

DE 076-29—September 27, 1976

**CHAPTER 98, FLORIDA
STATUTES
RESTORATION OF
NAMES TO BOOKS**

To: Honorable Joyce Diffenderfer, Supervisor of Elections, Post Office Box 012241, Miami, Florida

Prepared by: Division of Elections

You have asked essentially whether Section 98.081, F.S., "Removal of names from registration books; procedure," requires one whose name has been removed thereunder to appear in person, physically, before the Supervisor in order to make known that his (the elector's) status is unchanged and that his name should be restored to the books.

The pertinent portion of Section 98.081, F.S., reads:

Names will be restored to the registration records when the elector in person makes known to the supervisor that his status has not changed...

Attorney General Ervin in 1954, in the course of construing other provisions of Section 98.081, F.S., opined that restoration of names should be made "only when the elector appears in person and makes known to the Supervisor that his status has not changed." A.G.O. 054 — 38 (February 18, 1954).

General Ervin again construed Section 98.081, F.S., *inter alia*, in a 1958 opinion in which he asserted that a name removed under Section 98.081, F.S., "Should only be restored to the registration books by way of a personal appearance of the elector involved before the Supervisor of registration at a time when the registration books are open." A.G.O. 058 - 285 (October 3, 1958).

The subject provision might have required such an elector "personally" — rather than by agent — to make the requisite showing, but it requires instead an "in person" showing; and the weight of opinion is that such language means a physical appearance need not be made before the Supervisor herself or himself, according to the statutory language, but may be made before a deputy so long as the elector's unchanged status is made "known to the Supervisor..."

You have asked, also, about Section 98.291, F.S., which requires restoration to the registration books the name of an elector whose name has been "erroneously or. illegally removed .. ." Specifically, you are concerned to know (a) what constitutes "erroneous removal," and (b) what procedures must be instituted to reinstate such electors on election day?

It has been recognized that Section 98.081 and 98.291, F.S., treat different categories of electors, impose different requirements and allow for different restorational time frames. See,

A.G.O. 058 — 285, op cit.

An elector wishing to have his name restored to the books under Section 98.291, F.S., need not by the language of the statute appear in person, nor even act personally (but may act by one lawfully empowered). Such restoration is not by the statutory text limited to the period during which the registration books are open, and may be effectuated "at any time." A.G.O. 058 - 285 op. cit. See also, A.G.O. 050 - 147 (March 23, 1950); A.G.O. 050 - 432 (September 6, 1950).

An "erroneous" removal occurs "where the name should not have been removed in the first instance ..." A.G.O.058 — 285, op cit. Without attempting to exhaust the indeterminate errors which might result or have resulted in erroneous removal (such as inadvertent erasure of a name, inadvertent oversight in copying a name, illusion of names by clerical personnel, etc.) suffice it to say that such removal is distinguishable manifestly from (a) removal with criminal intent, or (b) removal pursuant to Section 98.081, F.S., where electors have failed to return forms.

As to what procedures must be instituted to reinstate electors under Section 98.291, F.S., on election, I would prefer to treat briefly (but not with any intention to exhaust the possible procedures) procedures which may be used. Adequate proof of identity should be provided by the elector. Upon determination by the Supervisor that the elector's name has been erroneously removed, the elector's name should be reinstated and said elector would then be allowed to vote. Individual procedures should be based on the facts.