Hospital districts merged, referendum

Number: INFORMAL

Date: November 10, 2009

The Honorable D. Alan Hays
Representative, District 25
Post Office Box 2326
Umatilla, Florida 32784

Dear Representative Hays:

You ask this office's opinion as to whether a referendum was required to merge the Northwest Lake County Hospital District and the Northeast Lake County Hospital District. According to your letter, the two districts were merged by Chapter 95-508, Laws of Florida.

Initially, I note that this office must presume the validity of any duly enacted legislation. In an effort to be of assistance, I would note that Chapter 95-508, Laws of Florida, sought to ratify the merger between these two hospital districts pursuant to Chapter 189, Florida Statutes 1989. As stated in the act's Whereas clauses:
"* * *
WHEREAS, the Northeast Lake County Hospital District and the Northwest Lake County Hospital District were merged into one single independent special taxing district by concurrent resolutions of the Northeast Lake County Hospital District and the Northwest Lake County Hospital District on the 9th day of February 1990, and

* * *

WHEREAS, the Legislature recognizes that Chapter 189, Section 189.4042, Florida Statutes, 1989, the Uniform Special District Accountability Act of 1989, provides for the merger of special districts through the adoption of concurrent resolutions by the governing bodies of each special district but feels that the citizens of Lake County would be better served by the Legislature of the State of Florida ratifying the prior concurrent resolutions and changing certain provisions of the concurrent resolutions . . . ."

At that time, section 189.4045(1), Florida Statutes 1989, authorized the merger of two or more special districts by "passage of a concurrent . . . resolution by the governing bodies of each unit to be affected."[1] The statute, however, did not provide for approval of the merger by referendum.

Regarding the passage of Chapter 95-508, Laws of Florida, which is a special act, I would note that Article III, section 10 of the Florida Constitution, sets forth certain requirements for the passage of a special law, providing:

"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."

Therefore, before a special law may be passed, one of two things must have occurred: (1) there must have been notice of intention to seek enactment of the special law published in the manner provided by general law, *or* (2) the law must contain a referendum provision and the effectiveness of the law must depend on a favorable vote in the referendum.

Sections 11.02 - 11.03, Florida Statutes, prescribe the notice requirements for special or local acts.[2] Section 11.021, Florida Statutes, states:

"The evidence that such notice has been published shall be established in the Legislature before such bill shall be passed, and such evidence shall be filed or preserved with the bill in the Department of State in such manner as the Legislature shall provide."

In 1995, the statute further provided that "[t]he fact that such notice was established in the Legislature shall in every case be recited upon the journals of the Senate and of the House of Representatives."[3] A review of the Florida House of Representatives Journal for the 1995 regular session reveals the statement that "[p]roof of publication of the required notice" for House Bill 1951 (enacted as Chapter 95-508, Laws of Florida) was attached.[4]

I trust that the above information may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Director of Opinions Division

JW/tsh

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[1] Section 189.4042(2)(a), Fla. Stat. 1989, provided that initiation of procedures for merger of special districts as described in subsection (1) may be done by either adoption of a resolution by the governing body of an area to be affected or by a petition of 10 percent of the qualified voters in the area. Section 8, Ch. 97-255, Laws of Fla., amended s. 189.4042(1) to, among other things, limit the subsection's application to dependent districts and amended subsection (2) to provide in part that the merger or dissolution of an independent special district or a dependent district created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law. A different procedure, however, was recognized for districts created by a county or municipality.

[2] *See* s. 11.02, Fla. Stat., which provides:

"The notice required to obtain special or local legislation or any relief act specified in s. 11.065 shall be by publishing the identical notice in each county involved in some newspaper as defined

in chapter 50 published in or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065 shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund."

And see s. 11.03, Fla. Stat., setting forth an affidavit of proof of publication which may be used.

[3] This provision requiring that the notice be recited in the Journals was deleted in 1996. *See* s. 3, Ch. 96-318, Laws of Fla.

[4] Journal of the Florida House of Representatives, 1995 regular session, March 13, 1995, Vol. I, p. 174.