

One or more statutes addressed in this opinion has changed.

Please consult current Florida law.

DE 83-15 - October 18, 1983

1. DEPUTY SHERIFF AS CLERKS  
AND INSPECTORS
2. COUNTY CANVASSING BOARD
3. POLL WATCHERS "At LARGE"
4. AGE REQUIREMENT TO  
PREREGISTER AND VOTE

*To: Honorable John P. Sullivan, Jr., Supervisor of Elections, Leon County Courthouse,  
Room 101, Tallahassee, Florida 32301*

*Prepared by: Division of Elections*

Pursuant to your request, this is a formal elections opinion under s. 106.23(2), F.S. on essentially four separate questions:

1. May an inspector or clerk appointed pursuant to s. 102.012, F.S. also serve as the deputy at the polls?
2. May the county canvassing board meet prior to the closing of the polls to compare information on absentee ballot return envelopes, open envelopes or in any way prepare for the canvass of absentee ballots?
3. May a candidate designate a poll watcher who serves at large?
4. May a person whose birthday is March 14, 1966 preregister and qualify to vote in the March 13, 1984 presidential primary election?

As to the first question, s. 102.012, F.S., creates the election board consisting of inspectors and a clerk who are appointed and trained by the supervisor of elections. The clerk shall be in charge of and responsible for seeing that the election board carries out its duties and responsibilities. In addition, the sheriff shall deputize a deputy sheriff for each precinct who shall be present during the time the polls are opened and until the election is completed, who shall be subject to all lawful commands of the clerk or inspectors, and who shall maintain good order. s. 102.081, F.S. Inspectors, clerks and deputy sheriffs undergo training to carry out the duties and responsibilities for these positions. Each has a separate role to play in making sure that the election is carried out properly and according to law and under the general authority of the supervisor of elections. Chapter 102 refers to the clerk, inspector and deputy sheriff as separate positions as if to imply that the respective duties are best carried out by separate people. There is no statutory authority to permit a clerk or inspector to be deputized and serve in the capacity as deputy sheriff at the polls.

While the deputy sheriff at the polls need not be a bonded, sworn law

enforcement officer with full powers of arrest, the sheriff may grant a special deputy the full powers of arrest when it is reasonable and necessary to the execution of the duties of his office. s. 30.09(1)(g), F.S. A special deputy with arrest powers would be an officer of the law, see DE 80-5 (May 2, 1980), and as such is not allowed within the polling place without permission from the clerk or a majority of the inspectors except to cast his ballot. s. 102.101, F.S. Therefore, a deputy officer who is also an inspector might violate the intent of s. 102.101, F.S. which is designed to preserve the power to conduct elections with the supervisor of elections and to prevent unnecessary presence of the law enforcement officers at the polls.

As to your second question pertaining to the County Canvassing Board. s. 102.141(2), F.S. states in pertinent part as follows:

“At the close of the polls, or as soon thereafter as practicable but not later than noon on the day following any primary, general, special, or other election, the county canvassing board shall meet in the courthouse at a time and place to be designated by the chairman. It shall then proceed to publicly canvass the absentee electors' ballots as provided for in s. 101.68 . . . .”

A Supervisor may, at the time an absentee ballot is received, compare the information on the voter's certificate on the back of the envelope with the information in the registration books to determine whether the elector is duly registered in the precinct and may record on the electors registration certificate that the elector has voted.

Additionally, the Supervisor shall safely keep the ballot unopened in his office until the County Canvassing Board canvasses the vote according to law.

The manner by which the County Canvassing Board meets to canvass absentee ballots is carefully and precisely set forth by s. 102.141, F.S. and s. 101 .68, F.S. Any deviation from the prescribed manner and procedure for canvassing absentee ballots is in derogation of the statutes and is not advisable.

Your third question relates to appointment of an "at large poll watcher" to cover more than one precinct at various times. Action 101.131, F.S. Permit's each political party and candidate to have one watcher in each polling place at any one time during the election. The supervisor shall furnish a list of the poll watchers designated by the political party or candidate and approved by the Supervisor to serve in such precinct. This office has construed this provision to mean that one poll watcher may serve at more than one precinct so long as it is on a scheduled and assisted basis which will enable the election board to know who and when a poll watcher is to be present. Therefore a poll watcher may move from one precinct to another but must do so according to an approved schedule to enable orderly assignment of poll watchers.

In your last question, you ask whether common law would supercede s. 97.041(1)(b), F.S. with regard to a person born on March 14, 1966 who wishes to vote in the March 13th Presidential Preference Primary. Section 97.041(1)(b), F.S. states that:

“Any person who will become 18 years of age on or before the date of any election and who is otherwise qualified shall be entitled, within 180 days preceding his 18th birthday, to preregister with the supervisor for any election occurring on or after his 18th birthday, when the registration books are opened.”

It is within the jurisdiction of the state to prescribe by statute the age limitation with respect to the right to vote. The age limitation in Florida is 18 years old. In determining at what time a person arrives at this age, the common law rule that one is the age of majority on the day preceding the anniversary of his birth is followed in some states. However, this rule does not prevail in states which adhere to civil law rule that minors are persons who have not yet attained the age of majority completely. 25 Am Jur 2d, Elections s. 63. In Florida, the disability of nonage is removed for a person in Florida who has attained the age of 18 years. s. 1.01(14). F.S. The Election Code states that any person who will become 18 years of age on or before the date of any election may preregister and vote in any election on or after his 18th birthday.” Therefore, under the Election Code the age of 18 and the 18th birthday are synonymous, thereby conforming to the civil law position on nonage. While Florida has declared the common and statute laws of England to be in force, s. 2.01. F.S. states:

“Provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the arts of the legislature of this state.”

If a statute expressly modifies or abrogates common law, the statute is controlling. In Florida, the disability of nonage is removed for purposes of registering to vote when the person reaches his or her 18th birthday.

#### SUMMARY

1. The clerk, inspector and deputy sheriff have responsibilities which are more effectively performed by separate individuals and moreover, the apartment of a clerk or an inspector as a deputy sheriff to serve at a polling place would be in violation of s. 102.101, F.S.
2. There is no statutory authority to permit a County Canvassing Commission to meet prior to the close of the polls to open absentee ballots and to canvass these returns.
3. A poll watcher may serve at more than one precinct but must do so according to a schedule of assignment approved by the Supervisor of Election.
4. Under the Florida Election Code, A person becomes 18 years old on his or her 18th birthday and is eligible to preregister and vote in an election occurring on or after his or her 18th birthday.