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Municipal Corporations: Nonresident Voters and the Tourist Municipality

Charles M. Blalock

John B. Kelley

LEGISLATIVE NOTES

MUNICIPAL CORPORATIONS: NONRESIDENT VOTERS AND THE TOURIST MUNICIPALITY

Florida Constitution Art. VI, §1; Art. VIII, §8

Since statehood the health of some of Florida's leading industries has been based upon the success of their efforts to entice tourists. One promising idea presently under development is that of according the right of participation in municipal government to nonresidents. Heretofore the constitutional qualifications of electors prescribed in Article VI, Section 1, of the Florida Constitution have been assumed to prevent such participation. Interpretation of this section, however, may have created an avenue through which nonresident property owners can seek the right of local self-government from the Legislature.

The Problem

The idea of giving voting rights to nonresident property owners immediately brings to mind the following requirements of the Florida Constitution:[1]

> "Every male person of the age of twenty one years and upwards that shall, at the time of registration, be a citizen of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for one year and in the county for six months, shall in such county be deemed a qualified elector at all elections under this constitution."

When, however, all related provisions of the present Constitution are considered in conjunction with this passage, it is apparent that municipal elections are not in general governed by the suffrage clause.

Legislative History

The present Constitution was not new even in 1885 but was merely

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[1]Fla. Const. Art. VI, §1. U. S. Const. Amend. XIX overrides the Florida requirement that a qualified elector be a "male person," State *ex rel.* Barnett v. Gray, 107 Fla. 73, 144 So. 349 (1932). Fla. H.R.J. Res. 647, introduced in the

a revision of the Constitution of 1868.[2] *State* ex rel. *Lamar v. Dillon*[3] points out that, although the terms of the present suffrage clause were not substantially changed in the revision, material alterations of related provisions have given it a new meaning. The most significant modifications were made in Article IV, Section 27, of the 1868 Constitution, which read:

> "The Legislature shall provide for the election by the people, or appointment by the Governor, of all State, county or municipal officers not otherwise provided for by this Constitution . . . ."

The corresponding section in the current Constitution, Article III, Section 27, reads as follows:

> "The Legislature shall provide for the election by the people or appointment by the Governor of all State and county officers not otherwise provided for by this Constitution . . . ."

The obvious change is the omission of municipal officers in the present provision.

Another such change occurred in Article IV, Section 17:

> "The Legislature shall not pass special or local laws in any of the following enumerated cases . . . regulating the election of county, township, and municipal officers; for the assessment and collection of taxes, for State, county, and municipal purposes; providing for opening and conducting elections for State, county, and municipal officers, and designating the places of voting . . . ."

In Article III, Section 20, which is the corresponding provision in the current Constitution, all references to municipal taxes, officers, and elections have been eliminated. Two exceptions, however, "municipal officers" and "municipal courts," were incorporated in the prohibition against the enactment of special legislation.

Along with these changes altering the application of the requirements for electors found in the suffrage clause, an additional section

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1951 Legislature, proposed to delete this now ineffective verbiage; it failed to pass, however.

[2]The evolution of our five constitutions is discussed in Legis., 3 U. OF FLA. L. REV. 74, 75-76 (1950).

[3]32 Fla. 545, 14 So. 383 (1893).

was embodied in the Constitution of 1885 to give the Legislature full control over the creation of municipalities:[4]

> "The Legislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time. When any municipality shall be abolished, provision shall be made for the protection of its creditors."

Thus it becomes evident that municipalities and their governments are creatures of the Legislature. The foregoing section controls municipal elections in instances not governed by other constitutional provisions restricting its general terms. Special laws enacted under this broad grant of power by publication of notice in the area affected, however, are today subject to specific procedural requirements.[5]

INTERPRETATION

Under the judicial interpretation of the present Constitution, the right to vote is not an inherent right generally reserved in bills of rights, but is dependent upon constitutional or statutory grant.[6]

In the absence of limitations in the Federal Constitution, such a right is within the sovereign power of the state.[7] When the state constitution prescribes the qualifications for electors, then the legislature cannot change or add to them in any way;[8] but in the absence of such limitations the legislature has full authority to establish these qualifications.[9]

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[4]FLA. CONST. Art. VIII, §8. The omission of a comma after "municipalities," though official, is obviously an error.

[5]FLA. CONST. Art. III, §21, quoted in note 11 *infra*. Note that Chavous v. Goodbread, 156 Fla. 599, 23 So.2d 761 (1945), in effect overrules, on the basis of comparatively recent amendment of this section, State *ex rel.* McQuaid v. County Comm'rs of Duval County, 23 Fla. 483, 3 So. 193 (1887), which held that special legislation enacted under the authority of Art. VIII, §8, need not meet the notice requirements of Art. III, §21, in its original form. Chavous v. Goodbred [*sic*], 158 Fla. 826, 30 So.2d 370 (1947), deals with the statutory notice provisions contained in FLA. STAT. §§11.02, 11.03 (1949).

[6]State *ex rel.* Lamar v. Dillon, 32 Fla. 545, 14 So. 383 (1893).

[7]*Ibid.*

[8]State *ex rel.* Landis v. Board of Public Instruction, 137 Fla. 244, 188 So. 88 (1939); Riley v. Holmer, 100 Fla. 938, 131 So. 330 (1930); Stewart v. New Smyrna Inlet Dist., 100 Fla. 1126, 130 So. 575 (1930).

[9]State *ex rel.* Johnson v. Johns, 92 Fla. 187, 109 So. 223 (1926); State *ex rel.*

In the Florida Constitution the qualifications of voters are prescribed in Article VI, Section 1. A limitation on the application of these requirements, however, is denoted in the same section by the phrase ". . . shall . . . be deemed a qualified elector at all elections under this constitution." In harmony with the significant constitutional changes discussed in the preceding section, the qualifications of electors found in the Constitution have been held not to apply to elections for municipal officers, since it nowhere mentions general city elections.[10] The exception to this is found in the referendum election, which relates to special municipal laws and is provided as an alternative to notice.[11] This specific reference has led the Court to hold that such an election is one held under the Constitution.[12] The organic-law barrier setting qualifications for a referendum election can, however, be avoided in practice by publication of notice;[13] accordingly the procedure utilized in providing for a municipal election is of the utmost importance if suffrage is to be safely afforded nonresidents.

Since the Constitution prescribes neither the right to vote nor the requisite qualifications as regards election of municipal officers, the Legislature is authorized to prescribe the rights and qualifications of the electors in such elections.[14] As might be expected, there are exceptions in the form of constitutional restrictions. All persons voting on a proposed levy of a school district tax must meet the

Lamar v. Dillon, 32 Fla. 545, 14 So. 383 (1893). Legislative action is always subject to any limitations imposed by federal law, of course.

[10]Orlando v. Evans, 132 Fla. 609, 182 So. 264 (1938); West v. Lake Placid, 97 Fla. 127, 120 So. 361 (1929); State *ex rel.* Johnson v. Johns, 92 Fla. 187, 109 So. 223 (1926); State *ex rel.* Lamar v. Dillon, 32 Fla. 545, 14 So. 383 (1893).

[11]FLA. CONST. Art. III, §21: ". . . the Legislature may pass special or local laws . . . provided that no local or special bill shall be passed, nor shall any local or special law establishing or abolishing municipalities, or providing for their government, jurisdiction and powers, or altering or amending the same, be passed, unless notice of intention to apply therefor shall have been published in the manner provided by law . . . at least thirty days prior to introduction into the Legislature of any such bill. . . . Provided, however, no publication of any such law shall be required hereunder when such law contains a provision to the effect that the same shall not become operative or effective until ratified or approved at a referendum election to be called and held in the territory affected in accordance with a provision therefor contained in such bill, or provided by general law."

[12]Stewart v. New Smyrna Inlet Dist., 100 Fla. 1126, 130 So. 575 (1930); *see* Pitt v. Belote, 108 Fla. 292, 295, 146 So. 380, 381 (1933).

[13]See note 5 *supra.*

[14]See note 8 *supra*; Leavine v. State, 101 Fla. 1370, 133 So. 870 (1931).

qualifications prescribed in Article VI, Section 1, and these are not subject to legislative change.[15] This same statement applies to those voting on proposed county, district, and municipal bond issues[16] or on special tax school district bond issues.[17] Though no case has been found expressly holding that qualified electors in such bond elections are those defined by Article VI, Section 1, any other interpretation is hardly conceivable.[18]

The power of the Legislature to regulate municipal elections in Florida is not based entirely on the absence of constitutional regulation. Article VIII, Section 8, specifically grants the Legislature the ". . . power to establish, and to abolish, municipalities to provide for their government . . . ." There are no organic provisions restricting this broad grant of power other than the requirement of protection of creditors in case the municipality is abolished and the limitations previously discussed.

The decisions interpreting the above section are to the effect that municipal officers are statutory officers and subject to legislative control.[19] Furthermore, it has been held that in municipal elections the Legislature may validly restrict the electorate to freeholders.[20]

Although no Florida case as yet holds squarely that the Legislature may prescribe the right of a nonresident freeholder to vote in municipal elections, the Legislature has granted such a charter.[21] The charter was attacked by a bill to enjoin city officials from performing certain functions and to have the act of incorporation declared void because it permitted persons other than Florida residents to vote in municipal referendum elections. The circuit court dismissed the

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[15]FLA. CONST. Art. XII, §10; State *ex rel.* Landis v. Board of Public Instruction, 137 Fla. 244, 188 So. 88 (1939).

[16]FLA. CONST. Art. IX, §6, provides that ". . . Municipalities . . . shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors . . . shall participate . . . ."

[17]FLA. CONST. Art. XII, §17, provides: "The Legislature may provide for special tax school districts to issue bonds . . . whenever a majority of the qualified electors thereof who are freeholders shall vote in favor . . . ."

[18]State *ex rel.* Landis v. Board of Public Instruction, 137 Fla. 244, 247, 188 So. 88, 89 (1939), does contain a dictum that elections authorized by the Constitution are subject to such requirements.

[19]See note 8 *supra.*

[20]State *ex rel.* Landis v. Gifford, 114 Fla. 872, 154 So. 893 (1934).

[21]Fla. Spec. Acts. 1947, c. 24658.

bill without specifying the ground for dismissal, and the Supreme Court affirmed without opinion, Justice Roberts dissenting.[22] Even the dissent, however, does not discuss the validity of permitting nonresidents to vote in a municipal election; instead it deals with the power of the Legislature to alter the constitutional requirements of an elector in a referendum election. Since the ground for dismissal of the bill was not stated, and in the absence of an opinion by the Supreme Court, this case is no authority for the existence of power in the Legislature to alter the qualifications of electors in referendum elections, especially in view of the prior decisions.[23] It does, however, serve to confuse the question of referendum elections as being "elections under the constitution."

Conclusion

Judging from the intent of the framers of our present Constitution and the judicial interpretations of it, there is a distinct possibility that the Legislature can create a municipality with a special appeal to tourists. This appeal consists in allowing nonresident property owners to participate in general city elections. A special law creating such a municipality can be passed by the use of publication of notice, thereby avoiding the constitutional qualifications for referendum elections. The only caution to be borne in mind is that, although at least one charter granting such privilege is in effect today,[24] the Supreme Court has not yet passed on the validity of such an electoral privilege.

Charles M. Blalock
John B. Kelley

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[22]Knoll v. Linardy, 43 So.2d 857 (Fla. 1950).
[23]See note 12 *supra.*
[24]Fla. Spec. Acts 1947, c. 24658.