

A statute addressed in this opinion has changed. Please consult current Florida law.

DE 90-33 - July 19, 1990

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

To: Mr. Richard S. Amari, Amari, Theriac and Roberts, P.A., Mariner Square, Suite 302, 96 Willard Street, Cocoa, Florida 32922

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to certain categories of persons including local officers having election related duties. You are City Attorney for the City of Cocoa and request this opinion relating to duties of your city clerk related to her election duties under the Florida Election Code.

Your question is:

What are the duties of a city clerk under the provisions of Section 100.361, Florida Statutes, with regard to a petition for recall which is filed with the city clerk and on its face meets the requirements of Section 100.361, Florida Statutes, but the city officer whose recall is being sought has not served one-fourth of his term of office?

Effective January 1, 1990, the city clerk has the responsibility to exam a recall petition and determine whether the recall petition contains one of the seven grounds listed in Section 100.361(1)(b), and, therefore, is facially valid pursuant to the statute. Section 100.361(1)(d), Florida Statutes, provides in pertinent part:

If it is determined by the clerk that the petition does not meet the requirements of s. 100.361(1)(b) and therefore is not facially valid, the clerk shall so notify the governing body of the municipality or charter county and take no further action. The petition cannot be amended after it is filed with the clerk. (Emphasis added.)

Section 100.361(6), Florida Statutes, specifically provides that no petition to recall any member of the governing body of a municipality shall be filed until the member has served one-fourth of his term of office. The statute does not address the question as to whether it is the city clerk's responsibility to determine that the city official whose recall is being sought has served one-fourth of his term. However, this question was answered by the First District Court of Appeal in Taylor v. Thornber when the court held that when a municipal recall petition is filed seeking to recall a municipal officer who has not completed one-fourth of his term of office, the petition is untimely. Taylor v. Thornber, 418 So.2d 1155 (1st DCA 1989).

SUMMARY

The city clerk has the responsibility to exam a recall petition and determine whether the recall contains one of the seven grounds listed in Section 100.361(1)(b), and, therefore, is facially valid pursuant to statute. It is not the city clerk's responsibility to determine whether the city official whose recall is being sought has served one- fourth of his term. However, when a municipal recall petition is filed seeking to recall a municipal officer who has not completed one-fourth of his term of office, the petition is untimely.