

DE 77-23 - October 12, 1977

**Reinstatement
Sections 97.091 and 98.081, F.S.**

To: Honorable Katherine Odham, Supervisor of Elections, Volusia County, Post Office Box 1467, Deland, Florida 32720

Prepared by: Division of Elections

You have brought to our attention Sections 97.091 and 98.081 of the Florida Statutes, the Florida Election Code of 1977, effective January 1, 1978, and have requested an advisory opinion respecting the operation of each of these sections.

Specifically, you are concerned to have our advise respecting the operation of Section 97.091(3), which provides:

When an elector's name does not appear on the registration books of the election precinct in which he is registered, and when he cannot present a valid registration identification card, he may have his name restored if the supervisor is otherwise satisfied that he is validly registered, that his name has been erroneously omitted from the books, and that he is entitled to have his name restored. The supervisor, if he is satisfied as to the elector's previous registration, shall allow such person to vote and shall thereafter issue a duplicate registration identification card. (Underlined portions are the amendments effective January 1, 1978).

It is the understanding and opinion of the Division of Elections that Section 97.091(3) relates to persons whose names do not appear on the registration books and who do not possess or cannot present valid registration cards, and that the subsection entitles such persons to prove to the supervisor that such person is entitled to have his name appear on the registration books, and is entitled to be issued a duplicate registration card — if the supervisor in the exercise of sound discretion is satisfied as to the proofs offered — up to the close of the polls, and thereafter.

Section 98.081(1) provides for a purge during the odd-numbered years, in response to which purge letter an elector is obligated to provide a written response to the supervisor, and thereby to obtain reinstatement. However, subsection (1) of Section 98.081 is specifically and expressly made cumulative to, rather than exclusive of, all other provisions having to do with removal and reinstatement. This then brings us to subsection (4) of the Section.

Section 98.081(4) provides:

When the name of any elector has been erroneously or illegally removed from the registration books pursuant to this section, s. 98.201 or s. 98.301, the name of the elector shall be restored by the supervisor upon satisfactory proof, even though the registration books are closed.

This subsection, like Section 98.081(1) does not limit restoration of a name to the period prior to the time that the books close or prior to the time that the polls open: restoration may be made until the polls close. Indeed, Section 98.081, Florida Statutes (1976), did contain a requirement that restoration be made in response to a purge letter only if done "in person" and then only "at any time the books are open." Those two limitations have now been removed.

The import of Section 98.081(4), Florida Statutes, above-quoted, is that the erroneous or illegal removal from the registration books of the name requires restoration of the elector's name to the book upon satisfaction proof to the supervisor — who in the exercise of sound discretion shall accept or reject such proofs — until the time of the closing of the polls, and thereafter.

Neither Section 97.091 nor Section 98.081 sets a limitation upon the time allotted to the elector whose name has been erroneously or illegally or otherwise removed to have his name reinstated. This does not mean that no purge is provided by law, for it is clearly provided by Section 98.081(1), Florida Statutes. It does not mean that there is not an affirmative obligation upon electors notified of purging to respond as provided in Section 98.081(1), Florida Statutes, for such an obligation is spelled out in and by that subsection. It does mean, however, that reinstatement may be made as prescribed, upon the presentation of proofs to the supervisor, who is then required to exercise sound discretion, up to the closing of the polls at a given election.

SUMMARY

An elector is entitled under Section 97.091, Florida Statutes, as well as, under Section 98.081, Florida Statutes, to have his name restored, without regard to the passage of time since his name was removed or the fact that the book may be closed for an election.