



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Miscellaneous

J.3.

10/25/2022

Subject:

Requesting the Attorney General's Office to issue an opinion regarding whether county commissioner members of the Value Adjustment Board must recuse themselves from hearing petitions concerning county-owned or county-managed properties.

Fiscal Impact:

None

Dept/Office:

District 3 Office

Requested Action:

Direct the County Attorney's Office to request an opinion from the Florida Attorney General's Office on the following question:

Are county commissioner members of a Value Adjustment Board required to recuse themselves from hearing petitions regarding the classification of properties that are owned or managed by the county?

Summary Explanation and Background:

Brevard County filed a petition with the Value Adjustment Board ("VAB") appealing the Property Appraiser's denial of the County's application for agricultural classification for certain property owned or managed by the County within the Town of Malabar. Counsel for the VAB opined that because the County itself is a party to the matter, the county commissioner members of the VAB must recuse themselves from considering the petition. Without at least one county commissioner on the VAB, there can be no quorum and the VAB cannot conduct a meeting or consider adopting the special magistrate recommendation.

Rule 12D-9.022, Florida Administrative Code, provides that VAB members "shall recuse themselves from hearing a petition when they have a conflict of interest or an appearance of a conflict of interest." The Florida Administrative Code does not supply a definition for "conflict of interest" in this context. There is no binding legal precedent requiring the recusal of county commissioner VAB members from hearings involving county-owned or county-managed properties. Typically, conflict of interest voting prohibitions arise only when the vote of a public officer would result in a special private gain or loss to such officer. Thus, there is doubt as to whether a county commissioner VAB member must recuse himself or herself from hearing a petition related to county-owned or county-managed properties, where there is no allegation or showing of private gain to the county commissioner.

While AGO opinions are non-binding, they can provide guidance to local governments and officials on interpretations of law and are highly persuasive.

Clerk to the Board Instructions:



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

October 26, 2022

MEMORANDUM

TO: Morris Richardson, County Attorney

RE: Item J.3., Requesting the Attorney General's Office to Issue an Opinion Regarding Whether County Commissioner Members of the Value Adjustment Board must Recuse Themselves from Hearing Petitions Concerning County-Owned or County-Managed Properties

The Board of County Commissioners, in regular session on October 25, 2022, directed the County Attorney's Office to request an opinion from the Florida Attorney General's Office on the following question: "Are County Commissioner members of a Value Adjustment Board required to recuse themselves from hearing petitions regarding the classification of properties that are owned or managed by the County?"

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

for: Donna Scott
Kimberly Powell, Clerk to the Board

/sm

cc: Each Commissioner