Sovereign immunity, interlocal agreements

Number: INFORMAL

Date: June 18, 1996

Mr. David A. Monaco
General Counsel
Volusia City-County Water Supply
Cooperative
Post Office Box 15200
Dayton Beach, Florida 32115

RE: INTERLOCAL AGREEMENTS--SOVEREIGN IMMUNITY--MUNICIPALITIES--COUNTIES--WATER MANAGEMENT DISTRICTS--WATER--sovereign immunity for entity created by interlocal agreement with only county and city parties. ss. 163.01 and 768.28, Fla. Stat.

Dear Mr. Monaco:

You ask whether the proposed Volusia Aquifer Alliance (VAA) established pursuant to an interlocal agreement would be entitled to the limitations of liability in section 768.28, Florida Statutes, when some the members of its board are representatives of private entities appointed by Volusia County. You also ask whether the interlocal agreement may provide that the St. Johns River Water Management District modify future renewal permits to assure consistency and compatibility with the VAA's water supply plan.

Under the proposed plan, only governmental entities would be parties to the interlocal agreement. The board of representatives for the VAA, however, would be made up of an elected official from each municipality and three representatives appointed by the county council. The county's representatives would include one elected county council member, one person employed by the largest private utility within the county, and one person engaged in agriculture. The board's primary function would be to draft a county-wide water supply plan in accordance with the interlocal agreement and to coordinate the production and withdrawal of water from the aquifer.

Section 768.28, Florida Statutes, waives the sovereign immunity of the state and its agencies and subdivisions to the extent specified therein.[1] State agencies or subdivisions within the scope of the statute are defined as "counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities[.]"[2]

In Attorney General Opinion 93-24, this office was asked whether the Volusia City-County Water Supply Cooperative (the predecessor entity to the VAA) was protected by section 768.28, Florida Statutes, as a separate, independent legal entity or as an agency of the several local governmental units who were parties to the interlocal agreement creating the cooperative. It was also questioned whether participation of a private corporation as an affiliate member of the cooperative would affect its sovereign immunity. Considering the agreement's provisions allowing the members to continue to operate their existing water production and transmission

facilities and the need for a resolution to make the cooperative the sole supplier of raw water for the members, it was concluded that the cooperative was not a corporation primarily acting as an instrumentality or agency of the county or the individual municipalities who were parties to the interlocal agreement.

Thus, the cooperative failed to come within the definition of "state agencies or subdivisions" contained in section 768.28, Florida Statutes, since it was not acting an instrumentality of the county or of a municipality.

The opinion recognized that section 163.01(9)(c), Florida Statutes, extends the limitations of liability that apply to the individual governmental members of the cooperative to the cooperative itself as a separate legal entity to the extent that the membership of the organization was limited to cities and counties. It was concluded, however, that the participation of a private organization as a member would remove the cooperative from the protections afforded by section 163.01(9)(c), since membership of the group under the statute was limited exclusively to counties and municipalities.

Given the changes that have been made to limit membership to the county and municipalities, it would appear that the proposed VAA could claim the immunity protections afforded by section 163.01(9)(c), Florida Statutes.

While your second question is posed in terms of the parties to the interlocal agreement agreeing to be bound by a certain term, the term relates to the exercise of authority by the St. Johns River Water Management District. Clearly, the members of the VAA may agree to request the water management district to incorporate the VAA's standards in making its decision to grant or renew consumptive use permits. Absent a request from the St. Johns River Water Management District, however, this office may not comment upon the manner in which the district may carry out its duties and responsibilities under sections 373.219 and 373.223, Florida Statutes. A review of these statutes does not indicate any authority possessed by the VAA or a similarly situated entity to require a water management district to incorporate standards other than those set forth in the statute.

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

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* s. 768.28(1), Fla. Stat.

[2] Section 768.28(2), Fla. Stat.