

DE 77-18 - August 22, 1977

**Municipal Recall
Section 100.361, F.S.**

*To: Honorable Walter R. Shaw, City Council President, 1400 Northwest 62 Avenue, Sunrise, Florida
33313*

Prepared by: Division of Elections

By letter of August 16, 1977, you note that you were elected to office in March 1977 and sworn in March 18, 1977, (your attached certification of election revealing that election was held March 8, 1977, and that you were elected to the office of councilman for a term ending March 13, 1981).

You have noted, further, that there is presently underway a recall procedure against you and you ask whether "such action is out of order at this time".

Your inquiry arises under Section 100.361, Florida Statutes, controlling municipal recall. This section of the Florida Statutes is not without its difficulties, and has been significantly altered in and by the Florida Election Code of 1977, which will become effective on January 1, 1978. The present law provides at Subsection 8, in pertinent part:

Except as otherwise provided, no petition to recall any member of the governing body of a municipality shall be filed within one year after he takes office. . . .

Accordingly, it would appear under Subsection 8 that no petition may be filed against you within one year after you took office in March 1977. The statute is prohibitory and appears to be clear on that point. Any petitions filed against you within one year of your taking office would be null and void under Subsection 8 as a matter of law.

As requested, a copy of this opinion is being sent to the Honorable Robert N. Clark, City Clerk, of the City of sunrise.

SUMMARY

Municipal recall petitions may not be filed within one year of the municipal officer — to be recalled — having taken office.