

Vacancy, county commissioner residing out of district

Number: INFORMAL

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Mr. Gerald Holley
Holmes County Attorney
Post Office Box 268
Chipley, Florida 32428

RE: COUNTIES--COUNTY COMMISSIONERS--VACANCIES--commission relocating outside district when residence is purchased in federal flood buy-out. Art. X, s. 3, Fla. Const., s. 114.01, Fla. Stat.

Dear Mr. Holley:

On behalf of the Holmes County Board of County Commissioners, you ask whether a vacancy is created when a county commissioner's residence is located in a flood area and is purchased by the federal government's Flood Related Buy-Out Program, and the commissioner then relocates outside of his county commission district. Attorney General Butterworth has asked me to respond to your letter.

Based upon the following discussion, it appears that if a county commissioner's residence is located in a flood area and is purchased by the federal government's Flood Related Buy-Out Program, a vacancy would occur if he relocates and no longer resides within his county commission district.

You note that while county commissioners in Holmes County run countywide, they are required to reside in the district from which they run. One of the county commissioners was recently re-elected for a four-year term. He lives in an area of the county that was flooded by recent storms. According to your letter, his residence will be purchased by the federal government under its Flood Related Buy-Out Program, and the commissioner will have to relocate outside the flood area. The question has been raised whether a vacancy would be created if the commissioner relocates outside his district.

Article X, section 3, Florida Constitution, provides that a "[v]acancy in office shall occur upon . . . failure to maintain the residence required when elected or appointed" Similarly, section 114.01(1)(g), Florida Statutes, provides that a vacancy in office shall occur "[u]pon the officer's failure to maintain the residence required of him or her by law."

Clearly, if the commissioner relocates within the district, no vacancy occurs. In *State ex rel. Askew v. Thomas*,^[1] however, the Supreme Court of Florida determined that a school board member who chose to relocate her residence *outside* the area from which she was elected had failed to maintain the residency required for her office, leaving her office vacant. The Court found the constitutional and statutory requirement of maintaining residency applicable during any of the term in which the office was held. In simplifying the implications of an officer moving out of the

district from which he or she was elected, the Court stated "if he leaves, he leaves his office and a vacancy occurs in that residence area to be filled." [2]

The court's analysis in *Thomas* would apply equally to a county commissioner, given the constitutional and statutory requirements of residency for that office. [3] A commissioner who chooses to reside outside the district fails to maintain the required residency, resulting in a vacancy in the office. Thus, for example, in Attorney General Opinion 73-52 this office stated that when a member of a county commission ceases to reside within the district from which the commissioner was elected, the office becomes vacant pursuant to section 114.01(4), Florida Statutes. [4]

This office has stated that the term of office of a county commissioner is not affected by the redistricting of the county, even though his or her residence may no longer be within the district that he or she represents. [5] In such cases, however, the commissioner did not change his or her residence; rather it was the redistricting that changed the district lines. Or, if the county commissioner did move due to redistricting, as in Attorney General Opinion 88-11, it was to relocate the residence to the new district he or she represented. [6]

There is no evidence, however, in the instant inquiry that the county commissioner cannot relocate within the district. While the commissioner must move, he must relocate only outside of the flood area, not outside of the district. If he relocates within the district, no vacancy will occur. However, in light of the constitutional and statutory definitions of "vacancy," if he relocates outside the district and no longer resides within the district from which he was elected, it appears that a vacancy would occur.

Thus, it appears that if a county commissioner's residence is located in a flood area and is purchased by the federal government's Flood Related Buy-Out Program, a vacancy would occur if he relocates and no longer resides within his county commission district. I hope that the above advisory comments are of assistance in resolving this issue.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] 293 So. 2d 40 (Fla. 1974).

[2] *Id.* at 43.

[3] See s. 1(e), Art. VIII, Fla. Const. ("[o]ne commissioner residing in each district shall be elected as provided by law"); s. 124.01(2), Fla. Stat., providing for the election of one county commissioner for each county commission; and s. 124.011(1)(a), Fla. Stat. ("[f]ive county commissioners shall reside one in each of five county commission districts," under single-

member representation districts). *Cf.* Op. Att'y Gen. Fla. 55-182 (1955) (county commissioner must reside in the district in which he or she was elected).

[4] *And see* Op. Att'y Gen. Fla. 55-182 (1955) (when county commissioner, elected in district sold home and moved into rented home in an adjacent district, a vacancy in office occurred).

[5] *And see* Ops. Att'y Gen. Fla. 72-177 (1972); 46-389 (1946) (county commissioner whose district's lines are redrawn such that commissioner's residence is no longer within the district from which he or she was elected remains a commissioner for the district, provided residence is still within the county).

[6] *Compare* Op. Att'y Gen. Fla. 72-177 (1972), stating that while a commissioner could not be deprived of his office due to the redistricting, the commissioner could not seek election in another district (the one which the commissioner then resided in due to the redistricting) without resigning his old office.