



JIM SMITH
Attorney General
State of Florida

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32304

October 8, 1982

Mr. Joel Evers
County Attorney
County of Hardee
Post Office Drawer 1729
Wauchula, Florida 33873

Re: COUNTIES--ELECTIONS--voter participation in straw
ballot limited to electors in unincorporated areas
of county. §125.01(1)(y), F.S.

Dear Mr. Evers:

This is in response to your request for an opinion as to whether voter participation in a straw ballot vote may be limited or restricted to those electors in the unincorporated areas of the county.

According to your letter and supplemental materials supplied to this office, the Department of Corrections has made preliminary inquiries regarding the location of a state prison in the unincorporated area of Hardee County. You state that the location of the prison would affect the county land development code and the county comprehensive plan which are applicable only to the unincorporated areas of the county. You therefore inquire as to whether a straw ballot vote on the issue of the state prison may be restricted to voters in the unincorporated areas of the county or whether the voters in the incorporated as well as unincorporated areas of the county are entitled to vote on this issue.

Section 125.01(1)(y), F.S., expressly authorizes the legislative and governing body of a county to place questions or propositions on the ballot at any primary election, general election or otherwise called special election (provided that a special election is not called for the purpose of conducting a straw ballot), when agreed upon by a majority vote of the total membership of the legislative and governing body so as to obtain an "expression of elector sentiment with respect to matters of substantial concern within the county." Such straw ballots are not binding upon a

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Election Law

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Straw ballots

Mr. Joel Evers
Page Two

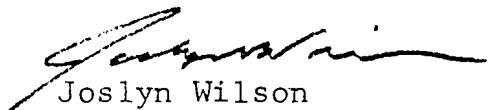
board of county commissioners. Cf., AGO 070-62. And see, AGO's 072-286 and 055-184 in which this office, prior to the adoption of §125.01(1)(y), stated that in the absence of a statute or special law permitting, the board of county commissioners was not authorized to conduct a straw ballot or to expend public funds therefor.

Although 125.01(1)(y) was first adopted in 1977, see, §1, Ch. 77-33, Laws of Florida, the scope of this statutory provision has not been judicially determined. The statute contemplates that issues placed upon the ballot for a straw vote shall be of substantial concern within the county; the statute does not, however, appear to authorize or otherwise provide for limited elections or voting. No other law, general or special, specifically authorizing a county to conduct straw ballots has been brought to this office's attention. Moreover, the outer parameters of home rule with respect to straw vote elections have not been addressed by any appellate decision. This office cannot therefore comment upon the legality of holding a straw ballot vote regarding the location of a state prison in the county which is limited to voters in the unincorporated areas. However, if the straw ballot is to determine elector sentiment regarding the amendment or modification of the land use plan and land development code to accommodate the use of property in the unincorporated areas for prisons or jails, I am not aware of any statute or decision which requires participation in such a straw vote by voters in the incorporated areas which are not subject to the land use plan or land development code.

This informal, advisory opinion reflects the views of the writer and was prepared by the Department of Legal Affairs in an effort to be of assistance to you.

Sincerely,

JIM SMITH
ATTORNEY GENERAL


Joslyn Wilson
Assistant Attorney General

JS/JWw

DYE, CLEARY, SCOTT & DEITRICH, P. A.

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OF COUNSEL
KENNETH W. CLEARY

EXPRESS MAIL
RETURN RECEIPT

September 23, 1982

The Honorable Jim Smith
Attorney General
The Capitol
Tallahassee, Florida 32301

ATTN: Opinions Division

RE: Opinion Request No. 2231 from Hardee County, Florida

Dear General Smith:

As special counsel to Hardee County, Florida, I have been authorized by the Board of County Commissioners to supplement the initial request for an opinion filed by County Attorney Joel Evers on August 27, 1982 regarding whether or not a Hardee County Commission may place a straw ballot question on the ballot at the general election but limit response to those electors residing outside the incorporated municipalities in Hardee County. Attached is a Memorandum and discussion reflecting the County Commission's thoughts on this issue, and I hope they will be of some assistance to you and your staff in responding to the request for an opinion.

If you or any of your staff have any questions about this matter, please do not hesitate to contact me. I remain,

Respectfully,


Judith S. Kavanaugh

JSK/th

Enclosure

cc: Maurice Henderson w/enc.

1. Election Law
2. Straw Vote
3. ballot, general election

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ATTORNEY GENERAL
TALLAHASSEE, FLORIDA

BURTON, EVERS & EZELLE, P. A.

ATTORNEYS AT LAW

POST OFFICE DRAWER 1729

WAUCHULA, FLORIDA 33873

August 27, 1982

JOHN W. BURTON
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MARCUS J. EZELLE

L. GRADY BURTON
1893-1981

TELEPHONE
813-773-3241

The Honorable Jim Smith
Attorney General
The Capitol
Tallahassee, Florida 32301

Dear Mr. Smith:

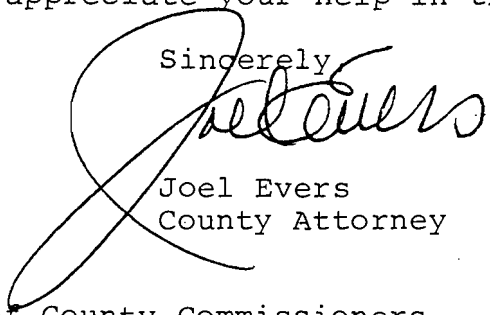
The Board of County Commissioners of Hardee County, Florida, has requested that I seek from your department an Attorney General's Opinion on a "straw ballot" issue involving the location of a state prison in Hardee County.

The problem involves whether the voting can be limited under the present Florida law to the residents of the unincorporated areas of Hardee County or must all registered voters in the incorporated as well as unincorporated areas vote on the issue.

Section 104.0515-1(1), Florida Statutes, which took effect July 1, 1982 seems to address the issue but we need to know whether it can be a limited vote or it must be a total vote of all registered voters so we can prepare the ballot and have the machines ready for the November election.

I will appreciate your help in the matter.

Sincerely,


Joel Evers
County Attorney

JE:bs
xc: Board of County Commissioners

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ATTORNEY GENERAL
TALLAHASSEE, FLORIDA