Withdrawal from regional planning council

Number: AGO 2017-08

Date: December 01, 2017

Subject:
Withdrawal from regional planning council

Ms. Margaret Wuerstle
Executive Director
Southwest Florida Regional Planning Council
1400 Colonial Boulevard, Suite 1
Fort Myers, Florida 33907

RE: REGIONAL PLANNING COUNCIL – INTERLOCAL AGREEMENT – COUNTIES – whether a county may withdraw from its regional planning council. §§ 163.01 and 186.504, Fla. Stat.

Dear Ms. Wuerstle:

On behalf of the Southwest Florida Regional Planning Council, you have asked for an opinion on the following question:

Must a county participate in its statutorily designated regional planning council, despite an interlocal agreement provision pertaining to procedures for terminating membership?

In sum:

Section 186.504, Florida Statutes, mandates county participation in its regional planning council; therefore, a county may not withdraw as a member county.

In 1973, the counties of Charlotte, Collier, Glades, Hendry, Lee, and Sarasota entered into an Interlocal Agreement creating the Southwest Florida Regional Planning Council ("Interlocal Agreement") pursuant to section 163.01, Florida Statutes.[1] There is a withdrawal provision in the Interlocal Agreement that allows a member county to withdraw its membership by resolution.[2] You indicate that Sarasota, Lee, and Charlotte counties have each passed resolutions to withdraw from the Southwest Florida Regional Planning Council within 12 months and to cease paying dues at that time.

In 1980, the Florida Legislature enacted the Florida Regional Planning Council Act, Chapter 80-315, Laws of Florida, originally codified at sections 160.01 through 160.08, Florida Statutes, and now at sections 186.501 through 186.513, Florida Statutes. In section 160.01(4), Florida Statutes, the Legislature expressly stated that membership in a regional planning council was not mandatory: "(4) Nothing contained in this act shall be construed to mandate local general-purpose government membership or participation in a regional planning council."

In 1984, however, the Legislature amended section 160.01(4), now 186.504(5), to mandate county membership:

“Nothing contained in this act shall be construed to mandate municipal local general-purpose government membership or participation in a regional planning council. However, each county shall be a member of the regional planning council created within the comprehensive planning district encompassing the county.”[3]

In 2015, the Legislature expressly designated the composition of each regional planning council in section 186.512, Florida Statutes, assigning every county in Florida to a council:

“(1) The territorial area of the state is subdivided into the following districts for the purpose of regional comprehensive planning. The name and geographic area of each respective district *must accord with the following*:

* * *

(h) Southwest Florida Regional Planning Council: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota Counties.” (e.s.)

Thus, the Legislature has created regional planning councils with mandatory county membership and has designated the particular council to which each county must belong. There is nothing in the Florida Regional Planning Council Act, sections 186.501 to 186.513, Florida Statutes, that allows a county to decline to participate in its council.[4] Moreover, one of the statutory powers and duties of a regional planning council enumerated in § 186.505(12), Florida Statutes, is to “fix and collect membership dues, rents, or fees when appropriate.” Thus, a member county would be subject to any dues imposed by the regional planning council under this provision.

Your second question regarding whether a county may withdraw from the Interlocal Agreement and cease paying dues pursuant to that document is beyond the purview of this office to decide. This office is not the appropriate forum for determining rights and obligations under the agreement that may be in dispute under such circumstance.

It is my opinion that the counties of Sarasota, Lee, and Charlotte are mandatory members of the Southwest Florida Regional Planning Council and may not refuse their statutory obligation to participate.

Sincerely,

Pam Bondi
Attorney General

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[1] Found at /files/pdf/page/1F857CC31C83D42D852581E900711BD2/SWFRPC_Interlocal_Agreement.pdf.

[2] *Id.* at 2.d., Effective Date, Duration, Termination and Withdrawal.

[3] Ch. 84-257, Laws of Fla., § 11.

[4] § 163.01(9)(b), Fla. Stat., provides, in part: “An interlocal agreement does not relieve a public agency of any obligation or responsibility imposed upon it by law[.]” As this office observed in Op. Att'y Gen. Fla. 95-47 (1995), regarding whether a county could withdraw from the Withlacoochee Regional Planning Council if there were a provision in its interlocal agreement authorizing withdrawal: “In light of the legislative directive as to how a regional planning district will be designated and the subsequent designation of the membership of District 5 by the Executive Office of the Governor, it would appear that any alteration to the district's designation and the composition of its membership would need to be addressed by that office or the Legislature.”