



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

March 7, 2014

Awilda Rodriguez
Village Clerk, Village of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

RE: DE 14-02 Canvassing Board –
Disqualification of Members; City
Canvassing Board, §§ 100.3605, 102.141,
Florida Statutes

Dear Ms. Rodriguez:

As clerk for the Village of Wellington, you have asked for an advisory opinion to essentially answer the following question:

Is the Village of Wellington Canvassing Board subject to the provisions contained in § 102.141, Florida Statutes (2013), providing for the appointment of substitute canvassing board members when a member is an “active participant” in the campaign of a candidate who has opposition in the election being canvassed?

Because this answer will assist you in your election-related duties, the Division is authorized to issue an opinion pursuant to section 106.23(2), Florida Statutes (2013).

Section 102.141 of the Florida Statutes is titled “County canvassing board; duties” and includes the qualifications for members of such boards. Among these qualifications is that a county canvassing board member cannot be a “candidate who has opposition in the election being canvassed” or an “active participant” in the campaign of a candidate who has opposition in the election being canvassed. § 102.141, Fla. Stat.

The issue of whether section 102.141 applies to a municipality is governed by section 100.3605, Florida Statutes, which provides in pertinent part as follows:

The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality’s election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a



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municipality from any provision in the Florida Election Code that expressly applies to municipalities.

§ 100.3605(1), Fla. Stat. The Election Code applies to a municipal election if either (1) the Election Code provision expressly applies to municipalities, or (2) the municipality does not have an “applicable” special act, charter, or ordinance provision. If the municipality does have a special act, charter, or ordinance provision that is “applicable,” and the applicable Election Code provision does not expressly apply to municipalities, then the local provision applies, not the Election Code. *See id.*

Section 102.141 does not expressly apply to municipalities. Therefore, the answer to your question depends on whether the Village of Wellington has an “applicable” special act, charter, or ordinance provision. *See* § 100.3605(1), Fla. Stat. As you indicate in your letter, the charter of the Village of Wellington contains the following provision:

Section 8. Elections.

G. *Village canvassing board.* The village canvassing board shall be composed of those members of the village council who are not candidates for reelection and the village clerk, who shall act as chairperson....

Section 8G is applicable to the composition of the canvassing board and the qualifications of village canvassing board members, who are to be composed of the village clerk and members of the village council “who are not candidates for reelection.” In other words, it sets forth who the members of the board should be, as well as under what circumstances those individuals who would otherwise serve as board members would be ineligible. Likewise, section 102.141, Florida Statutes sets forth the composition of county canvassing boards as well as the circumstances under which board members may not serve. Because the charter of the Village of Wellington contains a provision applicable to the question of who should and should not serve on the canvassing board, section 102.141, Florida Statutes, does not govern the Village of Wellington in the administration of its elections pursuant to section 100.3605, Florida Statutes.

SUMMARY

Section 102.141, Florida Statutes, does not apply to the composition of the local canvassing board for the Village of Wellington for the following reasons:

1. Section 102.141 is not a law that expressly applies to municipalities, and
2. The Village of Wellington has adopted a charter that contains a provision that applies specifically to the composition of the canvassing board.

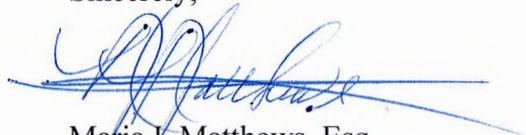
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Therefore, by the operation of the exception in section 100.3605, F.S., which otherwise subjects municipalities to the Florida Election Code, the charter provision for the Village of Wellington governs the composition of the canvassing board and when a member is ineligible to serve.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Matthews", is written over a horizontal line. The signature is stylized and cursive.

Maria I. Matthews, Esq.
Director, Division of Elections