

DE 77-05 - February 3, 1977

**Precinct Boundaries
Chapter 98, F.S.**

To: Honorable Randall N. Thornton, Sumter County Attorney, Post Office Box 8, Bushnell, Florida 33513

Honorable George Ralph Miller, Walton County Attorney, Post Office Box 112, DeFuniak Springs, Florida 32433

Prepared by: Division of Elections

You have, on behalf of your respective county commissions, inquired of the Division respecting Section 98.031, F.S., as amended by Chapter 76-121, Laws of Florida, 1976, in conformance with Public Law 94-171, 94th Congress, H.R. 1753 (Dec. 23, 1975).

It is the opinion of the Division of Elections, and we now formally articulate same, that Section 98.031 as amended in conformance with the mandate of Public Law 94-171 is mandatory and binding upon the Secretary of State, supervisors of elections and, therefore, upon the counties of Florida as hereinafter explained.

Public Law 94-171 provides for the officers or public bodies of each state to submit to the Secretary of the U.S. Department of Commerce, within 3 years prior to the census date, a plan identifying geographic areas for which specific tabulations of population are desired, such plans to be in accordance with criteria established by the Secretary of the Department of Commerce.

The Legislature of Florida then implemented Public Law 94-171 and the regulations which were issued thereunder by extensively amending Section 98.031, F.S., in Chapter 76-121, Laws of Florida (Senate Bill 1206). Section 98.031(3)(a) and (b), F.S., for example, now mandate:

- a. Each supervisor of Elections shall provide and maintain a suitable map drawn to a scale no smaller than 3 miles to the inch and clearly delineating all major observable features such as roads, streams, and railway lines and showing the current geographical boundaries of each precinct, election district, representative district, and senatorial district in the county. A word description of the geographical boundaries shall be attached to each map.
- b. Each supervisor of elections shall send a copy of each map with attached description to the Secretary of State no later than March 1 of any year the last digit of which is 7. No later than April 1 in any such year, the Secretary of State shall transmit an appropriate copy of facsimile of each map to the United States Bureau of Census.

To be sure, Section 98.031(1)(a) continues to empower board of county commissioners, upon recommendation of elections supervisors, to "alter or create new districts or precincts"; but the 1976 amendments conditioned and limited such power by the words "Except as otherwise provided in

paragraph (b),... ." Paragraph (b), added by the 1976 amendments, at #1 prohibits alteration or creation of precincts or "between January 1 of any year the last digit of which is 7 and December 1 of any year the last digit of which is 0." Then at #2, certain further exceptions to #1 are provided. However, the new paragraph (c) then operates mandatorily upon the Secretary of State, precluding him from granting to any county a waiver of compliance with paragraph (b) — unless "such county has met the requirements of the U.S. Bureau of the Census as set forth in its guidelines."

In fine, according to the plain language and manifest intent of Chapter 76-121, the 67 supervisors of elections must "no later than March 1 of" 1977 "send a copy" to the Florida Secretary of State of "a suitable map drawn to scale no smaller than 3 miles to the inch and clearly delineating" that which the subsection decrees in detail. Section 98.031(3)(a)(b), F.S., 1976. Too, the authority of boards of county commissioners to create, divide, abolish, consolidate or alter precinct or district boundaries is explicitly curtailed, Section 98.031(1)(a)(b), F.S., and the Florida Secretary of State is enjoined from waiving the curtailing provisions of paragraph (b), unless the waiver-seeking county has already met the U.S. Census Bureau guideline requirements.

If your letters constitute a request under Section 98.031(l)(c), F.S., for the Secretary of State to waive the provisions of paragraph (b), he is unable as a matter of law to grant such request.

If otherwise, your letters constitute a request for confirmation of existing precinct or district lines, such request is disposed of by Section 98.031(l)(a), F.S., and has no bearing upon the elections supervisors' obligations under Section 98.031(3)(a)(b), F.S..