

Schools, appointed/elected superintendent

Number: INFORMAL

Date: June 18, 1996

Mr. Marshall E. Wood, Attorney
School Board of Nassau County
Suite 200, Allan Building
303 Centre Street
Fernandina Beach, Florida 32034

RE: ELECTIONS--CHARTER AMENDMENTS--SCHOOL BOARDS--appointment or election of superintendent of schools; term of office of school superintendent.

Dear Mr. Wood:

Thank you for contacting this office regarding a proposed referendum on whether Nassau County will have an appointive superintendent of schools as opposed to the current elected superintendent. You also inquire about the term of office for an elected superintendent of schools. You have requested and received the assistance of the Division of Elections on several related questions. Attorney General Butterworth has asked me to respond to your letter. Informally and in an effort to provide you with some direction in this matter, I offer the following comments.

Initially, I must note that no judicial determination has been made of whether placing two items on the same ballot, such as those you propose, would be legal. The court in *Kobrin v. Leahy*,^[1] specifically declined to make such a determination deciding instead the question of the legality of the ballot language presented. The proposition which was placed on the ballot would have had the effect of eliminating the existence of a governmental entity, the governing body of the county fire and rescue service district, at the same election at which the voters would have elected persons to that very board. In that case the court held that the language of the proposition, which made no specific reference to the totally inconsistent but simultaneously conducted election nor to the elimination of the board governing the special district, was fatally defective. In light of this case it may be appropriate for the school board to request a judicial determination of whether these two matters may be included on the same ballot.

Your first question relates to the school board's authority to appoint a superintendent of schools if the referendum is successful. Any resolution of this question would appear to be dependent upon the terms of the resolution itself. As was the case in *Evans v. Bell*,^[2] ballot language may be crafted which specifically provides, and advises the voter, of the effect of passage of the amendment on those officials elected at the same election. Such language may assist a court in resolving any challenge to the ballot for failure to sufficiently advise the voter and for presenting the issues in "clear and unambiguous language"^[3]

Your second question relates to the term of office of the current superintendent of schools. Provisions of the Elections Code, Chapters 97 through 106, Florida Statutes, are interpreted by

the Division of Elections rather than by this office.[4] As an example of the assistance which the division may provide, I am enclosing a copy of an opinion of the Division of Elections, DE 81-3, which concludes that if an elected superintendent received a commission for a four year term beginning in January 1977 under the existing statutory provisions and was reelected for an additional four year term, under the new provisions of this section, this second term would begin in January of 1981 and not on the second Tuesday following the general election in which such superintendent was elected. Clearly, this is an issue which comes up periodically for the Division of Elections and you may wish to contact them to determine their position on this matter and to receive any opinions which may have been issued subsequent to DE 81-3.

I trust that these comments will be of assistance to you in advising the School Board of Nassau County.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] 528 So. 2d 393 (Fla. 3d DCA 1988).

[2] Case No. 94-4888-CA (Cir. Ct., Duval County, July 7, 1995).

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

[4] See s. 97.012(1), Florida Statutes.