Candidates -- Member Elect -- Sunshine Law

Number: INFORMAL

Date: August 17, 2016

Subject:
Candidates -- Member Elect -- Sunshine Law

Mr. Greg Popowitz
3964 NW 82 Drive
Cooper City, Florida 33024

Dear Mr. Popowitz:

This is in response to your letter sent July 28, 2016, asking Attorney General Pam Bondi whether, as an unopposed candidate seeking election to a community development district, you are subject to the open-meetings law prior to election day. Attorney General Bondi has asked me to respond to your question.

You state that you are running for the Monterra Community Development District and that the election will be held in November 2016. The Broward County Supervisor of Elections informed you that you are unopposed and thus you are considered "elected without opposition."

As a result of the election, you will be a member-elect of the community development district board, subject to the open-meetings law found in section 286.011, Florida Statutes.[1] As you acknowledge, this office previously stated in Attorney General Opinion 98-60 that a candidate who is unopposed is not considered to be a member-elect subject to the Government in the Sunshine law until the election has been held.[2]

You ask whether Attorney General Opinion 98-60 is still applicable in light of any statutory revisions that may have been made since it was issued. There have been no substantive changes to the language of sections 101.151(7) and 105.051(1)(c), Florida Statutes, that apply to your situation.[3] Accordingly, in light of the facts you have provided, Attorney General Opinion 98-60 continues to constitute this office's statement of the law on this question.[4] Attorney General Opinions are, by statute, advisory rather than binding, and constitute this office's best legal advice on the particular question presented.

Sincerely,

Ellen B. Gwynn
Senior Assistant Attorney General

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[1] *See Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 1973).

[2] This office has also specifically excluded non-incumbent candidates from the scope of section

286.011, Florida Statutes, prior to election day. Op. Att'y Gen. Fla. 92-5 (1992).

[3] You also express concern about *Advisory Opinion to the Governor re Judicial Vacancy Due to Resignation*, 42 So. 3d 795 (Fla. 2010), and whether the Florida Supreme Court can be considered to have found an unopposed judicial candidate to have been elected as of the close of the qualifying period. Without offering an interpretation of the court's language, I note that the court was addressing the particular situation of a judge who was unopposed yet had resigned after the qualifying period had ended and before the election, but who intended to resume his place on the bench during the next term by virtue of his unopposed election. The issue was whether the governor was instead permitted to appoint a replacement. The case did not involve section 286.011, Florida Statutes, much less its application to a member-elect of a local board.

[4] In 2010, the Division of Elections was asked to provide a "clear definition as to the date on which a candidate is officially elected to office." After considering the various statutes involved, the *Advisory Opinion, id.*, and certain Attorney General Opinions, the Division concluded that the date of a candidate's election to office could be deemed to be either the date specified by a court in an election case, election day itself, the date the final canvassing board certifies the election results, or some other date, depending upon the particular factual situation involved. Div. of Elections Op. 10-09 (July 26, 2010).