

DE 93-08 - September 23, 1993

**Vacancy in County Precinct Committee Office
Sections 98.031; 103.091(5); and 103.131(4), F.S.**

TO: Mr. Tom Slade, Chairman, Republican Party of Florida, Post Office Box 311, Tallahassee, Florida 32302

Prepared by: Division of Elections

This is in response to your request for an advisory opinion from the Division of Elections regarding when a vacancy is created in the county executive committee office of a precinct committee person. You are the Chairman of the Republican Party of Florida and, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

According to your letter, a precinct boundary was changed putting two committee people in the same precinct. You ask whether a supervisor of elections has the authority to change precinct lines during the term of a precinct committee person and, if so, how are elections handled when, because of such line changes, two committee people, elected in 1992, are now in the same precinct.

For reasons which follow, the answer to the first part of your question is yes; the answer to the second part of your question is that both committee people serve out the remainder of their four-year terms. Moreover, no vacancy has been created by the change of precinct lines.

With the exception of certain years preceding the United States census, the board of county commissioners, upon the recommendation and approval of the supervisor, may alter precinct lines at any time. Section 98.031, Fla. Stat.

As to the second part of your question, Section 103.091(5), Florida Statutes, provides in pertinent part:

In the event no county committeeman or committeewoman is elected, or a vacancy occurs from any other cause in any county executive committee, the county chairman shall call a meeting of the county executive committee by due notice to all members, and the vacancy shall be filled by a qualified member of the political party residing in the district where the vacancy occurred and for the unexpired portion of the term.

Our research has found no court decision interpreting this statutory language. However, this language formerly appeared, in substantially the same form, in Section 103.111(2)(b), Florida Statutes (1977), and it was the opinion of Florida's Attorney General that such language should be interpreted to be applied prospectively only. See, Op. Att'y Gen. 51-475 (December 21, 1951). We adopt the Attorney General's reasoning

Additionally, the Legislature in Section 103.131, Florida Statutes, specifically limits those cases in

which a vacancy in a political party office is deemed to have occurred to one of the following:

- (1) Death of the incumbent.
- (2) Resignation.
- (3) Removal.
- (4) Ceasing to be an inhabitant of the state, district, or precinct for which he shall have been elected or appointed.
- (5) Refusal to accept the office.
- (6) Conviction of the incumbent of any felony.
- (7) Decision of a competent tribunal declaring void his election or appointment, and his removal by said tribunal.
- (8) Failure to attend, without good and sufficient reason, three consecutive meetings, regular or called, of the committee of which he is a member.

A long standing rule of statutory construction, expressio unius, exclusio alterius, which translates into the "the mention of one implies the exclusion of another," requires the view that where the Legislature has specifically enumerated certain cases in which a vacancy in every political party office is to occur, no other case can be inferred. In the words of the Florida Supreme Court in Thayer v. State, 335 So. 2d 815, at 817 (Fla. 1976):

[W]here a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those things not expressly mentioned.

Accordingly, it is the opinion of the division that a vacancy has not been created where a change in precinct lines results in a committee person residing outside his or her precinct. Rather, each committee person serves out the remainder of his or her term until the next regularly scheduled election as though there has been no change in the precinct boundaries.

SUMMARY

Except for the three-year period preceding the United States census, the board of county commissioners, with the approval and recommendation of the supervisor of elections, may alter precinct boundaries at any time. If the boundary changes result in a committee person being placed in a new precinct, he or she serves out the remainder of his or her term as if no boundary changes had taken place.