

The statutes relating to qualifying procedures for special district candidates have changed.

Please consult current Florida law.

DE 98-02 - February 16, 1998

Special District Elections
§§189.405, F.S., Chapter 97-255, Laws of Fla.

TO: Mr. William E. Sherman, Landis, Graham, et al., Post Office Box 48, DeLand, Florida 32721-1350

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the effect of Chapter 97-255, Laws of Florida, on the election of officers to the West Volusia Hospital Authority (WVHA). The Division is authorized to provide this opinion to you, pursuant to section 106.23(2), Florida Statutes.

In essence, you ask:

1. Does paragraph 189.405(2)(c), Florida Statutes, supersede the enabling legislation of the WVHA, with regard to qualifying by candidates for the WVHA's board seats?
2. If this provision supersedes the enabling legislation, must candidates qualify by either paying the \$25 qualifying fee or obtaining the signatures of 3% of the district's electors?

According to your letter, the WVHA is an independent special tax district located entirely within Volusia County. 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. 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. The legislature expressly intended that there be "greater uniformity in special district elections."
§ 189.402(2)(d), Fla. Stat.

In 1997, the legislature again enacted 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. Effective January 1, 1998, an independent special district located within a single county may choose between conducting its own elections or conducting them through the supervisor of elections.

If the district chooses to conduct its own elections, it shall report to the supervisor in a timely manner the purpose, date, authorization, procedures, and results of each election conducted by the district. §189.405(2)(b), Fla. Stat. If it uses the supervisor of elections, a single county independent district candidate must qualify with the supervisor in whose jurisdiction the district is located, by paying a qualifying fee of \$25 or submitting a petition that contains at least 3% of the district's registered

electors. §189.405(2)(c), *Fla. Stat.* The petition is submitted in the same manner as judicial candidates, pursuant to section 105.035, Florida Statutes. Thus, the answer to both of your questions is yes, if the WVHA uses the supervisor to conduct its elections.

This position is consistent with our opinion in DE 97-04, attached, and also with the opinion of the Department of Community Affairs, which you reference in your original correspondence. However, you may want to obtain an opinion from that department on this particular special district, given the Department's authority in this area.

Finally, we also note that it appears the legislature has precluded itself from enacting any further special acts relating to special district elections. § 189.404(2), *Fla. Stat.* Thus, it will take a general law passed by at least three fifths of the membership of each house to remove this impediment. *Art. III, §11 (a)(21), Fla. Const.*

SUMMARY

Paragraph 189.405(2)(c), Florida Statutes, supersedes the enabling legislation of the WVHA. If the WVHA chooses to have the supervisor of elections conduct its elections, a candidate must qualify by paying a \$25 qualifying fee or obtaining the signatures of 3% of the electors of the district.