

Municipalities, financial instability

Number: INFORMAL

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Ms. Linda Johnson
Post Office Box 644
South Bay, Florida 33493

Dear Commissioner Johnson:

The Office of Attorney General Pam Bondi has received the copy of the letter you sent to Representative Mack Bernard regarding the problems encountered by the City of South Bay and the failure of the city commission to address those problems.

While this office has no specific authority over municipalities, or their governing bodies, the following informal comments are offered in an effort to be of assistance.

You state that the citizens previously had presented the city commission with a vote of no confidence and request for removal petition. Section 100.361, Florida Statutes, provides for the removal from office of any member of the governing body of a municipality by the electors of the municipality for, among other things, malfeasance, misfeasance, neglect of duty and incompetence.[1] The statute, which applies to municipalities "whether or not they have adopted recall provisions[,] "[2] sets forth the requirements for the recall petition.[3] Moreover, section 112.51(1), Florida Statutes, provides that the Governor, by executive order stating the grounds for the suspension and filed with the Secretary of State, may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.

Inasmuch as your refer to the financial instability of the city, I would direct your attention to section 218.503(1), Florida Statutes, which provides that local governmental entities shall be subject to review and oversight by the Governor, when *any one of the following conditions occurs*:

- "(a) Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of a lack of funds.
- (b) Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of a lack of funds.
- (c) Failure to transfer at the appropriate time, due to lack of funds:
 - 1. Taxes withheld on the income of employees; or
 - 2. Employer and employee contributions for:
 - a. Federal social security; or
 - b. Any pension, retirement, or benefit plan of an employee.
- (d) Failure for one pay period to pay, due to lack of funds:
 - 1. Wages and salaries owed to employees; or
 - 2. Retirement benefits owed to former employees.

(e) An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, for which sufficient resources of the local governmental entity, . . . as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Fixed or capital assets, the disposal of which would impair the ability of a local governmental entity . . . to carry out its functions, are not considered resources available to cover reported deficits."

It appears from your letter that the Governor may have declared the city to be in a financial emergency in the past. If it is determined that the city is currently experiencing a financial emergency, the Governor may take several measures to assist the local governmental entity in resolving the financial emergency, including, but not limited to, requiring approval of the city's budget by the Governor or establishing a financial emergency board to oversee the activities of the city.[4]

In light of the above, you may wish to contact the Governor's Office at the following address: Office of Governor Rick Scott, State of Florida, The Capitol, 400 South Monroe Street, Tallahassee, Florida 32399-0001; telephone (850) 488-7146; fax: (850) 487-0801.

You also indicate that there may have been criminal violations of the laws of this state. Such violations would be prosecuted by the local state attorney's office. It appears, however, that you have already contacted that office. Questions involving conflict of interest under the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, should be addressed to the Florida Commission on Ethics, which may be contacted at: Post Office Drawer 15709, Tallahassee, Florida 32317-5709; telephone: (850) 488-7864; fax: (850) 488-3077.

I hope that the above information may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] See s. 100.361(2)(d), Fla. Stat.

[2] See s. 100.361(12), Fla. Stat.

[3] See s. 100.361(2), Fla. Stat.

[4] See s. 218.503(3), Fla. Stat.