

accountability of funds raised by a testimonial affair as opposed to the accountability of funds raised by a political committee per se, it appears that a group which is organized to hold a testimonial affair pursuant to §99.193, F. S., does not come within the purview of Ch. 73-128, Laws of Florida.

Question 1 is answered in the negative.

AS TO QUESTION 2:

I have already concluded in response to your first question that an individual or group of persons organized to hold a testimonial affair pursuant to §99.193, F. S., is not within the provisions of Ch. 73-128, *supra*. Moreover, neither §99.193 nor Ch. 73-128 prohibits the person in charge or sponsor of such testimonial affair from printing tickets and invitations for a testimonial affair prior to the time the person in whose honor the affair is being held has qualified as a candidate or upon any other condition or occurrence.

Section 99.193, F. S., does not restrict testimonial affairs solely to candidates for office or to "qualified candidates" as opposed to "candidates" generally, and does not impose any requirement relative to candidates qualifying for office as a condition precedent to the holding of a testimonial affair.

Pursuant to §1(1)(b) of Ch. 73-128, *supra* [§106.011(1)(b), F. S.] any person who has received contributions or made expenditures, appointed a campaign treasurer, designated a campaign depository, or has given his consent for any person to receive contributions or make expenditures in behalf of his candidacy may be deemed to be a candidate for public office even if such person has not filed his qualification papers and paid his qualifying fees as provided by law.

I am therefore of the opinion that the filing of qualification papers and payment of qualifying fees by the person in whose behalf and honor a testimonial affair is to be held are not conditions precedent to the printing of tickets and invitations for a testimonial affair as defined by §99.193, F. S.

Question 2 is answered in the negative.

073-426—November 21, 1973

ELECTIONS

REGISTRATION OF MUNICIPAL ELECTORS

To: Richard (Dick) Stone, Secretary of State, Tallahassee

Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General

QUESTIONS:

1. Are the registration books required to be closed thirty days prior to an election and remain closed until five days after the election, as provided for in §98.051(4), F. S., after January 1, 1974, the date on which all municipalities are required to adopt and use the county permanent registration system?

2. Do the qualifications of an elector, as provided for in §97.041, F. S., apply to voters in municipal elections?

3. What effect does Ch. 73-155 have on Ch. 59-1436, Laws of Florida, which provides for a class B voter (nonresident homeowner)?

SUMMARY:

Under the provisions of Ch. 73-155, Laws of Florida, on January 1, 1974, after which all municipalities will be required to use a single permanent registration system for the registration of electors to qualify them to vote in all elections: The opening and closing of registration

books shall be in accordance with the provisions of §98.051, F. S.; the qualifications of a municipal elector shall be the same as those of a state or county elector and they shall be in accord with the provisions of §§97.041, 98.091, and 166.032, F. S.; and special acts and charter provisions providing for special municipal voter qualifications are now superseded pursuant to the provisions of Ch. 73-155 establishing a permanent single registration system.

Since the questions are interrelated they will not be considered separately except in summary.

Former §98.041, F. S. 1971, provided the several municipalities of this state the option to adopt the permanent single registration system utilized and maintained by the counties of this state.

The provisions of §1, Ch. 73-155, Laws of Florida, amended §98.041, F. S., to read as follows:

**98.041 Permanent single registration system established; effective date.**—*A permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties and municipalities. This system shall be put into use by all municipalities prior to January 1, 1974, and shall be in lieu of any other system of municipal registration. Electors shall be registered in pursuance of this system by the supervisor or by precinct registration officers, and electors registered shall not thereafter be required to register or reregister except as provided by law. (Emphasis supplied.)*

Under the former optional registration system, any registered elector in a municipality using the permanent registration system was qualified to participate in the city's election regardless of the provisions of a city's charter or other laws to the contrary as the city had the authority to either abide by the provisions of its charter or in the alternative the cumulative general act. *See* §98.091, F. S. 1971; *Armstrong v. City of Edgewater*, 157 So.2d 422 (Fla. 1963).

As revised by §2, Ch. 73-155, Laws of Florida, §98.091, F. S., reads in part:

**98.091 Use of system by municipalities.**—

(3) Any person who is a duly registered elector pursuant to this chapter [Ch. 98] and who resides within the boundaries of a municipality is qualified to participate in all municipal elections, the provisions of special acts or local charters notwithstanding. (Emphasis supplied.)

As now amended by Ch. 73-155, *supra*, and §§98.041 and 98.091(3), *supra*, any optional authority heretofore vested in the governing body of a municipality will be terminated on January 1, 1974, and it is an inescapable conclusion that the legislature by virtue of these several amendments has preempted local authority on matters of voter registration. *Cf.* AGO's 071-330 and 073-345 regarding state preemption on regulating campaign contributions and expenditures in municipal elections.

By analogy, the effect of the conversion from separate municipal registration to a permanent single registration system is similar to the prior transfer of varying county registration systems to a permanent system prior to January 1, 1960. Accordingly, §98.151, F. S., in summary provides that former registration systems existing under general law or population, local, or special acts, continue only until a permanent registration system is adopted, and after that time *all* state laws in conflict or inconsistent with the provisions of the state's election code would cease to remain in full force or effect.

Administration of a permanent single registration system is, by the provisions

of Ch. 98, F. S., the responsibility of a county supervisor of elections. The duties and responsibilities of a supervisor regarding the handling of the registration books for permanent registration systems are prescribed in §98.051, which among other things sets forth the times when the books for municipal elections shall be closed prior to any election. The supervisor may not proceed in any manner other than that specifically prescribed by the statutes.

Section 98.051(4), F. S., prescribes that county registration books shall close at 5:00 p.m. on the thirtieth day before each election and remain closed for five days after the election; and §98.051(5)(b), F. S., specifically provides that when a municipal election is called at a time when the books are open, the supervisor shall close all books to further registration for such municipal election thirty days prior to the election date or immediately if the date of such election is less than thirty days, but no mention is made as to the opening of the books for registration following the municipal election. It is clear that the classes covered by the above provisions are the same and must be considered *in pari materia* as a single procedure insofar as the opening or closing of registration books under a permanent registration system is concerned. *Cf. Seminole Rock Products, Inc. v. Town of Medley*, 180 So.2d 457 (Fla. 1965); *Special Tax School Dist. No. 1 of Duval County v. State*, 123 So.2d 316 (Fla. 1960); *State v. County of Sarasota*, 62 So.2d 708, 711 (Fla. 1953).

What shall constitute a municipality's responsibility in regard to voter registration and qualifications is for the legislature to declare. The amendatory language employed in Ch. 73-155, *supra*, should be taken in the sense in which it was understood when it was enacted and it may thereby include all situations, conditions, subjects, methods, and persons subject to such legislative subject matter. *Cf. State v. City of Jacksonville*, 50 So.2d 532 (Fla. 1951); *State v. County of Sarasota*, *supra*.

Amended §98.041, *supra*, clearly indicates that the permanent single registration system for the registration of electors will qualify them to vote in all elections *in lieu of any* other system of municipal registration. Revised §98.091(3), *supra*, states, in effect, any person who is duly registered pursuant to Ch. 98, F. S., and who resides within a municipality is qualified to participate in any municipal election, notwithstanding the provisions of special acts or local charters. Of necessity, one would have to conclude that the effect of Ch. 73-155, *supra*, not only brought municipal voter registration under a single permanent system, but it also included elimination of the various diverse municipal voter qualifications. *City of Coral Gables v. Carmichael*, 256 So.2d 404 (3 D.C.A. Fla., 1972); *Town of Jupiter Island v. Gautier*, 157 So.2d 868 (2 D.C.A. Fla., 1963).

Section 97.041(1), F. S., prescribes in summary that the qualifications to register in order to be a qualified elector of a county are that an individual must be: At least eighteen years of age; a citizen of the United States; and, a permanent resident of Florida and of the county where he wishes to register for the preceding sixty days.

As amended by §2, Ch. 73-157, Laws of Florida, §97.041(2), F. S., further provides that a person who is not yet eighteen at the time the registration books are closed, but who will attain such age prior to the next succeeding election and meets the other requirements provided in §97.041(1), above, may register during the sixty days prior to the closing of registration books next preceding his 18th birthday.

Voter qualifications in municipalities are identical to those of any other state elector and, in effect, considering the recent impact of federal decisions such as *Dunn v. Blumstein*, 405 U.S. 330, (1972), *Anderson v. City of Belle Glade*, 337 F. Supp. 1353 (S.D. Fla. 1971), as well as the unreported case of the U. S. District Court, Middle District of Florida (Orlando Div.), Case No. 72-92-Orl-Civ. (May 10, 1972), it appears that there exists little foundation for the continuation of local prerequisites to the right to vote.

Special acts such as Ch. 59-1436, Laws of Florida, providing for nonresident homeowner voting as well as other acts and charter provisions dealing with such

requirements as durational residency and feeholder status for voting have heretofore prevailed over general law as cumulative provisions for local municipal voting. *Armstrong v. City of Edgewater, supra*, and *Town of Jupiter Island v. Gautier, supra*.

Chapter 166, F. S., as revised by Ch. 73-129, Laws of Florida, cited as the "Municipal Home Rule Powers Act," now provides:

**166.032 Electors.**—Any person who is a resident of a municipality, who has qualified as an elector of this state, and who registers in the *procedural manner prescribed by general law and ordinance of the municipality*, shall be a qualified elector of the municipality. (Emphasis supplied.)

However the reference in said §166.032 to registration in the procedural manner prescribed by ordinance of the municipality must give way to the preemptive provisions of Ch. 73-155, *supra*, on matters of voter qualifications and registration. Moreover, §166.021(3)(c), F. S., provides that a municipality has the power to enact any legislation concerning any subject matter upon which the state legislature may act except, *inter alia*, any subject "*expressly preempted to state or county government by the constitution or by general law.*" (Emphasis supplied.)

It is clear that the legislature, by Ch. 73-155, *supra*, intended that special acts and charter provisions shall not prevail over the general election laws of this state relating to the registration of electors in this state qualified to vote in municipal elections.

In consideration of the foregoing, I am therefore of the opinion that the provisions of Ch. 73-155, *supra*, requiring utilization of a permanent single registration system prior to January 1, 1974, for the registration of electors to qualify them to vote in all county and municipal elections, supersede all other existing laws, special acts, or charter provisions on the subject of municipal voter qualifications and registration.

073-427—November 21, 1973

#### RETIREMENT

##### ALTERATION OF EMPLOYEE BENEFITS BY MUNICIPALITY

To: Jerry Melvin, Chairman, House Committee on Retirement, Personnel, and Claims, Tallahassee

Prepared by: Jan Dunn, Assistant Attorney General

#### QUESTION:

May a municipality alter its employee pension benefits under Ch. 73-129, Laws of Florida, without a referendum of the electorate?

#### SUMMARY:

A pension plan set out in a city charter is a right of a municipal employee under Ch. 73-129, Laws of Florida. It, therefore, cannot be changed by municipal ordinance without a referendum of the electorate, as to existing employees. It should be noted, however, that a voluntary pension plan, since it confers a vested contractual right, cannot be changed in any manner by either the legislature or municipality, as to existing employees. A municipality may, without a referendum, set up a different system for future employees which present employees could elect to join.

Section 166.021(4), F. S., created by Ch. 73-129, Laws of Florida, prohibits