

DE 90-44 - October 22, 1990

**Municipal Recall Elections**  
**Section 100.361, F.S.**

*To: Mr. T. Ray DeBord, Deputy Mayor, City of Cocoa, Post Office Box 1750, Cocoa, Florida 32923*  
*To: Mr. Mitchell S. Goldman, Amari, Theriac & Roberts, P.A., Mariner Square, Suite 302, 96 Willard Street, Cocoa, Florida 32922*

*Prepared by: Division of Elections*

This is in reference to your requests for advisory opinions on municipal recall elections. You are the Deputy Mayor and the Attorney for the City of Cocoa, respectively. 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.

You ask:

1. Are moneys spent for the purpose of erecting signs advocating recall of certain municipal officers prior to the date the recall election is publicly announced, unauthorized expenditures pursuant to Section 100.361(7), Florida Statutes?
2. Does the municipal clerk have the authority to strike a signature from a recall petition which does not contain an address, precinct number, or the date signed?

In reference to the first question, Section 106.011(4), Florida Statutes, provides, in pertinent part, that an expenditure is a purchase, payment, distribution, loan, advance, gift of money or anything of value made for the purpose of influencing the results of an election. Thus, moneys spent for the purpose of erecting signs advocating recall of specific municipal officers is an expenditure for purposes of the election code.

Section 100.361(7), Florida Statutes, provides that no expenditures for campaigning for or against an officer being recalled shall be made until the date the recall election is to be held is publicly announced. The above section prohibits expenditures prior to the announced recall election, but not the receipt of contributions. See Op. Div. Elect. Fla. 81-06. Further, the "committee" and the officer being recalled are subject to the provisions of the campaign financing law, Chapter 106, Florida Statutes. A petition committee accepting contributions during a calendar year in excess of the aggregate amount of \$500 before the announcement date for the recall election is required to register as a political committee pursuant to Section 106.03, Florida Statutes.

Therefore, until judicially or legislatively clarified, it is the Division's opinion that pursuant to Section 100.361(7), Florida Statutes, moneys spent for the purpose of erecting signs prior to the date a recall election is publicly announced is an unauthorized expenditure. Apparent or alleged violations of this

section may be investigated by the Division of Elections. See Sections 100.361(7), 106.22(7), Fla. Stat.

In reference to the second question, the municipal clerk is charged with the duty to determine whether a recall petition is facially valid. However, the statutes limit the determination of facial validity to a determination as to whether the petition contains at least one of the seven grounds for removal stated in Section 100.361(1)(b), Florida Statutes. See Op. Div. Elect. Fla. 90-33. The municipal clerk's duties are ministerial only, and the clerk has no duty to determine whether the signatures on the recall petition are valid. Once it is determined by the municipal clerk that the petition is facially valid, the clerk submits the petition to the supervisor of elections of the county for verification of signatures.

The supervisor has 30 days after receipt of the petition to verify the signatures to insure that each person signing the petition is a registered voter in the municipality and to determine that the petition contains the required number of valid signatures. Supervisors of elections are constitutional officers and have discretionary authority to determine the authenticity of a signature. See Op. Div. Elect. Fla. 78-29.

Therefore, the municipal clerk does not have the authority to strike signatures from a municipal recall petition which do not also have an address, precinct number, or the date signed.

In addition, you have asked us to review Section 2-21 of the Cocoa City Code which provides, in part, "In the event of any conflict between said statutes and the charter, this chapter or any ordinance of the city, the charter, this chapter or the ordinance shall prevail." The Division of Elections has authority to provide opinions relating to Chapters 97-106, Florida Statutes. Therefore, the Division does not have authority to give an opinion relating to the Cocoa City Code. However, we would like to direct your attention to Section 100.361(8), Florida Statutes, which provides:

It is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charter and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of this conflict. (Emphasis added.)

### **SUMMARY**

Moneys spent for the purpose of erecting signs prior to the date a recall election is publicly announced are unauthorized expenditures pursuant to Section 100.361(7), Florida Statutes.

The municipal clerk does not have the authority to strike signatures from a recall petition.