Community development district board voting zones

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Subject:
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Mr. Michael D. Chiumento III
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RE: SPECIAL DISTRICT – COMMUNITY DEVELOPMENT DISTRICT – ELECTIONS -authority of community development district to create voting zones to elect Board of Supervisors. 190.003, 190.006, 190.011, 190.046.

Dear Mr. Chiumento:

This office has received your request for an Attorney General opinion on behalf of the Dunes Community Development District asking essentially the following questions:

1. Are community development districts permitted to create voting zones within the district and to have an elector residing in each such zone be elected by the district's qualified electors to the Board of Supervisors?

2. If so, may the Community Development District take the administrative action of establishing such voting zones?

In sum:

There are no provisions in Chapter 190 that authorize a district to develop its own election procedures or modify the procedures set forth in section 190.006, Florida Statutes (2018). Section 190.006(3)(a)1 only requires elected board members to be "qualified electors of the district," whereas the procedure you propose would also require at least some of the board members to be qualified electors of a particular zone within the district, and therefore is not authorized.

The Dunes Community Development District in Flagler County was created by administrative rule in 1985. It encompasses approximately 2,200 acres and contains four residential communities: Hammock Dunes, Ocean Hammock, Hammock Beach, and Yacht Harbor Village. You state that each community has its own homeowners' association, its own social characteristics, and distinct governmental service issues.

For example, Ocean Hammock and Hammock Beach are forced to resolve unique stormwater

management and dune preservation issues, and Hammock Beach is more commercial than the other communities.

Two-thirds of the population of the District resides in the southern communities of Hammock Dunes and Yacht Harbor Village, and one-third resides in the northern communities of Ocean Hammock and Hammock Beach. As a result, the southern communities have an advantage over the northern communities in being able to elect their own candidates to the District's Board of Supervisors. Because of this, the District would like to establish voting zones. Qualified electors from each zone would elect a supervisor to represent that zone. This would ensure fair representation of all residents, regardless of the neighborhood in which they reside.

Section 190.003(6), Florida Statutes (2018), defines a "community development district" as:

[A] local unit of special-purpose government which is created pursuant to this act and limited to the performance of those specialized functions authorized by this act; the governing head of which is a body created, organized, and constituted and authorized to function specifically as prescribed in this act for the purpose of the delivery of urban community development services; and the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law. (Emphasis supplied.)

Section 190.006(1), Florida Statutes (2018), provides: "The board of the district shall exercise the powers granted to the district pursuant to this act."

The District's Board of Supervisors consists of five members. Section 190.006 provides detailed procedures for electing members of a board of supervisors. These procedures make clear that, after an initial period of time, board members must be elected by "qualified electors," which is defined to mean, "any person at least 18 years of age who is a citizen of the United States, a legal resident of Florida and of the district, and who registers to vote with the supervisor of elections in the county in which the district land is located." §§ 190.006(3), 190.003(17), Fla. Stat. Section 190.006(3), Florida Statutes, provides in subsection (a)1: "All elected board members must be qualified electors of the district." Subsection (3)(b) provides: "Elections of board members by qualified electors held pursuant to this subsection … shall be conducted in the manner prescribed by law for holding general elections."

The general rule regarding the powers of special districts is that such districts may exercise only those powers the Legislature has delegated to them, either expressly or by necessary implication.[1] You suggest that sections 190.011(5) and (15) provide the necessary authority to the District to adopt voting zones. Section 190.011, Florida Statutes, sets forth the general powers of a district, such as to sue and be sued, to contract for various services, to borrow money, etc. Sections 190.011(5) and (15) provide:

The district shall have, and the body may exercise, the following powers:
* * *
(5) To adopt rules and orders pursuant to the provisions of chapter 120 prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt administrative rules with respect to any of

the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.
* * *
(15) To exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.

You contend that the express power to conduct the business of the district implies the administrative authority to make "the express power effective," which would encompass the power to establish voting zones to "alleviate the suggested voting disparity" between the northern and southern communities. On the contrary, the quoted provisions authorize the District to adopt rules and exercise powers to implement the existing voting procedures articulated in section 190.006, but the District may not by rule alter the structure of political accountability of its board established by the Legislature in the act. Each board member must be elected by the "qualified electors" residing in the district, and those qualified electors are permitted to vote for each board member who governs the District. The creation of voting zones would contravene the district-wide procedure established by the law. Any change to that procedure is a matter for the Legislature.

To qualify to run for the Board of Supervisors, a person must be 18 years old, a resident of the district and of the state, a citizen of the United States, and registered to vote in the county where the community development district is located. §§ 190.003(17), 190.006(1) & (3)(a)1, Fla. Stat. To establish a new qualification – to be a resident of a particular voting zone – would exceed the legislative powers expressly granted in section 190.011, Florida Statutes.

You also contend that section 190.046(4)(b), Florida Statutes (2018), essentially creates voting zones when two or more community development districts merge, and that this "effectively authorizes" a single district to create voting zones. Generally, section 190.046 details the procedures to be followed when a community development district wishes either to contract or expand its boundaries, or to merge with one or more other districts. Subsection (4) provides that up to five districts that were established by the same government may merge into one district, and that the resulting district will still have only five members in its Board of Supervisors. One member must be from within the boundaries of each of the former districts involved in the merger, and any remainder within the allowable total of five will be at-large members from anywhere within the entire geographic area of the resulting district. The Legislature expressly outlined the new voting procedure to be followed in the case of a merger but did not authorize a change in voting procedure under any other circumstance. When the Legislature directs how a certain thing shall operate, "it is ordinarily to be construed as excluding from its operation all those not expressly mentioned."[2]

It is my opinion that the grant of powers in chapter 190 does not encompass an implied administrative authority to create zones within the District and to require supervisor candidates to reside in particular zones in order to qualify for election to the Board of Supervisors.

Sincerely,

Ashley Moody
Attorney General

AM/ebg

[1] See Hernandez v. Trout Creek Dev. Corp., 779 So. 2d 360, 362 (Fla. 2d DCA 2000). See also Halifax Hosp. Med. Ctr. V. State, 2019 WL 1716374, at 1 (Fla. 2019).
[2] Thayer v. State, 335 So. 2d 815, 817 (Fla. 1976). See also Op. Att'y Gen. Fla. 78-115 (1978) (statute authorized the county commission to appoint five members to Industrial Development Authority, and thus it could not instead choose to appoint seven members).