

Judicial nominating commissions are now official bodies set up under the Florida Constitution. Revised Art. V, §11. These commissions are charged with the duty and responsibility of recommending or "nominating" for gubernatorial appointment persons qualified and eligible to fill vacancies in judicial offices in this state.

The judicial nominating commissions are constitutional bodies falling under the executive branch of government. The legislature has no control over them. In *Times Publishing Co. v. Williams*, 222 So.2d 470 (2 D.C.A. Fla., 1969), the court stated that the Sunshine Law was intended to apply to "every board or commission of the state . . . over which [the legislature] has dominion and control." This would exclude judicial nominating commissions. "It has been held that the separation of powers provision [Art. II, §3, State Const.], prohibits the Legislature from applying the Sunshine Law to members of the Executive [or judicial] branch of the state government while exercising their constitutional duties in their capacities as members of that branch." Letter dated January 17, 1973.

I do not mean to say that the governor, the executive branch, or an administrative-executive body can never fall under the purview of the Sunshine Law. There may be circumstances where their exercise of duties given them by the legislature would bring an "executive" body under the Sunshine Law. For example, as stated in a letter dated January 17, 1973, ". . . when the Governor and Cabinet are sitting in their capacity as a board created by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources, they are subject to the Government in the Sunshine Law." Attorney General Opinion 072-400 says that a regulatory board created by the legislature although acting in an administrative or executive capacity is covered by the Sunshine Law. The facts that the commissions are created by the Constitution and are performing constitutional duties are controlling.

Your question is answered in the negative.

073-349—September 18, 1973

#### ELECTIONS

#### CITY COMMISSIONER MAY NOT BE CANDIDATE TO SUCCEED HIMSELF AT SAME ELECTION AT WHICH HIS RECALL IS SOUGHT

To: *R. B. Fordyce, Mayor, Miami Springs*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

May a city councilman who is subject to recall qualify as a candidate to succeed himself, if recalled, and appear as a candidate on the ballot in the election wherein his recall is sought?

#### SUMMARY:

A city councilman who is subject to recall may not qualify as a candidate to succeed himself, if recalled, and appear as a candidate on the ballot in the election wherein his recall is sought.

While no decision on this point by an appellate court of this state has been found, the courts of other jurisdictions have answered this question in the negative. As stated in 63 Am. Jur.2d *Public Officers and Employees* §60, p. 667:

The cases have generally held that a removal from office bars the removed officer from an election or appointment to fill the vacancy for the

unexpired term, but that it does not disqualify him to take some other office or to be elected or appointed to a new term of the same office.

*In re Recall Election in City of Hackensack*, 154 A.2d 639 (N.J. 1959), is squarely in point. There, as here, the city's charter act did not expressly prohibit a recalled councilman from being eligible to succeed himself for the unexpired term. The court held, however, that the names of the councilmen who were subject to the recall election should be removed from the ballot as candidates to succeed themselves. *Accord*: *Recall Bennett Committee v. Bennett*, 249 P. 2d 479 (Ore. 1952), and cases therein cited; *State ex rel. Thompson v. Crump*, 183 S.W. 505, 507 (Tenn. 1916). In the case last cited, the Tennessee Supreme Court said that

. . . when one is removed from an office, he is removed for the current term, and he cannot thereafter be reelected to that term. This is so because the term is part of the office.

Accordingly, when defendants were removed from the offices of mayor and vice mayor, they were deprived of the right to exercise certain functions and receive certain compensation, and they were deprived of that right for their terms then current. . . .

Thus, in accordance with what appears to be the great weight of authority, it must be held that a city councilman who is subject to a recall election is disqualified to become a candidate for election to the unexpired term of the office and that, by reason of his disqualification, his election, if an election were to be held, would be void.

Your question is, therefore, answered in the negative.

073-350—September 19, 1973

#### RETIREMENT

##### PROVISIONS FOR MUNICIPAL OFFICERS

*To: Harvey W. Perry, City Clerk, Live Oak*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

Is an elected city official who will not have served as such for twenty consecutive years until after October 1, 1973, entitled to the pension benefits of former §165.25, F. S. (1972 Supp.), and if not, is there any way in which the municipality can provide equivalent benefits to such official?

#### SUMMARY:

An elected city official who will not have completed twenty consecutive years of elective municipal service by October 1, 1973, is not entitled to the pension benefits of former §165.25, F. S. [amended and renumbered as §121.20, *id.*, by Ch. 73-129, Laws of Florida], if another retirement system is available to him on that date. However, under Ch. 73-129, *supra* [Section 121.20(3), *id.*], a city may provide a special contributory plan for its elected officials; or, in recognition of the loss of the pension benefits provided by §165.25, it may appropriate funds to its elected officials who have been elected to a term that, if served, will constitute twenty or more years of consecutive elective service with the municipality, sufficient to enable such officials to buy up their past years of service in the Florida Retirement System (or in