

DE 96-02 - July 15, 1996

**City and County Election Canvassing
DE 95-05**

TO: Mr. Thomas B. Hart, Humphrey & Knott Professional Association, Attorneys-At-Law, 1625 Hendry Street, Fort Myers, Florida 33901

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding city and county election canvassing boards. You are an attorney representing Philinda Young, Lee County Supervisor of Elections and pursuant to section 106.23(2), Florida Statutes (1995), the Division has authority to issue this opinion to you.

You ask whether Division of Elections Opinion 95-05 (Oct. 2, 1995) is altered or modified by the passage of section 100.3605, Florida Statutes (1995).

Division of Elections Opinion 95-05 states, inter alia, that since the county canvassing board has statutorily mandated exclusive responsibility for canvassing county elections, where city and county elections appear on the same ballot, only the county canvassing board may canvass the election. The statutory sections prescribing the jurisdiction and procedures applicable to the canvass of elections are couched in mandatory as well as exclusionary language. For example, section 102.141, Florida Statutes, specifies the composition and duties of the county canvassing board. Subsection (2) states that "[a]s soon as the absentee electors' ballots are canvassed, the board *shall* proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county...." Thus, the Election Code does not authorize anyone other than the statutorily designated individuals to act as the county canvassing board for the canvass of county elections.

Section 100.3605, Florida Statutes, states that "[t]he Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision." In the instant case, the City of Fort Myers charter specifies the composition of the City canvassing board and includes members different from the statutorily mandated county canvassing board. The City election is to appear on the same ballot with the Lee County election and the City's position is that the City's canvassing board may canvass the City's portion of the election as a result of the passage of the new statutory section.

The passage of section 100.3605, Florida Statutes, and resultant local legislation cannot be interpreted to have amended or repealed provisions of the Election Code by implication. The legislature's intent in enacting the new statute was to "ensure a standard of conduct for municipal elections...." House of Representatives, Committee On Ethics and Elections, Final Bill Analysis and Economic Impact Statement, May 19, 1995. The effect of the statute is to mandate that the Election Code applies to

cities unless cities exempt themselves therefrom or provide otherwise by special act, charter or ordinance provision. The fact that a city has enacted a charter provision on the same subject as the Election Code, in this case canvassing boards, does not operate as a preemption or repeal of the state law. It is fundamental in statutory construction that where later statutes are passed with knowledge of prior existing laws, each will be given a field of operation rather than have one rendered meaningless or repealed by implication. State Department of Public Welfare v. Galilean Children's Home 102 So. 2d 388 (Fla. 2d DCA 1958) at 393 *quoting* 50 Am. Jur., Statutes, §§354 and 362. A repeal by implication is disfavored in the law. State v. Collier County, 171 So. 2d 890 (Fla. 1965). Thus, the city charter canvassing board provisions will govern stand-alone city elections but where the city election is on the same ballot as the county election, the Florida Statutes provisions on canvassing boards will govern the entire election.

SUMMARY

Division of Elections Opinion 95-05 is not altered, amended or modified by the passage of section 100.3605, Florida Statutes. As such, a city may not canvass a county election when the city and county elections appear on the same ballot.