Value Adjustment Board member, resignation

Number: AGO 2012-18

Date: May 17, 2012

Subject:
Value Adjustment Board member, resignation

Mr. Monroe D. Kiar
6191 Southwest 45th Street
Suite 6151A
Davie, Florida 33314

RE: VALUE ADJUSTMENT BOARDS – ELECTIONS – TERMS OF OFFICE – MUNICIPALITIES – CITY COMMISSIONERS – TAXING AUTHORITY – requirement that value adjustment board member not serve as member of any taxing authority. s. 194.015, Fla. Stat.

Dear Mr. Kiar:

As attorney for the Broward County Value Adjustment Board, you have asked for my opinion on substantially the following questions:

1. Is a citizen board member of the Broward County Value Adjustment Board required to resign his position on the Value Adjustment Board prior to taking elected office under section 194.015, Florida Statutes?

2. If the response to Question One is in the affirmative, may that resignation take place anytime up to the moment that the citizen board member is sworn into local elected office?

In sum:

1. A citizen member of a county value adjustment board is prohibited by section 194.015, Florida Statutes, from simultaneously serving on the value adjustment board and being a member or an employee of a municipality.

2. As required by section 194.015, Florida Statutes, a member of the value adjustment board must resign his or her office on the board on or before becoming a "member" of the city commission, that is, no later than commencement of his or her term of office as a city commissioner.

As special legal counsel for the Broward County Value Adjustment Board you have advised this office that a citizen member of the board is planning to file as a candidate for city commissioner of the City of Weston. Based on the language of section 194.015, Florida Statutes, you have questions relating to this member's potential candidacy and its effects on his or her service on the Broward County Value Adjustment Board.[1]

Question One

Section 194.015, Florida Statutes, creates a value adjustment board for each county and provides for the membership of the board. Two citizen members shall be appointed to each value adjustment board:

"[O]ne of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district."[2]

With regard to citizen members of the board, the statute provides that "[a] citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes."

The statute does not specifically delineate what may constitute "any taxing authority" although this particular statute uses the term in several places.[3] Neither this office nor the courts are authorized to amplify legislative requirements with their own notions of what might be appropriate.[4] If additional requirements are to be imposed, they should be inserted by the Legislature.[5]

In the absence of statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of a word can be ascertained by reference to a dictionary.[6] Black's Law Dictionary defines the term "authority" as "[a] governmental agency or corporation that administers a public enterprise."[7] A "tax" is defined as "a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue."[8] Similarly, Webster's New Universal Unabridged Dictionary defines a "tax" as "a sum of money demanded by a government for its support or for special facilities or services, levied upon incomes, property, sales, etc."[9] An "authority" is defined as "a person or body of persons in whom authority is vested, as a governmental agency."[10]

Since section 194.015, Florida Statutes, does not define the phrase "taxing authority," it may also be helpful to consider a definition of "taxing authority" provided elsewhere in the Florida Statutes. Section 163.340, Florida Statutes, relating to community redevelopment defines the term "[t]axing authority" to mean "a public body that levies or is authorized to levy an ad valorem tax on real property located in a community redevelopment area."[11] Applying general rules of statutory construction and using other statutory definitions for support, it would appear that the term "taxing authority" as it is used in section 194.015, Florida Statutes, refers to a public body that levies or is authorized to levy taxes. It is without question that a municipality is a "taxing authority" within the scope of this general definition for purposes of the Florida Constitution and the Florida Statutes.[12]

Thus, it is my opinion that a citizen member of a county value adjustment board is prohibited by section 194.015, Florida Statutes, from serving on the value adjustment board and also being a member or an employee of a municipality.[13]

Question Two

My response to your first question was in the affirmative and you have also asked when the citizen member must resign his or her value adjustment board office after being elected as an officer of the city in order to satisfy the terms of section 194.015, Florida Statutes.[14] Because the statute states that "[a] citizen member may not be a member or an employee of any taxing authority," it would appear that resignation must occur no later than commencement of the term of office of the elected official.

Article VI, section 6 of the Florida Constitution provides that municipal elections shall be as provided by law. Section 166.021(4), Florida Statutes, requires referendum approval for matters prescribed by municipal charter relating to terms of office for municipal officers. The City of Weston adopted its charter by referendum on November 7, 2006.[15]

Article V of the City of Weston Charter provides that terms of office for the Mayor and Commissioners of the city "shall commence at the first regularly scheduled City Commission Meeting after receipt of certification of the election (the "Certification") or 20 days after the Certification is received, whichever is earlier."[16] A term of office is generally defined as "[t]he period during which an elected officer or appointee may hold office, perform its functions, and enjoy its privileges and emoluments"[17] and it is commencement of the term of office which determines when a commissioner becomes an active "member" of the commission.[18]

Thus, it is my opinion that, as required by section 194.015, Florida Statutes, a member of the value adjustment board must resign his or her office on the board on or before becoming a "member" of the city commission, that is, no later than commencement of his or her term as a city commissioner.

Sincerely,

Pam Bondi
Attorney General

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[1] Your questions have been rephrased to enable this office to comment. You have been advised that questions relating to Florida's Resign to Run Law must be addressed by the Division of Elections and that questions on the interpretation of administrative rules must be addressed by the agency promulgating those particular rules, in this case, the Department of Revenue.

[2] *And see* Op. Att'y Gen. Fla. 08-56 (2008), considering the qualification that a citizen member "own a business occupying commercial space located within the school district."

[3] The statute also prohibits private counsel for the board from representing "any taxing authority[.]"

[4] *Johnson v. Taggart*, 92 So. 2d 606 (Fla. 1957).

[5] *Id.* at 608. *And see Sarasota Herald-Tribune Company v. Sarasota County*, 632 So. 2d 606, 607 (Fla. 2d DCA 1993).

[6] *Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000); *Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *Green v. State*, 604 So. 2d 471 (Fla. 1992).

[7] Black's Law Dictionary (8th ed. 1999) at 143.

[8] *Id.* at 1496.

[9] Webster's New Universal Unabridged Dictionary (2003) at 1947.

[10] *Id.* at 139.

[11] Section 163.340(24), Fla. Stat.

[12] *See* Art. VII, s. 9, Fla. Const. "Local Taxes," which provides the authority to levy ad valorem taxes; *and see, e.g.,* s. 193.0235, Fla. Stat. (ad valorem taxes and non ad valorem assessments against subdivision property); s. 200.065, Fla. Stat. (method for fixing millage by taxing authorities).

[13] I would also note that the dual office-holding prohibition of the Florida Constitution would appear to preclude a value adjustment board member from simultaneously serving as an officer of the state, counties, or municipalities. *See* Ops. Att'y Gen. Fla. 06-13 (2006), 85-21 (1985), and 84-25 (1984).

[14] As noted *supra*, questions involving the applicability of the Resign to Run Law, section 99.012, Fla. Stat., should be directed to the Division of Elections and no comment is expressed herein regarding the applicability of that statute.

[15] *See* Charter of the City of Weston, as adopted by referendum on November 7, 2000, and amended by referenda on November 5, 2002, March 11, 2003, November 2, 2004, and November 7, 2006.

[16] *Id.* at s. 5.01(g).

[17] *See* Black's Law Dictionary (8th ed. 1999) at 1512.

[18] *And see* s. 2.03(a), Charter of the City of Weston, which requires that "[e]ach Commissioner and the Mayor shall remain in office until his or her successor is elected and assumes the duties of the position."