

DE 87-10 - September 16, 1987

Federal Post Card Application (FPCA)

Sections 97.063(2), 97.063(4), 97.063(5), 98.111(1), 98.111.(3), 106.23(2), F.S.; and Art. VI, S. 3, Fla. Const.

To: Mr. John G. Metz, Jr., General Counsel, Federal Voting Assistance Program, Office of the Secretary of Defense, Washington, D. C. 20301

Prepared by: Division of Elections

You have asked for an advisory opinion on two specific provisions of The Florida Election Code, Sections 97-106, Florida Statutes. Under the authority granted the Division of Elections in Section 106.23(2), Florida Statutes, the Division may issue advisory opinions to several categories of people including a person or organization engaged in political activity. Since the main thrust of the Federal Voting Assistance Program is registering overseas citizens and facilitating the absentee voting process for such persons, we consider that the Federal Voting Assistance Program is engaged in political activity, and, therefore, the Division has authority to issue an advisory opinion to you.

You asked two specific questions:

1. Does the Secretary of State have authority to accept the recently revised Federal Post Card Application (FPCA) as an absentee registration form in light of Section 98.111(1), Florida Statutes, which requires the Department of State to prescribe the registration form and outlines information to be elicited from the registration form?
2. Does the Florida Constitution mandate the witness requirements of Section 97.063(5), Florida Statutes, which requires that an absentee registration form must be witnessed by a notary or other official authorized to administer oaths or by two registered voters from the same county as the voter?

As to your first question: Whether the Secretary of State has authority to accept the recently revised FPCA as an absentee registration form in light of Section 98.111(1), Florida Statutes, which requires the Department of State to prescribe the registration form and outlines the information to be elicited, we answer in the affirmative. In doing so, the Secretary would need to determine whether the FPCA complied with other statutory requirements relating to absentee voter registration.

Section 98.111(3), Florida Statutes, provides that "(t)here shall also be printed on the form an affidavit to include the oaths prescribed by law and a sworn statement by the applicant that all information on the form is true...." The FPCA has a section marked, "OATH. SUBSCRIBED AND SWORN TO BEFORE ME _____" and then contains spaces for additional information: the typed name of the individual who administered the oath, his title, organization, signature and the date.

The individual administering the oath will be a voting assistance officer at a military installation, embassy or consulate or a personnel officer of a United States business located overseas. These individuals have a manual containing instructions and outlining specific requirements of individual states such as Florida's constitutionally mandated oath that a prospective voter must swear to when registering as a voter. In addition, this manual will contain tear-out stickers with Florida's oath printed on the stickers. When a Florida resident requests assistance in registering, the designated personnel will tear out a sticker containing Florida's oath and place the sticker on the individual's FPCA.

An individual's party affiliation must be given for a Florida resident utilizing the FPCA even though the FPCA states that party affiliation must be given only if the individual is requesting ballots for certain elections since Section 97.063(4), Florida Statutes, requires party affiliation for all persons registering absentee. The FPCA will then contain all of the information mandated by Section 97.063 (4), Florida Statutes.

Section 97.063(2), Florida Statutes, provides that the FPCA will be accepted as a request for an absentee registration form for members of the armed forces and other citizens and their families living outside the United States, but this language was adopted when the FPCA did not contain all of the information mandated by Section 97.063(4), Florida Statutes. Also, Section 97.063(2), Florida Statutes, does not provide that the FPCA be accepted only as a request for an absentee registration form. As you correctly pointed out, Section 98.111(1), Florida Statutes, requires the Department of State to prescribe the registration form, so that if the FPCA contains all of the required information, the Department of State may prescribe the FPCA as an absentee registration form for members of the armed forces and other citizens and their families living outside the United States.

The Florida Constitution does not preclude using the FPCA as an absentee registration form as the Constitution provides only that:

Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

Art. VI, s. 3, Fla. Const.

As to your second question: Whether the Florida Constitution mandates the witness requirements of Section 97.063(5), Florida Statutes, which requires that the absentee registration form be witnessed by a notary or other official authorized to administer oaths or by two registered voters from the same county as the voter, the answer is no.

SUMMARY

The Secretary of State has authority to accept the recently revised FPCA as an absentee voter registration form since Section 98.111(1), Florida Statutes, requires the Department of State to prescribe the registration form.

The Florida Constitution does not mandate the witness requirements of Section 97.063(5), Florida Statutes, which requires that the absentee registration form be witnessed by a notary or other official authorized to administer oaths or by two registered voters from the same county as the voter.