

**DE 80-26 - August 12, 1980**

**Recall**  
**Section 100.361, Florida Statutes**

*To: Mr. Samuel T. Adams, City Attorney, City of Callaway, Post Office Box 624, Apalachicola, Florida 32320*

*Prepared by: Division of Elections*

Your letter to the Attorney General dated July 2, 1980 has been referred to us. We consider your letter to be a request for advisory opinion under Section 106.23(2), F.S. (1979). Your question is:

Whether a public official removed by recall may run for election to the same governmental body within two years from the date of recall.

Your question is answered by referral to Hurt v. Naples 299 So. 2d 17 (Fla. 1974) and Op. Atty. Gen. 075-83 (March 18, 1975). The Supreme Court in Hurt v. Naples stated:

No one should be denied eligibility to public office unless the Constitution or applicable law expressly declares him ineligible.

id at 20

Accordingly, it is necessary to examine Section 100.361, F.S., (1979) to determine whether any such express disqualification exists. Section 100.361(7), F.S. (1979) provides, in pertinent part:

No person removed by a recall, or resigning after a petition has been filed against him, shall be eligible to be appointed to the governing body within a period of 2 years after the date of such recall or resignation.

This disqualification has been interpreted to apply only to appointments to the governing body and does not pose an impediment to seeking election to the office Op. Atty. Gen. 075-83 (March 18, 1975). The term appointed cannot be construed to mean elected.

Accordingly, an individual who is the subject of a recall cannot be prohibited from seeking reelection or election to any office even the one from which he was ousted. See Hurt v. Naples, Supra.

Your inquiry is answered accordingly.