

DE 90-23 - May 24, 1990

**Absentee Registration of Military Personnel
Sections 97.041 and 97.063, F.S.**

To: Honorable Patricia M. Hollarn, Supervisor of Elections, Okaloosa County, Okaloosa County Courthouse, 100 East U.S. Highway 90, Crestview, Florida 32536

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on absentee registration of military personnel. You are the Okaloosa County Supervisor of Elections, and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97- 106, Florida Statutes.

Specifically you have asked:

- 1) Is the supervisor of elections required to register military members and/or dependents who are not Florida residents, are stationed inside the United States, have recently voted elsewhere, and have not been stationed at a military base in the county?
- 2) Should SF76 postcard registration forms be accepted from military personnel stationed inside and outside the United States, or only from those stationed overseas?

In reference to your first question, in AGO 64-39, the Attorney General stated that where a person of another state, including military personnel, comes into this state and by clear and positive evidence establishes his permanent domicile in this state, there arises a presumption that such permanent domicile remains in this state until legally established elsewhere. The Attorney General also emphasized that the supervisor of elections would ultimately determine whether, in fact, the person is a resident of the county in which he wishes to register.

In DE 77-08, the Division of Elections opined that a member of the armed services who was previously registered to vote in Minnesota and temporarily residing in Maryland was entitled to register absentee if he provided proof of permanent residency in the county in Florida in which he wished to register, and if he otherwise satisfied the requirements of Section 97.041, Florida Statutes. In a later opinion, the Division also noted that although the Florida Election Code does not require a person to provide proof of residency before he is registered to vote, the supervisor may require proof of residency if the supervisor questions whether a person is a bona fide resident of the county. See Op. Div. Elec. 90-07.

Therefore, if the supervisor of elections determines that a military member has established his permanent residency in the county in which he wishes to register, and he otherwise satisfies the requirements of Section 97.041, Florida Statutes, the member and his dependents are entitled to

register to vote.

In reference to your second question, 42 U.S.C. Sections 1973ff-3(1) and 1973ff-6(1) provide:

To afford maximum access to the polls by absentee uniformed services voters and overseas voters, it is recommended that the States use the official post card form...for simultaneous voter registration application and absentee ballot application. As used in this statute, the term "absent uniformed services voters" means a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote.

The Florida Election Code allows members of the armed forces to register absentee while in active service, and the Secretary of State has, pursuant to Section 98.461, Florida Statutes, designated the federal post card registration form as an acceptable registration form. Letter from Florida Secretary of State to Hank Valentino (February 5, 1988)(discussing federal post card registration form). Section 97.063, Florida Statutes, does not limit absentee voter registration to members who are overseas. The federal statute defines "absent uniformed services voter" as a member of a uniformed services in active duty, whether stationed overseas or within the United States. Therefore, it is our opinion, that the supervisor of elections must accept the postcard registration forms from any member of the military stationed within the United States or overseas who is absent from the place of residence where the member is otherwise qualified to vote.

SUMMARY

If a military member is a resident of the county in which he wishes to register, and he otherwise satisfies the requirements of Section 97.041, Florida Statutes, the member is entitled to register to vote.

The supervisor of elections must accept the postcard registration forms from any member of the military stationed within the United States or overseas who is absent from the place of residence where the member is otherwise qualified to vote.