

The law addressed in this opinion has changed. Please consult current Florida law.

DE 87-20 - November 20, 1987

Absentee Voting; Nursing Homes
Sections 101.041; 101.051(1),(4); 101.62(4); 101.65 and 104.051(4), F.S.

To: Honorable Peter K. Ilchuk, Supervisor of Elections, Monroe County, 500 Whitehead Street (Rear), Key West, Florida 33040-6547

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections. Your questions are:

1. Whether you or your staff may go to two county-run old-age homes to allow residents at these homes to fill out their absentee ballots?
2. If you or your staff may go to the old-age homes, may you take one of your voting booths to assist the residents in voting absentee?
3. You also express concern that in the past there have been questions as to whether, when voting absentee, the residents of the county-run old-age homes have cast their votes in true secrecy and without any pressure.

We will first address your concern about the residents voting in true secrecy and without pressure.

Section 101.041, Florida Statutes, provides that "(i)n all elections ... the voting shall be by secret official ballot printed and distributed as provided by this code...." In addition, Section 101.65, Florida Statutes, mandates that the following instruction shall be enclosed with each ballot sent to an absent elector, "Mark your ballot in secret as instructed on the ballot."

While an elector cannot be compelled to violate the secrecy of his ballot, the Florida courts have held that secret voting is a personal privilege and may be waived by the elector. 21 Fla. Jur.2d Elections s. 106 (1980); McDonald v. Miller, 90 So.2d 124, 127 (1956). Persons who are disabled may need assistance in marking their ballots and, generally, such assistance is authorized by statute and if not, the right to assistance in marking a ballot is assumed unless expressly prohibited. 26 Am. Jur.2d Elections, s. 238 (1966).

Section 101.051(1), Florida Statutes, provides that an elector "who requires assistance to vote by reason of blindness, disability, or inability to read and write may request the assistance of two election officials or some other person of his own choice ... to assist him in casting his vote." In addition, this section provides that the elector may have one of the persons assisting him read to him, without

suggestion or inference, the titles of the offices to be filled, the candidates and the issues. Any elector requesting assistance must take the oath prescribed in Section 101.051(4), Florida Statutes.

To prevent pressure from being applied to an elector, Section 104.051(4), Florida Statutes, provides that any "supervisor, deputy supervisor, or election employee who attempts to influence or interfere with any elector voting an absentee ballot is guilty of a misdemeanor of the first degree...."

As to your first question, whether you or your staff may go to the old-age homes to allow residents to fill out their absentee ballots, Section 101.62(4), Florida Statutes, provides that the supervisor of elections shall deliver or mail an absentee ballot to each elector requesting such a ballot.

In 1950, the Attorney General opined that a supervisor of elections could not deliver an application blank for an absent voter's ballot and that delivery must be made to the elector in the supervisor's office or by mail. 1950 Op. Atty. Gen. Fla. 050- 345 (July 19, 1950). However, at that time the applicable statute read as follows:

Such application blank, shall, upon request therefor, be immediately sent by such county supervisor of registration to said absent voter by mail or shall be delivered to said voter upon application made personally at the office of such supervisor of registration. (Emphasis added.)

S. 101.02, Fla. Stat. (1949)

In 1951, the Legislature revised and renumbered this section so that it read:

Upon receipt of application for absentee ballot, filled out and signed, the supervisor shall file it in his office and enter the name and address of the applicant to which the ballot is to be sent, upon a list to be kept by the supervisor or clerk for that purpose, together with the date of receiving the application, the date of mailing or delivering the ballot to the elector, the date of receiving the ballot from the elector and such other information he may deem necessary. (Emphasis added.)

S. 101.63, Fla. Stat. (1951).

Therefore, in view of the legislative changes made in 1951 and the present language in Section 101.62 (4), Florida Statutes, we see no reason why you or your staff may not go to the old-age homes to allow the residents to fill out their absentee ballots.

As to your second question, the statutes do not address whether a supervisor may take a voting booth along when delivering absentee ballots, but since the voting booth would certainly assist electors exercise their right of secrecy when voting, we see no conflict in allowing the supervisors to do this.

SUMMARY

The supervisor of elections and his staff may go to two county-run old-age homes to allow residents at

these homes to fill out their absentee ballots. The supervisor may take a voting booth along for electors to use to assist the electors in exercising their right of secret voting. If the elector requests assistance in voting, two election officials or the other person of the elector's choice may assist the elector in voting.