Public Officers - Terms of Office - Special Districts

Number: AGO 2012-22

Date: August 01, 2012

Subject:
Public Officers – Terms of Office – Special Districts

Mr. Terrell K. Arline
Bay County Attorney
840 West 11th Street
Panama City, Florida 32401

RE: PUBLIC OFFICERS – TERMS OF OFFICE – SPECIAL DISTRICTS – TERM LIMITS – BAY MEDICAL CENTER – reappointment eligibility of individual who has served two four year terms with a break of service of one year between terms. Ch. 2005-343, Laws of Fla.

Dear Mr. Arline:

On behalf of The Honorable George B. Gainer, Chairman of the Bay County Board of County Commissioners, you ask the following question:

Under the provisions of Chapter 2005-343, Laws of Florida, may a person who has served two four-year terms on the Board of Trustees of Bay Medical Center, separated by a one-year absence, be reconfirmed to another four-year term?

In sum:

An individual who has served one four-year term, followed by a one-year absence, then served another four-year term has not served two consecutive, full four-year terms which would render him or her ineligible for reappointment to the board.

Chapter 2005-343, Laws of Florida, codifies all previously enacted special acts relating to the Board of Trustees of Bay Medical Center (board) and provides a single comprehensive charter for the independent special district which was previously created.[1] The charter provides that the board shall consist of nine persons, each appointed to serve four-year terms.[2]

Relative to your question, the act states:

"A person who has served two full, *consecutive terms* as a member of the board of trustees shall not be eligible for reconfirmation until the next regular appointment process occurring approximately 2 years after that person's termination of service."[3] (e.s.)

You state that recently a nominee was presented for consideration who has served one four-year term as the county commission's appointee, followed by a one-year absence, then reappointed by the medical staff as its appointee to serve another four-year term. The member

has now been nominated to serve another four-year term. Counsel for the special district has opined that the nomination may go forward because the member has not served two full, consecutive terms. The chairman of the county commission, however, is concerned that such a construction of the special act weakens the term limit provisions, by allowing a member to serve numerous terms by leaving the board between terms. This opinion is expressly limited to a consideration of the application of Chapter 2005-343, Laws of Florida, under the specific facts presented in your inquiry.

It is a generally established principle that the right to hold office is a valuable one which should not be curtailed in the absence of plain provisions of law.[4] If ambiguity exists in construing provisions limiting the right to hold office, those provisions should be construed in favor of eligibility.[5]

The plain language of section 3(3) of Chapter 2005-343, Laws of Florida, however, states that a person must serve two, full consecutive terms before becoming ineligible for consideration to fill another term of office for a period of two years. It is a general rule of statutory construction that in the absence of a statutory definition, the plain and ordinary meaning of words can be ascertained if necessary by reference to a dictionary.[6] The term "consecutive" is defined as "having no interval or break: continuous."[7] In the instant inquiry, the individual has served one four-year term with a break of one year before serving a second term. Under such facts, it does not appear that the individual has served two "consecutive" terms.

Accordingly, it is my opinion that an individual who has served one four-year term, followed by a one-year absence, then served another four-year term has not served two consecutive, full four-year terms which would render the individual ineligible for reappointment to the board.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] Section 1, Ch. 2005-343, Laws of Fla.

[2] Section 3(3), Ch. 2005-343, Laws of Fla.

[3] *Id.*

[4] *See, e.g.,* Op. Att'y Gen. Fla. 71-324 (1971). *And see Treiman v. Malmquist*, 342 So. 2d 972 (Fla. 1977); *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956) (statutes and constitutions imposing restrictions upon the right of a person to hold office should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers); *Vieira v. Slaughter*, 318 So. 2d 490 (Fla. 1st DCA 1975), *cert. denied*, 341 So. 2d 293 (Fla. 1976).

[5] *Ervin, supra* at 856.

[6] *See Green v. State*, 604 So. 2d 471, 473 (Fla. 1992); *Plante v. Department of Business and Professional Regulation*, 685 So. 2d 886 (Fla. 4th DCA 1996); *State v. Cohen*, 696 So. 2d 435 (Fla. 4th DCA 1997).

[7] Webster's Third New International Dictionary (1981, unabridged), p. 482.