Special Acts, electors voting in referendum

Number: INFORMAL

Date: July 30, 2010

The Honorable Joe A. Campbell
Post Office Drawer 3448
Sebring, Florida 33871-3448

Dear Mr. Campbell:

As the Supervisor of Elections for Highlands County, you have asked for this office's assistance in determining your responsibilities under Chapter 2010-266, Laws of Florida. Attorney General McCollum has asked me to respond to your letter.

Chapter 2010-266, Laws of Florida (CS/HB 1487), was enacted during the 2010 legislative session and is intended to deal generally with the Spring Lake Improvement District in Highlands County. The act deletes obsolete language included in earlier versions of the law, provides minimum charter requirements, and amends provisions relating to the board, its election, and terms of office for board members. The act also deletes obsolete district powers and provides additional district powers including mosquito control, fire and emergency services, and the construction and maintenance of school facilities.[1]

The language with which you are concerned, section 4, Chapter 2010-266, Laws of Florida, provides that:

"This act shall take effect only upon its approval by a majority vote of those qualified electors of the district voting in a referendum conducted in accordance with the provisions of law relating to elections currently in force, except that this section and section 3 shall take effect upon this act becoming a law."

You have asked for assistance in determining what the term "qualified electors of the district" may mean as it is used in the act.

Chapter 2010-266, Laws of Florida, is a "special law" or a "local bill," that is, the terms of the act relate to or operate in a particular locality rather than the entire state.[2] Article III, section 10, Florida Constitution, provides requirements for the passage of special laws:

"No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. *Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.*" (e.s.)

Thus, the Florida Constitution requires that special laws become effective "only upon approval by vote of the electors of the area affected" unless notice of enactment is published. It appears that the Legislature determined to qualify passage of Chapter 2010-266, Laws of Florida, upon

"approval by a majority vote of those qualified electors of the district voting in a referendum" conducted in the fashion provided by general law for referenda.

The Florida Constitution also provides general rules of construction for language found in the state constitution. Pursuant to Article X, section 12(d), Florida Constitution, a "[v]ote of the electors" means:

"the vote of the majority of those voting on the matter in an election, general or special, in which those participating are limited to the electors of the governmental unit referred to in the text."

Thus, the language in section 4, Chapter 2010-266, Laws of Florida, appears to require that the terms of the act only become effective when approved by a majority vote of qualified electors of the Spring Lake Improvement District, Highlands County.

You have also asked whether the reference in section 4 to "provisions of law relating to elections currently in force" refers to Chapter 189, Florida Statutes, or the Florida Elections Code (Chapters 97 - 106, Florida Statutes). While the language of the special act is far from clear on this point, I would note that the provisions in Chapter 189, Florida Statutes, dealing with elections are directed primarily to electing the governing board of the district.[3] While Chapter 2010-266, Laws of Florida, deals generally with Spring Lake Improvement District, the act itself is a general reworking of the enabling legislation for the district, not an election of the governing board pursuant to Chapter 189. Thus, I would suggest that the reference in section 4, Chapter 2010-266, Laws of Florida, to "the provisions of law relating to *elections* currently in force" is a reference to Florida's Election Code, Chapters 97 - 106, Florida Statutes. (e.s.)

I trust that these informal comments will assist you in determining your duties and responsibilities under this new legislation. As we discussed during our telephone conversation on these issues, Florida Attorney General Opinions are advisory only, as is this informal opinion.[4] Only a judicial resolution of these issues will provide a binding, definitive determination of these questions.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* Title to Ch. 2010-266, Laws of Fla.

[2] *See* http://www.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&S identifying the bill as a local bill and Art. X, s. 12(g), Fla. Const., defining a "[s]pecial law."

[3] *See* ss. 189.405 and 189.4051, Fla. Stat. *Cf.* s. 189.405(2)(a), Florida Statutes, specifically providing that "[a]ny independent special district that conducts its elections through the office of

the supervisor shall make election procedures consistent with the Florida Election Code."

[4] *See* s. 16.01(3), Fla. Stat.