Municipal Election Dates

Number: INFORMAL

Date: August 11, 2008

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

Mr. Steven F. Spina
City Manager
City of Zephyrhills
5335 Eighth Street
Zephyrhills, Florida 33542-4312

Dear Mr. Corley and Mr. Spina:

Thank you for your letters requesting this office's opinion on the following questions:

"1. May a municipality in Pasco County change the date of their election by ordinance; even though the following Legislative act, Chapter 84-506, House Bill No. 378, Section 1, states, "...the intent of this act is to provide for uniform filing and election dates for all municipal elections to elect municipal officers in Pasco County . . ." and this act became effective on January 1, 1985?

2. If the answer to Number 1 is yes, does that mean 101.75, Florida Statutes, supersedes Chapter 84-506, House Bill No. 378, Section 1?

3. If the answer to Number 1 is no, will Pasco County's municipalities need to have a Legislative act to be able to change their municipal election dates by ordinance?"

For several reasons, this office will be unable to formally address these questions.

Interpretation of provisions of "The Florida Elections Code," Chapters 97-106, Florida Statutes, is the exclusive province of the Division of Elections, Department of State.[1] Thus, since your questions involve an interpretation of the elections code, you may wish to pose these questions to that office.

In addition, your questions appear to require an analysis of the charters or ordinances of every municipality in Pasco County. This is beyond the scope of this office's authority unless each municipality joins in your request and the attorneys for those municipalities submit the required information to us for review. This office can only comment on the powers and duties of a municipality if a majority of the members of the governing body requests such an opinion.[2] Therefore, any opinion commenting on the authority of a municipality to take action by ordinance

must be requested by the governing body or its attorney.

However, in an effort to assist you in some way, I would offer the following informal general comments.

Chapter 84-506, Laws of Florida, was enacted by the Legislature in 1984 to provide uniform filing and election dates for municipal elections in Pasco County. The terms of the special act are general and appear to be effective throughout the county.[3] The terms of Chapter 84-506, Laws of Florida, were amended in 1992 by Chapter 92-227, Laws of Florida, to revise filing dates for municipal elections, but no substantive amendments to the terms of the special act have been made.[4]

The terms of section 101.75(1) and (2), Florida Statutes, appear to deal with an emergency situation where a municipality determines that the county does not have the number of voting devices available to meet the demands of a municipal and a statewide or county election to be held on the same date. In this situation, the statute provides municipalities with the authority to change the date of a municipal election by ordinance.

Because the provisions of the special act appear to be general in nature and the statutory language in section 101.75 (1) and (2), Florida Statutes, is directed to a specific situation, it would appear that these provisions can be read so that the force and effect of each is preserved.[5] Reading these provisions in pari materia, it would appear the specific provisions of section 101.75(1) and (2), Florida Statutes, would control in the event a municipality determines that the voting devices of the voting system will not accommodate holding a municipal election on the same date as a statewide or county election. In all other cases, the provision of the special act relating to all municipalities in Pasco County would control.

I would strongly suggest that, if this is indeed a current issue in Pasco County, you work with the attorneys for the individual municipalities to determine whether action is needed and in what form it must occur. It may be necessary to review the charters and ordinances for each municipality and section 101.75(1), Florida Statutes, appears to contemplate that a determination must be made that a municipality will not have enough voting devices available for both a municipal and statewide or county election before the provisions of the act are effective.

I regret that this office cannot be of more direct assistance to you in this regard. However, I trust you will understand that our authority is limited and we are bound to comply with our statutory directive.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 97.012(1), Fla. Stat.

[2] *See* section 16.01(3), Florida Statutes and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at www.myfloridalegal.com).

[3] *See* s. 1, Ch. 84-506, Laws of Fla.

[4] *See* Ch. 92-227, Laws of Fla.

[5] *See Wakulla County v. Davis*, 395 So. 2d 540 (Fla. 1981), *Ideal Farms Drainage District, et al. v. Certain Lands*, 19 So 2d 234 (Fla. 1944) and *State ex rel. Ashby v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).