

**DE 82-3 - February 15, 1982**

**REFERENDA; SECTION 101.161, F.S.; SECTION 100.341, F.S.**

*To: Honorable David C. Leahy, Supervisor of Elections, Dade County, Post Office Box 012241, Miami, Florida 33101*

*Prepared by: Division of Elections*

You have requested an opinion of this office on essentially the following questions:

- (1) Do the provisions of Section 101.161, Florida Statutes, relating to the use of the words “yes” and “no”, as well as the limitation on the numbers of words in the title and substance of a public measure apply to proposed municipal charter amendments, municipal referenda, municipal bond referenda, municipal straw ballot questions and municipal referenda on charter amendment placed on the ballot by initiative petition?
- (2) Do the provisions of Sections 101.161, Florida Statutes, relating to the use of the words “yes” and “no” as well as the limitation on the number of words in the title and substance of a public measure apply to propose county charter amendments, county referenda, county bond referenda, county straw ballot questions, county referenda or charter amendments placed on the ballot by petition, or special tax district referenda?

For reasons that will become apparent in the opinion, your questions are answered together.

Section 101.161, Florida Statutes provides:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear unambiguous language on the ballot after the list of candidates, followed by the word “yes” and also the word “no,” and shall be styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. (Emphasis supplied).

There are no Florida Statutes or reported case laws defining “other public measure.” It is a rule of statutory construction where the enumeration of specific things is followed by a more general word or phrase, the general phrase is construed to refer to a thing of the same kind or species as included within the preceding limiting and more confining terms. Smith v. Nussman, 156 So. 2d 680 (F1a. 3 DCA 1962). This principle, known as eiusdem generis, is a familiar aid to statutory construction. Smith, Supra.

In Union v. Ussery et al., 35 N.E. 618 (ILL. 1893), the Illinois Supreme Court rejected the principle of eiusdem generis in interpreting a provision similar to Section

101.161, F.S. That provision at page 619 read:

“Whenever a constitutional amendment, or other public measure is proposed to be voted upon by the people, the substance of such amendment, or other public measure shall be clearly indicated upon the ballot, and two spaces shall be left upon the margin, one for votes favoring the amendment or public measure, to be designate by the word ‘Yes’ and one for votes opposing the amendment or measure, to be designated by the word ‘No,’ as in the form herein given.”

Finding the principle of statutory construction inapplicable in the above statute, the court said:

There is nothing in it (statute) which authorizes the limiting of language “other public measures” to “like measures of equal breath, affecting like territory.” “Like measures of equal breath, affecting like terrory” would include only “constitutional amendment’s,” rendering the words, “or other public measures,” meaningless. All that is required by the rule is that general words be restricted to a sense analogous to the less general (citations omitted).

The Illinois Court further stated at Pg. 619:

"Constitutional amendments" affect the rights of all people of the state. Analogous thereto are all authorized changes in county, town, and city governments. They are public measures of the same kind. Where things inferior are enumerated, general words will not embrace those which are superior; but we know of no authority for holding the converse of the rule of construction . . . The generally accepted meaning of the language is measures interesting the public, as distinguished from those of private concern only. (Emphasis supplied).

I am of the view the Florida Courts would interpret Section 101.161, Florida Statutes, consistent with the above decision. Additionally, the language of Section 101.161, Florida Statutes, suggests the legislature intended the section should be liberally construed and have impact on the various levels of government:

The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, or enabling resolution or ordinance. (Emphasis supplied).

Ordinances are creatures of local government-counties and cities. Local governments have broad statutory authority to enact measures “interesting the public.” See s. 125.01(1)(t) and s. 166.021(3), Florida Statutes, giving county and municipal government plenary power to enact public measures.

The purpose of placing the substance of an amendment or other measure on the ballot is to give the electorate adequate notice of the contents of the proposed issue. Only

the substance and not the entire text of a proposed constitutional amendment or other public measure should be placed on the ballot. AGO 076-189, September 7, 1976. Thus, the legislature has required the explanatory statement or summary not exceed seventy-five (75) words in length; further, that the ballot title shall consist of a caption, not exceeding fifteen (15) words in length, by which the measure is commonly referred to or known.

A referendum is a device which secures to the people the power, by their own direct action, to approve or veto measures enacted by the legislative body. 42 Am Jur 2d, Initiative and Referendum, Section 1.

The power of the referendum may be conferred upon a municipal corporation in respect to any matter, legislative or administrative, within the realm of municipal affairs. Where such power is given, it is generally held to extend to all matters of local concern not expressly or implicitly excluded. Coral Gables v. Carmichael, 256 So. 2d. 404 (F1a. 3d DCA 1972), cert denied, 268 So. 2d 1 and (Disagreed with on other grounds) Andover Development Corp. v. New Smyrna Beach, 328 So. 2d 231 (F1a. 1st DCA 1976), cert denied, 341 So. 2d 290 (F1a. 1st DCA 1976).

Section 101.161, Florida Statutes, requires constitutional amendments and other public measures to be placed on the ballot with the word "Yes" and also the word "No" and styled in such a manner that a "yes" vote will indicate an approval and a "no" will indicate a rejection. Section 100.341, F.S., regarding the bond referendum ballot, provides:

The ballot used in bond referenda shall be on plain white paper with printed description of the issuance of bonds to be voted on as prescribed by the authority calling the referendum. A separate statement of each issue of bonds to be approved, giving the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors, shall be printed on the ballots in connection with the question "For Bonds" and "Against Bonds."

I can determine no exception to the above statutes for public measures proposed or enacted by county or municipal governments. As stated in Union County, Supra: "No authority is referred to, neither have we found any, to the effect that "public measure" means only a measure affecting people or the whole state."

Therefore, based on the previous discussion, I Am of the opinion that legislative proposals or enactment's requiring the approval or rejection of the electorate, whether in the county or municipality are "public measures" and referenda on such measures must comply with opinion 101.161, Florida Statutes. However, bond referenda must be conducted in accordance with Section 100.341, Florida Statutes. Further, that municipalities must comply with any local law related to bond referenda as provided in section 100.311, Florida Statutes.

As you are aware, some confusion exists regarding the transferability of Dade

County's Home Rule Power granted in Article 8, Section 11, of the Constitution of 1885 to the 1968 Constitution. Thus, questions have been raised regarding the applicability of certain sections of the Election Code to Dade County. The State Attorney General's Office is currently reviewing the Election Code in relation to Dade County's Home Rule Power. An opinion is forthcoming. Consequently, no opinion is expressed here regarding the applicability sections 101.161 and 100.341, Florida Statutes to Dade County.

Your questions are answered accordingly.

#### SUMMARY

Legislative proposals or enactment's requiring the approval or rejection of the electorate, whether in the county or municipality are "public measures" and referenda on such measures must comply with s. 101.161, Florida Statutes. However, bond referenda must be conducted in accordance with s. 100.341, Florida Statutes. Municipalities must also comply with any local law enacted related to bond referenda as provided in s. 100.311, Florida Statutes.