

Selection of Water Control District presiding officers

Number: INFORMAL

Date: January 14, 2004

Mr. John C. Rayson
Central Florida Water Control District Attorney
Second Floor
2400 East Oakland Park Boulevard
Fort Lauderdale, Florida 33306

RE: WATER CONTROL DISTRICTS–SPECIAL DISTRICTS–PUBLIC OFFICERS AND
EMPLOYEES–TERMS OF OFFICE–duties of officers of water control district. Ch. 98-501, Laws
of Florida.

Dear Mr. Rayson:

You have asked for assistance in resolving several questions relating to the Central Broward Water Control District and its board of commissioners. Specifically, you have asked whether the newly elected vice-chair of the district must preside over meetings of the district board in the absence of an elected chair or whether the board may establish its own rules of procedure and select another commissioner to serve as the temporary presiding officer until election of a chair. You have also asked whether the language of the charter would permit the elected chair and vice-chair of the board to hold over in office until such time as new officers are elected.

The charter of the Central Broward Water Control District was recodified in 1998 as Chapter 98-501, Laws of Florida, as a consolidated act including the original enabling legislation and all subsequent amendments to that law. With regard to the board of commissioners, the act provides that all commissioners shall serve a term of 4 years. No hold over provision is included in Chapter 98-501, Laws of Florida. While the Florida Constitution contains hold over provisions for state and county governmental officers, no such requirement exists in the constitution or the statutes for special district officers.[1]

Section 7, Chapter 98-501, Laws of Florida, provides:

"Organization of board of commissioners. – At the first regularly scheduled meeting following the first Tuesday after the first Monday in November each year, the board of commissioners shall assemble and organize by choosing one of their members chair of the board, and choosing another one of their members vice chair. . . . The chair shall preside at all meetings. In the chair's absence, the vice chair shall preside and have the same powers and be subject to the same limitations as the chair. Four members of the board including the chair, or the vice chair in the chair's absence, shall constitute a quorum for all purposes. The board shall establish its own rules of procedure. In all matters, the board shall act by resolution and the affirmative votes of a majority, but not less than three of the members of the board that are present at district meetings shall be required to make any determination or effect any action."

The board of commissioners of the Central Broward Water Control District was unable to choose a chair or vice-chair at its regular November meeting. At the next meeting, held on December 10, 2003, the previously elected chair and vice-chair held over to preside at the meeting. The matter of electing a chair and vice-chair was reconsidered. Again no chair was elected but a vice-chair was elected at that meeting. Thus, you ask whether the vice-chair may preside over meetings of the district board in the absence of an elected chair or whether the formerly elected chair holds over until a new chair is elected.

You have not advised me that the district has any internal rule or policy regarding holding over in office. As discussed above, no provision authorizes special district officers to hold over at the conclusion of their term of office. In the absence of any legal direction in this matter it does not appear that the previously elected chair and vice-chair of a board have any authority to continue to preside over meetings after the first regularly scheduled meeting following the first Tuesday after the first Monday in November each year. The board may wish to consider adopting a rule authorizing previously elected officers of the board to continue in office until the selection of their successors in order to facilitate the business of the district.[2]

You have also asked whether, under the provisions of the charter, the newly elected vice-chair may preside in the absence of an elected chair. The charter clearly contemplates that the members of the board will work together constructively to do the business of the district. Failure to do so may subject members of the board to charges of misfeasance for which they may be removed from office.[3] The provisions of the charter appear to contemplate the election of a chair and vice-chair as described therein; the charter refers to the vice-chair's duties "in the chair's absence." I cannot say that this refers only to a momentary removal from the meeting as opposed to the failure of the board to elect a chair. Thus, it would appear appropriate that the newly elected vice-chair preside over any meeting at which the chair is not present.

Finally, you have asked whether the board may establish its own rules of procedure and select another commissioner to serve temporarily as presiding officer for meetings during which no chair has been elected. While the district's charter recognizes the authority of the board to adopt rules of procedure, any such rules must otherwise comport with the act. The act currently contains provisions describing how the chair and vice-chair must be selected and who may preside over meetings in the absence of the chair. It does not appear that the board has any authority to circumvent the legislative directive contained in section 7, Chapter 98-501, Laws of Florida, as to the organization of the board of commissioners. Therefore, the board may adopt rules of procedure on matters not otherwise specifically prescribed by the charter but may not legislate on those topics for which the Legislature has made specific provision.

I trust these informal comments will assist you in advising your clients.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tgk

[1] See Article II, s. 5(a), Fla. Const.

[2] See s. 7, Chap. 98-501, Laws of Florida, providing that "[t]he board shall establish its own rules of procedure."

[3] *Cf.* s. 298.11(4), Fla. Stat.