

The statute addressed in this opinion has changed.

Please consult current Florida law.

DE 82-5-March 31, 1982

RECALL PETITION SECTIONS 100.361, F.S., AND 99.097(3), F.S.

*To: Honorable Doris Shiver Hamm, Supervisor of Elections, Franklin County
Courthouse Apalachicola, Florida 32320*

Prepared by: Division of Elections

This is in response to your inquiry regarding information required for verification of an elector's name on a recall Petition.

Section 100.361(c), Florida Statutes (1981). provides:

"Each elector of the municipality signing a petition shall sign his name in ink or indelible pencil as registered in the office of the Supervisor of Elections and shall state his place of residence and voting precinct. Each counterpart of the petition shall contain appropriate lines for signature by electors and form of affidavit, to be executed by the circulator thereof, verifying the fact that the circulator saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the circulator on the date indicated."

From the above statutory language it is clear that the elector must sign his or her name as mandated in the same manner that it appears in the office of the Supervisor of Elections. Further, the elector must state his place of residence and voting precinct.

Generally, in construing statutes relating to elections, the courts hold that they should receive a liberal construction in favor of the citizen whose right to vote they tend to restrict, in order to prevent disenfranchisement of legal voters. *State ex rel. Carpenter v. Barber*, 144, Fla. 159, 198 So. 49 (Fla. 1940); 21 Fla. Jar. 2d Elections, S.5. in other words, statutes tending to limit the citizen in the exercise of the elective franchise should be liberally construed in his favor. *State ex rel. Law v. Saxon*, 30 Fla 668, 12. So. 218 (F1a 1892); *State ex rel. Whitley v. Rinehart*, 140 Fla. 645, 192 So. 819 (overruled on other grounds, *Boardman v. Esteva* (F1a) 323 So. 2d 259, cert. denied and appeal dismissed, 425 US 967, 48 L. Ed. 2d 791, 96 S. Ct. 2162).

An interpretation of the phrase "as registered in the office of the Supervisor of elections" found in S. 100.361, Florida Statutes, was reviewed by a predecessor in this office in DE 78-29. There it was determined that an exact signature was not required, because the legislature mandated the elector to place his residence and precinct number on the petition that would be used to assist in identifying the elector. Further, the supervisor of Elections was advised to rely on the standard enunciated in 99.097(3), F.S., and need not require a perfect match between the petition signature and that on the registration rolls. I concur with this opinion.

Recall proceedings are in derogation of the statutory tenure of office prescribed for the officer sought to be recalled. Statutory provisions regarding recalls must be substantially pursued, or the proceedings will be held invalid and subject enjoined, where there is no adequate remedy and the defects are taken advantage of by appropriate procedure in equity in advance of the holding of the election. *State ex rel. Landis et al. v. Tedder*, 143 So. 148 (Fla. 1932). Thus, where substantial compliance with the statutes are followed, the verification process must be approved.

Regarding the "place of residence", it is my understanding that an elector is allowed to use his or her residence or mailing address in completing the registration form. The term place of residence generally connotes the place of one's abode, where one physically lives. Thus, residency is used for determining in what precinct an elector casts a ballot and whether the precinct is inside or outside the city limits or other appropriate boundary for voting purposes. Therefore, requiring the elector to place on the petition where he or she resides is an important factor in determining participation in the electoral process of the city or other area.

It is my understanding that some electors complete their registration cards using their mailing address which may be a post office box or rural designation. In this event, the address provided is not the place of residence and may present difficulty in determining the precinct number of the elector. However, in the absence of any statutory guidance it must be assumed that mailing addresses may be utilized for identifying an elector for recall petition purposes, provided the elector can show proof that the address shown is considered to be his/her official address on file with the Supervisor of Elections.

The precinct number determines the residential location of an elector. Thus, it is essential that an elector place the precinct number on the petition to show that he/she is eligible to participate in the election by being within the territorial limits of the recall proceeding. Failure of the voter to identify his/her precinct, places a substantial burden on the Supervisor of Elections in determining if such an elector's vote should be verified on a petition, since it would be difficult to show the elector resides within the recall area. However, if the Supervisor of Elections can identify the elector on comparison of his/her signature on the petition and the place of residence indicates the elector resides within the area the recall proceeding is being conducted, such elector's signature should be verified. Contrarily, if the elector's signature cannot be verified on comparison with the signature in the office of the Supervisor of Elections, or the place of residence is such that it is not readily discernable that the elector resides in the area covered by the recall proceeding. Such elector's signature on a petition should not be verified.

I hope this information will be of assistance to you.

SUMMARY

If the Supervisor of Elections can identify the elector on comparison of his/her signature on the petition and the place of residence indicates the elector resides within the area the recall proceeding is being conducted, such elector's signature should be verified.

Contrarily, if the elector's signature cannot be verified on comparison with the signature in the office of the Supervisor of Elections, or the place of residence is not readily discernable that the elector resides in the area covered by the recall proceeding, such elector's signature on a petition should not be verified.