

**Minutes of the Sebastian Inlet District  
Regular Commission Meeting  
September 8, 2010  
4:00 p.m.**

Call to order: A regular meeting of the Sebastian Inlet District Commissioners was held at the Sebastian Inlet State Park Fishing Museum, 14251 N. A-1-A, Vero Beach, FL 32963. 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.

Approval of Minutes: Motion was made by Commissioner Mitchell to approve the minutes of the August 11, 2010 meeting. **Motion carried.**

Executive Director's Reports:

Status of DMMA Project – The Lake Louisa recipient site permit was received to relocate the gopher tortoises from the DMMA site. The site is permitted to receive 62 tortoises. The District anticipates approximately 30 gopher tortoises will need to be moved at \$3,000 per head. If there are less than 30, the cost will come down. The tide pool excavation permit has not been received as the comments from NMFS have not been transmitted to the ACOE.

Update on FIND Application and Status of L-Dock Permitting – The FIND meeting for determining which projects will be funded has been moved to September 30<sup>th</sup>. The ACOE is waiting on SJRWMD to release their permit then ACOE will release theirs. Permits must be in hand to qualify for FIND cost-share.

DEP Cost-Share Application – The application has been reviewed and there were no deficiencies. DEP has committed to supporting the District's long range vision.

Inlet Navigation Buoys – The remainder of the new chains and final buoy were installed on August 31<sup>st</sup>.

Updates to District's Web Site - Some updates to the web site have already occurred. The Seat numbers and correlating counties have been added along with the District's charter. Other changes are in progress to enable District employees more control over the web site. Adding fishing etiquette and boating safety and a "tent" icon to link to the State Park will be new features.

Discussion of Consent Agenda- Under Item VII, A – 1 the District and the vendor compromised on the photos that were taken previously. A boat wake distorted the photography and the District agreed to pay for the plane fees but not the photography for a reshoot. Item VIII, A-2 was discussed under III, B-5 and item VII, B-1 was discussed under item III, B-1.

Administrator's Performance Review: Four Commissioners assigned the highest rating, "Exceeds Expectations." Commissioner Mitchell stated that she was struck by the disparity in one of the evaluations. The reviews become public record and she felt that the one set of low marks needed to be explained as they become public record. "Meets Expectations" to Commissioner Westlake meant that the Administrator is doing his job. The expectation is that he will perform at a high level and a "two" doesn't mean that he is doing anything wrong.

In answer to a question posed by Commissioner Lawton Seal, Mr. Smithson's last raise was September of 2008; he voluntarily declined a pay raise in 2009 due to the economy.

Commissioner Lawton Seal moved to increase Administrator Smithson's salary and the matter was opened up for discussion. After discussion, Commissioner Lawton Seal moved to increase Mr. Smithson's salary by 4% based on job performance. **Motion carried – 4-1** with Commissioner Westlake dissenting.

Park Matters: Mr. Coulliette and Mr. Rand were unable to attend the meeting.

Legal Counsel Update: The District received the letters from the Attorney General's Office and the Secretary of State's offices regarding the request for opinion on the election matter. **SEE ATTACHMENT # 1.** Mr. Kirschenbaum presented these options to the Commissioners. 1) Live with the opinions, 2) seek a declaratory judgment and ask a court to determine if the District's charter trumps the opinion of the Department of State or 3) seek a legislative amendment to the District's charter. At the request of the Commissioners, Mr. Kirschenbaum agreed to prepare a memorandum of law and facts that would predict the time, cost and probability of outcome in a presentation at the next meeting.

Public Comment: Mr. Dave Pasley commented that since the election issue was one created by the legislature, perhaps some of the District's local representatives could help.

Motion was made by Commissioner Mitchell to approve the consent agenda. **Motion carried.**

Commissioners Reports: Commissioner Culberson would like to consider advertising on the District's web site as a source of revenue.

Unfinished Business: There was no unfinished business.

New Business: There was no new business.

Adjournment: Chairman Perry adjourned the meeting at 5:35 p.m.

  
\_\_\_\_\_  
Secretary  
Sebastian Inlet District Commission

13 October 2010  
\_\_\_\_\_  
Date Approved

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**BILL McCOLLUM**  
ATTORNEY GENERAL  
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL  
Opinion Division

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The Capitol, PL-01  
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August 13, 2010

Mr. Jack A. Kirschenbaum  
Post Office Box 1870  
Melbourne, Florida 32902-4122

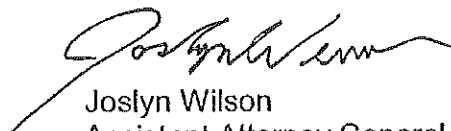
Dear Mr. Kirschenbaum:

You ask on behalf of the Board of Commissioners of the Sebastian Inlet Tax District whether the Department of State, Division of Elections, is precluded from ordering the Supervisors of Elections of Indian River and Brevard Counties to conduct primary elections in light of the provisions of Chapter 2003-373, Laws of Florida.

The authority of the Attorney General to issue opinions is prescribed by law and is limited to public officials on questions relating to their own official duties under state law. See section 16.01(3), Florida Statutes, and this office's Statement Concerning Attorney General Opinions, available online at: <http://myfloridalegal.com/opinions> This precludes this office from commenting at the request of one public official or agency on the powers and duties of another public official or agency. As your inquiry concerns the duties of the Department of State, this office must decline to comment upon this matter unless and until the department joins in your request.

I trust that you will understand that the duties of this office are prescribed by law. Thank you for contacting the Attorney General's Office.

Sincerely,

  
Joslyn Wilson  
Assistant Attorney General

JW/

**RECEIVED**

AUG 16 2010

By: JAK



## FLORIDA DEPARTMENT of STATE

**CHARLIE CRIST**  
Governor

**DAWN K ROBERTS**  
Interim Secretary of State

August 23, 2010

Jack A. Kirschenbaum, Esquire  
Gray-Robinson Attorneys at Law  
P.O. Box 1870  
Melbourne, Florida 32902-1870

Dear Mr. Kirschenbaum:

This letter responds to your request to the Secretary of State on behalf of the Board of Commissioners of Sebastian Inlet Tax District (SITD) for an opinion regarding the placement of the SITD's candidates on the primary election ballot.

Chapter 2003-373, Laws of Florida, provides that "Members of the Board shall be elected at the general election held in November of each even numbered year." The law further states that "Board members shall be elected on a non-partisan basis by a majority of the qualified electors of the District voting at the election ...." As you are aware, upon learning of the majority vote requirement for the SITD in 2010, the Division of Elections directed the supervisors of elections in Brevard and Indian River counties to place the SITD races on the primary ballot. Notwithstanding that the races will appear on the primary ballot, compliance with the provisions of Chapter 2003-373, Laws of Florida, will occur. Like other nonpartisan races, if no candidate in a SITD race receives a majority vote at the primary election, then the top two candidates will appear on the general election ballot in November and the winner will be elected at the general election by a majority vote. If any candidate in a SITD race receives a majority vote at the primary election, then that candidate will still be elected at the general election in November by a majority vote because it is presumed that an unopposed candidate will have deemed to have voted for himself or herself at the general election. §§ 101.151(7) and 105.051(1)(b), Fla. Stat. (2009). Also, the name of an unopposed SITD candidate after the qualifying period ends does not appear on any ballot and the candidate is deemed to have voted for himself or herself at the November general election. It is only after the general election results are tabulated in November that the winners of the SITD races are certified.

The direction by the Division of Elections to place the SITD races on the primary ballot, in fact, ensures that the board member shall be elected "in November" at the "general election" and "by a majority vote of the qualified electors." Otherwise, the SITD could have a result like in the 2004 general election where no SITD candidate received a majority vote.

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Jack A. Kirschenbaum, Esquire  
August 23, 2010  
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In such an instance because of the majority vote requirement in Chapter 2003-373, Laws of Florida, there would have to be a run-off election. If a run-off election occurs, the winner would not then be "elected at the general election." By placing the races on the primary ballot, the Division has given effect to the requirements of Chapter 2003-373, Laws of Florida, to have the SITD board members elected at the general election in November by a majority vote.

The Division, therefore, opines that Chapter 2003-373, Laws of Florida, does not prohibit it from having the SITD races placed on the primary ballot to ensure that the requirements of the law are fulfilled.

Sincerely,



Donald L. Palmer  
Director, Division of Elections