

DE 78-48 - November 6, 1978

**Municipal Recall; Application Of General Law
s. 100.361, F.S. (1977)**

To: Allen J. Levin, Esquire, City Attorney, City of North Port, 135 A South Tamiami Drive, N.W., Port Charlotte, Florida 33952

Prepared by: Division of Elections

Your letter requests an opinion of this office in answer to substantially the following question:

Are the provisions of s. 100.361, F.S., applicable to municipalities in the absence of an express adoption by the municipality of the provisions of that section of the Florida Election Code?

Based on the foregoing discussion, your question is answered in the affirmative.

The Legislature has provided in s. 100.361, F.S.. a very extensive statutory procedure for the recall of municipal officers. It is obvious from the very language of the law of the broad application of its provisions. It is there stated:

"It is the intent of the legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charters and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of the conflict." s. 100.361(9), F.S. (1977).

Further indication of the intent of the Legislature is found in the beginning of this statute which reads:

"Any member of the governing body of a municipality or charter county, hereinafter referred to in this section as municipality, may be removed from office by the electors of the municipality by the following procedure. . . ." s. 100,361(1), F.S.

In neither of these sections is there any restrictive language limiting the application of the recall provisions. It seems clear that it was intended for this statute to establish procedures for all cities and charter counties to have a uniform method for the recall of their elected officials. No action appears necessary by the municipality to implement s. 100.361, F.S.

This conclusion is supported by an opinion of the Attorney General which concluded that there was "... a clear legislative intent that the statute in question operate in and of itself as authorization for the removal of members of the governing bodies of municipalities. . ." Op. Att'y Gen. Fla. 075-242 (August 28, 1975).

This office has previously considered this question in an advisory opinion. In DE 77-09 (March

8,1977), the language of s. 100.361(11), F.S. (1975), was relied upon to reach the conclusion that the recall provisions of that statute applied only to cities or charter counties which had adopted recall provisions. That subsection states:

"The provisions of this act shall apply to cities and charter counties which have adopted recall provisions." s. 100.361(11), F.S. (1975).

This was read as being a restriction and therefore limited the application of the recall statute.

But the better view is that this later provision supplements the intent language and makes it abundantly clear that even such cities and counties are governed by this statute's provisions and not the charter provisions. To hold otherwise would reduce the statute's use to just those cities and counties adopting recall procedures to the exclusion of all other municipalities. It seems unreasonable to assume that the legislature intended to overrule provisions previously adopted, but not subject other municipalities to recall procedures.

The emphasis seems better placed on the language reflecting a desire to have a mandatory uniform statewide procedure, this gives full effect to the statute and relies upon a clear reading of its language. Accordingly, Division of Elections Opinion DE 77-09 is hereby expressly overruled and revoked.

SUMMARY

The recall provisions of s. 100.361, F.S., apply to municipalities and charter counties in the absence of any express adoption thereof by those governmental units.