

Mosquito control district, F.S. 120

Number: AGO 78-26

Date: January 22, 1998

Subject:

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ADMINISTRATIVE PROCEDURE ACT--NOT APPLICABLE TO LOCAL, ONE-COUNTY DISTRICT UNLESS SPECIFICALLY MADE SO

To: Hugh R. Papy, Attorney for Monroe County Mosquito Control District, Key West

Prepared by: Thomas M. Beason, Assistant Attorney General

QUESTION:

Does the Administrative Procedure Act, Ch. 120, F. S., apply to the Monroe County Mosquito Control District?

SUMMARY:

The Monroe County Mosquito Control District, having jurisdiction in only one county or part thereof, is not an intergovernmental or regional agency as described in s. 120.52(1)(b), F. S., and as an "other unit of government located in the state," as described in s. 120.52(1)(c), is subject to the provisions of Ch. 120, F. S., only if expressly made subject thereto by special or general legislative act or an existing judicial decision. Absent either such an act or decision, the Administrative Procedure Act does not apply to the Monroe County Mosquito Control District.

Your question is substantially similar to the question I recently addressed in AGO 077-142 concerning application of the Administrative Procedure Act to Lower Florida Keys Hospital District. There, I determined that the answer to the question depended on whether the hospital district is an agency as that term is defined in Ch. 120, F. S.:

"120.52 Definitions.--As used in this act:

(1) 'Agency' means:

(a) The Governor in the exercise of all executive powers other than those derived from the Constitution.

(b) Each other state officer and each state department, department unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 160, 163, 298, 373, 380 and 582.

(c) Each other unit of government in the state, including counties and municipalities to the extent

they are expressly made subject to this act by general or special law or existing judicial decisions. . . ."

In AGO 77-142, I first noted that the agencies enumerated in s. 120.52(1)(b), F. S., appear to be various types of intergovernmental programs and regional governmental agencies or districts existing in the state and that the adjective "state" evidently modifies each of the described units, such as commission, regional planning agency, board, and district thereafter listed. After considering the decision in *Sweetwater Utility Corp. v. Hillsborough County*, 314 So.2d 194 (2 D.C.A. Fla., 1975), and the observations of the Chairman of the Law Revision Council Committee on the Administrative Procedure Act Project, I concluded that units of local government having jurisdiction in only one county or a part thereof which are not intergovernmental or regional agencies or programs described in s. 120.52(1)(b) are subject to the provisions of Ch. 120, F. S., *only* if expressly made subject thereto by special or general legislative act or existing judicial decision.

Similar to the Lower Florida Keys Hospital District, the Monroe County Mosquito Control District is a special tax district existing only in Monroe County. Chapter 67-1726, Laws of Florida, as amended by Chs. 74-537 and 76-440, Laws of Florida. Accordingly, I conclude that the Monroe County Mosquito Control District is not included as an agency within s. 120.52(1)(a) or (b), F. S., and thus, as an "other unit of government in the state," is exempt from the Administrative Procedure Act unless expressly made subject thereto by judicial decision or legislative act. Since there is neither a special or general legislative act nor an existing judicial decision applying or extending the Administrative Procedure Act to the Monroe County Mosquito Control District, your question is answered in the negative.