

DE 86-13 - August 8, 1986

**POLLING PLACE; PUBLIC
BUILDINGS; REQUIREMENTS;
SECTION 101.71(5),
FLORIDA STATUTES**

To: Mr. Wilson W. Wright, General Counsel-Executive Director, Florida State Association of Supervisors of Elections, Inc., 217 South Adams Street, Tallahassee, Florida 32301

Prepared by: Division of Elections

This is in response to your request for an advisory opinion under Section 106.23(2), Florida Statutes. Because your inquiry pertaining to Section 101.71(5), Florida Statutes, involves a relationship between the duties of supervisors of elections and the responsibilities of public officials charged with the management of public buildings, your question is substantially as follows:

By Section 101.71(5), Florida Statutes, are public officials responsible for public buildings required or mandated to provide space for use as a polling place upon request of a supervisor of elections?

Section 101.71(5), Florida Statutes, provides as follows: Public, tax-supported buildings shall be made available for use as polling places upon the request of the supervisor of elections.

The right to vote is, without question, among the most fundamental in a free society. In recognition of the primacy of this right, the legislature intended by this provision to make space available in public buildings for the conduct of elections. Public buildings generally are readily accessible to the public, especially the handicapped, and usually have adequate and convenient parking facilities.

The word "shall" in a statute normally has a mandatory connotation, especially where personal property rights and interests are involved, Neal vs. Bryant, 149 So.2d 529, 97 ALR 2d 819 (Fla. 1962); Lomelo vs. Mayo, 204 So.2d 550 (Fla. 1st DCA 1967). However, where mandatory words are written in statutes defining the duties of administrative officers, such words may be construed as directory only, unless something in the body of the statute indicates a contrary view, Bunkley vs. State, 95 Fla. 457, 116 So. 78 (1928). I note that the statute contains no penalty or other prohibitory language for noncompliance. Although at first blush it may appear that these principles of statutory construction operate at cross purposes, they are harmonious because of the overriding public benefit flowing from the statute. Accordingly, in order to accomplish the public benefit, it is permissible to rely on the rule of reason in giving due weight to the language and importance of the statute, and the general object intended to be accomplished by the law.

Therefore, I conclude that upon a reasonable request by a supervisor of elections for space in public, tax-supported buildings to be used as a polling place, public officials charged with the responsibility of managing these buildings must, in the public interest, make a reasonable effort to provide the requested space.