

Ballot language to amend county charter

Number: INFORMAL

Date: February 02, 2000

The Honorable John F. Cosgrove
Representative, District 119
201 West Flagler Street
Miami, Florida 33130

Dear Representative Cosgrove:

You ask for this office's comments regarding a proposed ballot question which a group called the Let's Incorporate New Coalition is interested in submitting to the voters of Miami-Dade County. The proposed ballot question provides:

"The incorporation process shall be removed from the jurisdiction of the Board of County Commissioners and placed under the State of Florida Statutes, 165.041, 165.051, 165.093 and 165.081, which places the incorporation process under the State Legislature, as is the case with all other counties in the State of Florida."

This office has no authority to pass judgment upon the validity of a proposed local initiative.[1] However, in an effort to be of assistance, the following informal comments are offered. Section 101.161(1), Florida Statutes, provides:

"Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

Simply put, the ballot must give the voter fair notice of the decision he must make.[2]

Presumably, the initiative seeks to amend the county charter,[3] yet the proposal makes no mention of this, nor does it contain any reference to the charter provision or provisions it seeks to amend.[4] In *Fine v. Firestone*,^[5] the Supreme Court of Florida held that an initiative could not substantially affect existing provisions of the constitution without identifying such provisions. The Court stated that identifying articles or sections of the constitution substantially affected is an important factor and "is necessary for the public to be able to comprehend the contemplated

changes in the constitution"

The proposal states that the incorporation process will be placed under the referenced statutes, which will place the incorporation process under the state Legislature. However, one of these statutes relates to the dissolution of municipalities[6] and another provides for judicial review.[7] Neither of these provisions is mentioned in the proposal. It is not clear, therefore, whether the proposal seeks to place incorporation of a municipality with the state Legislature pursuant to section 165.051, Florida Statutes, but not to adopt the provisions contained in other sections of Chapter 165, Florida Statutes.

I note that the proposal indicates that such a change will modify the incorporation process in Miami-Dade County to reflect charters of other counties. However, if only certain provisions of Chapter 165, Florida Statutes, are adopted while others are omitted, it is unlikely that the incorporation process proposed can be classified as the same as occurring in all other counties.

The Let's Incorporate New Coalition, therefore, may wish to consider revising the language of its initiative to identify those charter provisions affected and to delete the language in such provisions granting the board of county commissioners the authority to incorporate municipalities.

I trust that the above informal advisory comments may be of some assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] *Compare* Art. IV, s. 10, Fla. Const., and s. 16.061, Fla. Stat., directing the Attorney General to request the opinion of the justices of the Supreme Court as to the validity of an initiative petition to amend the state constitution.

[2] *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

[3] The county charter gives the electors the authority to propose the passage or repeal of ordinances, see s. 7.01 of the charter, and to petition for the amendment of the county charter, see s. 8.07 of the charter. Amendments to the charter proposed by initiatory petition, however, may only be made during even numbered years in which state primary and general elections are held. All elections on charter amendments proposed by initiatory petitions shall be held in conjunction with state primary or general elections, unless the Board of County Commissioners shall determine to call a special election by two-thirds vote of the entire membership. Section 8.07.B. of the county charter.

[4] See s. 5.05 of the charter, providing:

"The Board of County Commissioners and only the Board may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida."

[5] 448 So. 2d 984, 989 (Fla. 1984).

[6] See s. 165.051, Fla. Stat., which permits dissolution not only by the Legislature but by the electorate of the municipality.

[7] See s. 165.081, Fla. Stat.