Supervisor of Elections, municipal election records

Number: INFORMAL

Date: March 10, 2010

Subject:
Supervisor of Elections, municipal election records

The Honorable Lester Sola
Miami-Dade County Supervisor of Elections
2700 Northwest 87th Avenue
Miami, Florida 33172

Dear Mr. Sola:

You have asked for assistance in determining the appropriate custodian of records of municipal elections conducted by your office on behalf of 35 municipalities located within Miami-Dade County. You state that your office is contracted by the municipalities to schedule and conduct the elections, as well as tabulate results. The local supervisor is the municipal clerk and the local elections are certified by municipal boards. You have no question regarding your responsibility to retain records of all federal, state, and county elections conducted by your office, but question whether the records for municipal elections should be returned to the respective municipality once the election process is completed and the municipality would maintain such records.

You have asked the Florida Records Storage Center for guidance and been advised that its rules do not address your concerns and directed to contact the Division of Elections (DE). That agency (DE), while noting that the ability to transfer the records to another agency depends upon a determination of who was the actual custodian of such records, advised that you seek guidance from this office. The DE noted that if you were merely performing the legwork of the election, *i.e.*, operating the machines, signing in voters, etc., with the election being conducted under the "auspices" of the municipality, then it could be that the municipality is the custodian of the records.

It would appear that ultimately the determination of whether you or the municipality is the custodian of the election records depends upon whether you have been delegated the function of conducting the election, and such a determination would depend upon the terms of the contract between you and the municipality. This office has no authority to resolve mixed questions of fact and law. In order to be of assistance, however, the following general comments are offered.

Florida's Public Records Law, Chapter 119, Florida Statutes, makes records made or received in connection with the transaction of official business by any "agency" open for public inspection, unless a statute exempts such records or makes the records confidential.[1] "Agency" is defined to include:

"[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau,

commission, or other separate unit of government created or established by law . . . and *any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency*."[2] (e.s.)

Section 119.021, Florida Statutes, sets forth the custodial requirements for the maintenance, preservation, and retention of public records. For purposes of Chapter 119, Florida Statutes, "[c]ustodian of public records" is defined as "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee." Thus, Chapter 119, Florida Statutes, dictates the responsibilities of the custodian of public records.

In this instance, you state that you have been contracted by the municipalities to conduct their municipal elections, but that the clerk for each municipality performs the role of supervisor of elections and that each municipality certifies the election. Under these circumstances, it is assumed that you provide the records generated by the election to the clerk in order for him or her to carry out the duties of a supervisor of elections and for the use of the appropriate board to certify the election. You have not provided, nor have I found, any statutory provision or court case indicating a requirement that a county supervisor of elections conducting municipal elections under these circumstances would be required to maintain such records otherwise maintained by the municipality. It would appear that the records would be municipal records that should be maintained by the municipality for which the election was handled.

Section 100.3605, Florida Statues, states:

"(1) 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 municipality from any provision in the Florida Election Code that expressly applies to municipalities.
(2) The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes."[3]

Section 101.002(1), Florida Statutes, authorizes the board of county commissioners of each county, with the concurrence of the supervisor of elections, to arrange the boundaries of voting precincts in each municipality within the county to conform to the boundaries of the municipality, subject to agreement of the municipality. This allows the use of the registration materials held by the supervisor of elections to be used by the municipal elections board or other appropriate elections official in conducting the municipal election.

Thus, the Florida Election Code recognizes that a city's charter or ordinance may direct the conduct of a municipal election, so long as such provisions do not conflict with or exempt a city from any provision in the code expressly applicable to a municipality. As noted, there appears to be no code provision that requires a county Supervisor of Elections to maintain records of a municipal election conducted by the supervisor on behalf of the municipality, when such records are returned to the municipality for custodial purposes. However, the terms of each municipality's charter or ordinances may affect the role of the Supervisor of Elections as custodian of municipal election records.[4]

I trust that these informal comments will be of assistance to you in resolving this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsh

---

[1] *See* s. 119.011(12), Fla. Stat., defining "Public records;" and *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc*., 379 So. 2d 633 (Fla. 1980).

[2] Section 119.011(2), Fla. Stat.

[3] *See* DE 03-01, The Hon. David C. Leahy, January 23, 2003 (Florida Election Code generally applies to the conduct of municipal elections only in the absence of an applicable special act, charter or ordinance provision).

[4] *See,e.g.,* s. 8.01, City of Tampa Code of Ordinances, providing:

"The supervisor of elections of Hillsborough County shall be elections officer of the City of Tampa and shall conduct, hold, and regulate all municipal elections of every kind, nature, or character whatsoever held in the city, including regular, general, special, bond, referendum, recall, charter and all other municipal elections. The elections officer shall not be required to be a resident or elector of the city."

And see s. 8.20, City of Tampa Code of Ordinances, stating that "the elections officer shall give any person desiring a copy of election returns or any other records in the custody of said officer a certified copy thereof or such part thereof as may be desired, upon payment of the customary fee for copying and certifying papers in the office of the clerk of the circuit court, which said fees shall be paid into the general fund of the city treasury." *Cf*. s. 49, City of Miami Charter, creating the office of the city clerk and imposing, among others, the duty to "[c]onduct, supervise and certify all city elections;" *and* s. 10-7, City of Homestead Code of Ordinances, designating the city clerk as the supervisor of elections for the city and assigning all appurtenant duties thereto; authorizing the city clerk to obtain any necessary assistance from the Miami-Dade County Supervisor of Elections office or successor agency.