

DE 90-18 - March 29, 1990

Absentee Ballots for Municipal Elections
Sections 97.021(8); 101.041; 101.5612; 101.5614; and 101.62 - 101.69, F.S.

To: Honorable Kurt S. Browning, Supervisor of Elections, Pasco County, Pasco County Courthouse, 705 East Live Oak Avenue, Dade City, Florida 33525

Prepared by: Division of Elections

This is in reference to your letter requesting an opinion regarding absentee ballots for municipal elections. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions to several categories of persons including supervisors of elections. Specifically, you have asked:

- 1) Do municipal governments in Florida have to provide absentee ballots for municipal elections?
- 2) If municipal governments provide absentee ballots, are the absentee ballots for municipal elections required to be distributed, returned, and counted pursuant to the Florida Election Code?
- 3) Do the following sections apply to municipal government elections?

101.5612 Testing of tabulating equipment.

101.5614 Canvass of returns.

101.62 Request for absentee ballots.

101.64 Delivery of absentee ballots; envelopes; form.

101.65 Instructions to absent electors.

101.67 Safekeeping of mailed ballots; deadline for receiving absentee ballots.

101.68 Canvassing of absent elector's ballot.

101.69 Voting in person; return of absent elector's ballot.

The primary application of the Florida Election Code, Chapters 97-106, Florida Statutes, is for county and state elections, although certain sections of the election code do apply to municipal and national elections.

In reference to your first question, municipal governments do not have to provide absentee ballots for municipal elections. As used in Chapters 97 through 105, Florida Statutes, the word "election" means any primary election, special primary election, special election, general election, or presidential preference primary election. Municipal election is not included in this definition. See Section 97.021 (8), Fla. Stat. Primary election, special primary election, special election, and general election are all also defined and municipal elections are not included in any of these definitions. See Sections 97.021 (12), (20), (22), and (23), Fla. Stat. As such, for any provisions in Chapter 97 through 105, Florida

Statutes, to apply to municipal elections, such provisions must specifically state that they are applicable to municipalities.

Chapter 101, Florida Statutes, provides procedures for voting. A number of sections specifically refer to municipal elections and are, therefore, applicable. Op. Div. Elect. 77-37. Sections which do not refer specifically to municipal elections would be applicable only if the municipality has specifically adopted them by charter provision or ordinance. The sections applicable to absentee ballots, Sections 101.62 through 101.69, Florida Statutes, do not refer specifically to municipal elections.

In addition, the court in Anderson v. Canvassing and Election Bd. of Gadsden Co., 399 So.2d 1021, 1023 (Fla. 1st DCA 1981), noted that "[U]nlike the right to vote, which is secured to every citizen by the United States Constitution and the various state constitutions, the ability to vote in absentia is a privilege."

Therefore, municipal governments in Florida are not required to provide absentee ballots for municipal elections.

In reference to your second question, if municipal governments provide absentee ballots, the absentee ballots are required to be distributed, returned, and counted pursuant to the election code. Section 101.041, Florida Statutes, which is applicable to elections for municipal officers provides "[T]he voting shall be by secret, official ballot printed and distributed as provided by this code, and no vote shall be received or counted in any election, except as prescribed by this code."

Consequently, if a municipality provides absentee ballots for elections, it must comply with all of the absentee ballot provisions in the election code.

In reference to your third question, as previously stated, Sections 101.62 - 101.69, Florida Statutes, apply to municipal elections if the municipality provides absentee ballots. In addition, Section 101.5612, Florida Statutes, which mandates public testing of automatic tabulating equipment and Section 101.5614, Florida Statutes, which provides for canvassing of returns when electronic or electromechanical voting systems are used, both apply when municipalities use electronic or electromechanical voting systems.

SUMMARY

Municipalities in Florida are not required to provide absentee ballots for municipal elections. However, if a municipality provides absentee ballots for municipal elections, it must comply with all of the absentee ballot provisions in the Florida Election Code. Section 101.5612, Florida Statutes, which mandates public testing of automatic tabulating equipment and Section 101.5614, Florida Statutes, which provides for canvassing of returns when electronic or electromechanical voting systems are used, apply when municipalities use electronic or electromechanical voting systems.