

DE 87-04 - May 22, 1987

**Municipal Recall
Section 100.361, Florida Statutes**

To: Ms. Kathy M. Alesafis, City Clerk and Collector, City of Tarpon Springs, Post Office Box 1575, Tarpon Springs, Florida 34286-1575

Prepared by: Division of Elections

This is in response to your letter of May 19, 1987 in which you asked our opinion on the following questions regarding Section 100.361, Florida Statutes:

1. May an allegation be deleted from a recall petition after the petition has been filed with the clerk?
2. If an allegation on a recall petition is false, does that render the petition void or invalid?
3. Would removal of an allegation with the approval of the chairman of the committee for recall invalidate the petition?

In my opinion, there is no statutory authority in Section 100.361, Florida Statutes, to change a petition once the petition has been signed and is filed. According to Section 100.361(1)(f), Florida Statutes, the city clerk, or his equivalent, must prepare and deliver mimeographed counterparts of "the recall petition" to the committee. If one of the charges in the initial recall petition were deleted, then it follows that the clerk would not be delivering the recall petition. Since a recall election is a special, extraordinary and unusual proceeding, the statutory authority authorizing the recall must be substantially pursued, or the recall may be held invalid and enjoined. State ex rel. Landis v. Tedder, 106 Fla. 140, 143 So. 14 (1932). Therefore, allegations in a recall petition may not be deleted.

You also asked if an allegation were false, would that render the petition for recall void or invalid. Attorney General's Opinion 075-119, April 25, 1975, found that the truth of the grounds alleged in a recall petition is not a prerequisite to holding a recall election. Moreover, in Tolar v. Johns, the court noted that "the truth or falsity of the charges...is a matter for the electorate to determine in an election." 147 So.2d 196 (Fla. 2nd DCA 1962); accord: Gilbert v. Morrow, 227 So.2d 812 (Fla. 1st DCA 1973).

We are not addressing the sufficiency of the allegations set forth in the petition.

Your last question was whether the removal of the subject allegation with the approval of the chairman of the committee would render the recall petition invalid. The answer is yes.

We hope this information is helpful.