

DE 02-01 - March 4, 2002

**Municipal Voting Systems
§ 101.011, 101.28, 101.5604, 100.3605 Florida Statutes**

To: The Honorable Sylvia D. Stephens, Supervisor of Elections, Jackson County, Post Office Box 6046, Marianna, Florida 32447

Prepared by: Division of Elections

Dear Ms. Stephens:

This is in response to your request for an advisory opinion regarding the appropriate voting system in municipal elections. You are the Supervisor of Elections for Jackson County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You essentially ask the following.

After the repeal of sections 101.011 and 101.28, Florida Statutes, will municipalities regardless of size, be required to use, at a minimum, an optical scan with precinct count voting system or may municipalities amend their charters to allow for the municipalities' currently used systems?

It should be noted that the above-cited statutes are not effectively repealed until September 2, 2002. However, the Election Reform Bill, Chapter 2001-40, Laws of Florida, has mandated widespread change in Florida's election processes.

For the reasons stated below, the answer to your question depends on whether or not the municipality will be using the county's system or running its own elections.

Section 101.011, Florida Statutes, provides procedures for voting by paper ballot and will be repealed on September 2, 2002. In conjunction with the repeal of this section, "paper ballot" is redefined in section 97.021(2)(a), Florida Statutes, as a "printed sheet of paper, *used in conjunction with an electronic or electromechanical vote tabulation voting system*". (emphasis added). These two sections basically abolish the use of paper ballots without the use of an electronic or electromechanical voting system.

In general, the Florida Election Code governs municipal elections "in the absence of an applicable special act, charter, or ordinance provision," pursuant to section 100.3605(1), Florida Statutes. Although municipalities may adopt provisions governing their own elections, no charter may conflict with or exempt a municipality from any statutory provisions that apply expressly to municipalities.

Section 101.5604, Florida Statutes, requires that counties "must" use an electronic or electromechanical precinct-count tabulation voting system. While this provision expressly applies to

counties, it does not expressly apply to municipalities. A municipality, pursuant to section 100.3605, Florida Statutes, may amend its charter to provide for the use of paper ballots for municipal elections. If a municipality chooses to use the county's system, then it must abide by the Florida Election Code, which requires counties to use, at a minimum, precinct-based optical scan systems.

SUMMARY

A municipality may amend its charter to provide for the use of paper ballots in a municipal election. If a municipality chooses to use the county's voting system, it must use, at a minimum, an optical scan precinct count system.

Sincerely,

L. Clayton Roberts
Director, Division of Elections

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