Counties - Supervisor of Elections - Petitions

Number: AGO 2015-12

Date: September 11, 2015

Subject:
Counties – Supervisor of Elections – Petitions

The Honorable Brian E. Corley
Pasco County Supervisor of Elections
Post Office Box 300
Dade City, Florida 33526-0300

RE: Counties – Charters – Supervisor of Elections – Petitions – date to be used to determine whether petition requesting appointment of county charter commission has been signed by requisite number of voters. s. 125.61, Fla. Stat.

Dear Mr. Corley:

As Supervisor of Elections for Pasco County, you have asked for my opinion on substantially the following question:

What date must a Supervisor of Elections use to calculate whether the required number of qualified voters have signed a petition requesting the establishment of a county charter commission pursuant to section 125.61, Florida Statutes?

In sum:

A Supervisor of Elections should use the date upon which the petition requesting the establishment of a county charter commission is submitted to the county commission to calculate the number of qualified voters required to meet the statutory requirement of "15 percent of the qualified electors of the county" mandated by section 125.61, Florida Statutes.

According to information obtained by this office, a citizens group in Pasco County has announced that it plans to seek petition signatures to require appointment of a county charter commission. The statute requires a determination of whether the petition has been "signed by at least 15 percent of the qualified electors of the county[.]" As the Supervisor of Elections, you are unsure when this calculation should be made as the statute is silent in this regard.

Section 125.61, Florida Statutes, was enacted by Chapter 69-45, Laws of Florida, as a part of the procedure enabling a county to adopt a home rule charter. The proceedings may be initiated by resolution of the board of county commissioners or by petition signed by at least 15 percent of the qualified electors of the county. Within 30 days of the adoption of the resolution or the filing of the petition, the members of the county charter commission "shall be appointed[.]" Specifically, the statute provides:

"125.61 Charter commission.—

(1) Following the adoption of a resolution by the board of county commissioners or upon the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of the county requesting that a charter commission be established, a charter commission shall be appointed pursuant to subsection (2) within 30 days of the adoption of said resolution or of the filing of said petition.

(2) The charter commission shall be composed of an odd number of not less than 11 or more than 15 members. The members of the commission shall be appointed by the board of county commissioners of said county or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or board of county commissioners shall be a member of the charter commission. Vacancies shall be filled within 30 days in the same manner as the original appointments."

Unlike a number of other statutes requiring a calculation of the requisite number of signatures on a petition, section 125.61, Florida Statutes, does not establish a benchmark date for the Supervisor to make this calculation. In section 100.361, Florida Statutes, dealing with municipal recall elections, a recall petition must be signed by "at least 50 electors or by 10 percent of the total number of registered electors of the municipality or district *as of the preceding municipal election*, whichever is greater."[1] (e.s.) Similarly, section 166.031(1), Florida Statutes, dealing with municipal charter amendments, provides:

"The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors *as of the last preceding municipal general election*, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose."[2] (e.s.)

It is a general rule of statutory construction that courts, in construing a statute, cannot invoke a limitation or add words to a statute not placed there by the Legislature, nor is this office authorized to do so.[3] Thus, this office cannot read into section 125.61, Florida Statutes, a requirement that these calculations be made "as of the last preceding . . . general election" or other such qualifying event. Further, the fact that the qualifying language exists in other statutes, particularly the municipal charter process described in section 166.031, Florida Statutes, *supra*, suggests that it was not intended to apply to the process described in section 125.61, Florida Statutes.

Other language in section 125.61, Florida Statutes, suggests that the date the petition is presented to the county commission is a significant date for this process. The statute provides that the charter commission must be appointed "within 30 days . . . of the filing of said petition." It would appear reasonable to conclude that the date upon which the petition is presented to the county commission is the benchmark date for calculation of the required number of signatures on the petition.

Therefore, in the absence of any legislative or judicial mandate to the contrary, it is reasonable to conclude that pursuant to section 125.61, Florida Statutes, a Supervisor of Elections should use the date a petition for establishment of a charter commission is submitted to the county commission to determine the number of signatures representing "at least 15 percent of the qualified electors of the county."

Sincerely,

Pam Bondi
Attorney General

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[1] Section 100.361(2)(b)1., Fla. Stat. *And see* s. 100.361(2)(b)2. - 6., Fla. Stat., containing identical language as to the benchmark date.

[2] However, like s. 125.61, Fla. Stat., several statutes contain no benchmark date for calculation of the requisite number of signatures on a petition. See s. 171.051(2), Fla. Stat., providing the procedure for municipal contraction by a petition of 15% of qualified voters in an area; and s. 367.072(2)(b), Fla. Stat., relating to a utility's certificate of authorization to provide water service and the requirements for petitions to revoke such certificates which must be signed by 65% of the customers in the service area covered by the certificate of authorization.

[3] See *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130 (Fla. 1990); *Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974); *and see* Ops. Att'y Gen. Fla. 82-80 (1982) (Attorney General, like a court, is not free to add words to a statute to support a conclusion that the plain wording of the statute does not supply; general rule of statutory construction is that any doubts as to legislative intent should be resolved against the power of the court to supply missing words); 98-82 (1998) (Attorney General will not read words of limitation into statute); 94-09 (1994); 87-43 (1987); 86-32 (1986); 82-20 (1982).