

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

DE 99-07 - November 17, 1999

Municipal Recall
§100.361, Fla. Stat. (1999)

TO: Ms. Grace Chewning, City Clerk, City of Orlando, 400 South Orange Avenue, Orlando, Florida 32801-3302

Prepared by: Division of Elections

This is in response to your faxed letter to me of November 10, 1999, requesting an advisory opinion. The Division is authorized to provide this advisory opinion to you, as the City Clerk of the City of Orlando, pursuant to section 106.23(2), Florida Statutes. The facts of your case are as follows. The "Ax the Tax" committee wishes to gather signatures in an attempt to recall the City of Orlando's mayor, Glenda Hood. The committee's form is being circulated by mail, allowing registered voters within the same household to witness the other voter's signature.

Section 100.361, Florida Statutes, provides for the recall of any member of the governing body of a municipality or charter county. Section 100.361(1)(c), Florida Statutes, reads:

Each petition shall contain appropriate lines for signatures and addresses of electors and an oath to be executed by the circulator thereof, verifying the fact that the circulator saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the circulator on the date indicated.

You have asked whether petitions executed as described in the first paragraph, meet the requirements of section 100.361, Florida Statutes. The answer to your question is no.

The term "circulator" is not defined in the municipal recall statute, nor anywhere else in the Florida Election Code. However, the language contained in section 100.361 implies that a circulator is someone who is associated with or volunteers his time on behalf of the sponsor committee. See §100.361(7), Fla. Stat. (prohibiting the payment of persons to circulate a recall petition). If the legislature had intended to permit the procedure proposed by the "Ax the Tax" Committee, it could have created a simple witnessing process, not unlike that of the absentee ballot, whereby members of the same household could attest to each other's signatures. Thus, it is my opinion that a circulator must be someone who is associated with the committee and that petitions cannot be circulated by mail.

I trust the foregoing is responsive to your inquiry. Please feel free to contact our office if you have additional questions.

Sincerely,



L. Clayton Roberts, Director
Division of Elections

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