

Special Districts, proxy voting

Number: INFORMAL

Date: June 30, 1999

The Honorable Doug Wiles
Representative, District 20
Post Office Box 2161
St. Augustine, Florida 32085-2161

RE: FLAGLER ESTATES ROAD AND WATER CONTROL DISTRICT--VOTING--PROXY
VOTING--request for opinion relating to proxy voting. Ch. 298, Fla. Stat.; Ch. 98-529, Laws of Florida.

Dear Representative Wiles:

Thank you for your letter requesting assistance in determining the validity of proxy ballots collected for a meeting of the Flagler Estates Road and Water Control District. The annual landowner meeting of the district was scheduled for June 19, 1999, and was subsequently rescheduled for June 30th. The rescheduling of the meeting has led to questions regarding whether the proxy votes collected for the June 19th meeting may be valid for the meeting scheduled for June 30, 1999. The following informal comments are offered in an attempt to assist you.

It is generally the rule that voting is held to be a personal act which cannot be performed by an agent. While the Legislature may have the power to extend to voters the right or privilege of voting by proxy, it will not be deemed to have done so in the absence of a clear provision to such effect, and in the absence of such provision the courts will enforce the common-law rule which regards voting as a nondelegable, personal trust that cannot be exercised by proxy.[1]

The Flagler Estates Road and Water Control District is an independent, multi-county special district governed by Chapter 298, Florida Statutes, and Chapter 98-529, Laws of Florida.

Section 298.11(2), Florida Statutes (1998 Supplement), makes provision for proxy voting by district landowners as follows:

"At the election, each and every acre of land in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy in writing duly signed, for every acre of land owned by him or her in the district, and the three persons receiving the highest number of votes shall be declared elected as supervisors. The appointment of proxies shall comply with s. 607.0722. . . ."[2]

Section 607.0722, Florida Statutes, provides specific limitations for proxy voting. Subsection (2) states that a shareholder may appoint a proxy by signing an appointment form. An appointment of a proxy is effective when received by the officer or agent authorized to do vote tabulation pursuant to subsection (3), which also provides that "[a]n appointment is valid for up to 11

months unless a longer period is expressly provided in the appointment form." Thus, proxy appointments must be in writing, are effective when received by the appropriate official, and, in general, are valid for up to 11 months. Further, subsection (8) provides:

"Subject to s. 607.0724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment."

Thus, the appointment form itself may provide express limitations on the authority granted to the proxy.

The proxy appointment form in question specifically provides on its face that:

"[The person named as proxy may act] with full power of substitution, to vote on my behalf, all of the votes to which I am entitled at the FERWCD [Flagler Estates Road & Water Control District] annual landowner meeting at 10:00 a.m. on Saturday, June 19, 1999, including any adjournment or recess thereof, for the purpose of electing the annual meeting chair, electing Supervisors, receiving annual reports and transacting such other business as may properly come before the meeting, and to do an perform any and all acts or things in my name and stead and with all powers that I could do as a landowner, if present in person at such meeting."

The effectiveness of the proxy appointment form, on its face, is limited to the meeting scheduled for June 19, 1999. It is my understanding that no such meeting was ever held nor was there an adjournment or recess thereof, rather, the meeting was rescheduled for another date as a result of defective notice being given of the meeting.

In light of the specific date and time language contained on the proxy appointment forms, the legal considerations about proxy voting itself and particular concerns about voting rights and the validity of votes cast, I would suggest that the proxy appointment forms submitted for the June 19, 1999, Flagler Estates Road & Water Control District election are not valid under these circumstances for a subsequent meeting.

I trust that these informal comments will be of assistance in resolving this matter.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See generally 29 C.J.S. *Elections* s. 201(1).

[2] I note that the codified charter for the district also specifically recognizes proxy voting. Section 2, Chapter 98-529, Laws of Florida, relating to the annual landowners meeting provides that "[a]

quorum for the landowners' meeting is the owners of land in the district present in person or *voting by proxy* for the purpose of holding elections and voting on any matters that may come properly before the meetings." (e.s.)