

The statutes addressed in this opinion have changed. Please consult current Florida law.

DE 88-09 - March 28, 1988

Municipal Recall
Sections 99.092(1); 99.095(1); 100.361; 101.151; and 101.191, F.S.

To: Honorable J. K. "Buddy" Irby, Supervisor of Elections, Alachua County, County Administration Building, Gainesville, Florida 32601

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on municipal recall, Section 100.361, Florida Statutes. You are the Alachua County Supervisor of Elections and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

Section 100.361, Florida Statutes, provides uniform procedures for recall of municipal officers or officers of a charter county. Alachua County is a charter county and has adopted the recall provisions of Section 100.361, Florida Statutes, for its county commissioners. The commission is partisan. Your specific questions are as follows:

1. Section 100.361(4) requires a special election to fill vacancies. Do candidates to succeed potentially recalled commissioners pay the 5% filing fee and party assessment?
2. May candidates running to succeed potentially recalled commissioners run by the alternative method contained in Section 99.095(1), Florida Statutes? If so, since there is no primary, what dates would apply?
3. If, in the final analysis, no current member is recalled, and therefore, no vacancy is declared, do the candidates to succeed them have refunded the fees required to run?
4. Since the county commission in your county is partisan, should the supervisor of elections list the party affiliation of candidates as if it were a general election ballot?

In reference to your first question, whether candidates to succeed potentially recalled commissioners must pay the 5% filing fee and party assessment, such candidates must pay this fee. Section 99.092(1), Florida Statutes, provides that "Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a filing fee to the officer with whom he qualifies and any party assessment levied.... The amount of the filing fee is 3 percent of the annual salary of the office. The amount of the committee assessment is 2 percent of the annual salary." (Emphasis added.) There are no exceptions to this provision, except the two method mentioned: candidates qualifying by the alternative method or as a write-in candidate.

In reference to your second question, whether a candidate may run by the alternative method, the alternative method is available only for "A person seeking to qualify for nomination to any office who is unable to pay the filing fee and party assessment prescribed by s. 99.092 without imposing an undue burden on his personal resources or on resources otherwise available to him...." (Emphasis added.) Section 99.095(1), Fla. Stat. The alternative method of qualifying is available only for persons seeking to qualify for nomination to office and not election to office. Candidates are nominated for office by political parties in the political party primaries and the persons nominated by this process are the party candidates for election at the general election. While your candidates are partisan candidates, they are running for election and not for party nomination. Therefore, the alternative method of qualifying is not available to them.

In reference to your third question, if, in the final analysis, no current member of the commission is recalled, and therefore, no vacancy is declared, do the candidates who qualified to succeed them have their fees refunded, we answer this question in the affirmative. While there are no specific provisions in the municipal recall section of the Florida Election Code for refunding fees when there is no successful recall, Section 99.092, Florida Statutes, does provide for refunding of qualifying fees in certain circumstances. Until legislatively or judicially determined otherwise, it is our opinion that these fees are to be refunded when no current member is recalled, and therefore, no candidate may succeed the present commissioner.

In reference to your fourth question, as to whether the supervisor of elections lists the party affiliations of candidates to succeed as if it were a general election ballot since your county commission is partisan, this is also answered in the affirmative. Section 101.151 and 101.191, Florida Statutes, provide the specifications and form for general election ballots. The municipal recall ballot, when the elections are partisan, is most similar to a general election ballot and the specifications set forth in these two sections of the Code should be followed.

SUMMARY

Candidates to succeed potentially recalled commissioners must pay the 5% filing fee and party assessment. Candidates running to succeed potentially recalled commissioners may not run by the alternative method contained in Section 99.095(1), Florida Statutes. If no current member is recalled, the candidates to succeed them will have their qualifying fees refunded to them. When candidates running to succeed potentially recalled commissioners will serve on a partisan county commission if elected, their party affiliations must be listed on the ballot as if it were a general election ballot.