

Status of South Walton Fire District

Number: INFORMAL

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Mr. E. Allan Ramey
Attorney, South Walton Fire District
Post Office Box 369
DeFuniak Springs, Florida 32433

Dear Mr. Ramey:

Thank you for considering this office as a source for assistance regarding the classification of the South Walton Fire District. You state that with the passage of House Bill 1741 (enacted as Chapter 97-256, Laws of Florida), the district wishes to resolve its uncertainty about its status. Attorney General Butterworth has asked me to respond to your letter.

Sections 1-13 of Chapter 97-256, Laws of Florida, created the "Independent Special Fire Control District Act," prescribing uniform criteria for the operation of independent special fire control districts.[1] "Independent special fire control district" is defined in section 3(5) of the act to mean

"an independent special district as defined in s. 189.403, Florida Statutes, created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district. The term does not include a municipality, a county, a dependent special district as defined in s. 189.403, Florida Statutes, a district providing primarily emergency medical services, a community development district established under chapter 190, Florida Statutes, or any other multiple-power district performing fire suppression and related services in addition to other services." [2]

Section 189.403(1), Florida Statutes, defines "Special district" to a local unit of special purpose government created by general law, special act, local ordinance, or rule of the Governor and Cabinet. 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." (e.s.)

"Independent special district" refers to a special district that is not a dependent special district as defined in section 189.403(2), Florida Statutes.[3] That subsection defines "Dependent special district" as a special district that meets at least one of the following criteria:

- (a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- (b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
- (c) During their unexpired terms, members of the special district's governing body are subject to removal by the governing body of a single county or a single municipality.

(d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality."

You state that the district was created by county ordinance.[4] Under the ordinance, the governing body of the fire district is elected. Nothing in the district's enabling ordinance provides for the removal of the fire district's board of commissioners by county commission or requires the district's budget to be approved by the county.[5]

You have not, however, advised this office under what authority the county was acting when it passed the ordinance.[6] For example, section 125.01(1)(q), Florida Statutes, authorizes a county to establish municipal service benefit or taxing units. The definition of "Special district" in section 189.403(1), Florida Statutes, however, specifically excludes such units. Accordingly, in the absence of such information, this office cannot definitively determine the nature of the special district.[7]

The definition of "Independent special fire control district" in Chapter 97-256, Laws of Florida, refers to a district created by special law or general law of local application. Since the South Walton Fire District was apparently created by county ordinance and you have been unable to advise this office that such ordinance was adopted pursuant to a special law or general law of local application, the above definition of "Independent special fire control district" would not appear to be necessarily applicable to the district.

I trust that the above informal advisory comments may be of some assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] Tentatively assigned as sections 191.001-191.014, Florida Statutes.

[2] Tentatively assigned as section 191.003(5), Florida Statutes.

[3] Section 189.403(3), Fla. Stat.

[4] Walton County Ordinance 83-6.

[5] You state that in 1992, the county adopted Ordinance 92-11 which authorizes the district to render services in emergency and crisis situations and authorizes the fire district to initiate a system of user charges or fees, upon approval by the board of county commissioners.

[6] *Cf.* s. 125.01(5), Fla. Stat., authorizing the county to establish special districts to include both

incorporated and unincorporated areas subject to the approval of the governing body of the incorporated area affected, the governing body of which is to be composed of the county commission or the county commission with members of the governing body of the incorporated area affected.

[7] The Department of Community Affairs has listed the South Walton Fire District as an independent special district on its official list of special districts. See s. 189.4035, Fla. Stat. The listing, however, does not indicate under what authority the district was created.