

MEMORANDUM

**TO: BRADLEY ARNOLD,
COUNTY ADMINISTRATOR**

FROM: THE HOGAN LAW FIRM, LLC

**SUBJECT: REDISTRICTING PROCESS FOR COUNTY COMMISSION
DISTRICTS**

DATE: OCTOBER 20, 2010

County Commission Redistricting in Florida

Except where provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. Fla. Stat. Const. Art. VIII, §1(e) (as revised in 1968 and subsequently amended). After each decennial census the Board of County Commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. *Id.* One commissioner residing in each district shall be elected as provided by law. *Id.* Pursuant to Fla. Stat. §124.01(1), there shall be five commissioner districts in each county, which shall be numbered one through five, and shall be nearly equal in proportion to population as possible. Additionally, the board of county commissioners shall from time to time, fix the boundaries of the districts so as to keep them as nearly equal in proportion to population as possible, but such changes shall only be made in odd numbered years. Fla. Stat. §124.01(3).

Whenever the boundaries of existing county commissioners' districts are changed by the Board of County Commissioners, the board shall place an accurate description of the boundaries of the districts (as changed) into the minutes of the meeting at which such boundaries are changed and a certified copy of the minutes is to be published at least once each week for two consecutive weeks in a newspaper which is published in the county. Fla. Stat. §124.02(1). After such publications, proof thereof must be entered on the minutes of the board. Fla. Stat. §124.02(3). Furthermore, the board of county commissioners must cause its clerk to furnish the Department of State with a certified copy of the minutes reflecting the

description of the boundaries of the (new) districts and the Department of State must record a description of the boundaries in its office in a book kept for that purpose. Fla. Stat. §124.03.

Redistricting of county commission districts must occur as soon as possible upon receipt of the decennial census by the board of county commissioners. Op. Atty. Gen. 074-359 (1974). It appears that the best practice for undertaking redistricting is to follow standard practice for regular meetings under Chapter 2, Article II of the Sumter County Code. Redistricting is often a labor-intensive process which requires a substantial amount of inquiry into and examination of population related data and other practical considerations relating to the needs of the county's population. The amount of discussion and research that often goes into redistricting requires the Board of County Commissioners and staff to allocate substantial amounts of time to ensuring that the process is undertaken correctly and in accordance with the law.

The redistricting process is governed by the ideal that equality of representation is the keystone of representative government. Singletary v. State. 69 So.2d 794, 798 (Fla. 1954). While commissioners have reasonable discretion in setting district boundaries as set forth in Ryan v. State, unless equality is attained to the greatest extent possible, that discretion has been abused. *Id.*; Ryan v. State. 60 So.2d 188, 189 (Fla. 1952). Following the receipt of the census data, commissioners may decide after a formal inquiry that the current county commissioners' districts are as equal as possible and no change is otherwise necessary. Op. Atty. Gen. 074-359 (1974). In other words, change simply for the sake of change is not required.

After a consideration of all guidelines, state and federal, such a districting plan must be formally approved by the commission and the minutes of the meeting forwarded to the Secretary of State in accordance with Fla. Stat. §124.01(3). *Id.* An unqualified approval cannot be given to any county commission districting plan. *Id.*

Whether districts are as nearly equal as possible is a subjective matter to be considered upon each county's individual circumstances. *Id.* Although population information, such as census data, is important to the determination of commission districts, practical considerations may be taken into account as well provided that they do not lead to a result that varies too far from constitutional requirements. Ryan v. State. 60 So.2d 188, 190 (Fla. 1952). Taking into account practical considerations does not excuse the use of credible population data nor does

it give rise to the idea that “guess work” is appropriate in determining commission districts. Singletary v. State. 69 So.2d 794 (Fla. 1954).

Two practical considerations which have been looked upon favorably by the Florida Supreme Court are a rapidly growing population in a certain part of a county, and similarity of interests (such as agriculture in one district and tourism in another). Ryan v. State. 60 So.2d 188, 190 (Fla. 1952); Op. Atty. Gen. 074-359. It is important to note, however, that practical considerations, no matter how legitimate, may not be utilized to draw districts so as to invidiously discriminate against any identifiable group. Fla. Stat. Const. Art. VIII, §1(e); Op. Atty. Gen. 074-359.

Another important consideration when drawing commissioner districts, especially in light of Sumter County’s large inmate population, is that a board of county commissioners must include and count the prison population within the district in which the prison population is physically located when balancing districts, but may not distribute the prison population among the districts. Op. Atty. Gen 2001-55 (2001). A few Florida counties, such as Gulf, Hamilton, Holmes and Madison, have found this mandate to be problematic and have made the choice to disregard the Attorney General Opinion on the subject, as well as the census bureau’s method of counting prison populations. At this time however, the Hogan Law Firm does not recommend action inconsistent with the standing Attorney General Opinion on the subject.

Please let us know if you require additional information.