Special district created by ordinance, status

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Date: June 07, 2013

Subject:
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Mr. C. Jeffrey McInnis
Okaloosa Island Fire District Attorney
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547-6711

RE: OKALOOSA ISLAND FIRE DISTRICT – FIRE CONTROL DISTRICTS – SPECIAL DISTRICTS – district created by county ordinance not subject to general act covering districts created by special act or general law of local application. Ch. 191, Fla. Stat.

Dear Mr. McInnis:

As the attorney for the Okaloosa Island Fire District, you ask substantially the following question:

Is the Okaloosa Island Fire District an independent fire district subject to the requirements in Chapter 191, Florida Statutes?

In sum:

The Okaloosa Island Fire District, as an independent special fire district created by county ordinance, is not an independent fire control district subject to Chapter 191, Florida Statutes.

You state that the Okaloosa Island Fire District (district) was created by Okaloosa County Ordinance 77-4, which was approved by referendum in 1977. You indicate that the district was formed by county ordinance pursuant to the authority granted in section 125.01(5), Florida Statutes (1975)[1], authorizing counties to create special districts with the power to levy ad valorem taxes to provide general governmental services, including fire protection. The district's governing board is composed of five elected commissioners who are qualified electors residing within the district.[2]

You question the district's status as an independent special district subject to Chapter 191, Florida Statutes, in light of changes to Florida law which no longer authorize the creation of an independent special district by county ordinance.[3] You state that Okaloosa County Ordinance 77-4 was never codified by the Florida Legislature and question whether a fire district which technically does not meet the definition of an independent special fire control district, as defined in Chapter 191, would be subject to that chapter's requirements.

Chapter 191, Florida Statutes, the "Independent Special Fire Control District Act," (the act) was enacted in 1997.[4] The legislation was enacted for the following purposes:

"(1) Provide standards, direction, and procedures concerning the operations and governance of independent special fire control districts.
(2) Provide greater uniformity in independent special fire control district operations and authority.
(3) Provide greater uniformity in the financing authority of independent special fire control districts without hampering the efficiency and effectiveness of currently authorized and implemented methods and procedures of raising revenue.
(4) Improve communication and coordination between special fire control districts and other local governments with respect to short-range and long-range planning to meet the demands for service delivery while maintaining fiscal responsibility.
(5) Provide uniform procedures for electing members of the governing boards of independent special fire control districts to ensure greater accountability to the public."[5]

For purposes of the act, "Independent special fire control district" is defined as:

"an independent special district as defined in s. 189.403, 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, a district providing primarily emergency medical services, a community development district established under chapter 190, or any other multiple-power district performing fire suppression and related services in addition to other services."[6]

Thus, to be subject to Chapter 191, Florida Statutes, a fire control district must be an independent special district as defined in section 189.403, Florida Statutes, and it must be created by special or general law of local application.

Section 189.403(3), Florida Statutes, defines "[i]ndependent special district" as "a special district that is not a dependent special district as defined in subsection (2). . . ." Subsection (2) defines a "[d]ependent 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 at will 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.

This subsection is for purposes of definition only. Nothing in this subsection confers additional authority upon local governments not otherwise authorized by the provisions of the special acts or general acts of local application creating each special district, as amended." [7]

The Okaloosa Island Fire District is characterized as an independent special district on the official list of special districts maintained by the Florida Department of Economic Opportunity[8] and it fits within the definition of an independent special district contained in section 189.403, Florida Statutes. The district, however, was not created by special or general law of local application.[9] It would not, therefore, by definition be subject to the provisions in Chapter 191,

Florida Statutes. While the provisions in Chapter 191, Florida Statutes, are clear in their application only to those independent special fire control districts which are created by special act or general law of local application, a review of the legislative history of its enactment reveals that as originally drafted, the act would have covered independent special districts created by local ordinance.[10] The bill was amended, however, to remove references to independent special fire control districts which are created by county ordinance.[11]

Accordingly, it is my opinion that the Okaloosa Island Fire District, as an independent special fire control district created pursuant to a county ordinance, is not subject to Chapter 191, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] Section 125.01(5), Fla. Stat. (1975), provided:

"(a) To an extent not inconsistent with general or special law, the governing body of a county shall have the power to establish, and subsequently merge or abolish those created hereunder, special districts for any part or all of the county, including incorporated areas if the governing body of the incorporated area affected approves such creation by ordinance, within which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within such district only. Such ordinance may be subsequently amended by the same procedure as the original enactment.
(b) The governing body of such special district may be composed of representatives of both county government and the government of such participating municipalities.
(c) It is hereby declared to be the intent of the Legislature that this subsection is the authorization for the levy by a special district of any millage designated in the ordinance creating such a special district or amendment thereto and approved by vote of the electors under the authority of the first sentence of s. 9(b), Art. VII of the State Constitution."

But see s. 1, Ch. 80-407, Laws of Fla., amending s. 125.01(5)(b), Fla. Stat., to provide:

"The governing body of such special district *shall* be composed of county commissioners and may include elected officials of the governing body of an incorporated area included in the boundaries of the special district with the basis of apportionment being set forth in the ordinance creating the special district." (e.s.)

[2] Appendix D, s. 2, Art. I, Okaloosa County, Florida, Code of Ordinances.

[3] *See* s. 189.402(1), Fla. Stat., stating:

"It is the intent of the Legislature through the adoption of this chapter to provide general

provisions for the definition, creation, and operation of special districts. It is the specific intent of the Legislature that dependent special districts shall be created at the prerogative of the counties and municipalities and that independent special districts shall only be created by legislative authorization as provided herein."

[4] *See* s. 1, Ch. 97-256, Laws of Fla.

[5] Section 191.002, Fla. Stat., as created by s. 2, Ch. 97-256, Laws of Fla.

[6] Section 191.003(5), Fla. Stat.

[7] Section 189.403(1), Fla. Stat., provides:

"'Special district' means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, *local ordinance*, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), special districts shall be treated as municipalities. 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.)

[8] *See* http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm.

[9] *See* s. 191.004, Fla. Stat., providing for the preemption of any "more specific provision of any special act or general law of local application *creating the charter of the district* . . ." and stating that "the provisions of this act supersede all special act or general law of local application provisions which *contain the charter of an independent special fire control district* and which address the same subjects as this act[.]" (e.s.) *Cf.* Inf. Op. to Mr. E. Allan Ramey, South Walton Fire District, dated November 12, 1997, in which this office observed that a fire district created by county ordinance, although the requestor was unable to advise whether such ordinance was adopted pursuant to a special law or general law of local application, did not fall within the definition of "Independent special fire control district" in Ch. 191, Fla. Stat. *And see State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA, 1992), citing *State ex rel. Gray v. Stoutamire*, 179 So. 730 (1938) (statute relating to particular persons or things or other particular subjects is considered under the Florida Constitution to be a special law; a local law or a general law of local application is a statute relating to particular subdivisions or portions of the state or to particular places of classified localities).

[10] *See* House of Representatives Committee on Community Affairs Bill Analysis & Economic Impact Statement, PCB CA 97-01 (HB 1741), March 13, 1997, p. 6.

[11] Florida House of Representatives Committee on Community Affairs Meeting, March 18, 1997, PCB CA 97-01 (HB 1741), Tape 1 of 1 (amendment eliminates reference to districts created by local ordinance, clarifying term "independent special fire control district" to not include counties; amendment "eliminates substantial conflict between controlling law for fire districts

created by county ordinance and districts created by special act.").