

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FAYE MUSGROVE,)
)
 Petitioner,)
)
 vs.) Case No. 98-0175
)
 SUWANNEE COUNTY and)
 SUWANNEE COUNTY SHERIFF'S)
 DEPARTMENT,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

This cause came on for consideration of a Motion for Summary Final Order filed by Respondent Suwannee County Sheriff's Department on April 8, 1998. Said motion is considered here as a Motion for Recommended Order of Dismissal.

APPEARANCES

For Petitioner: Faye Musgrove, pro se
Post Office Box 657
Live Oak, Florida 32064

For Respondent: Linda G. Bond, Esquire
Counsel for Suwannee County
Sheriff's Department
Post Office Box 12186
Tallahassee, Florida 32317

For Respondent: Suwannee County
No Appearance

STATEMENT OF THE ISSUE

The issue is whether the Division of Administrative Hearings has subject matter jurisdiction over the issues raised in Petitioner's Charge of Discrimination.

PRELIMINARY STATEMENT

On or about February 20, 1997, Petitioner Faye Musgrove (Petitioner) filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR). Said charge alleged that Respondent Suwannee County Sheriff's Department (SCSD) discriminated against her in violation of Chapter 760, Florida Statutes. Petitioner did not allege that Respondent Suwannee County, as a separate governmental unit, was guilty of discriminatory acts under Chapter 760, Florida Statutes.

On August 29, 1997, Petitioner filed an Election of Rights Form with FCHR. She sought permission to withdraw her charge and to file a Petition for Relief to proceed with an administrative hearing pursuant to Sections 760.11(4)(b) and 760.11(8), Florida Statutes.

FCHR referred this case to the Division of Administrative Hearings on January 9, 1998. An Amended Initial Order dated January 28, 1998, was issued on January 28, 1998.

The undersigned issued a Notice of Hearing on February 6, 1998. Said notice scheduled this case for formal hearing on June 25-26, 1998.

On April 8, 1998, SCSD filed the following pleadings: Respondent's Motion for Summary Final Order, Respondent's Proposed Recommended Order, Petitioner's deposition testimony dated February 9, 1998.

On April 10, 1998, the undersigned issued an Order to Show

Cause. Said order required Petitioner to show cause why the case should not be dismissed for lack of subject matter jurisdiction. Petitioner filed a response to the Order to Show Cause on August 24, 1998. This order follows.

FINDINGS OF FACT

1. Petitioner's discrimination statement dated February 18, 1997, states as follows:

I believe that I was discriminated against when the sheriff's department used illegally obtained information from my employer and a relative of mine working in the department, to give negative references and information to the general public.

2. Petitioner has never applied for employment or been employed by the Suwannee County Sheriff or his office.

3. Petitioner's claim apparently arises out of a family dispute between the Petitioner, her mother, Lotis Musgrove, and her sister, Eyvonne M. Roberson, who works for the Suwannee County Sheriff's Department.

4. The family dispute is not related to the Petitioner's employment with the Suwannee County Sheriff.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over claims arising under Chapter 760, Florida Statutes. Sections 120.57(1) and 760.11, Florida Statutes.

6. Chapter 760.07, Florida Statutes (1997), provides as follows in pertinent part:

Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. . . .

7. Claims arising under Chapter 760, Florida Statutes, are limited to those which involve discrimination related to employment, housing or acquired immune deficiency syndrome (AIDS). Honig v. Florida Commission on Human Relations, 659 So. 2d 1236, 1237 (Fla. 5th DCA 1995).

8. Unlawful employment practices are set forth in Section 760.10, Florida Statutes.

9. Petitioner has never been an applicant or an employee of SCSD. Accordingly, she cannot state a cause of action for employment discrimination against SCSD.

10. Regardless of the harm that the Petitioner may have suffered as a result of the family dispute, the Division of Administrative Hearings does not have jurisdiction over the subject matter of Petitioner's claims pursuant to Chapter 760, Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED:

That FCHR dismiss Petitioner's Petition for Relief.

DONE AND ENTERED this 20th day of May, 1998, in Tallahassee,
Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of May, 1998.

COPIES FURNISHED:

Linda G. Bond, Esquire
Powers, Quaschnick, Tischler
and Evans
Post Office Box 12186
Tallahassee, Florida 32317-2186

Faye Musgrove
Post Office Box 657
Live Oak, Florida 32064

Charmin Christensen, Director
Suwannee County Personnel
200 South Ohio Avenue
Live Oak, Florida 32060

Sharon Moultry, Clerk
Human Relations Commission
Building F, Suite 240
325 John Knox Road
Tallahassee, Florida 32303-4149

Dana Baird, General Counsel
Human Relations Commission
Building F, Suite 240
325 John Knox Road
Tallahassee, Florida 32303-4149

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.