

**DE 77-37 - December 20, 1977**

**Application Of Election Code To Municipal Election  
Chapters 97-106, F.S.**

*To: Mrs. Billie J. Gaskill, Town Clerk, Town of Indian Shores, Post Office Box 235, Indian Shores, Florida 35535*

*Prepared by: Division of Elections*

This is in response to your letter of December 8th in which you requested an opinion of this office in answer to substantially the following question:

To what extent does the state election code effective January 1, 1978 apply to non-partisan municipal elections?

The 1977 legislature adopted Chapter 77-175, Laws of Florida, which effective January 1, 1978 substantially revises the election laws of Florida. The primary application of the code is to elections for county, state, and national officers. However, certain sections do apply to municipalities.

Various provisions of the current election law (effective until January 1, 1978) have been found applicable to municipal elections. An opinion of the Attorney-General maintained that the provisions of ch. 104, F.S, commonly known as the corrupt practices acts, were applicable to municipalities. Op. Atty. Gen. Fla. 064-3 (January 15, 1964). This was upheld in State v. Brown, 298 So. 2d 487 (4th D.C. A. Fla. 1974). This application was found even in the absence of the adoption of the election code by a municipality pursuant to s. 104.45 related only to "the procedural aspects of conducting elections." In the absence of such an express approval, the city charter or ordinances adopted pursuant to the charter control.

The adoption of ch. 73-155, Laws of Florida, which established a single permanent registration system was found by the Attorney General to have superceded municipal charter provisions prescribing qualifications for municipal elections different from state law. Op. Atty. Gen. 073-484 (December 26, 1973). An informal opinion of the Attorney General to Secretary of State Smathers dated September 7, 1976 opined that ss. 99.092, 99.095, and 99.097, F.S., relating to qualifying procedures are not applicable to municipalities absent an express adoption thereof.

By definition in the current law, Chapter 106, F.S. (1975), is applicable to municipal elections. The definitions of "election" and "public office" found in s. 106.011, F.S. (1975), clearly include municipalities.

The new election code has repealed s. 104.45, F.S. (1975) effective January 1, 1978. This was done so that municipalities may exercise the authority under the Municipal Home Rule Powers Act (Chapter 166, F.S.) to provide such regulation to municipal elections as deemed appropriate, except those areas

thereof specifically preempted to state or county government by general law or the Constitution. See s. 166.021(3)(c), F.S.

This act specifically states that "the terms of municipal officers and the manner of their election" provided by special law or municipal charter may not be altered without approval by referendum of the municipal electors, s. 166.021(4), F.S. Furthermore, a qualified elector of the municipality is defined as "any person who is a resident of municipality, who has qualified as an elector of the state, and who registers in the manner prescribed by general law and ordinance of the municipality.. ." s. 166.032, F.S. In light of the previously cited opinion of the Attorney General and the legislative intent to establish a single permanent registration system, the voter registration provisions of the new election code will apply to municipalities. See s. 98.091, F.S. (1977).

By specific language therein, the Resign-to-Run Law (s. 99.012, F.S.), which is continued in the new code, applies to municipal officers. Filing fee and petition method of qualifying are carried forward with some revision in the new code. There is no express application of these provisions to municipalities. Therefore, the reasoning of Op. Atty. Gen. 072-237 (August 1, 1972) and the informal opinion of September 7, 1976 mentioned earlier appear to still be sound. Accordingly, in the absence of a city charter or ordinance provision, the qualifying procedures of ch. 99, F.S., do not apply to municipalities.

Those portions of Chapter 100 dealing with bond referendums (ss. 100.201-.351) and recall (100.361) are by specific language therein applicable to municipalities. All other sections of ch 100, F.S. (1977), are not applicable to municipalities in the absence of specific municipal adoption.

Chapter 101 provides the procedures for voting. Sections 101.031 (instructions to electors), 101.041 (secret voting), 101.21 (official ballots; number; printing; payment for ballots), 101.635 (distribution of blocks of printed ballots), and 101.75 (municipal elections; change of dates for cause) specifically refer to municipal elections and are therefore applicable. If municipal officials oversee and conduct the election with the assistance of the supervisor of elections, those provisions of Chapter 101 other than those specifically enumerated above would apply to municipal elections only if the municipality has specifically adopted them by charter provision of ordinance. Indirectly the voting machine statutes apply in that municipalities utilize county owned machines approved and purchased according to Chapter 101.

No section of Chapter 102 (conducting elections and ascertaining the results) is explicitly made applicable to municipal elections. Express adoption by the municipality would be necessary for any provision of that chapter to apply.

Chapter 103 deals with presidential electors and has no effect on municipal elections. As noted above, Chapter 104 has been found to apply to municipalities regardless of its express adoption. No change in this chapter has been made that would lead to a contrary opinion. Therefore, the decision in State v. Brown, op. cit., and the opinion of the Attorney General still appear sound in their holding that Chapter 104 applies to municipalities in its entirety. Chapter 105 applies only to judicial officers and thus has no effect on municipal elections.

Chapter 106 is made applicable by the inclusion of municipal in the definitions of "election" and "public office." See 106.011, F.S. (1977). The power of the Florida Election Commission has been expanded to include investigations and disposition of alleged violations of Chapter 106 by municipal candidates. Previously, such violations could merely be forwarded to the appropriate prosecuting attorney.

Any provision of the Florida election code which is not made specifically applicable to municipalities may be adopted by the municipality in its discretion. This may be by charter provision or ordinance. The code may be adopted in whole or in part. An adoption of the code in its entirety by ordinance should be updated by readoption of the ordinance as the code is amended. Any amendment to the code which has not been subsequently adopted by the municipality might in certain instances be inapplicable to a municipal election. A municipality may provide its own procedures for the conduct of its elections rather than adopt the code. Careful attention must be given to constitutional guarantees and due process in such cases.

### **SUMMARY**

Effective January 1, 1978, in the absence of an express adoption of all or part of the state election code by a municipality in the exercise of its home rule power, the following provision of the Florida Election Code apply to municipal elections: Chapter 97, Chapter 98, s. 99.012, ss. 100-201-.351, s. 100.361, s. 101.031, s. 101.041, s. 101.121, s. 101.635, s. 101.75, Chapter 104, and Chapter 106, F.S. (1977).