

Chapter XXV.

Elections.

A. Initiative and Referendum.

The term “initiative” refers to the power reserved to the people to propose laws, revisions to laws, and amendment to laws and to enact or reject the same at the polls, generally independent of the legislature. The term “referendum” refers to the power reserved to the people to approve or reject at the polls any act of the legislature which has been referred to them by the legislature. See *42 Am. Jur. 2d, Initiative and Referendum*, § 1.

1. Scope of Subject Matter.

- a. Citizens were entitled to utilize Fla. Stat. §166.031, initiative procedures to determine location of city hall where town charter contained no initiative provision. *Ennis v. Town of Lady Lake*, 660 So. 2d 1174 (Fla. Dist. Ct. App. 5th 1995).
- b. Electorate has no power by initiative or referendum to enact a charter amendment making all city council actions subject to referendum, and electorate could not by petition usurp the legislature’s authority to grant the right of referendum. *Holzendorf v. Bell*, 606 So. 2d 645 (Fla. Dist. Ct. App. 1st 1992).
- c. Where proposed ordinance was within the power of the city, and petition rights were coextensive with the legislative power of the city, initiative petition regarding location and construction of theater and convention center was within the proper scope of subjects that could be considered by the electorate. *Scott v. City of Orlando*, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d 1965).
- d. Charter properly gave referendum power to approve or reject ordinance passed by City Commission except for appropriation and annual tax levy ordinances which was required to be adopted in certain manner under state law. *City of Coral Gables v. Carmichael*, 256 So. 2d 433 (Fla. Dist. Ct. App. 3d 1972).
- e. Statutes giving the power of initiative to the electors of a municipality are to be liberally construed by the courts. *Barnes v. City of Miami*, 47 So. 2d 3 (Fla. 1950).

- f. Initiative and referendum provision of charter held not to apply to appropriations ordinances. *State v. City of St. Petersburg*, 145 So. 175 (Fla. 1933).
 - g. The Florida Supreme Court held that an increase in the rate charged for sewer services was administrative, not legislative, therefore the ordinance was not subject to the initiative provisions of the City Charter. *State v. City of St. Petersburg*, 61 So. 2d 416 (Fla. 1952).
 - h. Citizens petitioned for writ of mandamus to compel city to take action on their petition to amend the city charter and city code to prevent construction of coal fired electric plant. Court determined that decisions regarding construction and location of an electrical plant were legislative in nature and a proper subject for citizen petition. Those parts of petition that conflict with state law by making repeal subject to submission to the voters would be void however. *Gaines v. City of Orlando*, 450 So. 2d 1174 (Fla. Dist. Ct. App. 5th 1984).
 - i. *Florida Rock Indus., Inc. v. Alachua County*, 721 So. 2d 741 (Fla. Dist. Ct. App. 1st 1998). Opponent of county's proposed clean air ordinance who sought to have it removed from ballot failed to demonstrate the proposed ordinance was unconstitutional on its face and in its entirety. The fact that ordinance would not be effective until approved by the Department of Environmental Protection did not render it invalid.
2. Ballot Title and Summary required by Fla. Stat. §101.161(1) (2003).
 - a. A ballot summary must state the chief purpose of the measure. It need not explain every detail or ramification but must fairly and sufficiently inform voters so that they can intelligently make their decisions regarding how to vote. *In re: Advisory Opinion to the Attorney General re: Stop Early Release of Prisoners*, 661 So. 2d 1204 (Fla. 1995). *Abramowitz v. Glasser*, 656 So. 2d 1332 (Fla. Dist. Ct. App. 4th 1995);
 - b. The ballot summary must tell voters clearly and unambiguously what the amendment does. Deception of the voting public is intolerable and should not be countenanced. *Wadhams v. Board of County Commissioners*, 567 So. 2d 414 (Fla. 1990).
 - c. Fla. Stat. §101.161(1) has always been interpreted to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter. *Advisory Opinion to the Attorney General re: Limited Casinos*, 644 So. 2d 71, 75 (Fla. 1994). See also *Advisory Opinion to the Attorney General re: People's Property Rights Amendments*, 699 So. 2d 1304 (Fla. 1997).

- d. The purpose of Fla. Stat. §101.161 is to assure that the electorate is advised of the true meaning, and ramifications of an amendment. A proposed amendment cannot fly under false colors. The burden of informing the public should not fall only on the press and opponents of the measure – the ballot title and summary must do this. *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982).
- e. The Court in *Smith v. American Airlines*, 606 So. 2d 618 (Fla. 1992) stated:

We recognize that the seventy-five word limit on ballot summaries prevents the summary from revealing all the details or ramifications of the proposed amendment. Accordingly, we have never required that the summary explain the complete details of a proposal at great and undue length, nor do we do so now. However, the word limit does not give drafters of proposed amendments leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information.
- f. The purpose of Fla. Stat. §101.161 is to assure that the electorate is advised of the meaning and ramifications of the amendment voted on. The ballot must give the voter fair notice of what he is voting on, but need not include all possible. The ballot must, however, clearly state the chief purpose and effect. *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982).
- g. An action contested the validity of an election on the question of whether the Hialeah Council should appoint a board to prepare a new city charter because the entire legislative enactment did not appear on the ballot. The court held that all that is required is that the voter has notice of what he must decide, and that if every proposal appeared in full, it would hamper rather than aid the intelligent exercise of the privilege of voting. *Hill v Millander*, 72 So. 2d 796 (Fla. 1954).
- h. Ballot summary met the requirements and was not ambiguous or misleading even though the summary referred to the legislature "implementing this article" rather than "enforcing this section". The court stated that the words implement and enforce are considered synonyms in Webster's Third International Dictionary, therefore voters should not be misled by choice of terms. *In re: Advisory Opinion of the Attorney General re: English – The Official Language of Florida*, 520 So. 2d 11 (Fla. 1988).
- i. Purpose of the statutory requirement that ballot title and summary state clearly the chief purpose is to give voters notice of the issue contained in the amendment so they will not be misled. Ballot title and summary violated that requirement where the title "Save our Everglades" implied

peril not hinted at in the text of the amendment. The text stated purpose was restoration of the Everglades rather than salvation. The summary stated that the sugar industry would help to pay to clean-up pollution, while the test imposed the entire cost on the sugar industry. The court found the summary more closely resembled political rhetoric than accurate synopsis. *In re: Advisory Opinion of the Attorney General – Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994).

- j. City not required to include overall cost of property in ballot summary for bond referendum because city had conducted full public discussion of the matter and the purchase option contract was public record. *Kessler v. City of Winter Park*, 696 So. 2d 761 (Fla. 1997).
 - k. The Supreme Court held that the fact that an initiative was previously rejected did not preclude reconsideration after constitutional impediment was eliminated (previously rejected because it violated the single subject rule). Ballot title and summary were not misleading and sufficiently informed voters of the chief purpose of the amendment so that an informed decision was possible where it stated that a super majority would replace a simple majority requirement for constitutionally imposed taxes after November 8, 1994. *In re: Advisory Opinion to the Attorney General re: Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996).
 - l. The court does not have the authority to rewrite defective ballot language. *Smith v. American Airlines*, 606 So. 2d 618 (Fla. 1992)
 - m. *Harris v. Moore*, 752 So. 2d 1241 (Fla. Dist. Ct. App. 4th 2000). Proposed charter amendment was not misleading. Although ballot summary did not specifically state that it would amend the existing charter and abolish the existing form of government and substitute a new form, the language clearly implied a change would occur in form of government.
3. A Single Subject Requirement.
- a. The court struck three initiatives from the ballot for failing to comply with the single-subject requirement. Two petitions dealt with full compensation when government regulation devalued land, and the third required voter approval for all tax increases. *In re: Advisory Opinion, Re: People's Property Rights Amendments*, 699 So. 2d 1304 (Fla. 1997).
 - b. The single subject requirement embodied in the Florida Constitution is a rule of restraint that protects against unbridled cataclysmic changes in Florida's organic law. *Advisory Opinion to the Attorney General re: Fee on Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996).

- c. The single subject rule protects voters from “log-rolling” or being forced to enact an unfavorable portion of an initiative in order to enact a favorable change in the constitution. In order to comply with the single subject requirement, therefore, an initiative should manifest a logical and natural oneness of purpose. *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984).

4. Procedural Requirements.

Where the process of initiative and referendum is invoked, procedural requirements must be complied with. See *City of Miami Beach v. Herman*, 346 So. 2d 1222 (Fla. Dist. Ct. App. 3rd 1977); *Save Our County Coalition v. Wittenstein*, 351 So. 2d 1112, (Fla. Dist. Ct. App. 4th 1977).

- a. Failure of the Petitioners to comply with the procedural requirements set forth in the charter may result in the election being enjoined. *City of Miami Beach v. Herman*, 346 So. 2d 122 (Fla. Dist. Ct. App. 3rd 1977) Enjoining an election where the city charter procedure mandated a minimum sixty day period between certification of petition and date of referendum elections, and the time period was not followed.
- b. In *Eight is Enough In Pinellas v. Ruggles*, 678 So. 2d 898 (Fla. Dist. Ct. App. 2^d 1996), the court held that initiative petitions signed prior to 1994 election did not remain valid after the election where petition specifically requested that it be considered at next election.

5. Public Awareness of the effects of Initiative/Referendum.

- a. In *Palm Beach County v. Hudspeth*, 540 So. 2d 147 (Fla. Dist. Ct. App. 4th 1989), the court held that while county may appropriately expend public funds to educate public on purpose and essential ramifications of referendum, it must do so fairly and impartially. The county could not become an advocate for one position over another.
- b. In *People Against Tax Revenue Mismanagement, Inc. v. County of Leon*, 583 So. 2d 1373 (Fla. 1991), the court held the use of public funds and resources by local government to mount an informational campaign regarding a referendum is not improper if the use is not abusive or fraudulent. One duty of a democratic government is to lead the people to make informed choices through fair persuasion. The court went on to state that local governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose.