Mosquito Control Dist., repayment of salary

Number: INFORMAL

Date: March 12, 2007

Ms. Jeanne E. Brooker, Chair
Collier Mosquito Control District
600 North Road
Naples, Florida 34104-3464

Dear Ms. Brooker:

On behalf of the Collier Mosquito Control District you have requested our assistance in determining how to apply section 388.141(2), Florida Statutes. According to your letter a commissioner of the mosquito control district was recently elected to serve as a commissioner of a fire control district. The terms of office of these two districts overlapped by approximately six weeks. The commissioner was paid a salary by both the mosquito control district and the fire control district in violation of section 388.141(2), Florida Statutes. There is now a question as to which district should be reimbursed the amount of the salary paid to the commissioner.

Chapter 388, Florida Statutes, governs the operation of mosquito control districts established prior to July 1, 1980. (Section 388.021, Fla. Stat. On or after July 1, 1980, mosquito control districts are to be created pursuant to s. 125.01, Fla. Stat.) A review of the history of the Collier Mosquito Control District (district) shows that it was created as an independent special tax district as a result of a referendum in 1950. (*See* 50th Anniversary Historical Narrative, Collier Mosquito Control District, found at "www.collier-mosquito.org.") A board of commissioners, each elected for a four-year term, possesses the power and duty to carry out the district's purpose to control and eliminate all species of mosquitoes. (*See* ss. 388.101, 388.161 - 388.191, Fla. Stat.)

Compensation of the board's members is set statutorily. Section 388.141(1), Florida Statutes, states:

"Members of the board of commissioners of independent special tax districts may each be paid a salary to be determined by the unanimous vote of the board which shall not exceed $4,800 for each commissioner during any one year; however, this section shall not be construed to limit compensation of district commissioners where higher amounts have otherwise been authorized by special act or general act of local application. Said members may be reimbursed for expenses incurred in the performance of their duties as provided in s. 112.061." (Section 112.061, Fla. Stat., sets forth a uniform plan for per diem and reimbursement of expenses for travel or public officers, employees and persons authorized to incur such expenses on behalf of a public entity.)

Clearly, the statute recognizes that a mosquito control district commissioner is entitled to a limited salary and reimbursement of expenses incurred in the performance of his or her duties.

Section 388.141(2), Florida Statutes, provides a specific limitation for mosquito control district board members receiving compensation from more then one district:

"No board member of a mosquito control district shall receive compensation except for per diem and travel expenses authorized pursuant to s. 112.061, for serving on more than one special district board in this state. All special districts, regardless of the existence of other specific provisions of law, shall comply with this subsection."

It appears that the Legislature intended for the salary of a board member of a mosquito control district to be the sole compensation made to that commissioner.

While the statute does not provide direction as to how a commissioner should deal with accidental multiple compensation payments, it would appear to be appropriate for the board member to return all funds paid outside the scope of section 388.141, Florida Statutes, that is, to return compensation from any special district other than the mosquito control district. For the period of time that the commissioner was a board member of the mosquito control district, he or she was limited by section 388.141, to receiving compensation only from that district.

I trust that these informal suggestions will prove helpful to you in addressing this issue. This informal advisory opinion is provided to you by the staff of the Opinions Division in an effort to assist you. The conclusions herein are those of the writer and do not constitute a formal Attorney General's Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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