Juvenile Welfare Board, voting

Number: INFORMAL

Date: January 30, 2012

Ms. Colleen Flynn
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Dear Ms. Flynn:

On behalf of the Juvenile Welfare Board of Pinellas County, you have requested assistance in determining whether the requirement in section 260.065(5)(a)(1) and (2), Florida Statutes, for a vote of a percentage of the membership of the governing body of the juvenile welfare board refers to the total membership of the board or the current membership of the board. Attorney General Bondi has asked me to respond to your inquiry.

According to your letter, the Juvenile Welfare Board of Pinellas County (JWB) is an independent special district created by Chapter 2003-320, Laws of Florida. As provided in Chapter 2003-320, Laws of Florida, the board consists of 11 members:

"One (1) member shall be the county superintendent of public instruction, and the second member shall be a judge in the juvenile division of the Sixth Circuit Court, who each shall hold office on the board during the term of office in the official capacity stated. The third and fourth members shall be the state attorney and the public defender for the county, and the fifth member shall be an appointed member of the Board of County Commissioners of Pinellas County, Florida, who each shall hold office on the board during the term of office in the official capacity stated. The other six (6) members shall be appointed by the Governor of the State of Florida and confirmed by the Senate. All appointments of members of the board required to be made by the Governor shall be for the term of four (4) years each. If any of the members of the board required to be appointed by the Governor under the provisions of this section shall resign, die, or be removed from office, the vacancy thereby created shall, as soon as practicable, be filled by appointment by the Governor, and such appointment to fill a vacancy shall be for the unexpired term of the person who resigns, dies, or is removed from office."

You advise that one member of the board, an appointed position, is vacant due to a resignation effective earlier this year. No appointment has been made to fill that vacancy and, although there are 11 seats on the board, there are currently only 10 members sitting. The JWB has no information on when the Governor will make an appointment to fill the vacant position. Thus, you have asked whether a statutory reference to "the membership of the governing body" for purposes of establishing millage rates would require calculations using the current membership of the board, that is, 10 members, or is a reference to the total number of board members as provided in the enabling legislation, that is, 11 members.

Section 200.065, Florida Statutes, provides a method of fixing millage for purposes of taxation. Subsection (5)(a) of the statute requires that, beginning in the 2009-2010 fiscal year, the maximum millage rate that an independent special district may levy is

"a rolled-back rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied, adjusted for change in per capita Florida personal income, unless a higher rate is adopted, in which case the maximum is the adopted rate. . . . A higher rate may be adopted only under the following conditions:

1. A rate of not more than 110 percent of the rolled-back rate based on the previous year's maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the county, municipality, or independent district; or

2. A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing body of the county, municipality, or independent district or by a three-fourths vote of the membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum."

In each of these sections, the adoption of a higher rate is dependent upon a vote "of the membership of the governing body."

While section 200.065, Florida Statutes, does not define the phrase "membership of the governing body" for purposes of the statute, the legislative history for the 2008 amendment of section 200.065 indicates that the Legislature considered the language of the voting requirement as expressed in the 2007 legislation to be unclear.[1] Prior to the changes enacted in section 11, Chapter 2008-173, Laws of Florida, these sections provided for a "vote of the governing body."[2] The staff analysis reflects the Legislature's concern with the language of Chapter 2007-321, Laws of Florida, which created the excess rate voting provisions:

"*Clarity on voting rules . . .*

Sections 200.065 and 200.185, F.S., set maximum millage rates that may be levied by nonschool local taxing authorities. These rates may be exceeded by greater-than-majority votes of the governing bodies — a 2/3 vote allows 110 percent of the maximum rate, and a higher rate may be imposed by a unanimous vote. *The language in the statute is not clear whether the voting rule applies to just the members present at the meeting where the vote is taken or to the entire membership of the voting body.*"[3] (e.s.)

In describing the "Effect of Proposed Changes" made by CS/SB 1588, the staff analysis indicates that "[the bill] clarifies that supermajority votes are based on the membership of the governing body[.]"[4] Thus, the amendment of section 200.065(5)(a) by section 11, Chapter 2008-173, Laws of Florida, was an attempt by the Legislature to clarify that this voting requirement was intended to require calculations based on the entire membership of the governing body.[5]

The Florida Constitution currently provides a definition for language similar to that used in

section 200.065(5)(a)(1) and (2), Florida Statutes. Article X, section 12, Florida Constitution, provides that, in the absence of other qualifications in a constitutional provision, use of the phrase "of the membership" means "of all members thereof."[6] Likewise, the Rules of the Florida Senate refer, for certain actions, to a "two-thirds (2/3) vote of the membership of 40," or a "three-fourths (3/4) vote of the membership of 40," clearly indicating that it is a vote of the entire membership of that body irrespective of vacancies or absences at the time of the vote.[7] Rules of the House distinguish determinations made "by a majority of the House" from those made "by vote of those members present and voting."[8] Thus, the use by the Legislature of the phrase "of the membership" in section 200.065(5)(a), Florida Statutes, would appear to reflect an intent to require a vote based on the entire membership of the juvenile welfare board regardless of whether vacancies may exist on the board at the time of any vote.

Thus, it appears that the reference in section 200.065(5)(a)(1) and (2), Florida Statutes, to a "vote of the membership of the governing body" of the district is a reference to the total membership of the board as established in the district's enabling legislation, rather than a reference to the current membership of the board.

This informal advisory opinion was prepared for you by the Department of Legal Affairs in an effort to be of assistance to you in advising your clients. The conclusions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* Bill Analysis and Fiscal Impact Statement on CS/SB 1588, The Florida Senate, dated April 2, 2008.

[2] *See* s. 11, Ch. 2008-173, Laws of Fla.

[3] *Supra* n.1 at p. 2, s. II, "Present Situation."

[4] *Id.* at p. 8, s. 11.

[5] *See* Title, Ch. 2008-173, Laws of Fla., stating that it is an act "amending s. 200.065, F.S.; clarifying the calculation of maximum millage . . . .; *and see, e.g., State v. Webb*, 398 So. 2d 820 (Fla. 1981)(legislative intent is the polestar by which the courts must be guided); Op. Att'y Gen. Fla. 94-37 (1994) (paramount rule of statutory construction is to ascertain the intent of the Legislature).

[6] *See* Art. X, s. 12(e), Fla. Const.

[7] *See Rules and Manual of the Senate of the State of Florida 2010-2012*, pp. 146, 147, and 148, "Vote Required."

[8] *Compare* Rules 13.6 and 13.7 *with* Rule 17.3, *The Rules of the Florida House of Representatives (with tracked changes),* adopted November 16, 2010.