

Creation of additional school districts in county

Number: INFORMAL

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The Honorable Stephen R. Wise
Senator, District 6
3520-2 Blanding Boulevard
Jacksonville, Florida 32210-5253

Dear Senator Wise:

You ask whether additional school districts may be created within a charter county.

Based upon the following discussion, I am of the opinion that absent a constitutional amendment to Article IX, section 4, Florida Constitution, additional school districts may not be created within a county.

Article IX, section 4(a), Florida Constitution, provides:

"Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law." (e.s.)

The word "shall," according to its normal usage, has a mandatory connotation.[1] Thus, the only exception recognized by the Constitution from the mandate that a county constitutes a school district is for two or more contiguous counties to form a single school district. No provision is made for the division of a county into multiple school districts. It is an established principle that if the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner.[2]

Thus, the county, regardless of whether a charter or noncharter county,[3] and the school district are bound by the provisions of the Constitution and in the absence of a constitutional amendment authorizing the same, may not create additional school districts within a single county.[4]

I hope that the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] See, e.g., *Drury v. Harding*, 461 So. 2d 104 (Fla. 1984); *Holloway v. State*, 342 So. 2d 966 (Fla. 1977); *Concerned Citizens of Putnam County for Responsible Government, Inc. v. St. Johns River Water Management District*, 622 So. 2d 520 (Fla. 5th DCA 1993) (although not fixed construction of word "shall," it is normally meant to be mandatory in nature); *State, Department of Education. v. Glasser*, 622 So. 2d 1003 (Fla. 2d DCA 1992). And see *State ex rel. McKay v. Keller*, 191 So. 542 (Fla. 1939); *Mugge v. Warnell Lumber & Veneer Company*, 50 So. 645 (Fla. 1909) (established rules of construction applicable to statutes apply also to the construction of Constitutions).

[2] See *Weinberger v. Board of Public Instruction of St. Johns County*, 112 So. 253 (Fla. 1927); *In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520 (Fla. 1975); Op. Atty. Gen. Fla. 84-20 (1984).

[3] See Art. VIII, s. 1(g), Fla. Const., which provides that counties operating under a charter shall have all powers not inconsistent with general law, or with special law approved by vote of the electors.

[4] I would note that the Legislature in s. 30, Ch. 69-216, Laws of Florida, amended s. 230.23(11)(d), Fla. Stat. (1967), which authorized the creation of elementary or high school tax areas within a school district. The statute, as amended, prescribed a procedure whereby a district school board in certain counties could create tax areas within the district for the purpose of funding capital projects within the area. See Op. Att'y Gen. Fla. 69-95 (1969). This provision was subsequently repealed by s. 33, Ch. 72-221, Laws of Florida.