

DE 90-35 - August 7, 1990

**Special Districts
Section 189.405, F.S.**

To: Honorable Helen B. Gienau, Supervisor of Elections, Polk County, Post Office Box 1460, Bartow, Florida 33830

Prepared by: Division of Elections

This is in reference to your recent memorandum regarding the Lake Region Lakes Management District. Lake Region Lakes Management District is a special district and pursuant to Chapter Law 89-169, Laws of Florida, which created Section 189.405, Florida Statutes, special district elections which are conducted by a supervisor of elections shall conform to the Florida Election Code, Chapters 97-106, Florida Statutes. The Division of Elections may render legal opinions on the Florida Election Code, Chapters 97-106, Florida Statutes.

You have asked:

1. Is advertising required for a special district election? If so, who advertises?
2. Is the supervisor of elections required to furnish absentee ballots?
3. Do the candidates pay the new assessment fee based on the statutory change for compensation, which became effective June 29, 1990?
4. Will the voters in the split precincts be required to sign an oath that they are eligible to vote the district ballot as they cannot be identified otherwise?

Our interpretation of Section 100.342, Florida Statutes, is that if there is no specific mandate in the enabling legislation, or subsequent legislation pertaining to the special district, for how an election is to be advertised, Section 100.342, Florida Statutes, applies, and there must be at least 30 days notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality. There is a provision for posting a notice if there is no newspaper of general circulation within the county, but this is not the case in Polk County. Therefore, in reference to your first question, advertising of a special district election is required. The special district is responsible for preparing the format of the advertising, having it published, and paying for it pursuant to Section 100.011(4), Florida Statutes.

In reference to your second question concerning absentee ballots, if the election is conducted by the supervisor of elections, there must be absentee ballots and these ballots will be handled in accordance with the Florida Election Code.

Regarding your third question, whether the special district candidates will pay the one percent election assessment pursuant to Section 99.092, Florida Statutes, this election assessment does apply to candidates for special district office. However, Chapter Law 90-499, Laws of Florida, provides that the commissioners for the special district will receive compensation for their services only if established by resolution of the board after the election. Therefore, the compensation is not definite and the one percent election assessment is not applicable in this situation.

In reference to your fourth question, I am not aware of any specific procedure in the Florida Election Code mandating that voters in split precincts be required to sign an oath that they are eligible to vote the district ballot as you state they cannot be identified otherwise. However, the statutes do provide that identification may be required before an elector may vote and that the elector must identify himself as a duly qualified elector. See Section 101.22, Fla. Stat. (voting procedure, paper ballots); Section 101.47(1), Fla. Stat. (voting procedure, voting machine ballots); Section 101.5608(1), Fla. Stat. (voting procedure, electronic or electromechanical ballots.) As supervisor of elections in charge of this special election, it is your responsibility to guarantee the sanctity of the ballot. Accordingly, if there is no other way to identify the electors, you may use an affidavit to guarantee that the electors are eligible to vote in the special election.

SUMMARY

Advertising of a special district election is required. If the election is conducted by the supervisor of elections, there must be absentee ballots and these ballots will be handled in accordance with the Florida Election Code. Since the commissioners for the special district will receive compensation for their services only if established by resolution of the board after the election, the one percent election assessment is not applicable in this situation. The supervisor of elections may use an affidavit to guarantee that the electors are eligible to vote in the special election.