

DE 78-24 - May 26, 1978

**Municipal Recall: Petition Requirements
s. 100.361, F.S.**

To: Ms. E. Irene Beckham, Acting City Manager, City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida 32069

Prepared by: Division of Elections

This is in answer to your letter of May 10, 1978 in which the following question was raised:

"Under Section 6, Paragraph g (s. 100.361), it states, 'upon receipt of the counterparts, a committee may circulate them to obtain the signatures of 15% of the electors,'"

"Is this to say that an additional 15% is needed above the original 692 (signatures) or is this inclusive of that amount?"

Your letter states that 692 signatures constitute 10% of the total number of electors in the municipality as required by s. 100.361U)(a)(4.), F.S.

The municipal recall procedure outlined in s. 100.361 involves numerous procedural steps, including two separate petitions. The first procedure is utilized to initiate the process. See 100.361(l)(a-3), F.S. If a sufficient number of electors signed the first petition, a second petition is prepared and circulated, s. 100.361(l)(f-i), F.S.

It is this second petition which contains the counterparts mentioned in your question. In the event the required number of signatures are obtained on the first petition, the city auditor, clerk, or equivalent serves upon the person sought to be recalled a certified copy of the petition. A defensive statement may then be filed within five days. In turn, the clerk then prepares a sufficient number of "counterparts" containing the grounds for recall, the defensive statement, names and affidavits on the original petition, and lines and spaces for signatures of registered electors, residence, precinct number, date of signing, and affidavits to be executed by the circulators, s. 100.361(l)(f), F.S.

It is further provided that "Upon receipt of the counterparts, the committee may circulate them to obtain the signatures of 15 percent of the electors." s. 100.361(l)(g), F.S. (e.s.). The language employed by the legislature here indicates an intent to then secure fifteen percent upon the counterparts. This would be in addition to the signatures obtained on the first petition. If the legislature had intended the first petition's signatures to be included it could have easily done so. Nowhere in the entire recall statute is there language to the effect that the first petition is inclusive to the second or that the second petition need contain only a sufficient number of signatures plus the first petition's signatures to equal fifteen percent.

But the statute does not so read. By applying rules of statutory construction, the legislature is assumed to enact the literal meaning of words used to the exclusion of all others not used. Accordingly, in the absence of any statutory language to the contrary, the fifteen percent requirement of s. 100.361(l)(g), F.S., does not include the number of signatures contained in the first petition circulated and reprinted in the counterparts to the second. However, the statute does not prohibit a registered voter who signed the first petition from also signing the second petition.

SUMMARY

The fifteen percent of registered voters of a municipality required for a recall election of a municipal official pursuant to s. 100.361(l)(g), F.S., does not include the number of valid signatures contained in the first petition circulated to initiate the recall process pursuant to s. 100.361(l)(a), F.S. An elector of the municipality may sign both the first and second petitions.