

073-484—December 26, 1973

## ELECTIONS

## QUALIFICATIONS FOR MUNICIPAL ELECTORS

*To: Kirk Sullivan, Manalapan Town Attorney, West Palm Beach**Prepared by: Michael Parrish, Assistant Attorney General*

## QUESTIONS:

1. Does Art. III, §4 of the charter of the Town of Manalapan [Ch. 59-1531, Laws of Florida], which provides that certain nonresident property owners shall be qualified electors of said town, violate the provisions of Art. VI, §2 of the Florida Constitution?

2. May such nonresident property owners register under Ch. 73-155, Laws of Florida, for the purpose of voting in municipal elections held in Manalapan?

## SUMMARY:

Municipal charter provisions which establish voter qualifications different from those established by general law do not violate Art. VI, §2, State Const., but will be superseded as of January 1, 1974, by the provisions of Ch. 73-155, Laws of Florida.

## AS TO QUESTION 1:

It has been held that the elector qualifications set out in Art. VI, §2, State Const., do not apply to municipal elections. *See Masters v. Duval County*, 154 So. 172 (Fla. 1934); *State ex rel. Lamar v. Dillon*, 14 So. 383 (Fla. 1893). Furthermore, the Constitution now provides that "[r]egistration and elections in municipalities shall . . . be provided by law." Article VI, §6. Therefore, a municipal charter may contain provisions establishing qualifications for electors different from the qualifications of county and state electors. Qualifications similar to the ones provided in the Charter of the Town of Manalapan have been upheld by the courts in *Town of Jupiter Island v. Gautier*, (2 D.C.A. Fla., 1963) and *Hisgen v. Raleigh*, 115 So.2d 715 (2 D.C.A. Fla., 1959). In the latter case the court stated, at 719:

Where there are valid local or special laws relating to the powers and government of particular municipalities that are in conflict with the general statutory law, such local or special laws prevail.

Question 1 is answered accordingly. However, it should be noted, as discussed below in answer to question 2, that the legislature, in passing Ch. 73-155, Laws of Florida, has preempted all matters of municipal voter registration.

## AS TO QUESTION 2:

In AGO 073-426 I discussed at length the effect of Ch. 73-155, Laws of Florida, on municipal charter provisions which establish elector qualifications different from those established by general law. In that opinion I noted

. . . 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 [Ch. 73-155, *supra*] has preempted local authority on matters of voter registration.

and in conclusion I stated:

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.

Chapter 73-155, *supra*, requires that all municipalities put into use a permanent single registration system prior to January 1, 1974. Once said registration system is adopted, municipal elector qualifications such as those found in Art. III, §4, of the Charter of the Town of Manalapan will cease to have any force or effect.

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### COUNTY OFFICERS

#### EXPENSE ALLOWANCES UNDER SPECIAL LAW

To: W. L. Hendry, Attorney, Okeechobee County Commission, Okeechobee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTIONS:

1. Was Ch. 63-807, Laws of Florida, providing an "expense allowance" to the chairman and members of the board of county commissioners of Okeechobee County, repealed by Ch. 73-173, Laws of Florida?

2. If so, may the compensation received by these county officials pursuant to Ch. 63-807, *supra*, be counted in computing the 20 percent salary increase limitation prescribed by §11 of Ch. 73-173, *supra*?

#### SUMMARY:

A 1963 special law providing a monthly "expense allowance" to members of a board of county commissioners and to the chairman of the board was repealed by Ch. 73-173, Laws of Florida, as to the county commissioners but not as to the chairman of the board.

The expense allowance may not be counted in computing the compensation to which members and the chairman of the board of county commissioners are entitled under the 20 percent limitation on salary increases prescribed by §11 of Ch. 73-173, *supra*.

#### AS TO QUESTION 1:

Under Ch. 61-1319, Laws of Florida, the county commissioners of Okeechobee County were granted an "expense allowance of fifty (\$50.00) dollars per month, in addition to all other compensation to which they may be entitled." The act provided also for travel expenses when traveling outside the county on official business—eleven dollars per day or fraction thereof and ten cents per mile when using their privately owned automobiles. The 1961 act was amended in 1963, by Ch. 63-807, *id.*, to increase the "expense allowance" of county commissioners to one hundred dollars per month and to authorize the chairman of the county commissioners to receive one hundred twenty-five dollars per month "in addition to all other compensation to which they may be entitled." The provision for travel expenses was deleted—presumably because the 1963 Legislature, by Ch. 63-400, Laws of Florida, amended §112.061, F. S., to provide for reimbursement of county and city officers and employees for their travel expenses. (Prior to the 1963 amendment, the act applied only to state officers and employees.)

Section 13 of Ch. 73-173, *supra*, provides as follows:

All general acts and all special and general acts of local application are hereby repealed to the extent that they require, authorize, or permit