

TOWN OF MALABAR
TOWN COUNCIL WORKSHOP MEETING - PRECINCT REDISTRICTING
TUESDAY APRIL 4, 2017
1:30 PM – 4:00 PM
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. WORKSHOP TOPIC
 - REVIEW AND CONSENSUS OF COUNCIL OF REDISTRICTING LINES IN ORDER TO COMPLY WITH REFERENDUM APPROVED BY VOTERS IN NOVEMBER 2016 ELECTION

Final Action of this Item will be on Council Agenda of April 17, 2017

- D. ADJOURNMENT:

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

MALABAR COUNCIL REDISTRICTING WORKSHOP MEETING
April 4, 2017 1:30 PM

This meeting of the Malabar Town Council was held at the Malabar Town Hall, 2725 Malabar Road, Malabar, Florida.

A. CALL TO ORDER:

The meeting was called to order at 1:30 pm by Chair Mayor Reilly. Prayer & Pledge were said by Council Chair, Mayor Patrick T. Reilly.

B. COUNCIL/COMMITTEE:

COUNCIL CHAIR:	MAYOR PATRICK REILLY
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	LAURA MAHONEY
	DICK KORN
	RICHARD KOHLER
ADMINISTRATOR	DOUG HOYT
CLERK/TREASURER:	DEBBY FRANKLIN
DEPUTY CLERK/TREASURER	MATT STINNETT

C. WORKSHOP ACTION: REDISTRICTING DISCUSSION

Clerk introduced Mr. Ken Tozier, GISP, International Computer Works, Inc. from Temple Terrace, Florida, recommended by Mr. Tim Bobanic of the Brevard Supervisor of Elections office.

Mr. Tozier gave history of his office and his expertise.

He also explained how the Census blocks are used to track population within a municipality. Starting in December of this year we can provide input to the Supervisor of Elections on how we want the Census blocks to be more detailed, more granular to accomplish the redistribution of the population during future exercises like this. Have the opportunity to redesign census blocks. Malabar has 60 blocks.

When you redistrict you want more granular information. Have ability to draw the lines. Working with 10% deviation from highest to lowest. If the census blocks. He referenced PL 94.171. Same data that legislature uses to redistrict. Required by Fed govt for Senate district. Trickled down to state and county and school board. That data was gathered commencing 4/1/2010, then tabulated it and then attribute it to the census blocks so until in late 2010 they completed that process. Now 1st qtr of 2017, the Bldg Dept was able to provide information from 1/1/2011 and found 28 households and then staff called and got the population of that household. Added those pop numbers to census data.

Footnote 1: RVs could still be part of population.

Mayor asked why population is used and not registered voters. Mr. Tozier stated that the Legislative body has the responsibility to care for all residents from cradle to grave. Short answer is that is why the law is written.

Mayor asked about variance allowed is strictly 10% or 56 population. Mr. Tozier stated yes, that was the variance allowed. The House and Senate can only be within .5 of one percent.

CM Korn said his impression was they were going to meet individually. Mr. Tozier provided time for that if any Council Member felt the need. CM Korn said what was important to him was that the people that live in his district are similar in lifestyle.

A great deal of work went into this. Mr. Tozier demonstrated how the various census blocks could be selected and added to or removed from districts with the resulting population calculations. Deputy

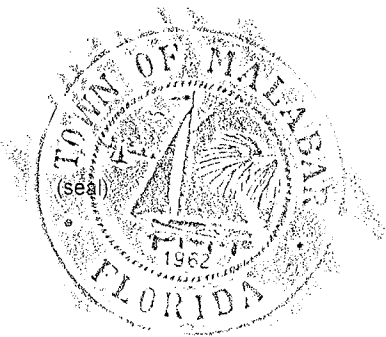
Clerk/Treasurer Matt Stinnett worked with Mr. Tozier on various modifications before the workshop and what you have is a further revision to Plan B showing no variance of more than 51 people.

Mayor said he spent a great deal of time in reviewing the briefing paper and the two preliminary maps. He also did some redistributions. He sent his questions via email to staff to forward on to Mr. Tozer.

CM Mahoney asked if there was any consideration to do this per our Charter because that is one thing on why people voted for this; to keep Malabar rural. Since you have high density population, you have different perspectives. Some people wanted the high dense population areas compared to the two acres and above. The two acres and above wanted a voice, basically. She said Malabar is made up of different perspectives. Mayor said what she is saying is block voting; to have Brook Hollow, Country Cove and Rocky Point to all be in one District. CM Mahoney said Rocky Point lots are big. Clerk said it is half acre zoning but most of the lots are one acre. CM Mahoney said they have a responsibility to our preamble. CM Rivet said part of what they should be doing is cooperating instead of setting up controversies between districts. They should be attempting to set up commonalities both in interests and responsibility to pay and not create divisions. Clumping all the developments into one district is a terrible idea. Mayor said her idea is wrong and that is why he voted against this last November. This is going to further divide the Town.

Mayor said this (the map) is very close. CM Korn said a lot of work went into this. CM Rivet asked if everyone could live with this. Yes. Straw vote: all in favor. Will be on agenda for action on April 17. Purple will become 5 and blue will become 3. Mr. Tozier will change.

Adjourned at 2:30PM.



BY: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

ATTEST
Debby K. Franklin
Debby Franklin, C.M.C.
Town Clerk/Treasurer

Approved: RTCM 4/17//2017

2017 Represents Our XXIX Anniversary



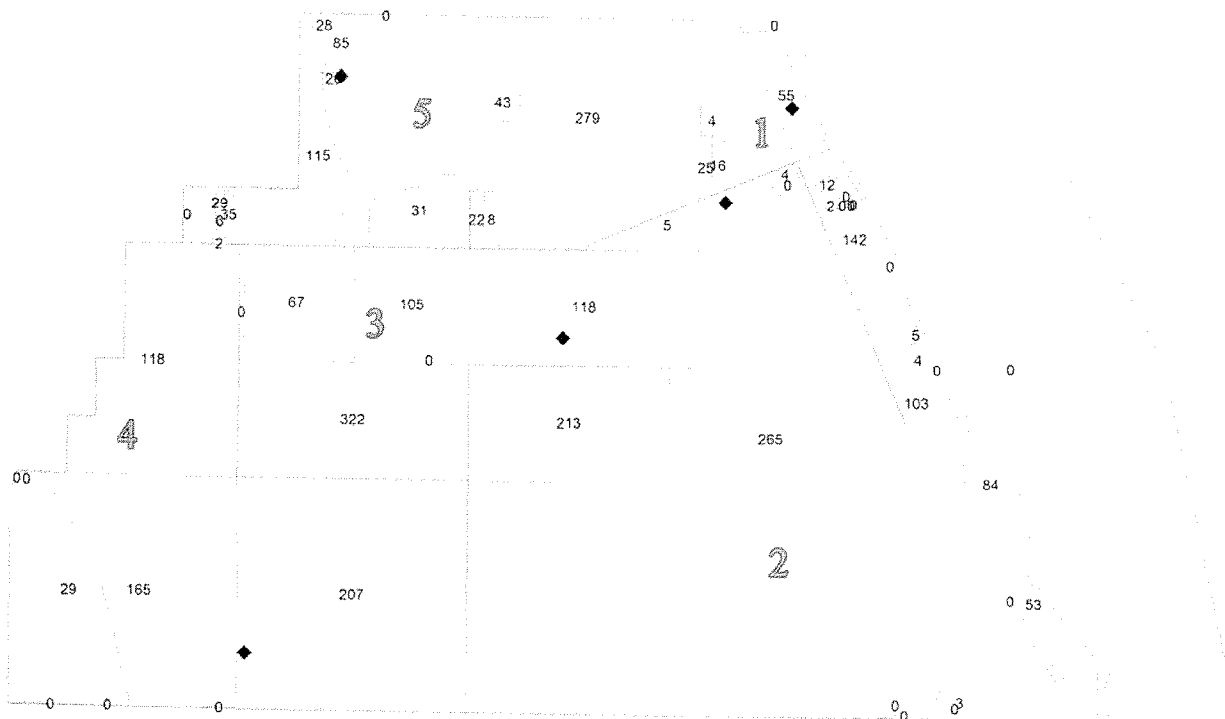
March 31, 2017

Town Of Malabar Briefing For Redistricting Five City Council Districts

Objective: Create five City Council Districts consistent with Ordinance 2016-1 to Amend Section 2.02 of the Charter, attached as Appendix A.

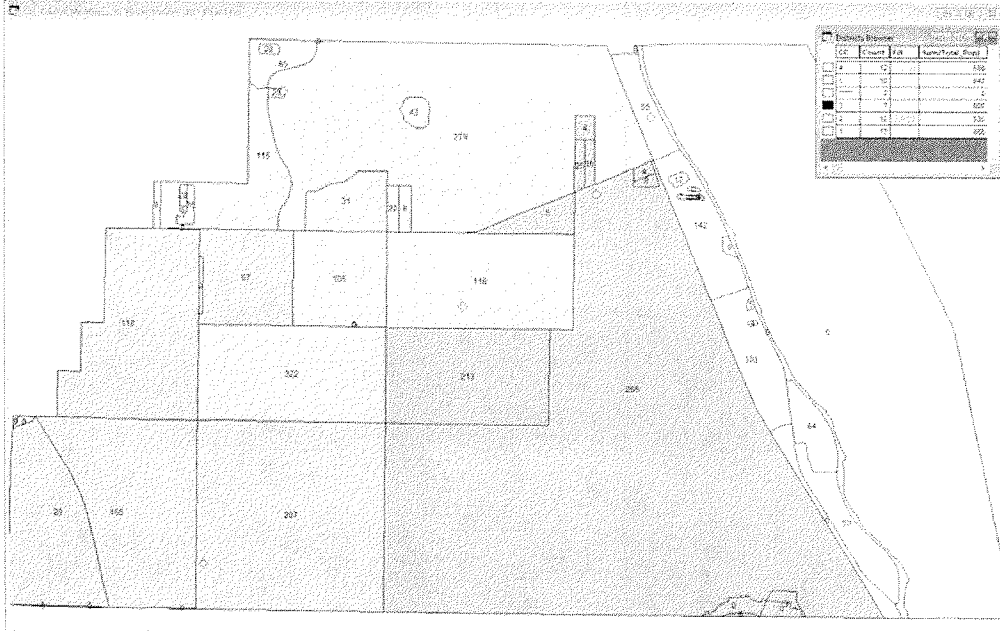
Guidelines: No district can deviate in population count from any other district by more than 10% reference section 7.5 of Ordinances. Use the 2010 US Census P.L. 94-171 geography and demographics adjusted to include the inhabitants of homes receiving a Certificate of Occupancy since January 1, 2011 per block. This results in a total population of 2,829. The target ideal districts will contain 656.8 residents with a potential deviation of 56.6. Attempt to create contiguous districts. Split districts may be acceptable.

There are 60 Census Blocks in the Town of Malabar. Twelve of these blocks are comparatively large by both area and total population relative to the other 48 blocks. This geographic configuration creates a challenge for redistricting five districts not to exceed a 10 percent deviation amongst any of the districts created. Following is a map of the 2010 blocks labeled with total population in black. The current District lines are in yellow labeled in blue. The residential location of each Council member is represented with a blue diamond.



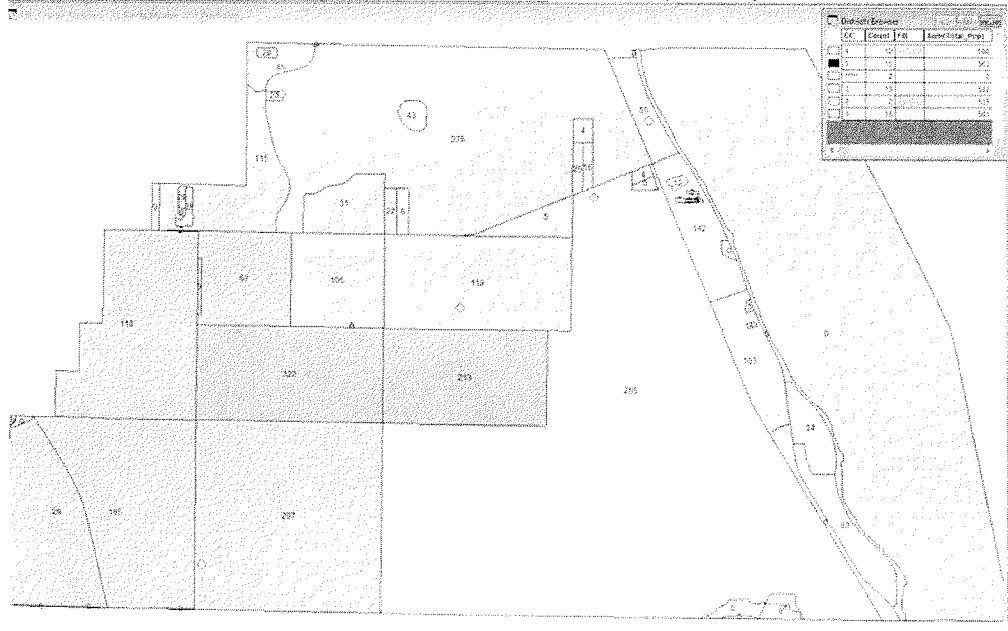
The GIS software for redistricting allows us to look at numerous layers of data including aerial photograph, block boundaries, point files for structures, roads, etc. With this software, we can construct districts by adding block after block. As we add blocks to a district, the software will show

the total population of the district. If a block is reassigned from one district to another, the software will display the incremental addition and decrement the population count for the district from which the block was reassigned. This flexibility allows for a wide range of “what if” scenarios and at any time a scenario can be saved as a plan (e.g. plan1, plan2, etc.). Following is a screen capture of a work in progress (Plan A).



This plan does not pass the 10% test. At once one can see the River district is not populous enough to support a single district alone. This area must be divided and expanded.

In the next illustration the districts are all within 56 residence of each other; however, District 3 is not contiguous and we do not have a Council member residing in side District 2 (Plan B).



District	Plan A	Plan B
4	588	588
5	640	563
3	606	582
2	535	535
1	460	561

During the workshop, we will be able to project a map onto a screen for all Council Members to see and reassign these 60 blocks creating five Districts to the satisfaction of the Council.

Given the inherent complexities caused by a combination of geography and the need to transition to single member districts, several AGOs are provided in Appendix A relating to some of the questions that may arise while completing the task at hand. Also included is an excerpt from the Brevard County Charter.

The US Bureau of the Census will initiate Phase II of the Data Redistricting Program also referred to as the Voter District (VTD) Phase during which they seek input from States to better define the geography that will be used in the next round of redistricting. The Brevard County Supervisor of Elections expects to participate in this process commencing in December, 2017. At that time representatives from the Town of Malabar will have an opportunity to introduce new blocks for the Town which will be available for redistricting in 2021.

Please call with any questions you may have on this or related matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Tozier', written in a cursive style.

Ken Tozier, GISP
International Computer Works, Inc.

Appendix A

ORDINANCE 2016-1

Question 2. Amendment to section 2.02 of the Charter relating to the election of the town council members

Shall Section 2.02 of the Charter be amended to change how the town council members are elected from "at-large" to being elected from the district in which the candidate resides?

___ Yes
___ No

Instruction to voters: If you are in favor of the adoption of the foregoing amendment to the Charter mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment to the Charter, mark the space to the left of the word "NO".

Version: Jan 7, 2015 Town of Malabar Ordinances

• **Sec. 7-2. - Council seats by districts.**

(a)

A candidate for the office of mayor may reside at any location within the town.

(b)

The five (5) council seats shall be designated as seats 1 through 5. A candidate for the office of councilmember shall reside, on the date of his qualification for office, within the district designated below for the specific seat for which he has qualified.

(1)

District 1. Comprised of areas in the following Sections: 31, 36, 6 and 5. Described as within the following area: beginning at the SW corner of Section 36. Head north along the center line of Corey Road up to and including the north end of Allen Street, then follow a straight line to the center line of Marie Street where it meets Johnston Avenue, then north to the town limit along the Marie Street line, then east to the Indian River Lagoon, then south to the north end of Rocky Point Road (not to include Rocky Point Road in District 1), then west to the Florida East Coast Railway, then north to Malabar Road, then west on the center line of Malabar Road to the beginning point.

(2)

District 2. Comprised of areas in the following Sections: 31, 36, 5, 6, 7, 8, and 12. Described as within the following area: Beginning at the SW corner of Section 1. Head north to the center line of Hall Road, then head east to the center line of McCain Lane, following north along the McCain Lane line to the center line of Glatter Road, then west to the center line of Malabar Road, then east on the center line of Malabar Road to the Florida East Coast Railway, then south to a line north of the north end of Rocky Point Road, then east to the Indian River Lagoon (to include all of Rocky Point Road in District 2), then south to the end of the town limit, then west to a line east of Kramer Lane, then north to, and including, the end north end of Kramer Lane, then west to Corey Road, then north to the beginning point.

(3)

District 3. Comprised of all of Section 2. And within that part of Section 1 described as follows: begin at the NW corner of Section 1, head east to the McCain Lane line, then south to Hall Road then west to Corey Road.

(4)

District 4. Comprised of all of Section 10 and all of Section 11. And all of Section 3 that is within the town limits. And within that part of Section 2 described as: begin at the SW corner of Section 12 head east to the east side of Kramer Lane (to include all of Kramer Lane in District 4), then north to the end

of Kramer Lane (to include all of Kramer Lane in District 4) then west to Corey Road. And all of Section 34 that is within the town limits.

(5)

District 5. Comprised of all of Section 35 that is within the town limit. And that part of Section 36 described as: begin at the NW corner of Section 36, head east to the east end of Section 36, then south along the Marie Street line to the center point where Johnston Avenue Marie Street meet, then follow a straight line to the north end of Allen Street (excluding Allen Street).

(Ord. No. 8-4-81, § 3, 8-18-81; Ord. No. 02-04, § 1, 7-15-02)

• **Sec. 7-5. - Basis of reapportionment.**

The representative districts within the Town of Malabar shall be determined in accordance with the population of the Town of Malabar as determined by the 2000 United States Census.

Pursuant to the provisions of the Town Charter, there shall remain five districts within the Town of Malabar. No districts shall deviate, in population, by more than ten (10) percent, from any other district.

Advisory Legal Opinion - AGO 75-143

MUNICIPALITIES--VOTING DISTRICTS NEED NOT BE CONTIGUOUS

To: Donald M. O'Leary, South Pasadena City Attorney, St. Petersburg

Prepared by: Jerry E. Oxner, Chief Trial Counsel

QUESTION:

Must voting districts for city elections be contiguous?

SUMMARY:

Voting districts in city elections need not be contiguous unless required by the city charter. Noncontiguous districts or districts which are not compact, however, may indicate a closer review is necessary to determine whether the plan meets constitutional standards which require that districts contain substantially equal numbers of voters and not be designed so as to minimize the voting strength of a particular group of voters.

Contiguous voting districts in city elections are required by neither the Florida Constitution nor the United States Constitution. However, contiguous districts may be required by the city charter. Even if not required, contiguous districts are preferable to noncontiguous districts. Noncontiguous districts are open to challenge on the grounds that such districts were designed to minimize the access to the political process of a particular group of voters. See *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973). It should be noted that, whether city voting districts are contiguous or noncontiguous, they must contain substantially equal numbers of voters or citizens. *Cousins v. City Council of Chicago*, 466 F.2d 830 (7th Cir. 1972).

Reference is hereby made to the discussion of the constitutional questions, both state and federal, as well as the limitation of my opinion as it regards your plan, contained in AGO 074-359.

A recent decision in our circuit set forth a two-pronged proposition which is inherent in the concept of fair representation:

". . . first, that in apportionment schemes, one man's vote should equal another man's vote as nearly as practicable; and second, that assuming substantial equality, the scheme must not operate to minimize or cancel out the voting strength of racial or political elements of the voting population." [Zimmer v. McKeithen, *supra*.]

The basis for the one person, one vote proposition is founded upon the general principle of population equality. Reynolds v. Sims, 377 U.S. 533, (1964). Mathematical exactness or precision in population equality is not required, and with respect to local governmental entities, the United States Supreme Court has stated that "viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing societal needs." Abate v. Mundt, 29 L.Ed.2d 399, (1971). Furthermore, the court stated that "the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality." See 29 L.Ed.2d at 403.

This does not mean that a local government, when redistricting, may overlook the equal protection test that districts in reapportioning must be "as nearly of equal population as is practicable."

Redistricting Plan No. 3 at first glance has the appearance of political gerrymandering -- discriminatory districting which operates to inflate unduly the political strength of one ground and deflate that of another. However, appearances are not enough to invalidate a plan.

In Newbold v. Osser, 230 A.2d 54 (Pa. 1967), the Pennsylvania Supreme Court was faced with a problem somewhat similar to the situation faced by your city. In upholding the validity of an ordinance redistricting in the City of Philadelphia, the court stated that:

". . . gerrymandering per se, as distinct from a departure from explicit constitutional or statutory requirements of compactness or contiguity, may not constitute the sole basis upon which a legislative plan of apportionment may be judicially invalidated." [*Id.* at 60.]

It is advised that your redistricting plan does not appear to minimize or cancel out the voting strength of racial or identifiable political elements of the voting population. Problems of contiguity or compactness come into play only when evidence that the district lines drawn by a city council operate to dilute the votes or voting strength of a group. See Cousins v. City Council of City of Chicago, *supra*.

An additional question of compactness is raised by noncontiguous districts. Should the city charter require that the districts be compact, or reasonably compact, then, of course, contiguous districts are required. There is no state or federal constitutional decision mandating compactness, although the subject has been addressed by the courts with an approach which leaves the door open for further debate.

Advisory Legal Opinion - AGO 88-11

Number: AGO 88-11
Date: April 12, 1988
Subject: Commissioner living outside district
Mr. Daniel S. McIntyre
County Attorney
St. Lucie County

2300 Virginia Avenue
Fort Pierce, Florida 34982-5652

Dear Mr. McIntyre:

You ask substantially the following question:

May a county commissioner whose district's lines are redrawn so that the commissioner's residence is outside the district from which he was elected change residence prior to the expiration of his or her current term to a location within the newly drawn district, but outside the boundaries of the original district, without creating a vacancy in office pursuant to s. 114.01(g), F.S., and s. 3, Art. X, State Const.?

In summary:

A county commissioner whose residence is no longer within the district from which he was elected due to the redrawing of district lines or redistricting may change residence to a location within the newly drawn district prior to the expiration of his term without creating a vacancy in office.

Residency in the district which a county commissioner represents is required by law.[1] This office, however, has previously stated that a change in the boundary line of commission districts or redistricting does not deprive a county commissioner of the right to hold office for the rest of his term, even though the commissioner's residence may no longer be within the district which he represents.[2] Thus, it appears clear that the redrawing of district lines cannot operate to deprive a commissioner of the office for which he or she was elected.

In AGO 72-177, this office considered whether a county commissioner whose residence was no longer within the district from which he was elected due to redistricting could seek election in the new district which his residence occupied without resigning his office. It was concluded that the commissioner would have to comply with the Resign-to-Run Law in order to seek election in a district other than the one from which he was elected.[3] Although the commissioner could not be deprived of his office due to the redistricting, he could not seek election in another district (the one which he then resided in due to the redistricting) without resigning his old office.[4]

Section 3, Art. X, State Const., provides that a "[v]acancy in office shall occur upon . . . failure to maintain the residence required when elected or appointed" Likewise, s. 114.01(1)(g), F.S., provides that a vacancy in office shall occur "[u]pon the officer's failure to maintain the residence required of

him by law."

Based upon the discussion above, the redrawing of county commission district lines or redistricting such that a commissioner's residence is no longer in the district from which he was elected does not operate to create a vacancy in the commissioner's office. [5]

In *State ex rel. Askew v. Thomas*, [6] the Supreme Court determined that a school board commissioner who chose to relocate her residence outside the area from which she was elected had failed to maintain the residency required for her office, leaving her office vacant. The Court found the constitutional and statutory requirement of maintaining residency applicable during any of the term in which the office was held. In simplifying the implications of an officer moving out of the district from which he or she was elected, the Court stated "if he leaves, he leaves his office and a vacancy occurs in that residence area to be filled." [7]

The analysis in *Thomas* would apply equally to county commissioners, given the constitutional and statutory requirements of residency for that office. [8] A commissioner who chooses to relocate his or her residence outside the district fails to maintain the required residency, resulting in a vacancy in the office.

I am unable to conclude, however, that a commissioner who moves his residence into a newly drawn district which he already represents would, thereby, create a vacancy in the office. The commissioner's move into the newly drawn district does not result in a failure to maintain the required residency. Moreover, if the commissioner moves to establish residency to qualify for re-election to the office which he holds, no part of the term of the office sought runs concurrently with the office he presently holds.

Based upon the above, it is my opinion that a county commissioner whose residence is displaced from the district the commissioner represents due to redrawing of district lines or redistricting may relocate his or her residence to the new district which he or she represents without creating a vacancy in office.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/lrs

[1] See s. 1(e), Art. VIII, State Const., providing that "[o]ne

commissioner residing in each district shall be elected as provided by law"; s. 124.01, F.S., providing for the election of one county commissioner for each county commission, as provided by s. 1(e), Art. VIII, State Const. and s. 124.011(1)(a), F.S., stating that "[f]ive county commissioners shall reside one in each of five county commission districts," under single-member representation districts. (e.s.) See also AGO 55-182 (county commissioner must reside in the district in which he or she was elected).

[2] See AGO 46-389 concluding that a county commissioner whose district's lines are redrawn such that the commissioner's residence is no longer within the district from which he or she was elected remains a commissioner for the district, provided the residence is still within the county; AGO 51-265 concluding that redistricting during the county commissioner's term which results in the commissioner no longer residing in the district from which elected does not deprive the commissioner of his office.

[3] See s. 99.012(2), F.S., Florida's Resign-to-Run Law, stating that "[n]o individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county, or municipal, the term of which or any part thereof runs concurrently with the terms of office for which he seeks to qualify without resigning from such office not less than 10 days prior to the first day of qualifying for the office he intends to seek."

[4] In AGO 72-177, the term of office for the county commissioner overlapped that of the office which he sought, creating a clear requirement that he resign his current office pursuant to s. 99.012, F.S.

[5] It is recognized that s. 97.012, F.S., makes the Secretary of State the chief election officer of the state with responsibility to "[o]btain and maintain uniformity in the application, operation, and interpretation of the election laws [Chs. 97-106, F.S.]."

[6] 293 So. 2d 40 (Fla. 1974).

[7] *Id.* at 43.

[8] See n.1, *supra*.

Brevard County Charter

SECTION 2.3. QUALIFICATIONS

County Commissioners shall be qualified electors of the County. The five (5) Commissioners shall reside within the districts from which they are elected. Any such Commissioner whose residency is removed from the district shall thereupon become disqualified to represent that district, and the office of any such Commissioner shall be deemed vacant, except that any Commissioner who is removed from a district by redistricting may continue to serve during the balance of the term of office.