

DE 90-31 - July 16, 1990

Absentee Ballots
Sections 101.62(1), (4)(B), (6), and 106.143, F.S.

To: Mr. John F. Laurent, Post Office Box 1018, Bartow, Florida 33830

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. You are a candidate for the Florida House of Representatives, and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to certain categories of persons including candidates. Therefore, the Division has authority to issue this opinion to you.

You asked several questions, and for clarity we will state each question and then answer that particular question.

1. Can a candidate legally mass mail unsolicited absentee ballot applications to the voters?

Yes. Section 101.62, Florida Statutes, provides that a supervisor "may accept" requests for absentee ballots made "in person, by mail, or by telephone." Section 101.62(1), Fla. Stat. In addition, an elector "may designate in writing a person to pick up the ballot for him; however, no candidate may be designated to pick up an absentee ballot for any elector other than a member of his immediate family." Section 101.62(4)(b), Fla. Stat. (Emphasis added.)

2. Is there a state form that must be used?

No. However, any request in writing must contain sufficient information so that the absentee ballot request may be honored by the supervisor. The person's name, address, including zip code, is necessary. In addition, the telephone number is helpful in case the supervisor has questions regarding the application for an absentee ballot. When the request is in writing, it must be signed by the elector with a statement requesting the absentee ballot. The birth date is also helpful since many times there are several electors within the county with the same name and, unless other identifying information is included, the supervisor does not know which elector requested the absentee ballot. The supervisor must have the address where the absentee ballot is to be sent since many times this will be different than the resident's address on file in the supervisor's office.

Section 101.62(1), Florida Statutes, also allows an elector to request absentee ballots for all elections within a calendar year, so the request must state for which elections the electors are requesting the absentee ballots. Section 101.64(1), Florida Statutes, provides the reasons that an elector may vote absentee. A voter needs to be aware that when he returns his absentee ballot he must state under oath that he is entitled to vote absentee.

3. Is partisan andor political material allowed to accompany the application for the absentee ballot?

Presumably your question refers to the content of the mass mailing by a candidate if part of that mass mailing is the application for an absentee ballot. There are no restrictions on what a candidate may send to an elector as long as the material conforms to the statutes regarding political advertisements. See Section 106.143, Fla. Stat. While there is no state form for requesting an absentee ballot, various supervisors do have their own individual forms for electors to use when requesting an absentee ballot. There are restrictions, however, on what a supervisor of elections may include with the absentee ballot. Section 101.62(6), Florida Statutes, provides "Nothing other than the materials necessary to vote absentee shall be mailed or delivered with any absentee ballot."

4. Can the returned absentee ballot applications be mailed to an address, other than the local supervisor of elections?

Yes. However, we caution you that if requests for absentee ballots are returned to an address other than the local supervisor of elections, the person who receives these applications must exercise caution in making sure that the applications are timely delivered to the local supervisor so that the elector will not be disenfranchised. As you may be aware, Florida has the "tightest" window of any of the states between its first primary, second primary, and general election with only nine weeks time frame. Therefore, time is of the essence and any delay in getting these applications to the supervisor could result in the elector losing his right to vote. Many supervisors request that if persons other than the supervisor receive these applications, or requests for absentee ballots, that they be submitted to the local supervisor the same day that they are received.

SUMMARY

A candidate may legally mass mail unsolicited absentee ballot applications to the voters. There is no specific state form that must be used; however, a written request must contain the person's name, address, zip code and must state for which election the elector is requesting the absentee ballot. There are no restrictions on what a candidate may send to an elector as long as the material conforms to the statutes regarding political advertisements. The absentee ballot applications may be returned to an address other than the local supervisor of elections.