

DE 94-14 - August 1, 1994

**Recalls in Charter Counties
Section 100.361, F.S.**

TO: Mr. C. Allen Watts, Attorney at Law, Cobb Cole & Bell, Post Office Box 2491, Daytona Beach, Florida 32115-2491

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding recalls and nonpartisan elections in charter counties. You are legal counsel for the Brevard County Charter Commission. Therefore, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

Essentially, you ask the following questions:

1. May a county charter lawfully provide a method for the recall of county officers?
2. May a county charter, not expressly authorized by the constitution, provide for the nonpartisan election of constitutional county officers?
3. If question two is answered in the affirmative, may a county charter specify a method of qualifying for nonpartisan candidates by petition, which differs from the requirements established by general law for partisan candidates in noncharter counties?

Your first question is answered in the affirmative. A county charter may provide a method for the recall of county officers. However, the provisions of Section 100.361, Florida Statutes, are applicable to all chartered counties and will prevail over any conflicting provisions in such charters to the extent of the conflict.

Section 100.361, Florida Statutes, sets forth the statewide uniform recall procedures for the removal from office of any member of the governing body of a chartered county by the elections of the chartered county. See, Section 100.361(8), Fla. Stat. The recall provisions provided in that section are applicable to all charter counties regardless of "whether or not they have adopted recall provisions." Section 100.361(9), Fla. Stat. Although charter counties may adopt recall provisions, the provisions of Section 100.361, Florida Statutes, will prevail over any conflicting provisions in such charters to the extent of the conflict. Section 100.361(8), Fla. Stat. Therefore, if a county charter adopted recall provisions which conflicted with the procedures provided in Section 100.361, Florida Statutes, the conflicting charter provisions would have no legal effect.

Your second and third questions involve issues requiring an interpretation of the Constitution of the State of Florida. Constitutional questions fall within the province of the Office of the Attorney General. Any questions relating to the constitutionality of nonpartisan elections of county officers

should be submitted to the Office of the Attorney General. Therefore, we are unable to render an opinion on your second and third questions.

SUMMARY

A county charter may provide a method for the recall of county officers. However, the provisions of Section 100.361, Florida Statutes, are applicable to all chartered counties and will prevail over any conflicting provisions in such charters to the extent of the conflict.