

DE 02-05 - April 9, 2002

**Municipal Recall
§ 100.361(6), Florida Statutes**

To: The Honorable Mark Andersen, Supervisor of Elections, Bay County, 205 Mosley Drive, Lynn Haven, Florida 32444

Prepared by: Division of Elections

Dear Mr. Andersen:

This is in response to your request for an advisory opinion regarding municipal recalls. You are the Supervisor of Elections for Bay County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You are writing asking for a formal opinion based on the following facts:

1. Sometime before September 6, 2001, a recall petition was filed against certain members of the town commission in the Town of Cedar Grove in Bay County in accordance with section 100.361, Florida Statutes.
2. After the required petitions were verified, Circuit Judge Pittman ordered on March 15, 2002 that a recall election be held on May 7, 2002 for the following members of the commission of Cedar Grove:

Mayor-Commissioner Hildrie Peel
Commissioner Richard McNeil
Commissioner Eddie Curti
Commissioner George "Jerry" Walsh

3. On January 28, 2002, Mayor-Commissioner Peel was suspended from office by the Governor because he was under indictment for a felony.
4. On February 12, 2002, Commissioner Curti resigned from his position as commissioner and was reappointed to the commission in the position of mayor-commissioner.
5. Mr. Danny Rendell was then appointed to fill the commissioner vacancy created by the resignation of Commissioner Curti.

You ask the following question:

Which persons in which seats of the Board of Commissioners are now subject to recall?

The starting document for this inquiry is the order of Judge Pittman. That established that the following Commissioners were subject to recall:

Mayor-Commissioner Hildrie Peel
Commissioner Richard McNeil
Commissioner Eddie Curti
Commissioner George "Jerry" Walsh

At the time of Judge Pittman's order, Mayor-Commissioner Peel was under suspension from office by the Governor for being under a felony indictment. Under a suspension, a municipal officer has the right to be reinstated if acquitted of the charges giving rise to the suspension (Article IV, Section 7, Florida Constitution). Therefore, although Mayor-Commissioner Peel is not currently exercising his office, he is still subject to recall. Commissioner Curti resigned his commission seat on February 12, 2002. This resignation was effective and created a vacancy in the seat previously held by Commissioner Curti. The commission attempted to appoint Mr. Curti to the Mayor-Commissioner seat. Subsection (6) of section 100.361, Florida Statutes, states, "[n]o person removed by a recall, or resigning after a petition has been filed against him or her, shall be eligible to be appointed to the governing body within a period of two years after the date of such recall or resignation." Therefore, Mr. Curti, having resigned, is unable to fill any seat on the governing board for a period of two years.

After the resignation of Commissioner Curti, the remaining members of the commission appointed Mr. Danny Rendell to the commission. This appointment appears to be in compliance with the Charter of Cedar Grove and is probably effective.

The end result leaves the following persons and offices subject to recall:

Mayor-Commissioner Hildrie Peel
Commissioner Richard McNeil
Commissioner George "Jerry" Walsh

SUMMARY

Based upon the facts presented and pursuant to the provisions of section 100.361, Florida Statutes, the following persons and offices are subject to recall: Mayor-Commissioner Hildrie Peel; Commissioner Richard McNeil; and Commissioner George "Jerry" Walsh. Mr. Eddie Curti, having resigned his commission seat after the recall petition was filed against him, is unable to fill any seat on the governing board for a period of two years.

Sincerely,

L. Clayton Roberts
Director, Division of Elections

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