Special district, absentee voting

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Subject:
Special district, absentee voting

John J. Fumero
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750 Park of Commerce Boulevard, Suite 210
Boca Raton, Florida 33487

RE: WATER CONTROL DISTRICT – ABSENTEE BALLOTS – voting by mail in annual landowner District Board elections is not permitted. §§298.11 & 298.12, Fla. Stat.

Dear Mr. Fumero:

This office has received your letter on behalf of the of the Central County Water Control District in Hendry County requesting an opinion regarding the use of absentee ballots in district landowner elections. You ask the following:

Does Chapter 298, Florida Statutes, or general Florida law, authorize or otherwise permit the use of absentee ballots by landowners voting for seats of the District Board at the annual landowners' meeting?

In sum:

There is no language in the District's charter or in the statutes that control District elections that authorizes voting by mail in District landowner elections.

The Central County Water Control District (the "District") was established in 1970 by special act in chapter 70-702, Laws of Florida (1970). All subsequent special acts related to the District were codified in chapter 2000-415, Laws of Florida (2000), as amended by chapter 2007-315, Laws of Florida (2007).

Pursuant to Chapter 2007-315, the governing Board of Supervisors consists of five persons, three of whom are elected by landowners of the District and two by qualified electors. According to your research, the District has been allowing landowners – more than 50 percent of whom are absentee landowners – to vote by mail, although you point out that there is no authority for voting by mail in the District's Charter or Chapter 298, Florida Statutes.

Chapter 2007-315, dealing with membership and qualifications, provides in section 9(1):

Three board members shall be elected by district landowners pursuant to chapter 298, Florida Statutes, on a one-acre, one-vote basis, and two board members shall be elected by qualified

electors, as defined in section 97.041, Florida Statutes, who are residents of the district.

Under section 9(3), dealing with election procedures at the annual meetings:

Landowners' meetings held in October of even-numbered years shall elect supervisors pursuant to chapter 298, Florida Statutes, as specified by this act. Supervisors to be elected by qualified electors shall qualify and run as nonpartisan candidates pursuant to general law.

Section 298.11 sets forth the procedures for the initial election of supervisors in a landowners' meeting, and section 298.12(1) provides that subsequent annual meetings shall be conducted as provided in section 298.11.[1] Section 298.11(2) provides:

The landowners, when assembled, shall organize by the election of a chair and secretary of the meeting, who shall conduct the election. At the election, each and every acre of assessable land in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy in writing duly signed, for every acre of assessable land owned by him or her in the district, and the three persons receiving the highest number of votes shall be declared elected as supervisors. … (Emphasis added.)

Although proxy voting is generally permissible for water control districts, the Legislature foreclosed proxy voting for the District by the special act governing the District. Proxy voting was permitted in District elections until 2000, when the Legislature removed the authority for proxy voting in chapter 2000-415, section 8: "Proxy voting eliminated. – Proxy voting is prohibited in elections of the district board of supervisors."

Accordingly, the only operative language in section 298.11 that addresses the actual casting of ballots by landowners provides that each is "entitled to one vote in person" per acre of assessable land.

Statutes creating special districts have only the powers the Legislature has granted to them. Accordingly, supervisors must manage a district within the limitations of the authorizing legislation. See State ex rel. Davis v. Jumper Creek Drainage Dist., 153 Fla. 451, 453, 14 So. 2d 900, 901 (Fla. 1943); Roach v. Loxahatchee Groves Water Control Dist., 417 So. 2d 814, 816 (Fla. 4th DCA 1982).

This office has previously stated that water control districts possess no inherent or home rule powers and thus they are limited to electing supervisors in the manner provided by sections 298.11 and 298.12 and may not adopt procedures that are not set forth therein.[2]

It is therefore my opinion that the Central County Water Control District may not permit landowners to use absentee ballots when voting for District members at the annual landowners' meetings.[3]

Sincerely,

Ashley Moody
Attorney General

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[1] See Att'y Gen. Ops. Fla. 90-63 (1990) (under section 298.12, landowners meet annually to elect supervisors in the same manner as provided in section 298.11); 76-138 (1976).

[2] See Att'y Gen. Op. Fla. 90-63 (1990) (there was no statutory language authorizing landowners to establish a procedure to recall a supervisor of the water control district).

[3] This opinion does not address whether absentee ballots may be used by qualified electors for the two board members so elected pursuant to chapter 2007-315, Laws of Florida, which elections are conducted by the supervisor of elections rather than pursuant to chapter 298.