Section 3 of CS/HB 710 amends s.120.545(1)(a), to replace the term "within the statutory authority upon which it is based" with the term "an invalid exercise of delegated legislative authority."

The amendment does not confer any "judicial power" whatsoever on the Joint Administrative Procedures Committee. Rather, it merely seeks to express more precisely the scope of the advisory rule review that the Committee performs under existing law. The consequences of the Committee's advisory rule review, as set forth in current law, clearly demonstrate that no judicial power is possessed or sought. See, s.120.545(1)-(8); s.11.60(2)(c)(d)(e) and (j); Commission on Ethics v. Sullivan, 489 So.2d 10 (Fla. 1986). Sullivan stands for the proposition that, like legislative branch entities or other legislative offices or agencies, the Committee is not an enforcing authority and cannot command compliance with its advisory findings. The Supreme Court of Florida held in Sullivan that the Committee

> examines existing and proposed rules made by agencies in accordance with chapter 120, F.S., ... As for the committee's power, while it may object to a proposed or existing rule, the committee has no authority to prevent an agency from filing or continuing the rule without modification ... [Such legislative] entities have in common their ability to investigate and report but not the ability to take actions others must adhere to. 489 So.2nd at 14. (e.s.)

To paraphrase the Supreme Court in Sullivan, the Committee's findings and review, like those of the Auditor General and the Commission on Ethics, "do not right wrongs", but merely put the public and appropriate agencies and offices on notice.

None would claim that the statutory power of the Attorney General to render advisory opinions under s.16.01(3), amounts to a "judicial" power. (See also s.112.322(3), advisory opinions of Commission on Ethics; cf. s.106.23(2), advisory opinions of Division of Elections). In Sullivan, the Court held that the "inability of the [Commission on Ethics] to take any kind of enforcement action means that the Commission does not exercise even quasi-judicial powers. This lack of judicial authoritativeness distinguishes the commission's opinions from the adjudication of rights that occurs by the judiciary." This same observation fully applies to the Committee: its critique or review of existing and proposed rules as described in either current or proposed versions of s.120.545(1)(a) is not quasi-judicial, and certainly not judicial, since the Committee lacks any mechanism for commanding compliance with its advisory findings.

John A. NEILY, Petitioner,

v.

Myrtle PROPST, et al., Respondents.

No. 66972.

Supreme Court of Florida.

April 10, 1986.

Rehearing Denied June 24, 1986.

Application for Review of the Decision of the District Court of Appeal—Direct Conflict of Decisions; Fourth District—Case Nos. 84–402, 84–505 and 84–554.

Bruce F. Simberg and Steven J. Chackman of Conroy, Simberg and Wilensky, Hollywood, for John A. Neily.

Melanie G. May of Bunnell, Denman and Woulfe, Fort Lauderdale, Florida, for Stanley Frankowitz, D.O., John Thesing, D.O., Sunrise Medical Group, James J. Yesbick, D.O., and David Miller, D.O.

Mercedes C. Busto of Bailey and Dawes, Miami, for respondents.

Prior Report: 464 So.2d 1225.

PER CURIAM.

Quashed. *See Young v. Altenhaus*, 472 So.2d 1152 (Fla.1985).

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, McDONALD, EHRLICH and SHAW, JJ., concur.

COMMISSION ON ETHICS, State of Florida, et al., Appellants,

v.

Wilma SULLIVAN, et al., Appellees.

No. 67689.

Supreme Court of Florida.

May 8, 1986.

Rehearing Denied June 24, 1986.

In judicial proceeding arising out of complaints filed with Commission on Ethics alleging breach of public trust by county supervisor and deputy supervisor of elections, the Circuit Court, Leon County, J. Lewis Hall, Jr., J., declared statutory Commission on Ethics appointments scheme unconstitutional. The First District Court of Appeal certified appeal to the Supreme Court. The Supreme Court, McDonald, J., held that: (1) Commission on Ethics was entity of legislative branch, and (2) membership and reporting scheme of Commission on Ethics, as part of legislative branch, was constitutionally sound.

Reversed and remanded to Circuit Court.

Adkins and Shaw, JJ., dissented.

1. States ⇐34

Commission on Ethics was entity of legislative branch, as its powers were most closely analogous to those exercised by legislative branch entities in investigating and reporting, free from day-to-day involvement in government, in order to put public and various appropriate public office holders on notice of complaints concerning breach of public trust by public officers or employees not within jurisdiction of Judicial Qualifications Commission. West's F.S.A. §§ 20.02(1), 112.321(1), 112.322; West's F.S.A. Const. Art. 2, §§ 3, 8, 8(f, h), (h)(3); Art. 4, § 6; Art. 10, § 3.

2. States ⇐34

Membership and reporting scheme of Commission on Ethics, as part of legislative

branch, was consistent with legislature's ability to staff its subunits in any manner it deemed proper, not violative of Constitution, and statutory appointment scheme was constitutionally sound. West's F.S.A. § 112.321(1); West's F.S.A. Const. Art. 2, § 3; Art. 4, § 6; Art. 10, § 3.

Jim Smith, Atty. Gen. and Arden M. Siegendorf, Asst. Atty. Gen., and Philip C. Claypool, Staff Atty., Com'n on Ethics, Tallahassee, for appellants.

Stephen Marc Slepin and George L. Waas of Slepin, Slepin and Waas, Tallahassee, for appellees.

D. Stephen Kahn of Kahn and Dariotis, Tallahassee, amicus curiae for Harry A. Johnston, II, as President of The Florida Senate.

McDONALD, Justice.

The present appeal is another in a series of judicial proceedings arising out of two complaints filed with the Florida Commission on Ethics (FCE) in January 1981 against Wilma Sullivan and her son John Sullivan (the Sullivans) alleging breach of the public trust while each served, respectively, as Supervisor of Elections and Deputy Supervisor of Elections for Leon County. In the instant matter the circuit court in Leon County held that section 112.321(1), Florida Statutes (1983),[1] is unconstitutional as a violation of article II, section 3 (separation of powers); article X, section 3 (vacancy in office); and article IV, section 6 (executive departments), of the Florida Constitution. On appeal to the first district that court certified to us that the trial court order requires immediate resolution by this Court because the issues are of great public importance and have a great effect upon the proper administration of justice throughout the state. We have jurisdiction. Art. V, § 3(b)(5), Fla. Const. We find that the FCE is constitutionally constituted and remand to the trial court for proceedings consistent with this opinion.

In 1976 the people of this state by initiative petition adopted an ethics in government provision for the state constitution. This constitutional amendment declares that "public office is a public trust" and that this trust will be secured and sustained against abuse. Art. II, § 8, Fla. Const. To assure the integrity of this public trust, the amendment further provides for "an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission." Art. II, § 8(f), Fla. Const. To implement this provision, the amendment provides that the independent commission "shall mean the Florida Commission on Ethics." Art. II, § 8(h)(3), Fla. Const.

The Florida Commission on Ethics referred to by the amendment is the body first created by chapter 74-176, Laws of Florida, and which presently appears at section 112.320, Florida Statutes (1983). *Florida Commission on Ethics v. Plante*, 369 So.2d 332, (Fla.1979). While the provisions of article II, section 8(h) remain effective only until the legislature acts to change its provisions by law, there has been no legislation that conflicts with the

1. This statute reads as follows:

(1) The commission shall be composed of nine members. Five of these members shall be appointed by the Governor, no more than three of whom shall be from the same political party, subject to confirmation by the Senate. One member appointed by the Governor shall be a former city or county official. Two members shall be appointed by the Speaker of the House of Representatives, and two members shall be appointed by the President of the Senate. Neither the Speaker of the House of Representatives nor the President of the Senate shall appoint more than one member from the same political party. No member may hold any public employment. All members shall serve 2-year terms, except that four of the initial members appointed by the Governor shall serve 1-year terms. All succeeding appointments shall be for 2 years. No member shall serve more than two full terms in succession. Any member of the commission may be removed for cause by majority vote of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

designation in article II, section 8(h)(3). Hence, the independent commission provided for in article II, section 8(f) remains the FCE. It would also appear that the sunshine amendment to the constitution adopted by implication the statutory method in selecting and appointing members to the commission.

In determining whether section 112.321(1) violates article II, section 3 of the constitution the position the ethics commission holds in our scheme of government is an important, if not determinative, factor. The FCE emphasizes that the demand for an independent commission be taken at its plain meaning. The commission argues that it possesses constitutional status separate and independent from the other branches of Florida government, a position clearly contemplated by the "unless expressly provided herein" clause in article II, section 3 of the Florida Constitution. Indeed, the FCE concludes, given the mission of the independent commission, the independence requirement can only be met by a membership scheme that has persons other than just the governor making appointments to the commission.

The Sullivans, on the other hand, contend that the independence intended by the phrase is merely a truism and claim that all entities and officers of government are presumed by case law to do their job in a fair, impartial, and lawful manner, independent of political manipulations. The FCE must belong to one of the three branches of Florida government. Absent any constitutional status, it can only belong to the executive department because the commission is not a court, and hence a part of the judicial branch, nor the house or senate, and thus a part of the legislative branch. Consequently, by the separation of powers and vacancy clauses of the Florida Constitution this executive branch entity is subject to the appointments clause in article IV, section 1(f), Florida Constitution, which places the power to appoint to all vacancies of the executive branch exclusively with the governor. Thus, the Sullivans claim that the FCE members have been improperly appointed.

Resolving this issue requires that we look to the essential nature and effect of the commission's powers and compare the commission's powers with those assigned to each branch of our government. *Florida Motor Lines, Inc. v. Railroad Commissioners*, 100 Fla. 538, 129 So. 876 (1930). *Accord In re Advisory Opinion to the Governor*, 223 So.2d 35 (Fla.1969). Our research reveals that the FCE is neither a separate constitutional entity nor is it a part of the executive branch.

The declaration of policy for the organizational structure of Florida government provides that "[t]he executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature." § 20.02(1), Fla.Stat. (1983). Inherent in the nature of this executive power is the ability to take authoritative action to fulfill the charge of faithfully enforcing the laws. The duties of the FCE are not commensurate with these executive responsibilities.

The constitution provides that the independent commission shall "conduct investigations and make public reports." Art. II, § 8(f), Fla. Const. In implementing this requirement section 112.322 provides the FCE with the authority to receive sworn complaints, conduct hearings, receive oral or written testimony, issue advisory opinions, subpoena and audit records, compel the attendance and testimony of witnesses, and administer oaths. These powers, however, merely supplement the general right to conduct investigations and make public reports. As to the nature of this investigative and reporting power, we held in *Plante* that a report of the commission "does not commence official action for discipline," nor does it in any other way penalize, affect qualifications, punish, or unseat an officeholder. 369 So.2d at 337.[2] Part III of chapter 112, Florida Statutes, also vests

2. While *Plante* specifically spoke to reports about members of the legislature, its analysis is applicable to any officeholder subject to an investigation or report by the FCE.

the FCE with responsibilities under the state's financial disclosure laws. But the FCE's powers extend only to the development of reporting forms (sections 112.3145(5) and 112.3147) and the ability to grant an extension of time for filing the required disclosure (section 112.3151). The actual filing of the disclosure statements is assigned to the secretary of state and to various other public officers. §§ 112.313(9)(b), 112.3145(2)(c), (4), Fla.Stat. (Supp. 1984). The penalties under the ethics code and the power to enforce its provisions are also specifically left to the governor, legislature, attorney general, and other public officers. *See, e.g.*, §§ 112.317, 112.324(3)–(5). In short, the commission administers no program; it enforces no law.

The FCE is also not a part of the judicial branch. The judicial power is defined by the declaration of policy as follows: "The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws." § 20.02(1). In perhaps the most famous characterization of the judicial power, Chief Justice John Marshall said: "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177, 2 L.Ed. 60 (1803). The FCE has no such power.

Section 112.322(3) provides the commission with the authority to issue advisory opinions to interpret or advise on the applicability of the state's ethics code. Those who propound the questions are bound by the opinion. When reviewed by the courts, however, these opinions are only persuasive; they are not binding. These advisory opinions are clearly distinguishable from decisions rendered by the courts, which are binding unless on review by a superior court reversible error is shown to exist in the decision. The attorney general of this state has a power similar to the FCE's to issue official opinions, but such power alone, and without any other constitutional demand, would not make the attorney general a part of the judicial branch. *Cf.* § 16.01(3), Fla.Stat. (1983) (ability of the attorney general to issue advisory opinions); *Beverly v. Division of Beverage, Department of Business Regulation*, 282 So.2d 657, 660 (Fla. 1st DCA 1973) (opinions of attorney general are persuasive but not binding).

Regarding the FCE's power to conduct investigations, while this power appears to be of a quasi-judicial nature, it is not. *Black's Law Dictionary* defines a quasi-judicial power as "the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, *as a basis for their official action*, and to exercise discretion of a judicial nature." 1121 (5th edition 1979) (emphasis added). As stated previously, the inability of the commission to take any kind of enforcement action based on its investigations means that the commission does not exercise even quasi-judicial powers. This lack of judicial authoritativeness distinguishes the commission's opinions from the adjudication of rights that occurs by the judiciary.

Turning now to the powers of the legislative branch, the declaration of policy provides that "[t]he legislative branch has the broad purpose of determining policies and programs and reviewing program performance." § 20.02(1). While the legislative power is vested in the senate and the house, certain legislative-related activities need not be performed or strictly divided between the house and senate. Indeed, under the umbrella of the legislative branch in Florida a number of entities exist to assist the legislature by reviewing programs and policies.

The first significant legislative branch entity is the Auditor General's Office. The auditor general conducts financial and performance audits of state agencies with such reports being issued to the Joint Legislative Auditing Committee, the governor, the subject agency, and any other relevant governmental entity for appropriate action. It must be noted that the auditor general cannot command or coerce compliance; this

power is left to others. Art. III, § 2, Fla. Const.; §§ 11.40–11.48, Fla.Stat. (1983 & Supp.1984). A second legislative agency is the Public Service Commission, which sets rates and settles jurisdictional boundaries for certain utilities in Florida with its decisions subject to judicial review. Examining the powers and position of the PSC, it is interesting to note that the ratemaking decisions of the commission will not be overturned by this Court if supported by clear and convincing evidence in the record. Art. V, § 3(b)(2), Fla. Const.; Title XXVII, Fla.Stat. (1983 & Supp.1984).[3] Another legislative agency is the Office of the Public Counsel. The public counsel represents the people of Florida at the Public Service Commission and other appropriate federal regulatory bodies. The public counsel's powers, however, are limited to the preparation and issuing of reports and recommendations to the Public Service Commission, governor, or legislature concerning matters within the jurisdiction of the commission; in its essentials, these reports and recommendations are informational materials that can be accepted or rejected. § 350.0611, Fla.Stat. (1983). Finally, there is the Joint Administrative Procedures Committee. This group examines existing and proposed rules made by agencies in accordance with chapter 120, Florida Statutes, for compliance with section 120.545(1)(a). As for the committee's power, while it may object to a proposed or existing rule, the committee has no authority to prevent an agency from filing or continuing the rule without modification. § 120.545, Fla.Stat. (1983).

With the exception of the Public Service Commission, these entities have in common their ability to investigate and report but not the ability to take actions others must adhere to. Indeed, the legislature each session creates a number of entities, mostly short-term advisory commissions or task forces, the purpose of which is to seek information, investigate problems, and inform the appropriate public officers of their findings and recommendations.

[1] The authority of the FCE is most closely analogous with the powers exercised by these legislative branch entities. Its ability to investigate and report free from day-to-day involvement in our government is at the heart of the FCE's position just as it is for the auditor general and the Joint Administrative Procedures Committee. In the final analysis the power of the commission lies in its status as an official forum in which public opinion can be informed and mobilized; the results of its reports, much like those of the auditor general, do not right wrongs but rather put the public and various appropriate officeholders on notice. We hold, therefore, that the FCE is a legislative branch entity.[4]

[2] As a part of the legislative branch, the membership and reporting scheme of the FCE is entirely consistent with the legislature's ability to staff its sub-units in any manner it deems proper that does not violate the constitution. The present appointments scheme is constitutionally sound. *See, e.g.*, §§ 350.001, 350.03, Fla. Stat. (1983) (delegation to the governor authority to appoint and remove public service commission members).

In summary, the FCE is a part of the legislative branch of Florida government. As such, its membership may be drawn in

3. While this Court has found the PSC to be a part of either the legislative or judicial branch, *In re Advisory Opinion To The Governor*, 223 So.2d 35 (Fla.1969), the legislature has declared it to be a legislative branch entity, § 350.001, Fla.Stat. (1983). Nevertheless, the PSC has been required to adhere to the Administrative Procedures Act. *ASI, Inc. v. Florida Public Service Com'n*, 334 So.2d 594 (Fla.1976).

4. The attorney general reached a similar conclusion in 1976. 1976 Op.Att'y Gen.Fla. 076–54 (Mar. 10, 1976). Dr. Allen Morris, perhaps the foremost authority on Florida government, has continued to list the FCE as a part of the legislative branch though with the caveat that the 1976 Sunshine Amendment, now article II, section 8, of the Florida Constitution elevated the commission to "constitutional status" and that the commission's placement among the three departments has not been "determined either judicially or otherwise" since the attorney general's 1976 opinion. A. Morris, *The Florida Handbook: 1983–1984* at 122 (19th ed. 1985).

whatever manner the legislature deems appropriate. Consequently, the present appointments scheme does not violate article II, section 3; article X, section 3; or article IV, section 6, of the Florida Constitution. We therefore reverse the order of the trial court and remand for proceedings consistent with this opinion.

It is so ordered.

BOYD, C.J., and OVERTON and EHRLICH, JJ., concur.

ADKINS and SHAW, JJ., dissent.

Tommy S. GROOVER, Appellant,

v.

STATE of Florida, Appellee.

No. 68845.

Supreme Court of Florida.

June 3, 1986.

Defendant was convicted of three counts of first-degree murder. The Circuit Court, Duval County, R. Hudson Olliff, J., denied application for stay of execution without evidentiary hearing. On appeal, the Supreme Court held that: (1) trial counsel was not ineffective for failing to present certain evidence or raise certain defenses; (2) defendant could not raise impropriety of prosecutorial statements for first time on appeal; (3) trial counsel properly testified at pretrial suppression hearing; (4) prosecutor's failure to reveal payments to critical state witness did not affect jury assessment of credibility; (5) trial judge's statement as to tragedy of victims' death was not improper; and (6) defendant was entitled to evidentiary hearing on issue of whether counsel's failure to explore defendant's psychiatric condition was ineffective assistance.

Reversed and remanded.

Boyd, C.J., dissented and filed opinion.

McDonald, J., dissented.

1. Criminal Law ⇐641.13(2)

It was not ineffective assistance for counsel to fail to present evidence that was largely cumulative or to fail to raise defense of voluntary intoxication that was inconsistent with theory that defendant had not committed killings. U.S.C.A. Const. Amend. 6.

2. Criminal Law ⇐1037.1(1)

Allegedly improper prosecutorial statements did not constitute fundamental error, and defendant who had not objected to those statements at trial was barred from doing so on appeal.

3. Attorney and Client ⇐109

Defense counsel did not breach duty to client by testifying at pretrial suppression hearing after being subpoenaed as result of defendant's claim that counsel had threatened him, where record showed that defendant wanted counsel to testify and explicitly waived attorney-client privilege as to discussions he wished presented.

4. Criminal Law ⇐700(4)

Defendant was not entitled to relief due to prosecutor's failure to reveal payments to critical State witness for lunch and travel expenses, since defense counsel had fully cross-examined witness and exposed fact that her testimony was given in exchange for a reduction of charges against her and payments in question could not have made any difference in jury's assessment of her credibility.

5. Criminal Law ⇐655(1)

Trial judge's statement in triple murder prosecution concerning fact that victims' lives had tragically ended over $50 drug debt was not improper.

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

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MEMORANDUM

TO: Representative Rick Dantzler

FROM: Carroll Webb, Scott Boyd, Anne Terry

DATE: April 20, 1987

RE: Amendment to s.120.54(7), F.S.

I. Proposed Language

The amendment would add a single sentence to s.120.54(7) so that it would read as follows:

> (7) Each rule adopted shall be accompanied by a reference to the specific rulemaking authority pursuant to which the rule was adopted and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific. No rule shall cite as the law implemented any legislative statement of general intent or general policy.

II. Purpose of Existing Language

Section 120.54(7) was enacted as part of the "new" Administrative Procedure Act in 1974. It requires an agency to cite the specific section or subsection of law being implemented in order to facilitate review by the Committee, hearing officers, and the courts and to emphasize that an agency has power only to interpret, make specific, or implement provisions of law and cannot itself legislate. This principle is closely

related to the doctrine of nondelegation of legislative power so fundamental to Florida government. Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978). It is settled law that, "Any reasonable doubt as to the lawful existence of a particular power that is being exercised by . . . [an administrative agency] . . . must be resolved against the exercise thereof, and the further exercise of the power should be arrested." Florida Bridge Company v. Bevis, 363 So.2d 799 (Fla. 1978).

III. Law on General Statements

A legislative statement of general intent or general policy would include preambles and statements of legislative findings, policy, purpose and intent. Sutherlands Statutory Construction, Fourth Ed., s.20.03, defines preamble as ". . . a prefatory explanation or statement, often commencing with the word 'whereas', which purports to state the reason or occasion for making a law or to explain in general terms the policy of the enactment." Policy sections of statutes serve the same function. As discussed in Sutherland s.20.12, "In place of a preamble it has become common, particularly in federal legislation, to include a policy section which states the general objectives of the act so that administrators and courts may know its purposes."

The issue thus arises as to what function preambles and policy sections serve with respect to the delegation of powers to an administrative agency. The law seems clear that such general statements can delegate no power to agencies. A preamble is ". . . not an essential or effective part of an act and cannot enlarge or confer powers, or cure inherent defects in the statute." 49 Fla. Jur. 2d. Statutes s.59. It is true that a preamble may be resorted to when doubt arises as to the interpretation of a section which does grant authority and may be utilized to construe specific enabling provisions of a statute, but it cannot ". . . confer power or determine rights. Hence it cannot be given the effect of enlarging the scope or effect of a statute." Sutherland s.20.03. The same is true of general policy statements. As Sutherland notes, "The policy section, like the preamble is available for the clarification of ambiguous provisions of the statute, but may not be used to create ambiguity." s.20.12, emphasis added.

Given the design of s.120.54(7) to identify the sections or subsections of the Florida Statutes or the Laws of Florida which are being implemented, it is

clear that it is improper to cite general statements of intent which cannot enlarge the scope or effect of the statute, and do not confer any power or authority. The amendment to s.120.54(7) would clarify and reinforce this principle. It would in no way prohibit an agency from considering statements of general intent and general polity when construing or interpreting specific enabling legislation, but rather would merely preclude agencies from citing these sections as specific grants of authority, which it is clear from the law they cannot be.

IV. Specific Examples

Example 1.

In Lewis v. State Board of Health, 143 So.2d 867 (1st DCA, 1962), the Board relied upon paragraph 381.031(1)(g), F.S., as the authority to enact a regulatory program governing spraying of lawns. The statute referred to the "execution of any other purpose or intent of the laws enacted for the protection of the public health of Florida." The court stated (emphasis added):

> To give such a broad meaning to this subsection could open the door for the State Board of Health to enact rules and regulations on every aspect of the life and property of private citizens under the guise "for the protection of the public health of Florida."
>
> * * *
>
> It is submitted that if the legislature had intended for the State Board of Health to possess the far reaching authority and power set out in the regulations being considered, it would have enacted a chapter upon the subject matter as it did in the structural pest control act and would not have depended upon the State Board of Health to hang its hat upon such a tenuous provision as "execution of any other purpose or intent of the laws enacted for the protection of the public health of Florida." A review of the cases construing the constitutionality of the rules and regulations promulgated by administrative agencies reveals that in each instance a specific grant of authority has been attempted to be delegated by the

> legislature, and that such authority has not been assumed by such agencies on the basis of implication or such vague and general provisions as relied upon by the State Board of Health in the instant case.

Example 2.

In HRS v. Florida Psychiatric Society, Inc., 382 So.2d 1280 (1st DCA, 1980) the Department of Health and Rehabilitative Services promulgated a rule establishing, regulating and licensing "crisis stabilization" facilities. Upon examining the laws cited by the agency as rulemaking authority and as law implemented pursuant to the Administrative Procedure Act, the court concluded that the statutes did not authorize the facilities.

The department cited, among other sections, s.394.453 which at that time was the legislative intent section of the Baker Act. The court found that the general intent section provided no authority because there was no other specific section of the law which granted authority to the department to have the facilities it had created. The court stated at page 1284, "We have examined the remaining statutory provisions primarily relied upon by the Department, and while we agree that the Department is given broad authority to carry out the purposes and intent of the legislature with respect to mentally ill persons, we find nothing in the statutes authorizing programs or facilities to which the rules adopted by the Department can reasonably be related."

Example 3.

In the Florida Public Transit Act is s.341.321 which is entitled "Development of high-speed rail lines; legislative findings, policy, purpose, and intent." This section consists, as its title suggests of certain factual findings of the legislature and general statements such as "The legislative intent of this act is to establish a centralized and coordinated permitting and planning process for the location of high-speed rail lines and their construction, operation, and maintenance in order to enhance and complete the transportation system of this state. . ."

When rules began to appear implementing the Act, a particular problem with reliance upon general statements of intent as grants of authority became apparent.

The Act involves the High Speed Rail Transportation Commission, the Department of Transportation, the Department of Environmental Regulation, the Department of Community Affairs and the Franchise and Environmental Review Committee. Each is assigned particular duties to perform by specific provisions of the statute. When rules were noticed in the Florida Administrative Weekly by the High Speed Rail Transportation Commission, however, the Commission had, in reliance upon citations to the general intent sections and general authority, attempted to promulgate rules within the statutory powers of other agencies and bodies.

It was only after extensive meetings between several members of the staff of the Joint Administrative Procedures Committee that the specific powers and duties sections of the statute were relied upon, and many of the provisions of the original rule package were removed. Some were enacted by the Department of Environmental Regulation and the Department of Community Affairs pursuant to express grants of authority in their powers and duties provisions.

It is suggested that as more and more agencies are being asked to cooperate in the implementation of a given statute or set of statutes, it becomes ever more important to clarify that statements of general intent and general policy do not bestow any authority whatsoever, but are rather placed to assist in interpretation and construction of the specific provisions which do grant power. For example, in the area of growth management, if each agency considers that general purposes expressed by the legislature give it the authority to enact whatever rules it may desire on the subject, chaos would result. Rather, each agency must look to the specific delegations of power and responsibilities as these are set forth in specific substantive provisions of the statute.

V. Conclusion

The proposed amendment to s.120.54(7), F.S., is consistent with existing language. It serves to strengthen and clarify the important principle that agency authority is only that which is delegated by the legislature and powers may not be assumed from legislative statements of general intent or general policy.

CW/SB/AT/cb