

DE 97-04 - August 22, 1997

Special District Elections

§§ 99.061(7), 100.071, 101.151(3), 105.035, 189.402(2), 189.403(1), 189.405(5), 388.101(1), F. S., chs. 97-255, 97-256, 97-340, Laws of Fla.

TO: The Honorable Mary Morgan, Supervisor of Elections, Collier County, Collier County Government Center, 3301 Tamiami Trail East, Naples, Florida 34112-4902

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding elections for membership on the Board of Commissioners of the Collier Mosquito Control District (the "district"). You are the Supervisor of Elections for Collier County and, pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to render this opinion to you.

You ask three questions:

1. When there are two or more district offices to be filled at an election and when the seats encompass the same geographical area and are to be voted upon by the same electors, are candidates required to designate group or seat numbers at the time of qualifying?
2. If group or seat numbers are required, is the supervisor required to follow the directions in section 101.151(3)(b), Florida Statutes, and list the candidates by group number?
3. If the answer to question 2 is no, you ask how the ballot for these races is to be prepared.

Based on the discussion that follows, your questions are answered, respectively, as follows:

1. No. However, beginning January 1, 1998, you will be required to designate group or seat numbers, unless the district conducts its own election.
2. No. However, sections 100.071 and 101.151(3)(b), Florida Statutes, will require the placement of candidates by group or district, beginning January 1, 1998, unless the district conducts its own election.
3. For the remainder of 1997, multiple candidates for multiple offices on the same mosquito control district board appear under one ballot heading.

For ease of discussion, this opinion is divided into parts I and II. Part I deals with current law. Part II discusses changes to the current law mandated by the 1997 legislature.

PART I

Since 1985, the Division of Elections has consistently maintained that the qualifying provisions of the Florida Election Code apply to mosquito control districts created pursuant to chapter 388, Florida Statutes. *Op. Div. Elect. 85-1, April 1, 1985 (DE 85-1)*. However, the answers to your questions necessarily involve further discussion of chapters 388 and 189, Florida Statutes, and the Florida Election Code, chapters 97-106, Florida Statutes, in light of legislative action that occurred during the 1997 legislative session.

Special districts are local units of special purpose government created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. § 189.403(1), *Fla. Stat.* With over 900 special districts operating in Florida, they are the most numerous form of local government in the state. *Staff of Fla. H.R. Comm. on Community Affairs, CSHB 1683 (1997) Bill Research and Economic Impact Statement, (rev. April 16, 1997) (on file with comm.)*.

In 1989, in response to legislative concerns regarding the lack of accountability and uniformity in the creation, operation, and control of such districts, the legislature enacted the Uniform Special District Accountability Act (the "Uniform Act"). *Ch. 189, Fla. Stat., see also Dempsey, Hetrick, and Falconer, Solving the Accountability Puzzle: Putting the Pieces Together Under the Uniform Special District Accountability Act of 1989, The Florida Bar Journal (January 1990)*. Among the major areas addressed in the Uniform Act were participation in local government comprehensive planning, financing, and elections. *Id.* With regard to the last item, it was and remains the express intent of the legislature that there be "greater uniformity in special district elections. § 189.402(2)(d), *Fla. Stat.*

The Uniform Act currently provides that an independent district located entirely within a single county has a choice between conducting its own election or conducting its election through the county supervisor of elections wherein the district is located. § 189.405(2), *Fla. Stat.* If it opts for the latter of these choices, the election must be conducted pursuant to the provisions of the Florida Election Code, but only for the following:

1. Qualifying periods in accordance with s. 99.061;
2. Petition format...;
3. Canvassing of returns, in accordance with, ss.101.5614, and 102.151;
4. Noticing special district elections, in accordance with chapter 100; and
5. Polling hours in accordance with s.100.011.

§ 189.405(2)(a), *Fla. Stat.*

If the district is a multi-county district with a popularly elected governing board, board member elections must be conducted in conformance with the entire election code. § 189.405(3)(a), *Fla. Stat.* There is nothing in section 189.405(2)(a)1.-5., Florida Statutes, that provides how candidates must

appear on the ballot. Moreover, the specific language of these provisions is obviously limited to the items listed, none of which addresses ballot placement. It is well settled that where a statute enumerates the things upon which it operates, anything not expressly mentioned is excluded. *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

Therefore, because ballot placement is not among those items listed in section 189.405(2)(a)1.-5., Florida Statutes, candidates do not appear on the ballot in groups or districts when the supervisor conducts an election for a single county independent special district. If the district is multi-county, such grouping is required. § 189.405(3)(a), Fla. Stat.

Nothing in the foregoing discussion causes us to depart from our advice in DE 85-1. In that opinion, we stated that candidates for mosquito control districts must qualify pursuant to section 99.061, Florida Statutes, but are elected pursuant to section 388.101, Florida Statutes, the latter of which does not require grouping of candidates on the ballot. As a result and with regard to any such district having an election this year, candidates for election to multiple offices on a mosquito control board appear in one grouping. The three persons receiving the most votes are elected in the case of a three-office (seat) race. § 388.101(1), Fla. Stat.

PART II

This year, the legislature was especially active in the area of special district legislation and further amended chapter 189, Florida Statutes, to require even more consistency with the election code, particularly in the area of candidate qualification. *Ch. 97-255, § 13, Laws of Fla., Fla. H. R. Comm. on Community Affairs, Bill Research and Economic Impact Statement, supra*. Effective January 1, 1998, an independent special district located within a single county continues to have a choice between conducting its own elections or conducting them through the supervisor of elections and, if conducting its election through the supervisor, an independent district must make its election procedures "consistent with the Florida Election Code." (emphasis added). *Ch. 97-255, § 13, supra*. However, the limitations in section 189.405(2)(a)1.-5., are removed. *Id.* Additionally, if using the supervisor of elections, a single county independent district candidate must qualify with the supervisor in whose jurisdiction the district is located, the elections are nonpartisan, unless otherwise specified in the district's charter, and candidates either pay a qualifying fee of \$25 or submit a petition that contains at least 3% of the district's registered electors. The petition is submitted in the same manner as judicial candidates, pursuant to section 105.035, Florida Statutes. Community Development Districts established pursuant to chapter 190, Florida Statutes, and Water Management Districts operated pursuant to chapter 373, Florida Statutes, continue to be exempted from these provisions. *Id.*

With regard to multi-county independent districts, section 189.405, Florida Statutes, as amended by chapter 97-255, Laws of Florida, provides that qualifying for these offices is coordinated by the Department of State. Multi-county districts must qualify by circulating a petition and obtaining the signatures of 3% of the districts' electors or paying a \$25 qualifying fee. Candidates for these offices will have to submit their fees to the Department and supervisors will have to verify and submit signature certifications to us in the same manner as is the case for judicial candidates, pursuant to section 105.035, Florida Statutes. Unlike single county independent districts, multi-county districts

must always conduct their elections pursuant to the Florida Election Code.

Although not related to your questions, we feel compelled to take this opportunity to also point out that, with respect to Fire Control Districts, the legislature has provided similar qualifying provisions which took effect May 30, 1997. *See chs. 97-256 and 97-340, Laws of Fla.* Like the 1997 amendments to the Uniform Act, both of these laws state that it is the express intent of the legislature to provide greater uniformity with regard to electing members to the governing boards of these districts. *Ch. 97-256, § 2, and Ch. 97-340, § 2, Laws of Fla.* It appears from our reading of these new laws that all of the 1997 legislation discussed thus far either expressly or by implication supersedes prior special or general laws to the extent of any conflicts.¹

However, we recommend that you, nevertheless, always verify qualifying procedures with the governing body of the district. Although the division makes every effort to advise supervisors of special acts enacted on or after a legislative session in which exceptions are made to general provisions like those that are the subject of this opinion, we recommend that you check with the district's administration or legal counsel to be certain that there are no conflicting special laws. We also defer to the Department of Community Affairs for additional interpretation of chapter 189, Florida Statutes, since this is the agency charged with oversight of special districts.

Returning to the district at issue here, the Collier Mosquito Control District is a single county independent special district operating under the general law provisions of chapter 388, Florida Statutes. Section 388.101(1), provides:

in the general election and each 4 years thereafter, the district board of commissioners shall be elected on a nonpartisan basis by the electors of the district. The three persons receiving the highest number of votes cast... shall serve... .

At first glance, this appears to conflict with the relevant provisions of the Florida Election Code related to ballot configuration made applicable to special districts via chapter 189, as discussed above. For example, sections 100.071 and 101.151(3)(b), Florida Statutes, require multiple candidates for the same office to be placed on the ballot by group or district. And, section 99.061(7)(a)2., Florida Statutes, requires the designation of a group number when submitting the candidate oath at the time of qualifying. However, under similar circumstances, the Florida Supreme Court has stated that in the presence of such a conflict:

All statutes relating to the same subject matter should be so construed with reference to each other that effect may be given to all the provisions of each if this can be done by any fair and reasonable construction... .

Ferguson v. State, 377 So.2d 709 (Fla. 1979).

We believe that such a construction can be given here. Effective January 1, 1998, single county independent special districts that choose to conduct their elections through the supervisor of elections must follow the procedures contained in the code. If a single county, independent special district

chooses to conduct its own election, it may do so and need only report to the supervisor the purpose, date, authorization, procedures, and results of each election conducted by the district.² § 189.405, *Fla. Stat., as amended by ch. 97-255, § 13, Laws of Fla.* Multi-county districts do not appear to have this option unless otherwise provided by law.³

Therefore, beginning January 1, 1998, the Collier Mosquito Control District may choose to conduct its own elections or conduct its elections through your office. If it chooses to conduct its own elections, the district is free to follow its own procedures, including qualifying procedures and whether or not to group candidates on the ballot according to seat numbers. On the other hand, if the district conducts its elections through your office, the district must make its procedures consistent with the Florida Election Code, and follow the qualifying procedures outlined in section 13, chapter 97-255, Laws of Florida, and chapter 97-106, Florida Statutes.

SUMMARY

Effective January 1, 1998, The Collier Mosquito Control District may conduct its own elections according to its own procedures or it may choose to conduct its elections through the office of the county supervisor of elections. If the district chooses to use the supervisor of elections, the district must follow the procedures set forth in the Florida Election Code for grouping candidates on the ballot. Given that the Department of Community Affairs, by law, is charged with general oversight of special districts, you may wish to obtain an opinion from them as well. For the remainder of 1997, such candidates appear on the ballot in one group pursuant to section 388.101(1), Florida Statutes.

¹ As noted by the Florida Supreme Court in *Adams v. Culver*, 111 So. 2d 665 (Fla. 1959) and *Tribune Co. v. School Board of Hillsborough County*, 367 So. 2d 627 (Fla. 1979), it is well settled that a special law prevails over a general law covering the same or similar subject matter. However, courts are obliged to read the provision of a general act with the special act and harmonize them, if possible. If not, then a later special act, as a more specific expression of the legislature will prevail. However, here we are concerned only with special acts in effect on or prior to the effective dates of chapters 97-255, 97-256, and 97-340. *But see*, footnote 2.

² See Op. Div. Elect. 96-2, July 25, 1996, wherein, with regard to city elections, we stated:

It is fundamental in statutory construction that where later statutes re passed with the knowledge of prior existing laws, each will be given a field of operation rather than have one rendered meaningless or repealed by implication. *State Department of Public Welfare v. Galilean Children's Home*, 102 So. 2d 388 (Fla. 2d DCA 1958), (further citations omitted.)

³ For example, ch. 97-340 allows the Boca Grande Fire Control District, a multi-county district, to qualify with the local supervisor of elections instead of the Department of State.