

Multicounty special district, filling vacancies

Number: INFORMAL

Date: November 09, 2010

The Honorable Michael S. Bennett
Senator, 21st District
Wildewood Professional Park, Suite 90
3653 Cortez Road West
Bradenton, Florida 34210

Dear Senator Bennett:

Thank you for your letter of October 28, 2010, requesting assistance regarding the process to be used in filling vacancies on multicounty special district boards. Information supplied with your letter indicates that a constituent has questions regarding filling vacancies on the district board as that procedure is controlled by section 189.405(3)(a), Florida Statutes. Attorney General McCollum has asked me to respond to your letter. I would note that this office will not comment on the duties and authority of the Governor in the absence of a request from that office for our assistance.[1] The following general comments are provided in an effort to assist you in advising your constituents.

Chapter 2009-260, Laws of Florida, CS/HB 1113, amended the special act creating the East County Water Control District in Lee and Hendry Counties. The act states that vacancies on the board shall be filled pursuant to section 189.405(3)(a), Florida Statutes.[2]

Section 189.405(3)(a), Florida Statutes, provides:

"If a multicounty special district has a popularly elected governing board, elections for the purpose of electing members to such board shall conform to the Florida Election Code, chapters 97-106."

The East County Water Control District Board of Commissioners is composed of five members who are registered voters and residents of the district.[3] As the act specifically recognizes, "[t]he Board of Commissioners shall be elected at large by the electors residing in the District." [4] Clearly, the board of commissioners of the East County Water Control District are popularly elected and their election must be conducted using the procedures set forth in the Election Code as required by section 189.405(3), Florida Statutes. However, section 4(4) of the special act also requires that *vacancies* be filled pursuant to section 189.405(3), Florida Statutes, and, by reference, the Florida Election Code.

A review of the legislative history contained in the House of Representatives Local Bill Staff Analysis indicates that the Legislature, in amending the special act to remove the requirement that vacancies be filled pursuant to section 298.12, Florida Statutes, intended to "chang[e] the method for filling vacancies through special election[.]" [5]

Thus, it would appear that the Legislature intended that a vacancy occurring on the Board of Commissioners of the East County Water Control District be filled by a special election conducted pursuant to the Florida Election Code, Chapters 97-106, Florida Statutes. Because this matter is not free from doubt, the Legislature may wish to revisit Chapter 2009-260, Laws of Florida, and clarify its intent regarding the methods to be used in filling vacancies on the board of commissioners for the district.

I trust that these informal comments will be of assistance to you in advising your constituents.

Sincerely

Gerry Hammond
Senior Assistant Attorney General

GH/srh

[1] See s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions.

[2] The previous method for filling vacancies was provided in section 298.12, Fla. Stat. See s. 4.(4), Ch. 2009-260, Laws of Fla.

[3] See s. 4.(1), Ch. 2009-260, Law of Florida.

[4] *Id.*

[5] See s. III.A. "Constitutional Issues," House of Representatives Local Bill Staff Analysis for CS/HB 113, dated 4/1/2009.