

February 10, 2004

The Honorable Donna Bryant  
Osceola County Supervisor of Elections  
P.O. Box 420759  
Kissimmee, Florida 34742

RE: DE 04-01  
List Maintenance Activities Regarding Inactive  
Voters Who Sign Petitions and Validity of Petitions  
Signed by Inactive Voters; §97.1031 and  
99.097(2)(b), Florida Statutes, and Rescinding  
Opinions DE 91-01, DE 90-29 and DE 87-16

Dear Ms. Bryant:

This is in response to your request for an advisory opinion regarding certain voter registration list maintenance activities arising in the context of the petition verification process. You are the Supervisor of Elections of Osceola County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You ask essentially the following questions:

1. When an inactive voter signs a petition, is the act of signing sufficient cause to change the voter's status to active?
2. If an inactive voter signs a petition and indicates a new address as well as checking the address change box, is this sufficient to reactivate the voter?
3. If an inactive voter signs a petition and the address he provides is the same as the one on record, may we assume that he was placed in inactive status by error, reactivate him and count his petition?

4. If an inactive voter signs a petition, provides a different address but does not check the address change box, should this generate any activity regarding the voter?
5. Are there any circumstances in which a petition signed by an inactive voter should be accepted as valid?

The short answers to questions 1 and 2 are a qualified yes. The short answers to questions 3, 4 and 5 are yes.

As to question 1, the act of signing a petition, when combined with providing certain residence address information, can be sufficient cause to change the voter's status to active. Several such scenarios are discussed below.

As to question 2, when an inactive voter lists a new residence address and checks the change of address box on the petition and signs their name, this is considered a signed, written notification from the voter to the supervisor that they have changed their address. If the new address is still within your county, this change should be noted on their registration records, they should be restored to active status and a new voter registration card should be issued by your office pursuant to sections 97.1031(1) and 97.071(3), Florida Statutes. However, if the new address is located in another county, you should notify the voter that you are treating this as a request to have their name removed from your county's voter registration books and instruct them as to how they can register to vote in their new county of residence.

As to question 3, the voter has now provided you with written verification of their residence address as listed in the voter registration records, and you should restore them to active status.

As to question 4, since the voter did not check the "change of address box" on the petition, they have not clearly indicated that they intend to effect a change of residence address. Therefore, you should follow-up with the voter in writing at the newly listed address and ask them to verify whether their residence address has changed. Until this verification occurs, they should remain in inactive status. Please note that while the Division of Elections in DE 91-01, opined that the act of signing a petition constitutes notice that the elector has moved to a new residence in the county and is eligible to sign the petition, the Florida Legislature later enacted section 99.097(2)(b), Florida Statutes, which states, "If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered." As a result of this language, the petition signed by an inactive voter who did not check the "change of address box" would be treated as valid as long as the residence address in their voter registration records is jurisdictionally appropriate with regard to that candidate or issue. Consequently, since the legislature has now specifically addressed the issue raised in DE 91-01 through the enactment of section 99.097(2)(b), Florida Statutes, that opinion is hereby rescinded. Further, Division of Elections opinions DE 90-29 and DE 87-16 are also rescinded as a result of the guidance provided by this opinion.

It is important to note that the “change of address box” was specifically added to the petition form after the enactment of section 99.097(2)(b), Florida Statutes, to provide a means by which the voter could effect a written change of address as provided for by section 97.1031, Florida Statutes, using the petition form itself. As reflected in the response to question 2 above, this allows you to reactivate the voter using the new address if they have checked the “change of address box.” Further, notwithstanding section 99.097(2)(b), Florida Statutes, since the voter has properly executed a written change of address, you should use the new address listed on such a petition in determining whether the petition is valid for that particular candidate or issue.

As to question 5, there are several situations in which a petition signed by an inactive voter should be accepted as valid. If the inactive voter lists on the petition the same residence address as is contained in the voter registration records, the petition should be accepted as valid. If the voter lists a new residence address on the petition but does not mark the “change of address box,” pursuant to section 99.097(2)(b), Florida Statutes, you treat the petition as though they had listed the residence address where the voter is registered and treat it as valid if jurisdictionally correct. If the inactive voter lists a new residence address and marks the “change of address box,” and the new address falls within the correct jurisdictional area for the subject matter of the petition, the petition should be accepted as valid.

#### SUMMARY

When an inactive voter lists a new residence address and checks the change of address box on the petition and signs their name, this is considered a signed, written notification from the voter to the supervisor that they have changed their address. If the new address is still within the same county, the voter should be restored to active status. However, if the inactive voter did not check the “change of address box” on the petition, they have not clearly indicated that they intend to effect a change of residence address. Therefore, you should follow-up with the voter in writing at the newly listed address and ask them to verify whether their residence address has changed. They would remain in inactive status during that verification process. Finally, an inactive voter who lists on a signed petition the same residence address as contained in their voter registration record has thereby provided a written verification of their address and should be restored to active status.

As to the issue of the validity of petitions signed by inactive voters, if the inactive voter lists a new residence address and marks the “change of address box,” and the new address falls within the correct jurisdictional area for the subject matter of the petition, the petition should be accepted as valid. If the voter lists a new residence address on the petition but does not mark the “change of address box,” pursuant to section 99.097(2)(b), Florida Statutes, you treat the petition as though they had listed the residence address where the voter is registered and treat it as valid if the registration address is jurisdictionally correct. If the inactive voter lists on the petition the same residence address as is contained in the voter registration records, the petition should be accepted as valid.

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This opinion rescinds Division of Elections opinions DE 91-01, DE 90-29 and DE 87-16.

Sincerely,

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EK/SDL/ccm