

**DE 83-01 January 7, 1983**

**Responsibility of A Supervisor  
Of Elections in Road and Bridge  
District Election; s. 336, F.S.**

*To: Kurt S. Browning, Supervisor of elections, Pasco County Courthouse, 705 East Live Oak Avenue, Dade City, Florida 33525*

*Prepared By: Division of Elections*

Pursuant to your request, this is a Division of Elections Opinion under the authority of Section 106.23(2), F.S. (1982) on essentially the following question:

What are the responsibilities of a Supervisor of Elections regarding qualifying petitions of candidates in a road and bridge district election created by Chapter 336. F.S.?

The road and bridge district which is the subject of this opinion is in Pasco County and was created by general law, Chapter 336, F.S. The election of commissioners for the district is provided by Section 336.62(2)(a) which states in pertinent part:

...the board of county commissioners shall cause to be printed on the ballot for the district referendum the names of any persons qualified as candidates for the office of member of the board of commissioners of the district who have filed with the board of county commissioners a petition signed by persons having not less than 25 percent of the votes within the district. (emphasis added).

The petition requirement also applies to all future elections of commissioners in the district and presumably, all such qualifying petitions must be signed by persons with no less than 25% of the vote in the district. (Section 336.62, F.S., 1981).

The responsibility of the supervisor of elections in the road and bridge district elections is defined in Section 336.62(2)(b):

The supervisor of elections and the property appraiser shall assist the board of county commissioners in preparing a list of eligible electors and the number of votes for each within the proposed district, and the supervisor shall further assist the board of county commissioners with such other administrative matters pertaining to the conduct of the election as the county deems appropriate.

In short, the county commission, not the supervisor of elections is the qualifying official for road and bridge elections. The supervisor of elections merely prepares the list of eligible electors and, in conjunction with the property appraiser, determines the number of votes for each elector (a property owner is given one vote per residential lot). To determine eligible electors, the supervisor must refer to Section 336.62(2)(e) or if the district was created after 1970 and if the election is king held five (5) years after the creation date to Section 336.62(2)(e)(2), F.S. The

power to receive, review and verify qualifying petitions is in the county commission, and the supervisor of elections has no inherent authority to determine qualification of candidates.

In the present case, the Election Code and Chapter 336, F.S. should be considered separate and apart. While there is some support and persuasive argument for the position that the Election Code should govern all elections including special districts (See Opp Atty Gen 078-38, March 3, 1978). there is no judicial authority to support the exclusivity of the Election Code. In 1978, a Pasco County Circuit Judge held that the election procedures of Chapter 336 prevailed over the Election Code regarding road and bridge district elections. (Board of County Commissioners of the Lake Padgett Road and Bridge v. Mary Morgan, Supervisor of Elections Pasco County, Case No. 78-2059, Pasco County, Circuit Court (October 31, 1978); see also Division of Elections Opinion DE 80-15, June 9, 1980). When faced with a latter statute which conflicts with an earlier one, the Supreme Court of Florida favors a presumption that statutes are passed with the knowledge of existing law and a construction is favored which gives each statute a field of operation. The Court hesitates to repeal a statute by implication. (Oldham v. Brooks, 361 So.2d 140, Fla. 1978). Therefore, until otherwise determined by the courts, the Election Code, Chapter 336 and special laws governing special district elections should each be given their "field of operation" and the supervisor of elections should be mindful of general or special law governing special district elections. See DE 82-27 (November 12, 1982).

While the supervisor has no inherent responsibility to receive and review qualifying papers in road and bridge elections under Chapter 336, F.S., there is a provision under the Chapter which allows the county commission to assign "such other administrative matters pertaining to the election" as they deem appropriate. If the county expressly delegated to the supervisor of elections the authority to receive and verify qualifying petitions, it follows that the supervisor is the qualifying official and must determine if a qualification petition is supported by 25% of the votes of the district. Accordingly, the supervisor of elections would not only determine eligible voters but verify the petition under the appropriate provision of law. Without passing upon the validity of a delegation of authority, I emphasize that only through delegation does the supervisor have the power to receive and verify qualifying petitions. If the supervisor is the qualifying officer, it is axiomatic that he may not look beyond the face of any qualifying petition. (State ex rel Cherry v. Stone, 265 So. 2d 56, 1972).

#### SUMMARY

In a road and bridge district election under Chapter 336, F.S., the supervisor of elections has no inherent authority to receive and verify qualifying petitions submitted by candidates for district office, but must be guided by the authority of Section 336.62(2)(b) or any express delegations of authority by the county commission pursuant to this provision.