

DE 83-14 - September 27, 1983

MUNICIPAL ELECTORS

*To: Mr. Andrew Rubin, President of the City of Okeechobee Taxpayers ' Association,
1909 Southwest 5th Avenue, Okeechobee, Florida 33472*

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion under exaction 106.23(2), Florida Statutes on essentially the following question:

Is a municipal ordinance which permits nonresident property owners to vote in a municipal election valid under state law?

On September 12, 1983, the City of Okeechobee passed an ordinance which states in pertinent part:

ARTICLE III: ELECTIONS

Section 11: Registration of Electors - Qualifications

. . Registration of Electors shall be done in accordance with Florida Statutes by the County Supervisor of Elections. Any person who is a registered and qualified voter under the laws of the State of Florida and has resided within the corporate limits of the City of Okeechobee for thirty (30) days prior to said election or who is a bona fide owner of real estate within the limits of said City of Okeechobee and a resident of Okeechobee County and who has been duly registered thirty (30) days prior to said election and who is otherwise qualified according to law shall have a right to vote in said municipal elections;. . . (emphasis added)

The city ordinance creates two classes of electors: (1) a person who is a registered and qualified elector under the laws of Florida and who has resided within the city for thirty (30) days prior to an election; or (2) a person who is an owner of real estate within the city, a resident of Okeechobee County and who has been duly registered thirty (30) days prior to the election and is otherwise qualified according to law.

Under this ordinance a nonresident property holder may vote in the municipal election.

The single permanent registration system created by Chapter 73-155, Laws of Florida, (now action 98.041, F.S.) establishes a single voter qualification system for all voters which supercedes municipal ordinance to the extent that the ordinance is in conflict with the general law. Op Atty. Gen 073-484 (December 26, 1973). Section 98.091, F.S. states:

“(3) Any person who is a duly registered elector pursuant to this code and who resides within the boundaries of a municipality is qualified to participate in all municipal elections, the provisions of special act, or local charters notwithstanding. Electors who are not registered under the permanent registration system shall not be permitted to vote.

The term elector is also defined by Section 166.032, Florida Statutes to be . . . "Any person who is a resident of a municipality who has qualified as an elector of this state. . . ." The single permanent registration system is in lieu of all other systems of municipal registration and requires that a person be a resident of the municipality and a duly registered elector to vote. The Okeechobee ordinance is in conflict with the aforementioned provision of the permanent single registration system because there is no qualification requirement that landowners be residents.

The Supreme Court of Florida ruled on an identical provision in the city charter of the Town of Indian River Shores. In the Town of Indian River Shores et al v. Rosemary Richey, 348 So 2d 1 (1977), the Supreme Court held that the statute providing for permanent single registration for all elections, including municipal elections, implicitly repealed provisions of a city charter which provided that qualified municipal electors shall be town residents or those who own real estate in the town. The court stated that the town charter and the statute were in irreconcilable conflict and, therefore, the legislature intended for the general law to repeal the charter provision.

On the basis of Florida Statutes and the decision of the Supreme Court of Florida in the Town of Indian River Shores, I believe that the City of Okeechobee ordinance which permits nonresident landowners to vote is invalid.

SUMMARY

Under Florida law, a person may vote in a municipal election if he or she is a registered elector according to law and is a resident of the municipality. A municipal charter which permits a nonresident elector to vote in a municipal election is in conflict with Florida law.