




## BROWARD OFFICE OF THE INSPECTOR GENERAL

### MEMORANDUM

To: Evan Anthony, John Boisseau, Sally Boisseau, Carlton Kirby, Patrick Kaufman, and Ray Nyhuis, Village of Lazy Lake

From: John W. Scott, Inspector General 

Date: November 20, 2019

Subject: **OIG Closing Memorandum Re: *Propriety of the Governance of the Village of Lazy Lake, Ref. OIG 18-025-M***

The purpose of this memorandum is to inform you that the Broward Office of the Inspector General (OIG) has closed its most recent inquiry into the governance of the Village of Lazy Lake after concluding that there is good cause to believe that individuals are now governing the village in violation of the state constitution, state statutes, and village charter. We also concluded that, if the village holds a proper election in March 2020 for mayor and the five seats on the council, the village will then be governed in accordance with the law.

We urge, in the strongest terms, that the village hold an election in March and thereafter institute reforms to prevent this grave error from being repeated.

#### ***Background***

##### *Prior OIG Investigation*

On August 21, 2014, the OIG issued a closing memorandum to the Village of Lazy Lake in which it reported its investigation into, in part, whether village officials engaged in statutory or constitutional misconduct in the administration of village affairs. That investigation determined that the village's clerk, mayor, and council engaged in misconduct including apparent violations of open meetings (Sunshine) law and constitutional, statutory, and charter requirements that the village be governed by properly qualified elected officials.<sup>1</sup> In the memo, we recommended that the village begin to ensure that it abide by all legal requirements by having legal counsel conduct a review "to establish the routines and procedures necessary to bring and keep the village in compliance with the laws that every other municipality in Florida is required to uphold."

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<sup>1</sup> See [OIG Closing Memorandum Re: \*Lazy Lake Officials' Compliance with Ethics Training Requirements of the Ethics Code and Misconduct in the Administration of Village Affairs. Ref. OIG 13-025.\*](#)

### OIG Request for a Status Report

After observing that the village did not hold an election in March 2018, on July 9, 2018, the OIG wrote a letter to then-Village Mayor Carolyn White, requesting a status report and certain documents evidencing whether the village had implemented recommendations contained in the August 2014 closing memorandum. The OIG requested the village to provide copies of meeting notices and minutes, any review conducted pursuant to the closing memorandum in OIG 13-025, and descriptions of the processes developed to address the deficiencies noted in the memorandum, including the process for conducting elections.

The OIG also asked the village to report the procedural or legal basis for re-appointing two individuals to the council on May 15, 2018. Our concern regarding these appointments was that these individuals and, indeed, every then-sitting member of the governing body had not qualified to run for office and did not run for office in the March 2018 election.

### The Village's Status Report

On November 9, 2018, by way of a letter, Evan Anthony, serving in the role of mayor (Ms. White having resigned) provided the village's status update. The only documents he enclosed were council meeting minutes and one meeting cancellation notice, even though his letter also claimed to provide all notices of council meetings since August 21, 2014. Most disturbingly, there were no documents relating to any March 2018 election, such as legally required candidate qualifying papers.

As to any new processes to fix the deficiencies that the OIG found in OIG 13-025, Mr. Anthony explained, "[T]here are currently no written procedures, however, we affirm that the Village of Lazy Lake has and continues to abide by all Constitutional, Statutory, Charter and Code Requirements of the State of Florida."

He further explained that, on May 15, 2018, the village council, by a voice vote of 3-0, passed a motion to appoint the aforementioned two individuals to the council until the November 2018 general election, and meeting minutes supported this assertion. But the village would not and did not hold an election in November 2018; according to the village charter and as manifested by village action over the years including 2012, 2014, and 2016, elections for the mayor and five council seats are to be held in March of every even year.

Thus, the OIG sent another letter to the village, dated November 27, 2018, which stated that the village's status report led us to assume that the village (1) did not develop and did not plan to develop any processes in response to the 2014 closing memorandum, such as for providing public notice of council meetings, responding to public records requests, appointing individuals to the council, or conducting elections; and (2) did not have a legal basis or procedure for reappointing any of the then-sitting council members, other than the process of appointing each other.

Thereafter, we opened the instant inquiry.

## ***OIG Inquiry***

### *Village Progress on Sunshine and Public Records*

Florida's Sunshine law requirements include that the village must make council meetings open and accessible to the public and give reasonable notice of the meetings.<sup>2</sup>

On February 27, 2019, counsel for the village<sup>3</sup> wrote to inform the OIG of progress on Sunshine law, public records, and elections issues. By that time, the village had purchased a public notice board and placed it at the entrance wall of its main gate to notice council meetings supplementally to the method of emailing residents and that it had arranged to post signs and unlock the doors at the meeting location to make meetings more accessible to the public.

The letter reported how the village was maintaining its public records and that it had contracted with a firm to fulfill its village clerk duties including the organization of official documents and village processes. The village was keeping its official records at its meeting place in Wilton Manors with a copier should anyone make a request for copies of any public records. The village was also digitizing many of its paper records in order to speed up the process of responding to records requests.

By April 23, 2019, counsel for the village had been trying to arrange for Broward County's administration to provide a website in order for the village to comply with the county charter's new internet posting requirements for meeting notices, agendas, and backup material.<sup>4</sup>

Counsel reported that, as of May 17, 2019, the village had passed a resolution formalizing a process to improve public notice for council meetings, approving holding its meetings outside of village boundaries as provided for in state law,<sup>5</sup> and modifying agendas to include better directions to the meeting venue. He also advised that the village successfully met internet posting requirements using the county's website.<sup>6</sup>

On May 21, 2019, according to meeting minutes of that date, the individuals acting as the village council authorized the purchase of a domain name for and the establishment of its own website.

At the time this inquiry was closing, a functioning website, at [lazylakefl.us](http://lazylakefl.us), maintained records that the law requires Broward municipalities to make available on publicly searchable internet databases, including meeting notices, agendas, and backup documents;

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<sup>2</sup> Fla. Stat. § 286.011(1).

<sup>3</sup> The Village retained a law firm on November 9, 2018, to perform some legal services—including to address the OIG's request for a status report—but not to serve as Village Attorney.

<sup>4</sup> Broward County Charter Sec. 1.07.

<sup>5</sup> Fla. Stat. § 166.0213.

<sup>6</sup> Broward County Ordinances Sec. 1-19(b)(4) allows for the Broward League of Cities (BLOC) to maintain a database for municipalities that do not have their own websites at which to post required ethics disclosures. As the BLOC does not maintain such a database, Broward County has chosen to fill that need.

and elected officials' ethics training certifications, financial disclosures, and outside employment disclosures.

Thus, the village now appears to comply with the open meetings, public records, and internet posting requirements with which the OIG was previously concerned.

*There is Good Cause to Believe That the Village Failed to Hold an Election and Improperly Seated Its "Officials"*

The state constitution requires, "Each municipal legislative body shall be elective."<sup>7</sup> State statutes provide for the method of holding local elections.<sup>8</sup>

The village charter provides for a general election bi-annually in even years for all elective positions, commencing March 1954, with the officials to hold office on April 1 following each election.<sup>9</sup> The charter also provides for a majority of the council to declare any vacancy in the mayor's or a council member's seat as soon as possible and then appoint a citizen or elector to the seat within two meetings thereafter or hold a special election to fill the vacancy.<sup>10</sup>

Counsel reviewed documents from the village's most recent election of March 2016 and opined, and the OIG does not dispute, that Ms. White was properly elected mayor, and that John Boisseau, Sally Boisseau, and Linda Catalano were properly elected as council members, providing the legal basis to appoint village electors Mr. Anthony, Oliver Kamm, and Raymond Nyhuis<sup>11</sup> to vacancies until the next general election of March 2018. As of January 16, 2018, Ms. White continued to serve as mayor, and Mr. Boisseau, Ms. Boisseau, and Ms. Catalano served as council members.

The village should have conducted an election in March 2018, but it did not. Consistent with Mr. Anthony's failure to provide the OIG with any documentation of an election, counsel's review did not locate any candidate qualifying papers or proof of notice, and none of the individuals who continued to serve could recall executing qualifying documents.

Yet, there is good cause to believe that, on May 15, 2018, two months after the would-be election date of March 13, 2018, three of these unqualified holdovers voted to appoint the two remaining unqualified holdovers to the council.<sup>12, 13</sup> Thereafter, between May and

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<sup>7</sup> Fla. Const. art. VIII, § 2(b).

<sup>8</sup> See generally Fla. Stat. Chapters 99 and 100.

<sup>9</sup> Counsel reported that his research, including into Florida state archives and Village documents, determined that there were no amendments to the Village charter.

<sup>10</sup> The village charter requires a majority of the remaining council, not the mayor, to make appointments to vacancies. Lazy Lake Charter art. II, § 3.

<sup>11</sup> Mr. Nyhuis was not a village elector at the time he was first appointed. After this infirmity was cured, he was reappointed. See OIG Appendix A.

<sup>12</sup> That the village charter provided for the council to fill vacancies was an additional reason the purported mayor was unqualified to vote on appointing Mr. and Mrs. Boisseau. See Footnote 10.

<sup>13</sup> According to the July 17, 2018, council meeting minutes, an attorney with the firm then serving as Village Attorney stated that, at the next election, there would be three seats available, one for mayor and two for council members. Thus, it was reasonable for the village's current counsel to conclude that on July 17, 2018, the Village Attorney advised that

September 2018, these apparently unqualified individuals acting as the council appointed Ms. Catalano to the mayor seat, Carlton Kirby to Ms. Catalano's former council seat, Mr. Anthony to the mayor seat, and Patrick Kaufman to Mr. Anthony's former council seat, in that order. There have been no subsequent changes to the composition of the purported council. A summary of village elections and appointments since March 2016 is attached as OIG Appendix A.

Counsel has opined that there is some legal support to find that the village may be operating with *de facto* officers properly holding over where there has been no duly elected or appointed successor. In a May 17, 2019, letter, he cited to several court cases and Attorney General Opinions that offer some support for this position, but he also properly acknowledged that the law is unclear on this point.

Section 14 of Article XVI of the 1885 Florida Constitution, which allowed an incumbent "state, county, or local officer" to properly remain in office until a successor qualified, was meant to avoid a "hiatus in government." *State v. Murphy*, 32 Fla. 138, 146, 13 So. 705 (Fla. 1893). We found that the current, 1968 Constitution kept this provision but not for municipal officers. It provides, "Each state and county officer . . . shall . . . continue in office until a successor qualifies." Fla. Const. Art. II, § 5(b). There is no similar provision for municipal officers in the current state constitution or statutes, and we could find no case law or even Attorney General Opinion on point. Furthermore, we question a holdover practice where officials created the infirmity by failing to qualify for the positions they then sought to continue holding.<sup>14</sup>

Thus, the OIG finds there is good cause to believe that unqualified individuals are now governing the village in violation of the state constitution, state statutes, and village charter.

#### Village Governance and Election Plan Going Forward

On April 16, 2019, counsel informed those governing the village that a Supervisor of Elections representative said it was unlikely that his office could hold a special election for the municipality prior to the March 2020 general election. At that time, the individuals serving as the council were presented with the choice of ceasing to operate altogether or continuing to comply with relevant laws until the governance issue was resolved. They voted to continue the village's day-to-day business and withhold deciding other items.

On May 17, 2019, counsel recommended the village pass a resolution approving a request for an opinion letter from the Florida Attorney General on the question of whether the persons seated as mayor and council members could continue serving in that capacity as *de*

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members' terms were staggered, which may explain why the individuals serving as the council treated Mr. and Mrs. Boisseau differently from the other would-be council members. Either way, the OIG has no basis to understand why Mr. and Mrs. Boisseau were appointed only until November 2018.

<sup>14</sup> Counsel cited to Florida Attorney General Opinion (AGO) 78-107 (1978), among other authority, to support the position that incumbent elective officials whose terms had expired could continue to serve until their successors were appointed or elected; however, the incumbents there had been appointed at a time when the positions were appointive and were in office when they became elective. None of them chose to run for office, no one qualified for the positions, and the question was whether they were *required* to hold over.

*facto* elected officials until the village’s next general election in March 2020.<sup>15</sup> Counsel memorialized that the village council had engaged in minimal official action and had not adopted any ordinances since November 2018, but soon needed to impose ad valorem taxes for the upcoming fiscal year. He also described the village’s effort “to explore a merger with Wilton Manors.” With approval from those serving as the council, counsel forwarded the request for an Attorney General Opinion on May 22, 2019.

But the Attorney General denied the village’s request on July 25, 2019.

Thereafter, counsel again contacted the Supervisor of Elections coordinator for municipal elections, who confirmed in writing on August 21, 2019, that it was not possible for his office to conduct a special election prior to the March 2020 general election for municipalities.

At the September 6, 2019, village meeting, counsel informed the individuals serving as the council that the Attorney General and Supervisor of Elections had declined their recent requests, and the individuals again voted to “minimally operate” until the general election of March 2020. In an October 8, 2019, letter to the OIG, counsel explained that this meant that, for the time being, the village will

continue to work on compliance matters, complete the minimum requirements to continue operating this year and fund the next, adopt no regulatory Ordinance or Charter amendments, and not approve any new material contractual obligations other than those necessary to minimally operate an ongoing municipal concern, and continue to provide and pay for the public services its residents receive.

### ***Conclusion***

We are closing this inquiry upon a finding of good cause to believe that unqualified individuals are governing the Village of Lazy Lake.

We are keen to inform the public of the current state of affairs there, with the hopes that the public will ensure that there will be an election in March 2020 to qualify and elect properly seated officials. To that end, we are forwarding a copy of this memorandum to the current resident email list maintained by the village. Counsel now providing legal services to the village, a long-time city attorney, is well versed in all manner of local government law, including the legal and procedural mechanics of holding a local election. If followed, his specific advice to the village on how to arrange for the general election and the documents needed for properly qualified candidates will enable the village to govern and administer itself legally.

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<sup>15</sup> The Florida Attorney General has the authority to issue an official opinion and legal advice upon request of certain officials within the state, including municipal officers, in response to questions about the requestor’s official duties. Fla. Stat. § 16.01(3). In the absence of case law, Attorney General Opinions are entitled to “great weight” but are not binding legal authority. *Bunkley v. State*, 882 So. 2d 890, 897 (Fla. 2004) (citing *Beverly v. Division of Beverage of the Dept. of Business Regulation*, 282 So. 2d 657, 660 (Fla. 1<sup>st</sup> DCA 1973)).

As soon as practicable after March 2020, those properly governing the village should establish protocols and an accountability process to ensure this grave error is never repeated, passing whatever legal measures they need in order to do so.

cc: Mr. Donald J. Lunny, Esq.

OIG Appendix A  
 Timeline of Elections and Appointments  
 to Village of Lazy Lake Mayor and Council Member Positions  
 2016-2019

DATE	METHOD	TERM	MAYOR	COUNCIL SEAT*	COUNCIL SEAT*	COUNCIL SEAT*	COUNCIL SEAT*	COUNCIL SEAT*
03/15/16	Election	04/01/16 - 03/31/18	White, Carolyn	Boisseau, John	Boisseau, Sally	Catalano, Linda	NONE	NONE
05/10/16	Appointment	05/10/16 - 03/31/18					Kamm, Oliver	
06/28/16	Appointment	06/28/16 - 03/31/18						Anthony, Evan
07/12/16	Appointment	07/12/16 - 03/31/18					Nyhuis, Raymond	
05/09/17	Appointment	05/09/17 - 03/31/18					Nyhuis, Raymond	
03/13/18	Election	04/01/18 - 03/31/20	NONE	NONE	NONE	NONE	NONE	NONE
** 05/15/18	Appointment	05/15/18 - 03/31/20		Boisseau, John	Boisseau, Sally			
07/17/18	Appointment	07/17/18 - 03/31/20	Catalano, Linda					
09/12/18	Appointment	09/12/18 - 03/31/20				Kirby, Carlton		
09/24/18	Appointment	09/24/18 - 03/31/20	Anthony, Evan					Kaufman, Patrick

\* Seat number not known.

\*\*Blue shaded area indicates appointments not in accordance with the State of Florida Constitution or Village of Lazy Lake Charter