

RULES OF PROCEDURE

I. Initial Procedure:

Whenever a vacancy occurs on the Public Service Commission, the nominating council shall actively seek, receive and review applications submitted by persons who voluntarily request consideration and by those persons who otherwise consent to such consideration by the council. All persons under consideration for nomination to the Public Service Commission shall submit application to the council on a copy of the approved form attached to these rules. The application shall be accompanied by a signed waiver of confidentiality of all materials necessary for adequate investigation of each applicant.

II. Initial Screening:

For each vacancy to which nominations shall be made, the council shall establish a cut-off date for receipt of applications. No application shall be considered which arrives at the council after the cut-off date. The council shall vote to designate a list of "most qualified applicants" by a vote of no less than three members of the council. There shall be no limit upon the number of persons so designated, but all so designated shall appear from available information to possess all qualifications prescribed by law for Public Service

Commission members, as well as those personal qualities and attributes of character, experience, temperament, professional competence and other personal characteristics essential to commission membership.

III. Further Investigation; Interviews:

Upon selection by the council of a list of applicants found upon preliminary evaluation to be "most qualified" and deserving of further consideration, the council shall further investigate the fitness and qualifications of each "most qualified" applicant. In the course of such investigations, the council may utilize all sources reasonably available within the time permitted by law. In addition, the council shall invite the applicants deemed "most qualified" to appear before the council to respond to questions deemed pertinent to each person's fitness and qualifications to hold a seat on the Public Service Commission. Each such "most qualified" applicant shall be permitted to testify in his or her own behalf at the interview if he or she so desires. Following an applicant's interview, the council may conduct further investigation, if necessary, of that applicant and may accept oral or written testimony or input from the public. The purpose of investigations and interviews is to determine if applicants possess all qualifications prescribed by law and those additional attributes described in Section VI hereof.

IV. Voting:

Five members shall constitute a quorum. No business shall be conducted by the council in the absence of a quorum.

All motions shall be decided by a majority of those members present, except for final selection of nominees, which shall be governed by the provisions in Section V.

V. Final Selection of Nominees:

Upon conclusion of all investigations and after those applicants designated as "most qualified" have been interviewed, the council shall select, by majority vote of its entire membership, the nominees to be submitted to the Governor. Each vacant seat on the Commission shall constitute a separate group. The council shall nominate not fewer than three persons in each group. The council shall nominate for gubernatorial appointment only persons who were initially designated as "most qualified" and whose personal interviews and investigations have satisfied the criteria set forth in Section VI. The names of the nominees in each separate group shall be certified to the Governor in alphabetical order together with a copy of the investigative information relating to each such nominee. The Governor shall appoint one nominee from each group.

VI. Standards and Qualifications: Criteria:

No person shall be nominated to the Governor for appointment unless the council finds that the nominee is fit for the appointment to the Public Service Commission after full and careful consideration by the council of the following criteria:

- (a) Personal attributes
 - 1) Personal integrity
 - 2) Standing in community

(3)

- 3) Sobriety
- 4) Moral conduct
- 5) Ethics
- 6) Impartiality
- 7) Administrative ability
- 8) Independence
- 9) Temperament

(b) Competency and experience

- 1) General health
- 2) Physical disabilities
- 3) Intelligence
- 4) Professional reputation
- 5) Knowledge, experience and competence in the industry, with particular emphasis on one or more of the following fields:

public affairs

law

economics

accounting

engineering

finance

natural resource conservation

energy

or another field substantially related to the duties and functions of the commission

VII. Appointment of Members to Commission by the Council:

(a) Introduction

Section 350.031(6), Florida Statutes, provides that if the Governor has not made an appointment by December 1 to fill a vacancy for a term to begin the following January, then the council, by majority vote, shall appoint by December 31 one person from the applicants previously nominated to the Governor to fill the vacancy. In addition, that same statute provides that if the Governor has not made the appointment to fill a vacancy occurring for any reason other than an expiration of the term by the 60th day following receipt of the nominations of the council, the council by majority vote shall appoint within 30 days thereafter one person from the applicants previously nominated to the Governor to fill the vacancy. The following procedures apply in those instances when the Governor has not made a timely appointment.

(b) Candidates for appointment

Only those nominees who were nominated by the council to the Governor pursuant to Fla. Stat. 350.031(5) shall be considered for appointment to the Public Service Commission by the council.

(c) Voting procedures for appointment

1) At a duly convened meeting of the membership of the council, the chairman shall poll in alphabetical order each member of the council who is present to cast a single vote for his or her choice to fill a particular

vacancy. If there exists more than one vacancy to be filled on the Public Service Commission at the council meeting, each member present shall cast simultaneously one vote for his or her choice for each vacancy. The name of the chairman shall be called last. After the members of the council have voted on the initial ballot, the chairman shall tally, record, and announce the number of votes for all nominees receiving votes.

2) In the case of a single vacancy, the nominee who receives the highest number of votes shall be deemed appointed by the council to fill the vacancy on the Public Service Commission; provided however, that the aforesaid nominee has received such votes from a majority of the membership of the council.

For multiple vacancies:

a) A nominee who receives the highest number of votes shall be deemed appointed by the council to fill one of the vacancies on the Public Service Commission; provided however, that the aforesaid nominee has received such votes from a majority of the membership of the council.

b) If a nominee receiving the next highest number of votes has also received such votes from a majority of the council membership, that person shall be appointed to fill the second vacancy on the Public Service Commission.

c) In case of a tie between two (2) of the nominees who receive the highest number of votes, provided that both nominees have received such votes from a majority of the council membership, both shall be appointed to fill the vacancies.

d) In the event there is a tie between more than two (2) of the nominees who receive the highest number of votes, then the chairman

shall call for a run-off round of voting with respect to the aforesaid nominees and council members shall be polled in accordance with the procedures in 1) above.

e) In case one nominee receives the highest number of votes and two (2) nominees receive the next highest but equal number of votes, provided all the aforesaid nominees have received such votes from a majority of the council membership, the nominee receiving the highest number of votes shall be appointed to fill one (1) vacancy on the Public Service Commission, and the two (2) remaining nominees with tie votes will be in a run-off round of voting in accordance with the procedures in 1) above to fill the other vacancy.

3) In the event the nominee or nominees with the highest number of votes in any round of voting does/do not receive votes from a majority of the council membership, the chairman shall call for another round of voting according to the procedures in 1) above, but the eligible nominees for consideration shall be only the three (3) (or more in the event of a tie) nominees with the highest number of votes. This process may be repeated as necessary until one or more nominee(s) receive(s) votes from a majority of the council membership and is/are thereby appointed to the Public Service Commission. A run-off round of voting shall make null and void all previous votes cast for these nominees. The chairman shall tally, record, and announce the total vote of the membership of the council for such nominees.

(d) Notice of appointment

Upon the selection of an appointee, the chairman shall send a notice to the appointee on behalf of the council in the following form:

NOTICE OF APPOINTMENT

This is to advise you that by virtue of the authority vested in the Florida Public Service Commission Nominating Council pursuant to Chapter 350, Florida Statutes, you have this day been appointed to the Florida Public Service Commission. This appointment shall be for a term of _____ years, commencing _____, 19____, with all the powers and duties incident to such office.

The appointment is subject to your acceptance and subject to confirmation by the Senate of the State of Florida.

Before entering upon the duties of his or her office, each commissioner shall subscribe to an oath of office as provided in Section 350.05, Florida Statutes.

Dated _____, 19____.

Florida Public Service Commission Nominating Council

By _____
Chairman

VIII. Records:

The nominating council shall maintain continuous records of its proceedings, including written records of each council vote. Such records shall be maintained in the offices of the Joint Legislative Management Committee. Such records shall be open to the public upon reasonable notice, as further provided in Florida's Public Records Law, which shall apply to the proceedings of the Public Service Commission Nominating Council.

IX. Ethical Consideration:

No council member should conduct himself in a manner which reflects discredit upon the selection process. Consideration of applicants by the council should be made impartially and objectively; however, a council member may suggest the names of prospective-nominees. A council member should disclose to other council members all personal and business relationships with a prospective nominee that may influence his decision and, if a substantial conflict of interest exists, the council member should disqualify himself from voting on further consideration of any affected prospect.

All balloting by the council shall be by open ballot.

X. Chairmanship; Meetings; Notice:

At its first meeting, the council shall select one of its members to serve as chairman and one of its members to serve as vice-chairman, each for a two-year term. Subsequent meetings shall be at the call of the chairman.

All meetings of the council shall be open to the public at all times.

Meetings of the council shall be held upon no less than seven days written notice to the President of the Senate, the Speaker of the House of Representatives, the Governor of Florida, and of each of the council members. The chairman shall make a reasonable attempt to schedule meetings at locations and times to best accommodate the members. No meeting shall be held at such place or time that would conflict with the attendance by a member of the Florida Senate or Florida House of Representatives at a regularly scheduled legislative committee meeting of which any member of the nominating council shall be a

member. Appointments for such interviews and agendas for the meetings shall be made by the chairman.

The meeting notice shall contain an agenda prescribing the business to come before the council and the order of business.

All persons appearing to speak before the council shall fill out an appearance card in a form substantially as used by standing committees of the Florida Senate and House of Representatives.

These rules may be amended or waived by a 2/3 vote of those council members present at any duly called meeting of the council.

All meetings and proceedings of the council shall be staffed by the Joint Legislative Management Committee.

XI. Council in Deliberation:

The following general rules shall prescribe the procedure for the council on deliberating any of its duties as prescribed herein:

1. Calling council to order: The chairman or in his absence the vice-chairman, shall call the council to order at the date and hour provided by the notice of the council meeting. On the appearance of a quorum the council shall proceed with the order of business. Any member of the council may question any existence of a quorum.

2. Chairman's Control: The chairman or vice-chairman shall preserve order in decorum and shall have general control of the council meeting room. If there is a disturbance or disorderly conduct in the council meeting room, the chairman may take such actions as may be necessary to assure that orderly conduct is maintained.

3. Order of Business: Items shall be considered in the order appearing in the notice required by these rules. An item may be considered out of its order by the council on a vote of 2/3 of those members present.

XII. Chairman's Authority: Appeals:

The chairman shall sign all notices or reports required or permitted under these rules. He shall decide all questions of order. Any ruling by the chair is subject, however, to an appeal by any member. Any appeal made by such member questioning the ruling of the chair shall be made instanter. Any ruling made by the chair, and questioned by appeal of the chair's ruling shall stand, unless reversed by a 2/3 vote of the members present.

XIII. Member's Attendance, Voting, Proxy:

No member of the council shall be allowed to vote by proxy. A majority of all the council members present shall agree by their votes on the disposition of any matter considered by the council.

The chairman may excuse any council member for just cause and this excused absence shall be noted on the council's records.

XIV. Taking the Vote:

The chairman shall declare all votes and shall cause same to be entered on the records of the council.

Any vote may be recorded by a roll call of any members present, on the request of any council member. A council member may request to change his

vote before the results of any roll call are announced. After the results have been announced, a council member with unanimous consent of those present may change his vote. If such changed vote alters the final action of the council, no change of vote shall be valid until the measure has been recalled to the council for further consideration. On request of any council member prior to consideration of other business, the chairman shall order a verification of a vote.

XV. Casting Vote for Another:

No council member shall cast a vote for another member.

XVI. Explanation of Vote:

Any council member may submit his explanation in writing on any vote and shall file it with the chairman. The explanation shall be kept as part of the council record.

XVII. Motions; How Made, Withdrawn:

Every motion may be made orally. On request of the chairman, a council member shall submit his motion in writing. After a motion has been stated or read by the chairman, it shall be deemed to be in possession of the council if seconded by a member, and shall be disposed of by vote of the council members present. The mover may withdraw a motion, except a motion to reconsider at any time before the same has been amended, or before a vote shall have commenced.

XVIII.

Motions; Precedence:

When a question is under debate, the chairman shall receive no motion except:

1. To rise
2. To take a recess
3. To reconsider
4. To limit debate
5. To postpone to a day certain which shall have precedence in the descending order given.