Airport authority, partial term, effect on term limits

Number: INFORMAL

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Mr. Donald W. Stanley, Jr.
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Regional Airport Authority
202 South Rome Avenue
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Tampa, Florida 33606

Dear Mr. Stanley:

On behalf of the Gainesville Alachua County Regional Airport Authority (authority), you ask whether an appointee who fills a vacancy for the balance of the unexpired term of the previous board member would be considered to have served a term for purposes of a limitation on serving more than two successive terms. You also ask whether the by-laws of the authority may be amended by the board to provide that a member appointed to complete an unexpired term with less than 50% of the term remaining may be eligible to serve two full terms subsequent to completing the term.

Section 4(4), Chapter 2006-363, Laws of Florida, governs the term of office of the members of the authority as follows:

"The term of any member initially appointed prior to the effective date of this act shall expire on July 31 of the year such member's term was scheduled to expire under chapter 95-457, Laws of Florida. No member shall serve more than two successive terms."

Section 4(5) of the act states that "[a]ll members appointed subsequent to the effective date of this act shall serve 3-year terms of office, beginning on August 1 and expiring on July 31 of the appropriate year." The by-laws for the authority state that "[e]ach member shall be appointed for a term of three (3) years; except for appointments to fill vacancies, which shall be for the balance of the unexpired term[.]"[1]

Clearly, the enabling legislation provides and the by-laws concur that a term of office shall be for three years. The act further limits a member's service on the authority to no more than two successive terms. It would be consistent with this clear expression of legislative intent to limit the term of office to no more than two terms or six years. It would be beyond the authority's statutorily granted powers to alter the term of office by extending it beyond six years or a maximum of two terms. As an administrative agency, however, the authority's powers are limited to those expressly granted by the statutes or acts creating it and those which by fair implication are necessary to carry out the powers expressly granted.[2]

However, it has been recognized by a Florida court that the appointment to a partial term, such as a transitional term, does not constitute a term of office in situation similar to the one you have

raised. In *Vieira v. Slaughter*,[3] the First District Court of Appeals considered whether a mayor was precluded from running for a full four-year term when he had served a transitional term, as well as a subsequent four-year term, where the city's charter provided that no mayor elected and qualified for two consecutive terms was eligible for election in the next succeeding term. The court noted:

"The right to be a candidate for public office is a valuable right, and no one should be denied this right unless the Constitution or applicable valid law expressly declares him ineligible."[4]

The court further stated that the imposition of restrictions upon the right of a person to hold public office should be liberally construed in favor of the people exercising freedom of choice in the selection of their public officers. Should there by any doubt or ambiguity in the provisions, it should be resolved in favor of eligibility.[5]

While it does not appear that the authority would be authorized to amend its by-laws to alter the limitations on serving as a member for more than six years or two terms, there is support for concluding that appointment to fill a vacancy for an unexpired term does not constitute a full term.

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 2, Art. II, By-laws for the Gainesville - Alachua County Regional Airport Authority, Adopted November 17, 2005.

[2] *See, e.g., City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973); *Halifax Drainage District of Volusia County v. State*, 185 So. 123 (Fla. 1938); *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).

[3] 318 So. 2d 490 (Fla. 1st DCA 1975).

[4] *Id. at* 492, *citing Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956) and *Hurt v. Naples*, 299 So. 2d 17 (Fla. 1974).

[5] *Ervin v. Collins, supra*.