Special Districts - Vacancies

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Subject:
Special Districts - Vacancies

Mr. Karl W. Bohne, Jr.
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RE: SPECIAL DISTRICTS – MOBILE HOME PARK RECREATION DISTRICTS – VACANCIES – requirements for filling vacancies on board of trustees of mobile home park recreation district. ss. 414.404 and 418.302, Fla. Stat.

Dear Mr. Bohne:

As general counsel for the Port Malabar Holiday Park Mobile Home Park Recreation District, you have, on behalf of the members of the Board of Trustees for the district, requested my opinion on substantially the following questions:

1. In the event that a vacancy on the board of trustees of the Port Malabar Holiday Park Mobile Home Park Recreation District cannot be filled by appointment by the board, may the board continue to operate with less than nine members?

2. In the event that a vacancy on the board of trustees of the district cannot be filled by appointment of the board should such a vacancy in office for the unexpired term be filled pursuant to section 114.04, Florida Statutes?

3. If the answer to Question 2 is in the affirmative, then in the event that the Governor is unable to fill the vacancy in the office for the unexpired term pursuant to section 114.04, Florida Statutes, is the district required to hold a special election to fill the vacant office for the remaining unexpired term?

In sum:

1. The board of trustees of the Port Malabar Holiday Park Mobile Home Park Recreation District is, by statute, constituted as a nine-member board. This office cannot advise the board that it may continue to do business indefinitely with less than the statutorily prescribed number of board members. However, the statute does not require the suspension of business upon the occurrence of a vacancy and would appear to allow the board to continue to function and conduct district business while seeking a person to fill the vacancy on the board.

2. The provisions of section 114.04, Florida Statutes, do not apply to the Port Malabar Holiday

Park Mobile Home Park Recreation District as the Legislature has prescribed the method of filling vacancies on the board of trustees in section 418.302(5), Florida Statutes.

3. In light of my response to Question Two, no discussion of your third question is necessary.

The Port Malabar Holiday Park Mobile Home Park Recreation District was created in 1983 pursuant to Part II, Chapter 418, Florida Statutes, as a mobile home recreation district. The district operates as an independent special district.[1] Pursuant to section 418.304(3), Florida Statutes, the board of trustees of the district is authorized:

"To acquire, purchase, construct, improve, equip, and maintain streets and lights, recreational facilities, and other common areas of all types, including real property and personal property, within the boundaries of the existing platted mobile home park to be acquired by the district; such acquisition may be by purchase, lease, or gift."

The district may levy a special assessment known as a "recreation district tax" against all improved residential parcels situated within the district for the purpose of providing funds to implement the powers of the district.[2] In addition, the district may "issue bonds or notes to finance, in whole or in part, the cost of construction, acquisition, or improvement of common real property and personal property of the district."[3] Thus, the Port Malabar Holiday Park Mobile Home Park Recreation District was created pursuant to section 418.30, Florida Statutes, as an independent special district authorized to levy special assessments against the taxable real estate within its boundaries for recreational purposes.

The statutes prescribe the composition and duties of the governing body of a mobile home park recreation district. Section 418.302, Florida Statutes, states that the governing body "shall consist of a nine-member board of trustees" who are elected by district electors and serve staggered two-year terms. Trustees may succeed themselves in office.[4] As prescribed by statute:

"Any vacancy on the board of trustees shall be filled for the unexpired term by the appointment of a successor from among the qualified electors of the district by the remaining trustees. Any trustee who fails to discharge her or his duties may be removed for cause by the board of trustees after due notice and an opportunity to be heard upon charges of malfeasance or misfeasance. A trustee who is not guilty of malfeasance or misfeasance in office is relieved of any personal liability for acts done by her or him while holding office. Except with respect to matters wherein it is adjudged that the trustee is liable for gross negligence or misconduct in the performance of her or his duties, a trustee who is made a party to any action, suit, or proceeding solely by reason of her or his holding office in the district shall be indemnified by the district against reasonable expenses, including attorney's fees, incurred by the trustee in defending such suit, action, or proceeding."[5]

Thus, the statute specifically provides that any vacancy on the board of trustees must be filled by the appointment of a successor to fill the remainder of the unexpired term. This successor must be appointed by the trustees from among the qualified electors of the district.[6] According to your letter, "the District may not be able to fill vacancies[7] for the unexpired term of an office as

there appears to be no qualified elector willing to step up and fill the vacancy [sic] office."

Question One

You ask whether, in the event that a vacancy on the board of trustees of the Port Malabar Holiday Park Mobile Home Park Recreation District cannot be filled by appointment by the board, the board may continue to operate with less than nine members. According to your letter, a quorum of members on the board of trustees for the district would continue to be present in order to conduct business.

Section 418.302(1), Florida Statutes, provides that "[t]he governing body of a recreation district created pursuant to s. 418.30 *shall consist of a nine-member board of trustees* elected by the electors of the district." (e.s.) And, section 418.302(5), Florida Statutes, says a vacancy *shall* be filled. It is the general rule that a legislative direction as to how a thing is to be done is, in effect, a prohibition against its being done in any other way.[8]

The district cannot contravene the statutory requirement of a nine-member board of trustees by conducting business in an on-going fashion with an eight-member board. However, the statute does not require the suspension of business upon the occurrence of a vacancy, but would appear to allow the board to continue to function and conduct district business while seeking a person to fill the vacancy on the board so long as a quorum is present.

Question Two

You have also asked whether the Governor may fill the vacancy pursuant to section 114.04, Florida Statutes, in the event that a vacancy on the board of trustees of the district cannot be filled by appointment of the board.

Section 114.04, Florida Statutes, makes provision for filling vacancies in district offices:

"Except as otherwise provided in the State Constitution, the Governor shall fill by appointment any vacancy in a state, district, or county office, other than a member or officer of the Legislature, for the remainder of the term of an appointive officer and for the remainder of the term of an elective office, if there is less than 28 months remaining in the term; otherwise, until the first Tuesday after the first Monday following the next general election. . . ."

Despite the language in section 114.04, Florida Statutes, which authorizes the Governor to fill vacancies in district offices, the Legislature specifically provided in section 418.302(5), Florida Statutes, that vacancies on the board of trustees of mobile home park recreation districts would be filled by appointment by the remaining trustees.

In Attorney General Opinion 99-21, this office considered a similar question with regard to vacancies on the Board of Commissioners of the West Volusia Hospital Authority and concluded that it was the district's enabling legislation that controlled the filling of vacancies. The enabling legislation for the hospital authority required that the remaining members of the authority's board of commissioners fill any vacancies on the board. However, the commissioners questioned their authority to fill a vacancy in light of the language in section 114.04, Florida Statutes. The 1999

opinion noted that this office had earlier recognized that the language requiring that vacancies in a state, district or county office (other than a member of the Legislature) be filled by the governor was added by an amendment to the statutes in 1977.[9] These earlier opinions, however, recognize that the Legislature has the authority to provide by general or special law for the filling of vacancies in special district offices and has done so outside the terms of section 114.04, Florida Statutes. Because this office must presume the validity of duly enacted legislation, Attorney General Opinion 99-21 concluded that the enabling legislation for the West Volusia Hospital Authority controlled the filling of vacancies on the board of commissioners and that section 114.04, Florida Statutes, did not apply.

Likewise, the Legislature, in adopting section 418.302, Florida Statutes,[10] had the authority to provide for the filling of vacancies in office on the boards of trustees of mobile home park recreation districts and did so in subsection (5). This office cannot declare a statue repealed by implication, rather, the terms of the statute are presumed valid and effective until declared otherwise by a court of competent jurisdiction in an appropriate judicial proceeding. Furthermore, it is the last adopted expression of the Legislature that will generally prevail in the case of two statutory provisions that cannot be reconciled.[11] Section 418.302, Florida Statutes, is not only the more specific expression of legislative intent,[12] being directed specifically to mobile home park recreation districts rather than to special districts generally, but it is the later expression of the Legislature's intent having been adopted in 1983.[13]

Thus, it is my opinion that, in the event a vacancy on the board of trustees of the district cannot be filled by appointment of the board, the provisions of section 114.04, Florida Statutes, may not be utilized to fill a vacancy on the board.

Question Three

In light of my response to your second question, no discussion of your third question is necessary.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* Official List of Special Districts Online - Directory, compiled by the Department of Economic Opportunity pursuant to s. 189.4035(1), Fla. Stat. *And see* s. 418.30, Fla. Stat., authorizing any municipality or county in the state to create one or more mobile home park recreation districts by ordinance approved by a vote of the electors residing in the proposed district.

[2] Section 418.304(4), Fla. Stat.

[3] Section 418.304(5), Fla. Stat.

[4] Section 418.302(3), Fla. Stat.

[5] Section 418.302(5), Fla. Stat.

[6] *And see* Art. VI, Port Malabar Holiday Park Mobile Home District Recreation District Board of Trustees by-laws which provides that "[i]f the office of any member of the Board of Trustees becomes vacant prior to the expiration, of such member's term of office, the Board of Trustees shall fit [sic] the vacancy by appointment of a successor from among the electors of the District. Such appointed shall hold office for the remainder of the term of the vacant office."

[7] You have not indicated the nature of any vacancy, but Art. X, s. 3, Fla. Const., provides that a "[v]acancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term."

[8] *See Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[9] *See* s. 1, Ch. 77-235, Laws of Fla. The amendment removed language stating that a vacancy was created when "any office created or continued by the constitution or laws shall not have been filled by election or appointment under the constitution or law creating or continuing such office." The 1977 amendment changed the language to provide that an office shall be deemed vacant when created.

[10] Section 418.302, Fla. Stat., authorizing the creation of mobile home park recreation districts was enacted in 1983 as s. 35, Ch. 83-204, Laws of Fla. Subsection (5) was a part of that original legislation and remains substantially unchanged.

[11] *See Askew v. Schuster*, 331 So. 2d 297 (Fla. 1976); *Florida Association of Counties, Inc. v. Department of Administration, Division of Retirement*, 580 So. 2d 641 (Fla. 1st DCA 1991), *approved*, 595 So. 2d 42 (Fla. 1992) (general rule is that in cases of conflicting statutory provisions, latter expression will prevail over former).

[12] A specific statute covering a particular subject area will control over a statute covering the same and other subjects in more general terms. *See McKendry v. State*, 641 So. 2d 45 (Fla. 1994); *Gretz v. Florida Unemployment Appeals Commission*, 572 So. 2d 1384 (Fla. 1991) (specific statute stating no fee for transcript preparation in unemployment compensation appeals controls over general statute requiring agency to provide transcripts at actual cost); *Barnett Banks, Inc. v. Department of Revenue*, 738 So. 2d 502 (Fla. 1st DCA 1999).

[13] The language with which this opinion is concerned was added to s. 114.04, Fla. Stat., by amendment in 1977. *See* s. 1, Ch. 77-235, Laws of Fla.