

Industrial Development Authority, number of members

Number: INFORMAL

Date: May 16, 1997

Mr. Burton C. Conner
Okeechobee County Industrial Development Authority Attorney
301 Northwest Fifth Street
Okeechobee, Florida 34972-2564

RE: COUNTIES--INDUSTRIAL DEVELOPMENT AUTHORITY--SPECIAL DISTRICTS--county commission not authorized to increase number of authority members or to appoint alternates. s. 159.45, Fla. Stat.

Dear Mr. Conner:

You ask whether the membership of an industrial development authority may be increased from five members by the county commission. You also ask whether the county commission may appoint alternate members to the industrial development board. Attorney General Butterworth has asked me to respond to your letter.

You state that the Okeechobee County Industrial Development Authority was created as a public corporation in 1981 pursuant to section 159.45, Florida Statutes. At that time, section 159.45(3), Florida Statutes (1980 Supplement), provided:

"The aforementioned resolution shall designate *five* persons who are residents and electors of the county as members of the authority created for said county. Of the members first appointed, one shall serve for 1 year, one for 2 years, one for 3 years, and two for 4 years and in each case until his successor is appointed and has qualified. Thereafter, the commission shall appoint for terms of 4 years each a member or members to succeed those whose terms expire. The commission shall fill any vacancy for an unexpired term. . . ." (e.s.)

This office has recognized that the structural organization of county industrial development authorities and the composition of its members has been prescribed with particularity by statute. Thus, the office has stated that a county commission did not have the authority to alter the composition or number of the authority members.[1]

Section 159.45(3), Florida Statutes, was amended in 1986 to provide that the resolution "shall designate *not less than* five persons who are residents and electors of the county as members of the authority created for said county." [2] In light of this language, you ask whether the membership of the existing industrial authority may be increased.

This office was presented with a similar situation in Attorney General Opinion 84-56. Section 421.05, Florida Statutes 1979, prescribed the procedures for the appointment of commissioners of the city housing authority created by the governing body of a city by resolution. The statute provided for the appointment of five persons as commissioners. The Housing Authority of the

City of Miami Beach was created and its commissioners appointed pursuant to this statute. In 1980, however, the statute was amended to provide for the appointment of "no less than five persons as commissioners of the authority"[3]

This office was asked whether the housing authority created prior to the 1980 amendment could expand the number of its commissioners from five to seven. This office concluded that the amendment was not retroactive and the housing authority was not, therefore, authorized to expand its membership from five to seven members. I am enclosing a copy of Attorney General Opinion 84-56 for your information and review.

Based upon the conclusions reached in Attorney General Opinion 84-56, it would appear questionable whether section 159.45, Florida Statutes, as amended in 1986, would authorize the Okeechobee County Industrial Development Authority to increase its membership.

Regarding your second question, this office, as noted *supra*, has recognized that the Legislature in Part III, Chapter 159, Florida Statutes, has determined the structure of county industrial development authorities. While the Legislature has delegated the responsibility of determining the need for, and activation of, such entities, section 159.45(3), Florida Statutes, prescribes with particularity the composition, term and number of the authority members. The statute would therefore appear to preclude the board of county commissioners from altering such matters by designating alternative members.

I am enclosing copies of Attorney General Opinions 78-115 and 84-56 for your review and consideration. I trust that the above informal advisory comments which should not be construed as a formal opinion of this office may be of some assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosures

[1] Attorney General Opinion 78-115.

[2] See s. 1, Ch. 86-214, Laws of Florida.

[3] See s. 1, Ch. 80-357, Laws of Florida.