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TELECOPIER COVER SHEET

TO: Chief Hooks
FROM: Harry E. Barr
Telecopier No. 244-3911
Date: 10/26/99

Message:

Here is the memo. Call if you have any questions.

TOTAL NUMBER OF PAGES (including cover sheet): 3

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Memorandum

To: Okaloosa Island Fire District
From: KMB
Date: October 26, 1999
Re: Compliance with Florida Statutes Chapter 191

Background

The Okaloosa Island Fire District ("OIFD") was created in 1977 pursuant to Florida Statute §125.01(5). That statute, subsection (b) allowed for the governing of a special district to include representatives of county government and the government of participating municipalities. The OIFD chose not to include any county commissioners in their governing body, which of course, was their prerogative to do at the time.

In 1980, the Legislature amended Fla. Stat. §125.01(5)(b). Rather than use the term "may" include, the Legislature used the term "shall" in that section. It now reads,

The governing body of such special district **shall be** composed of county commissioners and may include elected officials of the governing body of an incorporated area included in the boundaries of the special district, with the basis of the appointment being set forth in the ordinance creating the special district. (Emphasis added).

This change becomes particularly important in 1989 when the Legislature passed the "Uniform Special District Accountability Act" found in Chapter 189. The statute requires that all special districts be classified as dependent or independent. Dependent districts could still be created by local ordinance, but it was the intent of the legislature that only they could create independent special districts.

Dependent districts are defined as those whose governing bodies are identical to those of the governing body of a single county; or whose governing bodies are appointed by the governing body of a single county; or when during their unexpired terms, the members of the special districts governing body are subject to removal by the governing body of a single county; or when the budget of the special district is subject to the control of the governing body of a single county.

Independent special districts are those that are not classified as dependent special districts.

The OIFD is classified by definition and by the Department of Community Affairs as an independent special district since they meet none of the criteria for a dependent special district. Thus, the OIFD must comply with the reporting regulations as set out in Florida

Statutes Chapter 189. Failure to file these reports could result in a fine to the OIFD if it is found that the failure to file the reports was willful.

Issue - Does the OIFD have to comply with Chapter 191 of the Florida Statutes?

Probably Not. According to Chapter 191, an "Independent Special Fire Control District" means an independent special district as defined in Fl. Stat. §189.403, created by "special law or general law of local application" providing fire suppression and related activities within the boundaries of the district.

The OIFD although not specified in the ordinance itself, I assume was created by the authority granted in Fl. Stat. §125.01(5) which allows for county government to create special districts. Thus, it is not an independent special district created by *special law or general law of local application*. The OIFD was created by *county ordinance* and therefore does not fall within the definition of an independent special fire control district as stated in Chapter 191 and should not have to comply with it. This is also the reasoning of Carri Roth.

In my conversations with her, she also mentioned that she believed that Chapter 125 did not give counties the authority to create independent special districts. While certainly the OIFD could no longer be created by the methods used in 1977, I have so far not found any authority that retroactively applies the new procedures for creating independent special districts.

Ms. Roth believes that the OIFD should contact a local government expert in Tallahassee to recreate the district under present law standards and walk a special law through the legislature. She gave no opinion as to what would happen if we did not do that and just carried on as is. The 1998 amendment to Chapter 191 requires that all Independent Special Fire Districts comply by December 1, 2004.

Ms. Roth did not specifically state why she believed that Chapter 125 did not grant municipalities the authority to create independent special districts in 1977. I have read the statutes and several attorney general opinions extensively and have failed to detect why the OIFD was not properly created. Also, as I read it, there are no penalties for not complying with Chapter 191.

Perhaps the best avenue at this point is to consult a local government expert for their opinion in this matter, or to write to the Attorney General to obtain an opinion as to whether the OIFD must comply with Chapter 191.