

See also Schauer v. City of Miami Beach, 112 So.2d 838 (Fla. 1959), holding that the motives of a city commissioner in voting upon a zoning ordinance—a *legislative* function—were not proper subjects for judicial inquiry; and Van Italie v. Franklin Lakes, 146 A.2d 111 (N.J. 1958), which also involved a zoning ordinance, in which the court said:

Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in so doing they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials.

It seems clear that, as branch manager of the office supply division of the national manufacturing company, the only personal interest that the branch manager-authority member could have in the proposed sales and construction agreement would be the possibility that the corporation to whom the property is sold might, as a result of this transaction, increase its purchases from the local branch of the national manufacturing company which he represents. If this possibility is merely remote and speculative, I do not conceive that the member in question would have the right to abstain from voting upon the matter under §286.012, *supra*; if the expectation is a probable consequence of the consummation of the transaction, I have the view that he could validly abstain from voting thereon and, in fact, should do so as a matter of public policy.

073-122—April 17, 1973

WETLANDS

LEGAL INTERPRETATION OF TERM "WETLANDS"

To: Mallory Home, Senate President, Tallahassee

Prepared by: Arthur C. Canaday, Assistant Attorney General

QUESTION:

What is the legal interpretation of the term "wetlands"?

SUMMARY:

The term "wetlands," in and of itself, has no precise legal interpretation, but legislatures have utilized the term in laws dealing with coastal zones by adding a statutory definition of "wetlands" pegged to biological, physiographic, or tidal data or a combination thereof.

Without any qualifying or descriptive language, the word "wetlands," in and of itself, would not have a precise legal definition that I can determine. The legislative approach in other states has been to define the term within the act in which it appears. *See, e.g.,* The Coastal Wetlands Protection Act of Massachusetts (Act, 768-1965); The Virginia Wetlands Act (Ch. 21.1-13.1 *et seq.*, Laws of Virginia).

In many cases coastal wetlands are identified and defined separately from interior wetlands. They both may be defined by tying the areas involved to physiographic or biological indices, as well as tidal data. Marine biologists have

advised that pegging the definition of wetlands to specific types of naturally occurring grasses or other flora can be very precise if the correct types of vegetation are listed. An example of such a precise definition appears in the draft Florida Inland and Coastal Wetlands Management and Protection Act of 1973 which has been proposed by Governor Askew. This definition distinguishes also between coastal wetlands and "inland wetlands." The definition of "inland wetlands" is as follows (§3):

(2) "Inland Wetlands" means any land upon which occurs a natural community of one or more of the following species: sawgrass (*Cladium jamaicensis*), bald cypress (*Taxodium distichum*), pond cypress (*Taxodium ascendens*), swamp tupelo (*Nyssa biflora*), water tupelo (*Nyssa aquatica*), cattail (*Typha angustifolia*, *Typha domingensis*, *Typha latifolia*), pickerelweed (*Pontederia lanceolata*), soft rush (*Juncus effusus*), bulrush (*Scirpus americanus*, *Scirpus validus*), switch grass (*Panicum virgatum*), maiden cane (*Panicum hemitemon*), water ash (*Fraxinus caroliniana*), water willow (*Justicia ovata*), willow (*Salix caroliniana*), ogeeche tupelo (*Nyssa ogeche*), water lily (*Nymphaea*), spadder dock (*Nuphar*), button bush (*Cephalanthus occidentalis*), pond apple (*Annona glabra*)

The Virginia Wetlands Act defines the term by reference to both tidal elevations and certain types of marine plants. In Ch. 21.1-13.1, wetlands are defined as:

. . . all that land lying between and contiguous to *mean low water* and an elevation above mean low water equal to a factor 1.5 times the mean tide range at the site of the proposed project in the county, city or town in question; *and upon which is growing* on July 1, 1972 or grows thereon subsequent thereto, any one or more of the following . . . [Species of plants]. (Emphasis supplied.)

The Massachusetts Coastal Wetlands Protection Act (Act 768-1965) defines coastal wetlands as "any bank, marsh, swamp, meadow or field or other low land subject to tidal action or coastal storm flowage" It would seem the approach proposed in the Florida Wetlands Act cited above, including certain species of vegetation, would be more legally precise than the Massachusetts Act.

I hope these comments are helpful to you. I would be glad to work with your office or any individual senator in a legal analysis of any particular statutory definition of the term "wetlands." The answer to your specific question is that I know of no precise legal meaning or court construction of the term "wetlands" when used without further clarification or definition.

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COUNTY COMMISSIONERS' DISTRICTS

AMENDING STATUTE TO EXCLUDE PALM BEACH COUNTY FROM STATUTORY REDISTRICTING REQUIREMENTS

To: Raymond J. Moudry, Representative, 79th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a proposed amendment to §124.01(5), F. S., excluding Palm Beach County from the application thereof or other legislation be adopted to effect a change in the district of a county commissioner of Palm Beach County?