

Drainage districts subject to Chs. 298 and 189

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The Honorable Joseph R. Spratt
Representative, District 77
205 South Commerce Avenue, Suite B
Sebring, Florida 33870-3604

Dear Representative Spratt:

You ask how the provisions of Chapter 298, Florida Statutes, interact with Chapter 189, Florida Statutes. You do not mention any specific provisions of the two chapters; therefore, my comments must be general in nature.

Chapter 298, Florida Statutes, provides guidance regarding the powers and duties of certain types of special districts, that is, water management districts and drainage districts. Chapter 189, Florida Statutes, is the "Uniform Special District Accountability Act of 1989," and was intended by the Legislature to provide general provisions for the definition, creation, and operation of special districts.[1]

Chapter 189, Florida Statutes, applies to a variety of special districts. As defined in section 189.403(1), Florida Statutes, for purposes of Chapter 189, "special district" means:

"a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. . . . The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality." [2]

Thus, while the provisions of Chapter 189, Florida Statutes, may apply to a water control district subject to Chapter 298, Florida Statutes, Chapter 189 is not limited to such districts but rather applies to any local unit of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet, except those expressly excluded.

For districts subject to Chapters 298 and 189, Florida Statutes, the provisions of the two chapters should, to the extent possible, be read together. For example, in Attorney General Opinion 96-28, this office concluded that the provisions of section 255.20, Florida Statutes, which apply to Chapter 189 districts should be read together with the minimum procedures for letting contracts for works and improvements by drainage and water control districts set forth in section 298.35, Florida Statutes. This conclusion allowed the Northern Palm Beach County

Improvement District to hire a managing general contractor by utilizing the competitive bidding procedures set forth in section 255.20, Florida Statutes, after complying with the more general requirements to which the district was subject contained in Chapter 298, Florida Statutes. Attorney General's Opinion 96-28 recognizes that the minimum specifications contained in section 298.35, Florida Statutes, may be supplemented by more stringent requirements contained in section 255.20, Florida Statutes. As pointed out in that opinion:

"Nothing in this section or elsewhere in Chapter 298, Florida Statutes, or the district's enabling legislation makes this procedure the exclusive method for letting contracts for works and improvements. Rather, section 298.35, Florida Statutes, appears to represent a minimum procedure to which supplementary requirements may be added by the special district." [3]

I am enclosing a copy of Attorney General Opinion 96-28 for your consideration.

If there is conflict between the provisions of the two chapters, an examination of such conflict would have to be made, considering such issues as when the statutory provisions were adopted, whether they appear to be exclusive and which provision is more specific. Such issues would have to be addressed on a case by case basis.

I trust that the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

Enclosure

[1] See s. 189.402, Fla. Stat., setting forth the statement of legislative intent and purpose.

[2] You refer specifically to the Sun 'n Lake of Sebring Improvement District. As noted in Attorney General Opinion 02-31, the Second District Court of Appeal in *Sun 'n Lake of Sebring Improvement Dist. v. McIntyre*, 800 So. 2d 715 (Fla. 2d DCA 2001), referred to the district as an independent special district as defined by the Uniform Special District Accountability Act of 1989. The Florida Department of Community Affairs, pursuant to its duties under s. 189.4035, Fla. Stat., has listed the district as an independent water control special district, created by county ordinance under the authority of Ch. 298, Fla. Stat.

[3] Cf. Op. Att'y Gen. Fla. 97-69 (1997), in which this office concluded that the provisions of the special act creating the Tampa Port Authority appeared to represent a comprehensive scheme for awarding contracts for construction and for the purchase of goods and services. This office therefore concluded that the authority could not utilize the provisions of section 255.20, Florida Statutes, under the general rules of statutory construction, which provide that a special act will

control over the provisions of a general law.