

It is clear that the commission is a statutory body having only advisory powers. Therefore, the members of the commission come within the exemption found in Art. II, §5(a), *supra*.

Your question is answered in the affirmative.

073-48—March 8, 1973

ELECTION LAW

DUTY OF SECRETARY OF STATE TO ENFORCE—SUBPOENA POWERS

To: Richard Stone, Secretary of State, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does the Department of State have the duty to enforce the provisions of §99.161(10), F. S. 1971, and to subpoena bank records of public officials in performing that duty?

SUMMARY:

The Department of State has no duty to enforce the provisions of §99.161(10), F. S. 1971, nor to subpoena bank records of public officials in connection with an alleged violation of the campaign-spending law. Under §104.27, *id.*, the duty to investigate alleged violations of this law and to enforce it in appropriate judicial proceedings is vested in the state attorney of the county in which the person charged with violating it resides.

Your question is answered in the negative.

Under §15.13, F. S., the Department of State is vested with the "general supervision and administration of the election laws, corporation laws and such other laws as are placed under it by the legislature and shall keep records of same." However, the Supreme Court of Florida stated in *State ex rel. Shevin v. Stone*, 279 So.2d 17 (Fla. 1972), that the secretary of state does not have the authority to make factual determinations as to the violations *vel non* of the resign-to-run law or the "campaign spending" law. The court said that "[a]ny challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made, as here." [279 So.2d at 22.]

Section 104.27, F. S. 1971, provides a special procedure for the initiation in the circuit court, by petition, of judicial proceedings to try alleged violations of §99.161, *supra*. The petition is filed in the circuit court of the county in which the person charged with the violation resides. This statute makes it the duty of the state attorney of that judicial circuit to investigate the charges made in such petition and to file in the proceedings such pleadings as he determines should be filed. Presumably, in the course of such investigation or proceedings, the state attorney could compel the attendance of witnesses, as authorized by §27.04, *id.*, as well as the production of books and papers in the custody of any such witness as he may properly, under applicable principles of law, be compelled to produce. *See* *Imparato v. Spicola*, 238 So.2d 503 (2 D.C.A. Fla., 1970). However, as noted above, there is nothing in the statutes which either expressly or by necessary implication vests in the Department of State the duty or authority to enforce the provisions of §99.161, *supra*; it necessarily follows that it has no subpoena powers with respect thereto.

I have not overlooked the provision of §104.27(8), *supra*, authorizing the

Department of State to investigate a sworn complaint filed with it involving an alleged violation of §99.161, *supra*, by a corporation, and requiring it to revoke the corporation's charter if it is subsequently found by the court, in an appropriate judicial proceeding, that the corporation has in fact violated the law. However, the department's investigation is a preliminary, fact-finding one only; and it has no power actually to adjudicate the question of the violation. Any findings of fact indicating that a violation has occurred are referred by the department to the state attorney in the appropriate county "for filing of a petition and pleadings in the circuit court." Thus, even in this particular instance, the power to *enforce* the law is vested in the judiciary, acting through its judicial officers.

073-49—March 8, 1973

MUNICIPALITIES

AUTHORITY TO AMEND SPECIAL ACT CREATING POLICE AND FIRE DEPARTMENT PENSION FUND

To: *Hyatt Brown, Representative, 31st District, Daytona Beach*

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

QUESTION:

May the City of Daytona Beach amend the provisions of a special act creating its police and fire department pension fund by ordinance or by amendment to its charter act?

SUMMARY:

A special act establishing a pension fund for a municipality may not be amended by home rule ordinance; however, the provision of the city's charter act adopting the pension plan established by that special act could be amended by special act of the legislature and, perhaps, by an ordinance approved by a majority of the electors voting on the question adopted pursuant to §166.17, F. S. 1971.

Under Art. VIII, §2, State Const., a municipality of this state may exercise any power for municipal purposes "except as otherwise provided by law. . . ." And §167.005(1), F. S. 1971, provides that municipalities

. . . shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when *prohibited* by general or special law. (Emphasis supplied.)

In ACO 070-150, my predecessor in office stated the general rule applicable here, as follows:

. . . a legislative direction by general or special act, including a special charter act, as to the manner in which a particular municipal function or purpose is to be performed, is ordinarily to be interpreted as a prohibition against its being performed in a different manner; and. . . ; such a legislative direction cannot be superseded by a "home rule" ordinance in conflict therewith. When, however, a general or special law provides an alternative method of accomplishing a municipal purpose and merely authorizes a city to proceed in accordance therewith, such *permissive* legislative authority would not be within the rule of statutory construction referred to above.