

A statute addressed in this opinion has changed. Please consult current Florida law.

DE 77-09 - March 8, 1977

**Municipal Recall
Chapter 100, F.S.**

To: Honorable Joanne E. Koester, Supervisor of Elections, Sarasota County Courthouse, Sarasota, Florida 33578; Honorable Margaret M. Gentle, Mayor, City of North Port, 311 North Port Boulevard, North Port, Florida 33595

Prepared by: Division of Elections

This opinion is issued upon your request, in confirmation of the telegram requested by you and sent to you on March 4, 1977.

The opinion is issued pursuant to Section 106.23(2), Florida Statutes, 1976.

You have asked whether the City of North Port may lawfully hold a recall election pursuant to Section 100.361, Florida Statutes, 1974. In this regard, you have reported that the charter of the City of North Port contains no authority for municipal recall.

Section 100.361, Florida Statutes, provides at subsection (11):

The provisions of this act shall apply to cities and charter counties that have adopted recall provisions.

The clear and unambiguous import of subsection (11) even without resort to the settled doctrine of statutory interpretation expressio unius exclesio alterius, is that Section 100.361, applies to cities and charter counties which have adopted recall provisions rather than to all cities and charter counties. It is to be noted in this regard, that subsection (10), of the act repeals all municipal charter and special law provisions contrary to this act — replacing same with the provisions of Section 100.361, Florida Statutes.

Opinion of the Attorney General 075-242 (August 28, 1975), came to the opposite conclusion by reviewing exclusively on the language of subsection (1), of the act: "any member of the governing body of a municipality which has at least 500 registered electors.. .may be removed from office by the electors of the municipality by the following procedure:..." In respect of the qualifying language of subsection (11), the Attorney General declared that although the said subsection "encompasses a smaller universe than that engulfed by subsection (1), it does not do so in a restrictive manner,..."

With this view, we must disagree at the risk of plagiarizing the immortal thoughts of Gertrude Stein, a restriction is restrictive, and it is clear beyond peradventure of a doubt that subsection (11) limits the application of the preceding ten subsections to those cities or charter counties which have adopted recall provisions.

In light of the foregoing, you have asked on what legal basis the City of North Port might effectuate a municipal recall election. Absent provision for municipal recall in applicable state law, city charter or ordinance, there would be no legal basis for municipal recall election in the City of North Port.