

Special District, vacancies

Number: INFORMAL

Date: April 02, 2004

Mr. Leonard G. Rubin
Attorney for the Northern Palm Beach
County Improvement District
Post Office Box 4626
West Palm Beach, Florida 33402-4626

Dear Mr. Rubin:

You ask whether the Board of Supervisors of the Northern Palm Beach County Improvement District may adopt a policy to implement changes in the board's composition as a result of mid-term changes in residency or real property ownership by one or more supervisors if such policy is submitted for ratification by the landowners.

According to your letter, the policy would provide that when a supervisor's actions or change in circumstance cause the board of supervisors to be in noncompliance with the requirement that three supervisors be county residents and owners of property within the district, the supervisor would be given a specific period of time to bring the board into compliance. If this were not done, the supervisor's seat would become vacant and the board would fill the vacancy for the remainder of the term.

In 2000, the Florida Legislature codified the special acts relating to the Northern Palm Beach County Improvement District.[1] The district, originally created in 1959 as the Northern Palm Beach County Water Control District, was established for the purposes of reclaiming and draining certain lands in Palm Beach County.[2] The district operates as an independent special district and pursuant to its enabling legislation is also subject to the provisions relating to water control districts contained in Chapter 298, Florida Statutes.[3]

The district's enabling legislation provides that the district is governed by a five member elected board of supervisors:

"At least three of the Supervisors of the Northern Palm Beach County Improvement District shall be residents of Palm Beach County, Florida, and owners of lands within said District. The other two Supervisors of the Northern Palm Beach County Improvement District need not be residents of the State of Florida. To be eligible for election, a candidate for the office of Supervisor shall file a written notice of intention to be a candidate in the office of the District at least 30 days before the annual meeting of the landowners. In case of a vacancy in the office of any Supervisor, the remaining Supervisors may fill such vacancy until the next annual meeting of the landowners, when his or her successor shall be elected by the landowners for the unexpired term."[4]

According to your letter, the district has historically treated the above mandate of three members being landowners within the district as a "floating requirement." While a seat on the board is not

specifically designated as a property owner or non-property owner seat, property owner status is relevant when determining whether a candidate is eligible to run for the board depending upon the composition of the board at that time.

At the last election, one supervisor's seat was up for reelection. The incumbent was reelected to the board for a three year term. At that time, the incumbent supervisor running for reelection was a county resident and owned property within the district as did two other members of the board of supervisors who were not up for reelection. The two remaining supervisors were not and are not landowners within the district.

You have advised this office that in order to comply with the statutory mandate of residency and property ownership, any person seeking to qualify for the seat in the last election was required to be a resident of the county and a landowner within the district. Thus, the statutory qualifications for that seat on the board of supervisors at that election required that the individual be a county resident and a landowner within the district. Since the election, however, the newly elected commissioner has advised the board that she no longer owns property within the district.

Article X, section 3, Florida Constitution, provides that a "[v]acancy in office shall occur upon . . . failure to maintain the residence required when elected or appointed[.]" Similarly, section 114.01(1)(g), Florida Statutes, provides that a vacancy in office shall occur "[u]pon the officer's failure to maintain the residence required of him or her by law." Subsection (2) of section 114.01 provides that with respect to a vacancy created pursuant to section 114.01(1)(g), the Governor shall file an executive order with the Secretary of State setting forth the facts giving rise to the vacancy, the title of the office, the name of the incumbent and the date on which the vacancy in office occurred. The statute provides that the office shall be considered vacant as of the date specified in the executive order or, in the absence of such a date, as of the date the order is filed with the Secretary of State.

In *State ex rel. Askew v. Thomas*,^[5] the Supreme Court determined that a school board commissioner who chose to relocate her residence outside the area from which she was elected had failed to maintain the residency required for her office, leaving her office vacant. The Court found the constitutional and statutory requirement of maintaining residency applicable during any of the term in which the office was held. In simplifying the implications of an officer moving out of the district from which he or she was elected, the Court stated "if he leaves, he leaves his office and a vacancy occurs in that residence area to be filled."^[6]

According to your letter, however, the supervisor in question still meets the residency requirement, *i.e.*, she still resides within the county although she no longer owns property within the district. The district's enabling legislation does not require the supervisor to reside within the district and this office cannot read such a requirement into the special act. Thus, the provisions of Article X, section 3, Florida Constitution, and section 114.01, Florida Statutes, creating a vacancy for failure to maintain residency would not appear to be applicable.

You refer to Attorney General Opinion 74-241 in which this office stated a vacancy is created in the office of a supervisor of a water district when such supervisor ceases to be a freeholder in the district, even though the loss of freeholder status results from an involuntary taking of his property through eminent domain proceedings. The enabling legislation for the district, however,

specifically provided the office of any supervisor who ceased to be a qualified elector and freeholder in the district during his term of office shall become vacant. Unlike the water district considered in Attorney General Opinion 74-241, nothing in the enabling legislation for the Northern Palm Beach County Improvement District provides that a vacancy is created when a supervisor fails to maintain the qualifications for the office for which he or she was elected.

The Florida Supreme Court, however, has stated that eligibility to public office is of a continuing nature. The fact that the candidate may have been qualified at the time of election is not sufficient to entitle the individual to continue to hold office, if during the continuance of the incumbency the person ceases to be qualified and "quo warranto will lie to oust him therefrom." [7]

While the board of supervisors is authorized to fill a vacancy for the unexpired term, such authority does not necessarily encompass the power to declare that a vacancy exists. As a special district, the Northern Palm Beach County Improvement District possess only such powers and authority as have been granted by statute. [8] Nor does Chapter 298, Florida Statutes, provide such authorization. Section 298.11(4), Florida Statutes, provides that any appointed or elected supervisor may be removed by the Governor for dishonesty, incompetency or failure to perform the duties imposed upon him by Chapter 298, Florida Statutes. There is no comparable provision in Chapter 298, however, for such action by the board of supervisors.

In light of the uncertainty surrounding this issue, it is suggested that the district seek judicial or legislative clarification of its authority on this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See Ch. 00-467, Laws of Florida.

[2] See Ch. 59-994, Laws of Florida, as amended. *And see* Ch. 95-489, Laws of Florida, which renamed the district as the Northern Palm Beach County Improvement District.

[3] See s. 3(2), Ch. 00-467, Laws of Florida. *And see* s. 6, Ch. 00-467, *supra*, stating that in the event of a conflict between the provisions of the special act and any other act, the provisions of the special act shall prevail.

[4] Section 3(4)(D), Ch. 00-467, Laws of Florida.

[5] 293 So.2d 40 (Fla.1974).

[6] *Id.* at 43. *And see* Op. Att'y Gen. Fla. 74-104 (1974), stating that a member of a mosquito

control district who changed his residence to a location outside the district was disqualified to serve as a member of the district's board of commissioners.

[7] *State ex rel. Landis v Ward*, 158 So. 273, 276 (Fla. 1934). See 63C Am Jur. 2d *Public Officers and Employees*, s. 56, stating:

"Eligibility to public office is of a continuing nature and must exist at the commencement of the term of office and during the occupancy of the office. The fact that the candidate may have been qualified at the time of his election is not sufficient to entitle him to hold the office, if at the time of the commencement of the term or during the continuance of the incumbency he ceases to be qualified."

Compare 67 C.J.S. *Officers* s. 74c., stating:

"A vacancy in office for any of the causes enumerated in the constitution or a statute is usually regarded as occurring at the time of the happening of the event which is the cause of the vacancy, in which case no judicial determination is necessary. However, this rule is not applicable to all grounds for the occurrence of a vacancy, and if officers are eligible at the time they take office, their subsequent ineligibility, although it may afford ground for removal, does not vacate the offices ipso facto so as to warrant, without further action, the election of their successors."

[8] See, e.g., Op. Att'y Gen. Fla. 90-63 (1990) (Ch. 298, Fla. Stat., does not authorize water control district to adopt recall provisions for recall of supervisors). And see, *Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919).