

**Minutes of the Sebastian Inlet District
Special Commission Meeting
July 28, 2010
4:00 p.m.**

Call to order: A regular meeting of the Sebastian Inlet District Commissioners was held at the Sebastian Inlet District Offices, 114 Sixth Avenue, Indialantic, FL 32903 on July 28, 2010. The meeting was called to order at 4:00 p.m. by Chairman Ann Perry. Secretary Jenny Lawton Seal was present and there was a quorum.

Introduction and Purpose of Meeting – Smithson – Mr. Smithson outlined the charter for the participating public. The charter encompasses meetings, locations, noticing requirements, voting by the board, bookkeeping and accounting procedures, adherence to law by special districts, spells out the mission of the board, the powers of the board, how the District can hold, acquire and condemn lands and easements, public hearings, tax levy procedures and limits, emergency authorizations, certification of engineers, fines for damaging inlet structures, boundaries of the District and several sections that make up the governing body, the power of the body and how they are seated. The purpose of the meeting is to determine what will be done regarding the State's interpretation of the District's legislatively enacted charter.

Information Obtained and Pertaining to:

1. Schedule for Inlet District Elections – Attorney Kirschenbaum –A series of telephone calls and telephone conferences were made by Mr. Kirschenbaum and Mr. Smithson over the past two weeks to the Supervisors of Elections of Brevard and Indian River Counties, the Division of Elections and the Secretary of State's Office. The first notification of the change was received via email by the Supervisor's of Elections Offices from Kristi Bronson, Bureau Chief of the Division of Elections. The email was not provided to anyone else and that was confirmed by Ms. Bronson, her lawyer Mr. Holland and others at the Secretary of State's Office. Mr. Kirschenbaum informed the Division regarding a prior opinion that had been rendered by the Division of Election Office in 2004 that indicated since the candidates were only on the ballot in the general election; the determination of the person elected is by the person who received the highest number of votes cast for the office, which is consistent with the decades long practice of the District. Mr. Kirschenbaum requested the Division assist the District in complying with the charter. Both Supervisors of Election indicated they felt an error was made in interpreting the charter. The conversations ended with a specific request that someone above the level of those on the phone at the time be advised of the issue and a subsequent conversation. Mr. Kirschenbaum followed up with a letter and an email requesting a telephone conversation with the new interim Secretary of State. Two days later, Mr. Kirschenbaum received a phone call from one of the lawyers at the Secretary of State's Office that they declined his request for a telephone conference but that the Secretary had been advised as to the District's position and that the instructions given to the Supervisors via email would stand.

It was a low level opinion and was recognized as such by the State and could be interpreted differently in the future. The District could request a formal opinion from the Attorney General's Office but that could take weeks or months.

Option one is to do nothing and accept the change as a roadmap for the future. This option could open the District up to law suits by candidates but is outside of the control of the Commissioners at this point.

Option two is a proactive, aggressive position to file a law suit in Tallahassee against the Department of State's Division of Elections asking for a declaratory judgment to declare that the conducting of a primary under these facts particularly without notice is a violation of the charter, disenfranchises the voters and causes confusion. In that case, the District would have to join the Secretary of State, as well as the two Supervisors of Elections to ask for immediate review by the courts. This could cause a disruption in the election unless the District received a ruling prior to the primary.

Option three is to act upon option two after the primary when the District will know if the charter has been violated or not.

2. Qualifying Candidates – When discussing chapter 3(a) of the District's charter, it came to the attention of Mr. Smithson and Mr. Kirschenbaum that two candidates for the District 4 seat have indications that are relevant to the charter discussion. One candidate has listed his address in Sebastian, FL, Indian River County but has listed that he is a qualified elector in Brevard County. If those conditions aren't the same, it does not meet the charter. Another candidate for seat 4 has listed his address as Melbourne Beach and has listed that he is a qualified elector of Brevard County. Mr. Kirschenbaum sent letters to both candidates pointing out the charter provision and pointing out what their qualifying papers said. The charter requires that each member be a qualified elector and resident of the county they represent. If a candidate won an election who was not qualified, they would not be sworn in, leaving a vacancy on the board which the Governor would have to appoint someone to fill.

Commissioner Mitchell moved to request a formal opinion for the Attorney General's office and the Secretary of State regarding the District's charter interpretation. The matter was opened for discussion.

Public Comment Period – Mr. Dave Pasley of Melbourne Beach relayed that putting the charter on the web site to prevent confusion in the future and that talking to local representatives to put some pressure on getting a decision from Tallahassee to get the charter issue resolved could be helpful.

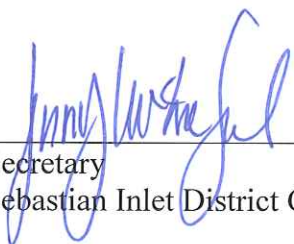
Mr. Anthony Infintini of Melbourne Beach commented that the entire election process had been confusing. Mr. Infintini is staying in the race as nothing in the charter that says he can't run for District 4.

The motion on the floor carried 5-0.


Commissioners Items – Commissioner Mitchell thanked Mr. Smithson and Mr. Kirschenbaum for the work they did in preparation for the special meeting and that she looked forward to receiving a formal opinion.

Commissioner Culberson gave a brief summary of how the charter evolved.

Adjournment – Chairman Perry adjourned the meeting at 5:10 p.m.



Secretary
Sebastian Inlet District Commission



Date Approved