

DE 88-46 - November 2, 1988

**Municipal Recall
Section 100.361(1), F.S.**

To: Mr. Robert R. Crittenden, Attorney, Town of Dundee, Post Office Drawer 152, Winter Haven, Florida 33882-0152

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on Section 100.361, Florida Statutes, which deals with municipal recall.

You are the Attorney for the Town of Dundee and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions to several categories of persons including local officers with election related duties. Therefore, we have authority to issue this opinion.

Your specific questions are as follows:

1. When, and directed to what petition, may a written demand be filed by a person signing a recall petition under Section 100.361, Florida Statutes, to have his name stricken from that petition?
2. At what point in such recall proceedings may the city clerk strike names from the first recall petition referred to in paragraph (1)(d) of that statute?

In reference to your first question, when, and directed to what petition, may a written demand be filed by a person signing a recall petition to have his name stricken from that petition, such a demand may be filed with the city auditor or clerk after an elector has signed the second petition or counterpart as it is referred to in Section 100.361(1)(f) and (g), Florida Statutes.

The statute makes no provision for the withdrawal of signatures from the first petition. If the elector changes his mind about recalling an official, he simply need not sign the second petition or counterpart.

Section 100.361(1)(g), Florida Statutes, provides that "no signature may be stricken after the city auditor or clerk, or his equivalent, has certified the total number of electors to the governing body." This section was interpreted in Newton v. Martina, and the court affirmed the lower court's opinion which held that no signatures could be withdrawn after delivery of the petition or counterpart to the supervisor of elections for verification of the signatures. 371 So.2d 234, 236 (Fla. 1st DCA 1979).

In reference to your second question, at what point in such recall proceedings may the city clerk strike names from the first recall petition referred to in Section 100.361(1)(d), Florida Statutes, as previously stated, the city clerk may not strike names from the first recall petition at any time.

SUMMARY

An elector may not have his name stricken from the first recall petition, but may refrain from signing the second petition referred to in Section 100.361(1)(d), Florida Statutes, as the counterpart. If an elector signs the counterpart and then wishes to have his name stricken, a written demand filed with the city clerk before the clerk delivers the counterpart to the supervisor of elections for verification of signatures will result in the striking of the elector's name from the counterpart.