

**DE 78-09 - February 14, 1978**

**Straw Ballot - Special District  
ss. 101.351, 101.36, 125.01, F.S.**

*To: Honorable Helen B. Gienau, Supervisor of Elections, Polk County Courthouse, Bartow, Florida  
33830*

*Prepared by: Division of Elections*

You have asked if a "straw ballot" may be conducted regarding an issue pertinent to a fire district in your county. If so, may the ballot be conducted by mail or must voting machines be used.

The state election laws make no reference to a straw ballot. The vote you have described appears to be a form of referendum. Various references are contained in the election code to referenda in certain situations, i.e. bonds, constitutional amendments, etc. A general reference is made in the statutes to an election held under a referendum provision of an act of the legislature, s. 100.351, P.S.

Assuming the fire district is created by special act of the legislature, that act should be reviewed to determine if any referendum provision has been included therein. If such a provision is present, the special act's provision controls and a referendum would be conducted pursuant thereto. In the absence of such a provision, nothing in the election law prevents the conducting of a straw ballot in any other manner deemed acceptable.

It should be noted that the legislature has recently seen fit to provide for the use of "straw ballots" or expressions of voter sentiment when called by a board of county commissioners, ch. 77-33, Laws of Florida. This amendment to s. 125.01, F.S., gave county commissioners the power to place questions on the ballot of an otherwise called election for the purpose of obtaining an expression of voter sentiment. The "straw ballot" concept was impliedly accepted by a provision which prohibits a special election being called just for that purpose. However, this recent legislation is directed only to county commissioners and does not affect special districts independent of the commission.

The county's voting machines may be utilized by the fire district pursuant to s. 101.36, F.S., which requires the approval of the county commission to rent the machines. If a formal referendum is not required, a mail straw ballot may be utilized as it is neither expressly authorized nor prohibited. However, it should be cautioned that a straw ballot has no binding or conclusive result.

You have asked if those voting in such a "straw ballot" must be property owners. Such limitation in this type of election is not addressed by the election code. However, let me call your attention to a federal court case, Fair v. Fair, 317 F.Supp. 859 (M.D. Fla. 1970), which found those provisions of the Florida Constitution restricting certain exercise of the elective franchise to freeholders violative of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

## **SUMMARY**

Provided an applicable special act of the legislature does not state otherwise, a "straw ballot" may be conducted in a county fire district. The vote may be by voting machines or by mail. Such a ballot can have no binding effect and is merely an unofficial expression of voter sentiment. Those persons eligible to vote may not be restricted to freeholders.