

Elections -- Unopposed Candidates

Number: INFORMAL

Date: January 23, 2015

Mr. Thomas Hart
Knott - Ebelini - Hart
Post Office Box 2449
Fort Myers, Florida 33902-2449

Dear Mr. Hart:

You are the attorney for Ms. Sharon Harrington, Supervisor of Elections for Lee County, and, on her behalf, you have contacted this office for assistance in determining whether the Supervisor of Elections is authorized to include the names of unopposed candidates on the election ballot when Chapter 2014-249, Laws of Florida, provides that the election shall be conducted "in accordance with the Florida Election Code[.]" According to information you have provided to this office, you have contacted the Florida Department of State, Division of Elections, and were referred to this office for assistance.

While the Florida Attorney General's Office is limited to providing legal opinions on issues of state law[1] and cannot comment on or interpret municipal charter language, your question arises based on provisions of Chapter 2014-249, Laws of Florida, which creates the Village of Estero. Thus, as it requires comment on provisions of state law and in light of the Division of Elections referral, this office will provide assistance.

The Village of Estero was created by CS/CS/HB 1373, enacted during the 2014 Legislative Session and designated Chapter 2014-249, Laws of Florida. Chapter 2014-249, Laws of Florida, makes provision for the election of a seven member village council to exercise all powers of the Village of Estero.[2] Council members shall serve a four year term of office and are limited to serving two consecutive terms.[3]

The act makes specific provision for the initial election of the village council.[4] The initial election shall be called by the Supervisor of Elections of Lee County for March 3, 2015, for the election of seven village council members.[5] As provided in the act, "[t]he election shall be conducted by the Supervisor of Lee County Elections in accordance with the Florida Election Code[.]"[6]

Section 12(2)(d) of Chapter 2014-249, Laws of Florida, states that:

"The four council members receiving the highest number of votes shall be elected to 4-year terms and the other three council members shall be elected to initial 2-year terms. The council members elected to the 2-year terms may serve, if reelected, an additional 4-year term, which will constitute two terms for term limit purposes."

The Lee County Supervisor of Elections' questions arise in light of section 101.151(7), Florida Statutes, the statute which provides general specifications for ballots,[7] and which provides that:

"[T]he names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself."

There is concern that unopposed village council candidates, whose names do not appear on the ballot under this provision of the Election Code, will be limited to initial 2-year terms as, by law, they will only receive their own vote. Thus, the Supervisor asks whether section 101.151(7), Florida Statutes, precludes her from listing unopposed candidates on the ballot for electing the initial village council members.

Section 101.151(7), Florida Statutes, states that the names of unopposed candidates "shall not appear on the *general election* ballot." (e.s.) The definition of the term "General election," to be used in construing provisions of the Florida Election Code, is found in section 97.021, Florida Statutes:

"(15) 'General election' means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law."

While you note that the specific terms of this statute apply to "national, state, county, and district offices" and not to municipal elections, the Legislature has directed that the provisions of the Florida Election Code apply to elections held pursuant to Chapter 2014-249, Laws of Florida. Applying this statute as directed by the Legislature, the election of the initial village council of the Village of Estero, to be held on March 3, 2015, would not fall within the scope of this definition as a "general election." Thus, it does not appear that section 101.151(7), Florida Statutes (the provision of the Florida Election Code precluding the Supervisor of Elections from listing unopposed candidates on the general election ballot), would apply to the Village of Estero initial council election occurring on March 3, 2015.

I trust that this discussion will be helpful to you in advising your client, the Supervisor of Elections of Lee County. This informal Attorney General Opinion was prepared by the Department of Legal Affairs in an effort to assist you. The conclusions herein are those of the writer and do not constitute a formal Florida Attorney General Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

[1] See s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at: www.myfloridalegal.com).

[2] Section 4(1) and (2), Ch. 2014-249, Laws of Fla.

[3] Section 4(2)(c), Ch. 2014-249, Laws of Fla

[4] See s. 12, Ch. 2014-249, Laws of Fla.

[5] Section 12(2)(a), Ch. 2014-249, Laws of Fla

[6] Section 12(2)(a), Ch. 2014-249, Laws of Fla.; *and* see s. 100.3605(1), Fla. Stat., providing that:

"The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities."

[7] *Compare* s. 105.051(1), Fla. Stat., which provides for the election or retention of unopposed candidates for judicial office or school board.