

A statute addressed in this opinion has changed. Please consult current Florida law.

DE 90-09 - March 15, 1990

**Absentee Ballots from "Handicapped Voters"
Sections 101.68 and 102.141, F.S.**

To: Honorable Mary W. Morgan, Supervisor of Elections, Collier County, Collier Government Complex, Naples, Florida 33962

Prepared by: Division of Elections

This is in reference to your letter requesting an opinion regarding the canvassing of absentee ballots from "handicapped" voters. The canvassing of absentee ballots by county canvassing boards is covered in Sections 101.68 and 102.141, Florida Statutes. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions to several categories of persons including supervisors of elections. Your questions and our responses are as follows:

1) Does the term "disabled" or "handicapped" include those persons who are unable to read and write - as would seem to be indicated in Section 208 of the Voting Rights Act?

The answer to this question is no. Section 208 of the Voting Rights Act, 42 U.S.C. Section 1973aa-6 provides "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." As used in this act, the term "handicapped" means "having a temporary or permanent physical disability." 42 U.S.C. Section 1973ee-6 (1984). Illiteracy is a condition of education rather than a physical disability and, therefore, is not included in the term "handicapped" as used in the Voting Rights Act.

Our answers to questions two and three are interrelated so we will answer these questions together.

2) When an absentee ballot is from a handicapped voter and the voter's signature matches what we have on record, can we reject the absentee ballot because the voter's signature was not witnessed?

3) In those cases where the voter uses an "X" for his signature, whether by illiteracy or diminished physical ability, and that "X" is the "official" signature on our records, are we required to accept and count the absentee ballot when:

a. there are no witnesses - nothing on the voter certificate but an "X"?

b. there are no witnesses plus the signature has been treated like -

his

John (X) Doe?

mark

c. there is only an "X" and one witness?

d. there is a "signature" like in (b) above, but there are two (2) witnesses predicated on the guidance found in Florida Statute 97.061 in giving assistance to handicapped voters at the polls?

The law requires two signatures in support of an absentee ballot. Therefore, the answer to question two is yes. Similarly, a canvassing board is not required to accept and count an absentee ballot signed with an "X" when there are no witnesses, as indicated in question three, parts (a) and (b).

With regard to question three, parts (c) and (d), absentee voting laws should be encouraged and enforced; although, based upon the Boardman v. Esteva case, 323 So.2d 259 (Fla. 1976), cert. denied, 425 U.S. 967, a canvassing board may determine that an absentee ballot is to be counted if a statutory requirement is directory, not mandatory. The court cited three factors to be considered by a canvassing board in measuring the effect of irregularities on the validity of absentee ballots:

1. the presence or absence of fraud, gross negligence, or intentional wrongdoing;
2. whether there has been substantial compliance with the essential requirement of the absentee voting law; and
3. whether the irregularities complained of adversely affect the sanctity of the ballot and the integrity of the election.

Therefore, the final determination as to accepting or rejecting an absentee ballot rests with the county canvassing board. The board will determine whether ballots such as those described in question three, parts (c) and (d) are accepted or rejected on a case-by-case basis using the factors set forth in Boardman.

4) If the answer in question three, part (d) above is affirmative and two witnesses are required for those absentee voters whose signature is an "X", must the witnesses be from different political parties?

No. As provided in Section 101.65, Florida Statutes, any two persons 18 years of age or older may serve as attesting witnesses for an absentee ballot, with the exception that no candidate may serve as an attesting witness.

SUMMARY

Illiteracy is not included in the term "handicapped" as used in the Voting Rights Act.

A county canvassing board is not required to accept and count an absentee ballot when there are no witnesses. The canvassing board will determine whether absentee ballots are accepted or rejected on a case-by-case basis using the factors set forth in Boardman.

Any two persons 18 years of age or older may serve as attesting witnesses for an absentee ballot, with the exception that no candidate may serve as an attesting witness.