

DE 00-07 - September 14, 2000

**The Florida Elections Commission's duty to enforce violations of election-related provisions of local charters and ordinances.
§ 104.011(1), Fla. Stat.**

TO: Dr. Susan A. MacManus, Chair, Florida Elections Commission, Room 2002, The Capitol, Tallahassee, Florida 32399-1050

Prepared by: Division of Elections

This is in response to your request for an opinion relating to the Commission's duties to enforce Chapter 104 and 106, Florida Statutes. You are the Chair for the Florida Elections Commission and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask the following:

1. Whether the duty to enforce Chapters 104 and 106, Florida Statutes, applies to enforcing violations of election-related provisions contained in various county and municipal charters and ordinances.
2. Whether counties and municipalities can legally enact various election-related provisions in their charters and ordinances.

With regard to the first question, generally speaking, the Commission does not have the duty or authority to enforce the various election-related provisions of the local charters and ordinances. However, as stated in your letter, there are certain provisions of Chapter 104, Florida Statutes, which might be construed to allow the "piggybacking" of alleged charter and ordinance violations onto election-related violations thereby indirectly expanding the jurisdiction of the Commission. One such provision is section 104.011(1), Florida Statutes, which provides:

A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(Emphasis added.) The term "any" is generally defined as "[o]ne indiscriminately of whatever kind or quantity." *Blacks Law Dictionary, 86 (6th edition 1990)*. Thus, based upon the plain language of section 104.011(1), Florida Statutes, the Commission has jurisdiction to enforce this section as it pertains to the oaths required by local charters and ordinances pertaining to voting or elections. With regard to other violations of local charters or ordinances, the Commission has the duty to enforce these violations only if such are also violations of Chapters 104 or 106, Florida Statutes.

As you note in your letter, the duty to enforce local provisions which are piggybacked onto Election Code violations could become burdensome for the Commission. Thus, the Commission may wish to

seek to legislatively limit its jurisdiction over local violations.

Your second question deals with whether a local government may legislate in the election law area or whether this area is preempted by state law. This question involves the interpretation of Section 1, Article VIII, Florida Constitution, regarding the powers and authority of local governments. Subsection (2) of section 106.23, Florida Statutes, reads:

The Division of Elections shall provide advisory opinions when requested by any supervisor of election, candidate, local officer having election-related duties, political committee, committee of continuous existence, or other person or organization engaged in political activity, relating to any provisions or possible violations of Florida election laws with respect to actions such supervisor, candidate, local officer having election-related duties, political party, committee, person, or organization has taken or proposes to take.

(Emphasis added.) Section 1, Article VIII, Florida Constitution does not relate to "Florida election laws." For this reason, the Division is without jurisdiction and therefore declines to opine on whether local governments may legislate in the election law area.

However, a recent ruling in the Twelfth Judicial Circuit provides support for the legality of such ordinances. *See Claravella v. Bd. of Co. Comm. of Sarasota Co. Fla.*, 99-4201-CA, Div. C (Fla. 12th Cir.). In *Claravella*, the court held that Chapter 106, Florida Statutes, does not expressly or impliedly preempt local governments from legislating in the arena of campaign financing. Thus, until legislatively determined otherwise, it appears that local governments may enact election-related provisions which do not conflict with Chapters 97-106, Florida Statutes.

SUMMARY

The Commission does not have the authority or duty to enforce local election provisions unless a violation of such provision constitutes a violation of Chapter 104 or 106, Florida Statutes.