

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.

073-123—April 17, 1973

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?

SUMMARY:

In the absence of constitutional authority, the legislature may not provide for a change in the boundaries of county commissioner districts in any manner other than that prescribed by Art. VIII §1(e), State Const.: that is, by action of the board of county commissioners.

Under Art. VIII, §1(e), State Const., the county commissioners of nonchartered counties are charged with the duty and responsibility of dividing the county into districts as nearly equal in population as practicable, after each decennial census. This same duty has been imposed upon the county commissioners since the year 1900 by our Florida Constitution. The legislature has no authority to alter the provisions of the constitution respecting redistricting or any other constitutional mandate. *Cf. Prince v. State ex rel. Williams*, 25 So.2d 5 (Fla. 1946), in which the court ruled that certain provisions of §124.01, F. S. 1941, were not in harmony with the constitutional provisions respecting redistricting, and that "the provisions of the Constitution will control, rather than those of the statute."

The provision of §124.01(5), *supra*, excepting Dade County from the requirements of the statute, is constitutional only because Dade County's Home Rule Amendment, Art. VIII, §11, State Const., 1885 (expressly retained by Art. VIII, §6, State Const., 1968), provides that Dade County's Home Rule Charter:

Shall fix the boundaries of each county commission district, provide a method for changing them from time to time, and fix the number, terms and compensation of the commissioners, and their method of election.

In the absence of any similar constitutional provision relating to Palm Beach County, I know of no way in which a county commissioner's district of that county may be changed except in the manner prescribed by the constitution, that is, by action of the board of county commissioners.

073-124—April 17, 1973

MUNICIPAL OFFICERS**QUALIFICATION FOR OFFICE OF CITY COMMISSIONER
OF CITY OF MIAMI**

To: Alan H. Rothstein, City Attorney, Miami

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is the City Commission of the City of Miami prohibited by law from appointing a person as acting or interim mayor of the city in the following circumstances?

SUMMARY:

Under Art. VI, §4, State Const., the conviction of a felony will disqualify a person from holding public office; however, a mere charge of conduct subjecting a person to civil liability or penalties or constituting a crime is not a disqualification.

The individual in question is the president and a director of a large corporation in Dade County. The corporation was charged with conspiring with others to fix the price of concrete in a civil, not criminal, suit; however, the case was settled for an agreed-upon amount and is no longer pending. The