DE 90-13 - March 29, 1990

Selection of Polling Places
Sections 101.71 and 101.715, F.S.

To: Honorable Dorothy K. Holt, Supervisor of Elections, Clay County, Post Office Box 337, Green Cove Springs, Florida 32043

Prepared by: Division of Elections

This is in reference to your letter requesting an opinion regarding designation of a church as a polling place. The designation of polling places by a supervisor of elections is covered in Sections 101.71 and 101.715, Florida Statutes. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions to several categories of persons including supervisors of elections. Specifically, you have asked:

> Is the designation of a church as a polling place an unacceptable violation of the constitutional concept of separation of church and state?

Determining whether government action violates the concept of separation of church and state involves analysis under either the Establishment Clause or the Free Exercise Clause of the United States Constitution.

There is no fixed per se rule to determine whether government activity violates the Establishment Clause. In Lemon v. Kurtzman, 403 U.S. 602, 612 (1971), the Supreme Court held that the analysis of legislation in this area begins with:

1. there must be a secular purpose for the activity;

2. the principal or primary effect cannot advance or inhibit religion; and

3. there is not an excessive entanglement with religion.

Supervisors of elections are given the discretion to select the polling places for each county subject to the standards of accessibility set forth in Section 101.715(1), Florida Statutes.

Using a church as a polling place advances the government‘s secular purpose of providing adequate polling facilities which are easily accessible to the voters in each precinct. Churches are often the only feasible building to use for a polling place when other public buildings fail to meet the statutory requirements or are not conveniently located for the voters.

Voting in a church does not promote a specific religion in that no particular type of church is given preference over another.

Designation of a church as a polling place does not cause excessive entanglement between the government and the church. The church does not benefit from opening their doors to the public as a polling place nor is there any resulting relationship. Taken in context, the use of a church as a polling place does not convey a religious message. It is simply a way to provide ample and adequate polling locations for the public.

In addition, the Attorney General of Florida has opined that when a church serves as a polling place, it loses its identity, at least while it serves as a polling place, as private property. See Op. Atty. Gen. Fla. 87-5. Moreover, the Attorney General opined that when "private property is voluntarily offered by private individuals or organizations and is utilized as a polling place in conducting an election, the First Amendment guarantees of freedom of speech and association are available and may not be infringed upon by the private property owner." Id. at 4. In this opinion, a church was concerned "that the setting up of tables or displays on church property which is being used as a polling place may give the appearance that the church is involved in the gathering of signatures." Id. The Attorney General opined that the "church can expressly disavow any connection with the procedure by posting signs in the area which disclaim any sponsorship of signature collection, or it may set up its own tables or displays in opposition. Id. Also see Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980).

Under the Free Exercise Clause, federal and state legislation cannot in any way restrict or burden certain aspects of religious exercise. Braunfeld v. Brown, 366 U.S. 599, 603 (1961). The freedom to hold or reject religious beliefs and opinions is absolute. In Braunfeld, the Court held that a law is unconstitutional if the purpose or effect of a law is to impede the observance of one or all religions, even if the burden is indirect. However, if the purpose and effect of the law is to advance the state's secular goals, the statute is valid despite its indirect burden on religious observance unless the state may accomplish its purpose by means which do not impose such a burden.

Designation of a church as a polling place does not require the observance of any particular religion in violation of the Free Exercise Clause. It does not require that a person adopt the religious beliefs of the church in order to vote or forbid beliefs which are contrary to those of the church where the voting takes place.

In addition, if a person's religious beliefs forbid entering a church-related building for voting purposes, Section 101.64, Florida Statutes, allows any person whose religious tenets prevent him from attending the polls to vote by absentee ballot. The incidental burden to such a person to vote absentee is so slight that it does not outweigh the interest of the state in having the additional polling places which churches provide. Berman v. Bd. of Elections, City of New York, 420 F.2d 684, 686 (2d Cir. 1969).

Considering the statutory authority given to a supervisor of elections to select polling places and the standards used by the Supreme Court to determine whether government conduct violates the Free Exercise Clause or the Establishment Clause, the designation of a church as a polling place is not an unacceptable violation of the constitutional concept of separation of church and state.

SUMMARY

The designation of a church as a polling place is not an unacceptable violation of the constitutional concept of separation of church and state.