Workforce development board, proxy voting

Number: INFORMAL

Date: May 06, 2010

Mr. Robert A. Stermer
7763 Southwest Highway 200
Ocala, Florida 34476

Dear Mr. Stermer:

On behalf of the Chair of the Citrus, Levy, Marion Regional Workforce Development Board, you have asked for this office's assistance in determining whether the board may utilize proxy voting under certain circumstances.

Initially, I must advise you that this office, when considering a request for an opinion involving the duties and responsibilities of a collegial body, requires that a majority of the members of the body join in the request for an opinion.[1] This ensures that the collegial body itself is interested in resolving the issue and will give the response from this office due consideration. Although you indicate that the Chair of the Workforce Development Board has requested this opinion, it is not clear that a majority of the members of the board have joined in the request. Therefore, my comments will be general in nature but, I trust, will be helpful to you in resolving this matter.

The Citrus, Levy, Marion Regional Workforce Development Board is a multi-county independent special district created pursuant to and operating under section 445.007, Florida Statutes. This statute provides that

"If the regional workforce board enters into a contract with an organization or individual represented on the board of directors, the contract must be approved by a two-thirds vote of the entire board, and the board member who could benefit financially from the transaction must abstain from voting on the contract. A board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143."[2]

You have asked whether the requirement of "a two-thirds vote of the entire board," would allow proxy voting by board members.

It is a well established rule that special districts have only such powers as are expressly granted to them by law or those necessarily implied because they are essential to carry into effect those powers expressly granted; any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.[3] While it is clear from a reading of the enabling legislation for the district that the powers granted to it are broad, those powers are limited to accomplishing the purposes of the district.[4]

I would note that the language of section 445.007(1), Florida Statutes, specifically recognizes that

"[t]he board, its committees, subcommittees, and subdivisions, and other units of the workforce system, including units that may consist in whole or in part of local governmental units, may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of the telecommunications meeting and reasonable access to observe and, when appropriate, participate. Regional workforce boards are subject to chapters 119 and 286 and s. 24, Art. I of the State Constitution."

Thus, the workforce development board is specifically authorized to use telecommunications to conduct its meetings so long as the statutory requirements are met.

However, nothing in section 445.007, Florida Statutes, authorizes the use of proxy votes for conducting official business of the board. The Legislature has provided statutory authorization for special districts to utilize proxy voting in a number of other statutes.[5] In the absence of specific statutory authority for the members of a regional workforce development board to conduct business using proxy voting, I cannot say that such a power may be validly exercised.[6]

In addition, you may wish to discuss this matter with the Agency for Workforce Innovation. Chapter 445, Florida Statutes, the "Workforce Innovation Act of 2000," is implemented and administered by the Agency for Workforce Innovation and that agency may be able to provide additional assistance in this regard.

I trust that these informal comments may be helpful to you in resolving this issue. Thank you for contacting the Florida Attorney General's Office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* Department of Legal Affairs Statement Concerning Opinions (copy enclosed).

[2] Section 445.007(1), Fla. Stat.

[3] *See, e.g., Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District,* 82 So. 346 (Fla. 1919); Op. Att'y Gen. Fla. 89-34 (1989); *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973).

[4] *See, e.g.*, Ops. Att'y Gen. Fla. 2009-13 (water control district not authorized to purchase multi-use golf course facility located within district that includes a driving range, restaurant, bar, sewer plant, and related businesses); 2007-24 (use of water authority's funds to host a fishing

tournament or sponsor a soccer league would not appear to be related to authority's duties to foster and improve tourism through improvement of streams, lakes, canals); 86-90 (1986).

[5] *See, e.g.,* s. 153.53(3)(d), Fla. Stat., authorizing proxy voting for the establishment of a county water and sewer district; s. 189.4051, Fla. Stat., (special requirements and procedures for districts with governing boards elected on one-acre/one-vote basis); s. 190.006, Fla. Stat., (community development districts).

[6] Any reasonable doubt as to the lawful existence of a particular power sought to be exercised by an administrative agency or officer of the state must be resolved against the exercise thereof. *State ex rel. Greenberg v. Florida State Board of Dentistry,* 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973).