

Status of Town of Marineland

Number: INFORMAL

Date: March 14, 2000

The Honorable Doug Wiles
Representative, District 20
Post Office Box 2161
St. Augustine, Florida 32085-2161

Dear Representative Wiles:

Your letter to the Secretary of State, the Honorable Katherine Harris, was forwarded to this office for assistance. You ask about the current status of the Town of Marineland.

An examination of the special acts indicates that in 1969, the Legislature enacted Chapter 69-1295, Laws of Florida, which sought to abolish the then existing Town of Marineland and create and establish a new municipality to be known as the Town of Marineland.

Article VIII, section 2(a), Florida Constitution, provides:

"Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors."

Chapter 165, Florida Statutes, the Formation of Municipalities Act, provides general law standards and procedures for forming and dissolving municipalities in lieu of any procedure or standards now provided by general or special law. Section 165.022, Florida Statutes, states that the act shall be the exclusive procedure pursuant to general law for forming or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by Article VIII, section 6(e), of the Florida Constitution.[1] Any provisions of a general or special law existing on July 1, 1974, in conflict with the act is not effective to the extent of such conflict.

Section 165.051(1), Florida Statutes, states that:

"The charter of any existing municipality may be revoked and the municipal corporation dissolved by either:

- (a) A special act of the Legislature; or
- (b) An ordinance of the governing body of the municipality, approved by a vote of the qualified voters."

If a vote of the qualified voters is required, the governing body of the municipality or, if the municipal governing body does not act within 30 days, the governing body of the county where the municipality is located, shall set the date of the election.[2] The election shall be the next regularly scheduled election or a special election held prior to such election, if approved by a

majority of the members of the governing body of each governmental unit affected. It may not, however, be held until more than 30 days after passage of the ordinance. Notice of the election is required to be published at least once each week for two consecutive weeks prior to the election in a newspaper of general circulation in the municipality. "Municipality" is defined in 165.031(4), Florida Statutes, to mean a municipality created pursuant to general or special law authorized or recognized pursuant to Article VIII, sections 2 or 6 of the Florida Constitution. The Town of Marineland, created as a municipality by special act, would appear to be subject to Chapter 165, Florida Statutes.

Section 165.052, Florida Statutes, establishes special dissolution procedures. The statute authorizes the Secretary of State by proclamation to declare inactive any municipality in this state upon a report being filed by the Department of Community Affairs which shall show that the municipality is no longer active, based upon a finding:

"(a) That the municipality has not conducted an election for membership in its legislative body within the 4 years immediately preceding, or as otherwise provided by law;
(b) That a notice of the proposed proclamation has been published at least once each week for 2 consecutive weeks in a newspaper of general circulation within the county wherein the territory of the municipality is located, stating the name of said municipality, the law under which it was organized and operating, a general description of the territory included in said municipality, and stating that any objections to the proposed proclamation or to any debts of said municipality shall be filed not later than 60 days following the date of last publication with the department; and
(c) That 60 days have elapsed from the last publication date of the notice of proposed proclamation and no sustained objections have been filed." [3]

Any special law authorizing the incorporation or creation, or relating only to the powers or duties, of a municipality declared inactive by the Secretary of State shall be reported by the Governor to the presiding officers of both houses of the Legislature. [4] The proclamation of inactive status constitutes sufficient notice as required by Article III, section 10, Florida Constitution, to authorize the Legislature to repeal any special laws so reported. [5]

If a municipality declared inactive by the Secretary owes any debt at the time of proclamation, any property or assets of such unit shall be subject to legal process for the payment of such debt. [6] After the payment of all the debts, the remainder of the municipality's property or assets shall escheat to the county wherein located. If it is necessary to levy any taxes on the property in the territory or limits of the inactive municipality in order to pay its debts, such taxes may be assessed and levied by order of the board of county commissioners and shall be assessed by the county property appraiser and collected by the county tax collector.

This office has not been informed of any special law abolishing the Town of Marineland, nor has this office been advised that the town has surrendered its franchise or otherwise been dissolved pursuant to the general law methods of municipal dissolution. This office has been advised by the Secretary of State's Office that it has not issued a proclamation declaring the town inactive.

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

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

cc: Ms. Deborah K. Kearney
General Counsel

[1] See Op. Att'y Gen. Fla. 76-96 (1976), stating that the mere enactment of Ch. 165, Fla. Stat., by Ch. 74-192, Laws of Florida, did not abolish any existing municipality, but merely established a new general-law method for the formation and dissolution of municipalities subsequent to its effective date.

[2] Section 165.051(2), Fla. Stat.

[3] Section 165.052(1), Fla. Stat. *And see* s. 165.052(2), Fla. Stat., requiring the state agency charged with collecting financial information from municipalities to report to the Department of State and the Department of Community Affairs any municipality which has failed to file a report within the time set by law. *Cf. Treadwell v. Town of Oak Hill*, 175 So. 2d 777 (Fla. 1965), in which the court held that where the town's charter had never been nullified or abolished by the Legislature but the town's government had ceased to function for 30 years and, under the provisions of the charter, only the last elected officials of the town were authorized to call an election for purposes of filling vacancies and such officials were all deceased, an equity court could, in the absence of remedy for rights of the town's citizens at law, call an election and appoint a board of elections to conduct same for purpose of re-activating the municipality.

[4] Section 165.052(4), Fla. Stat.

[5] *Id.*

[6] Section 165.052(3), Fla. Stat.