

One or more statutes addressed in this opinion has changed.

Please consult current Florida law.

DE 82-27--November 12, 1982

**SPECIAL DISTRICT ELECTIONS AND THE
ELECTION CODE. FREEHOLDERS WHO ARE
NOT REGISTERED ELECTORS.**

To: Mr. David R. Hawkins, 312 South Hiatus Road, Plantation, Florida 33325

Prepared by: Division of Elections

This is a formal elections opinion pursuant to Section 106.23(2), FS. on essentially the following questions:

- (1) Does the Election Code govern an election in the Plantation Acres Improvement District?
- (2) May a person who owns property in the Plantation Acres Improvement District but who is not a qualified elector vote in a special district election?

The Plantation Acres Improvement District (formerly the Dixie Drainage District) was created by Chapter 82-274, Laws of Florida "...to enable that the district undertake the improvements herein provided for and to promote and create favorable conditions for the development of the land within the district." Section 6 of the act creates a five member Board of Supervisors and sets forth the terms of office for the supervisors, the time and manner by which an election is conducted and the requirement that only landowners are entitled to vote. The act does not require the freeholder to be a qualified elector. The act does not incorporate or otherwise reference the Florida Election Law, Chapter 97-106, Florida Statutes (referred to herein as the Election Code). In Section 6(3), the act states only that: "Elections shall be conducted such that two members shall be elected to four year terms and one member to a two year term in accordance to general law." The vague reference to "general law" relates only to terms of the members of the board and does not expressly make the Election Code applicable to special district elections.

The statutory authority for the creation of the Plantation Acres Improvement District is Chapter 298, Florida Statutes, whose provisions are made applicable to the extent not inconsistent with Chapter 82-274.

The provisions of Chapter 298 do not answer the questions at hand.

Section 100.241, FS. (created by Chapter 77-175, Laws of Florida), creates a procedure for the registration and verification of electors in special district elections ". . .in which only electors who are freeholders are qualified to vote. . .". In such an election, the freeholder shall submit proof by affidavit made before an inspector that he is a freeholder who is a qualified elector residing in the county, district or municipality in which the election or referendum is to be held. However, proof of qualification as an

elector and a freeholder applies only in an election in which the rule is restricted to electors who are freeholders. Section 100.241, FS. does not limit all special district elections to electors who are freeholders or to freeholders who are electors. The language of Section 100.241, FS. does not preclude a special district election limited to freeholders without regard to residence or qualification to vote.¹

It is important to note here that the Election Code as a whole has limited, if any, application to special district elections. Notwithstanding an Attorney General's opinion and an earlier Division of Election's opinion, the application of the Election Code to special districts has not yet been clearly determined by the legislature or the judiciary.

¹Section 5(6) of the act defines "landowner." The definition does not require a landowner to be a resident or qualified elector.

Opp Atty Gen 078-38 (March 3, 1978) stated that Chapter 77-175, Laws of Florida broadened the scope of the Election Code to provide procedures for the nomination and election of candidates for special district office. The Attorney General said that Chapter 77-175 implicitly repealed all earlier special laws which are in conflict with the Election Code.

However, the opinion is silent about special districts created after 1977, such as the Plantation Acres Improvement District. Because it must be presumed that later special law or statutes are passed with knowledge of prior existing laws, a construction is favored which gives each one a field of operation rather than having a repeal by implication. Oldham v. Brooks, 361 So. 2d 140 (Fla. 1978).

Division of Elections Opinion 78-32 (August 11, 1978) basically adopted the opinion of the Attorney General. But, subsequently, the Division of Elections receded from its earlier opinion in light of a decision of the Circuit Court for the Sixth Judicial Circuit in Pasco County which enjoined the supervisor of elections from qualifying candidates or conducting special district elections under the Election Code. Board of County Commissioners of the Lake Padgett Water and Sewer District and Road and Bridge District v., Mary Morgan, Supervisor of Elections, Pasco County, Case Nos. CA 78-2117, 78-2059 (October 31, 1978). The Court specifically rejected the argument that Chapter 77-175 implicitly repealed all special and statutory law governing elections in special purpose districts. In light of this cost decision, the Division of Election, in opinion DE 80-15 (June 9, 1980) concluded that the Election Code does not necessarily supercede all special or statutory law governing district elections.

By enacting Chapter 82-274, Laws of Florida without reference to the Election Code, the Florida Legislature has created a special district with its own tolerance and election procedures. Absent clear legislative or judicial authority, I am unable to conclude that the Election Code supercedes this special law and governs elections in the Plantation Acres Improvement District.

The act permits a landowner to vote in a special district election without regard to

residence or registration as an elector. Hence, this is not the type of election in which qualification and registration of freeholders, as prescribed by s. 100.241, FS., is required.

The constitutionality of a vote by a nonresident freeholder was specifically addressed in a decision of the United States Supreme Court in Sayler Land Company v. Tulare Lake Basin Water Storage District, 410 U.S. 719, 93 Sup. Ct. 1224, 36 L. Ed.2d (1973). In Sayler, the court held that a special water storage district could, by reason of the limited purpose of the district and the disproportionate effect of its activities on landowners as a group, limit the vote to district landowners even if they did not live or vote in the district. The court held that the one man, one vote principle established in Reynolds v. Sims, 377 U.S. 533, 12 L.Ed 506, 84 Sup. Ct. 1362 (1964) does not apply to special purpose units of government assigned the performance of functions affecting definable groups of constituents more than other constituents.

Under the Sayler decision, restriction of the vote in Plantation Acres to landowners (even if nonresidents) is not unconstitutional provided the special district is a limited purpose unit of government within the meaning of Sayler land Company v. Tulare Lake Basin Water Storage District, *supra*. and Avery v. Midland County, 390 U.S. 474, 20 L.Ed 2d 45, 88 Sup. Ct. 1114 (1968). Whether Plantation Acres is a limited purpose unit of government is a factual determination outside the scope of this opinion which is best determined by judicial review of Chapter 82-274, Laws of Florida and the relevant case law.

SUMMARY

The special law which created the Plantation Acres Improvement District provides for the conduct of elections without application of the Election Code. The act does not limit the vote to freeholders who are electors; hence, the qualification and registration procedures prescribed by Section 100.241, FS. are not required. Given the lack of clear legislative or judicial authority, I cannot conclude that the Election Code, as a whole, governs elections in the district.

A freeholder who is a nonresident is not prohibited from voting in a special district election provided the district is a limited purpose unit government within the meaning of United States Supreme Court decisions whose functions have a disproportionate effect on property owners.