

DE 89-04 - June 1, 1989

**Registering the Homeless
Section 97.091, F.S.**

*To: Honorable Shirley Baccus, Supervisor of Elections, Brevard County, Searstown Mall-West End,
3550 South Washington Avenue, Titusville, Florida 32780*

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 specific questions are as follows:

If a homeless citizen wishes to register to vote and claims his automobile as his residence, in what precinct can the supervisor of elections register him? Since his car will not be residing in the same place every night, does the supervisor register him in the precinct where his automobile is that evening or can he register in the courthouse precinct?

Section 97.091(1), Florida Statutes, provides in pertinent part:

No person shall be permitted to vote in any election precinct or district other than the one in which he has his permanent place of residence and in which he is registered. However, a person temporarily residing outside the county shall be registered in the precinct in which the county courthouse is located when he has no permanent address in the county and it is his intention to remain a resident of Florida and of the county in which he is registered to vote....

In determining voting qualifications, states are limited by the equal protection clause of the United States Constitution and by federal statutes. Collin, Voting Rights of the Homeless, 15 Stetson L.Rev. 809 (1986). In 1972, the Supreme Court held that a state may not discriminate against the homeless in its registration laws. Dunn v. Blumstein, 405 U.S. 330 (1972).

Accordingly, the Southern District of New York in 1984 held that the manner in which the New York City Board of Elections applied New York State election laws completely disenfranchised homeless individuals and was, therefore, a violation of the equal protection clause. Pitts v. Black, 608 F.Supp. 696 (D.C.N.Y. 1984). The issue before the court was whether individuals inhabiting non traditional "residences," such as parks, alleys, and other outdoor areas, met the statute's residency requirements. Id. at 698. The court stated that to determine whether an individual has a residence, the key objective is to ascertain "the place which is the center of an individual's life...the locus of his primary concern... and the place the individual presently intends to remain." Id. at 709.

The court noted that at least two other jurisdictions had devised alternative residency requirements

which were less restrictive of voting rights than the procedure utilized in New York.

In the District of Columbia, residency requirements may be satisfied by the designation of any location as long as it is accompanied by an effective mailing address. Pitts, at 709 citing In re: application for voter registration of Willie R. Jenkins, (D.C. Board of Elections and Ethics, June 7, 1984). In Pennsylvania, an applicant who is homeless is deemed to have satisfied the residency requirements by declaring the address of any shelter with which the applicant has an established relationship. Pitts at 708, citing Committee for the Dignity and Fairness for the Homeless v. Tartaglione, No. 84-3447 (E.D. Pa. Sept. 14, 1984).

The California Second District Court of Appeals held in 1985 that affidavits in which applicants listed a city park as their residence were sufficient for voter registration. Collier v. Menzel, 176 Cal.App.3d. 30, 221 Cal.Rptr. 110 (Cal.2d Dist.Ct.App. 1985).

Therefore, it is clear that the homeless are to be registered to vote when the following criteria are met:

1. The applicant intends to remain in that locale
2. There is a place where the applicant can receive messages, or
3. There is an effective mailing address.

In reference to your specific questions, it appears from the cases noted above, that a homeless person is not to be registered routinely in the courthouse precinct. Therefore, if the homeless applicant intends to remain in your local and wants to register to vote, he must be able to furnish you either a place where he can receive messages or an effective mailing address.

Section 98.111(1), Florida Statutes, provides that an applicant must provide the supervisor with a residence address. However, in view of the federal court cases, we suggest the following procedure when a homeless person intends to remain in your local and wants to register to vote but does not have a residence address: If the applicant has a place where he may receive messages, you may use the address of this place as the applicant's residence address. If the applicant has an effective mailing address, you may use the address of the mailing address as the applicant's residence address. If the mailing address is a post office box or general delivery at a particular post office, use the address of the post office for the residence address. We also suggest that you have some way of identifying the homeless in your voter registration records so if you are questioned about a homeless person's residence address, you will know that the voter is homeless.

SUMMARY

State registration laws may not discriminate against the homeless in voter registration as long as the homeless applicant for voter registration intends to remain in a locale and has either a place where he can receive messages or an effective mailing address. To determine in which precinct the homeless applicant should be registered, the supervisor may use a location where the applicant receives messages or the precinct in which the applicant's effective mailing address is located. If the effective mailing address should be either a post office box or general delivery at a particular post office, the

precinct in which the particular post office is located should be listed as the precinct of the homeless individual.