

Fire and Rescue District, by-laws amendment

Number: INFORMAL

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Mr. Andrew J. Salzman
Attorney, Spring Hill Fire Rescue and
Emergency Medical Services District
2570 Coral Landings Boulevard
Suite 201
Palm Harbor, Florida 34684

Dear Mr. Salzman:

On behalf of the Spring Hill Fire Rescue and Emergency Medical Services District, you ask whether the district board of commissioners may repeal the district by-laws by a simple majority vote when the by-laws require a super majority vote of the board to amend the by-laws. You also ask whether section 189.436, Florida Statutes, will prevail over the by-laws if there is a conflict between the statute and the by-laws.

Chapter 2009-261, Laws of Florida, creates the Spring Hill Fire Rescue and Emergency Medical Services District as an independent special district for the purpose of providing fire protection and firefighting services, rescue services, and emergency medical services.[1] Section 2(1) of the special act provides that the "district is organized and exists for all purposes and shall hold all powers set forth in this act and chapters 189 and 191, Florida Statutes."

As discussed in this office's statement concerning Attorney General Opinions,[2] opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Moreover, this office must presume the validity of any duly enacted by-laws. In an effort to be of assistance, however, I would note that the Fifth District Court of Appeal in *Sterling v. Brevard County*,[3] considered the validity of action taken by a charter review commission (CRC) which had adopted by-laws requiring a two-thirds vote of the CRC on all questions or motions. According to the court, "[w]hile discussing the super majority issue on June 19, 1998, the attorney for the commission erroneously opined that a simple majority could amend the bylaws. Based on this misdirected legal advice, the CRC, by a simple majority vote, modified Rule 16 to provide that a simple majority could amend the CRC's bylaws." [4] In considering the decision of the lower court, the district court stated that the judge "correctly ruled that the CRC did not properly amend its bylaws or Rule 9 at the meeting on June 19th." [5]

Following the rationale expressed in the *Sterling* case, the district board of commissioners would appear to be required to act in accordance with its duly enacted by-laws until such by-laws have been properly amended.

You also ask whether a statute or the by-laws would prevail in the event of a conflict. The courts have recognized that enactments by local governments are inferior to state law.[6] Thus, if there

is a clear conflict between a state statute and a by-law, the statute would prevail. It is not, however, clear that such a conflict exists with regard to the instant inquiry as section 189.436(1), Florida Statutes, merely provides that the board may appoint and fix the salary of a chief financial officer of the authority.[7] Moreover, while the special act provides that the district has all powers set forth in the special act and Chapters 189 and 191, Florida Statutes, I would note that section 189.436, Florida Statutes, is a part of the "Community Improvement Authority Act," sections 189.430-189.444, Florida Statutes. The act provides for the creation of community improvement authorities which seek to generate local support for the development of projects, including professional sports facilities and related amenities and infrastructure.[8] A question would therefore be raised as to whether the Legislature intended the Spring Hill Fire Rescue and Emergency Medical Services District to exercise the powers of a community improvement authority even though such provisions are contained in Chapter 189, Florida Statutes.[9]

The district may wish to seek legislative or judicial clarification of its duties and responsibilities. I hope, however, that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

[1] The district's boundaries were subsequently revised in Ch. 2010-264, Laws of Fla.

[2] Available online at: <http://myfloridalegal.com/opinions>.

[3] 776 So. 2d 281 (Fla. 5th DCA 2000).

[4] *Id.* at 282.

[5] 776 So. 2d at 283.

[6] *See, e.g., Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144, 1147 (Fla. 2d DCA 2006); *West Palm Beach Association of Firefighters v. Board of City Commissioners*, 448 So. 2d 1212, 1215 (Fla. 4th DCA 1984); *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 890-891 (Fla. 2010) (concurrent legislation by a local government may not conflict with state law; if conflict arises, state law prevails).

[7] *And see* s. 191.006(5), Fla. Stat., authorizing a water control district "[t]o adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the district;" and s. 3(5) and (6) of the district charter providing that the board of supervisors has the authority to "employ such personnel as deemed necessary for the proper function and operation of the district" with the salaries of district personnel and any other wages to be determined by the board.

[8] See s.189.432(1) and (2), Fla. Stat., respectively defining "Authority" to mean an authority created under the Community Improvement Authority Act, and "Board" or "board of supervisors" to mean the governing body of an authority. *And* see s. 189.432(7), Fla. Stat., defining "Project" to mean "facilities, attractions, and other improvements authorized by this act, including professional sports facilities, related amenities and infrastructure, and systems, facilities, and services determined by an authority to be beneficial to the development, ownership, and operation of any of the foregoing, including the acquisition of land and any interest therein."

[9] *Compare* ss. 189.401-189.429, Fla. Stat., containing provisions relating to special districts. Chapter 2000-348, Laws of Fla., which created the Community Improvement Authority Act, did not place the act within Ch. 189, Fla. Stat.; such assignment appears to have been made by the Division of Statutory Revision.