

July 3, 2007

The Honorable Mac V. Horton
Charlotte County Supervisor of Elections
P.O. Box 511229
Punta Gorda, Florida 33951-1229

RE: DE 07-02
Early Voting; §§ 97.021(7), 101.657, and
212.055(6), Florida Statutes

Dear Mr. Horton:

This letter responds to your request for an advisory opinion. You are the Supervisor of Elections for Charlotte County; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2006).

You ask essentially the following questions:

If the Board of County Commissioners approves a request from the School Board for a sales tax referendum¹ (no candidates involved) to be held on a date not in conjunction with any other county or state election, is early voting required? If early voting is required, would the early voting begin 15 or 8 days before the election?

The short answer to your first question is "No." Therefore, an answer to your second question is not necessary.

With regard to your first question, several statutory definitions are involved. Relevant definitions in section 97.021, Florida Statutes (2006), include:

(7) "Early voting" means casting a ballot prior to election day at a location designated by the supervisor of elections and depositing the voted ballot in the tabulation system.

¹ The referendum is permitted by s. 212.055(6)(a), Florida Statutes (2006), which states:

The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(10) "Election" means any primary election, special primary election, special election, general election, or presidential preference primary election.

(14) "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

(27) "Primary election" means an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office.

(32) "Special election" is a special election called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office.

(33) "Special primary election" is a special nomination election designated by the Governor, called for the purpose of nominating a party nominee to be voted on in a general or special election.

Unless the context clearly indicates otherwise, these definitions apply throughout the Election Code (s. 97.021, Florida Statutes (2006)). All types of elections within the definition of "election" solely involve candidates or nominees, except for "general election[s]," which may also include votes on constitutional amendments.

Also, relevant portions of s. 101.657, Florida Statutes (2006), state:

101.657 Early voting.--

(1)(a) As a convenience to the voter, the supervisor of elections shall allow an elector to vote early in the main or branch office of the supervisor. The supervisor shall mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot. In order for a branch office to be used for early voting, it shall be a permanent facility of the supervisor and shall have been designated and used as such for at least 1 year prior to the election. The supervisor may also designate any city hall or permanent public library facility as early voting sites; however, if so designated, the sites must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable. The results or tabulation of votes cast during early voting may not be made before the close of the polls on election day. Results shall be reported by precinct.

(b) The supervisor shall designate each early voting site by no later than the 30th day prior to an election and shall designate an early voting area, as defined in s. 97.021, at each early voting site. ...

(d) Early voting shall begin on the 15th day before an election and end on the 2nd day before an election. For purposes of a special election held pursuant to s. 100.101, early voting shall begin on the 8th day before an election and end on the 2nd day before an election. Early voting shall be provided for 8 hours per weekday and 8 hours in the aggregate each weekend at each site during the applicable periods. Early voting sites shall open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day. ...

(f) Notwithstanding the requirements of s. 189.405, special districts may provide early voting in any district election not held in conjunction with county or state elections. If a special district provides early voting, it may designate as many sites as necessary and shall conduct its activities in accordance with the provisions of paragraphs (a)-(c). The supervisor is not required to conduct early voting if it is provided pursuant to this subsection.

The definition of a special district is contained in s. 189.403(1), Florida Statutes (2006), which reads:

"Special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. ... The term does not include a school district

Because a school district is not a "special district," s. 101.657(1)(f), Florida Statutes (2006), does not apply to a school district sales tax referendum vote not held in conjunction with county or state elections. Moreover, the context of s. 101.657, Florida Statutes (2006), does not clearly indicate that the definitions of "early voting," "election," and "special election" are intended to differ from the definitions in s. 97.021, Florida Statutes (2006). Because early voting means casting a ballot prior to "election" day and an "election" means a "primary election, special primary election, special election, general election, or presidential preference primary election," as those terms are further specifically defined by statute, a sales surtax referendum approved by a Board of County Commissioners on behalf of a school district is not an "election" for purposes of the early voting provisions in s. 101.657, Florida Statutes (2006). Therefore, a Supervisor of Elections is not required to offer early voting on a school district sales tax referendum that is not held in conjunction with a county or state election.

Because early voting is not required under the circumstances you describe, an answer to your second question regarding the timing of early voting is not necessary.

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SUMMARY

A sales surtax referendum approved by a Board of County Commissioners on behalf of a school district is not an "election" for purposes of the early voting provisions in s. 101.657, Florida Statutes (2006). Early voting is not required for a school district sales tax referendum not held in conjunction with a county or state election.

Sincerely,

Amy K. Tuck
Director, Division of Elections

Prepared by:
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