

DE 90-39 - August 22, 1990

Advance Absentee Ballots
Sections 97.021(8), (12) and 20; and 101.62(4)(a), F.S.

To: Honorable J. K. "Buddy" Irby, Supervisor of Elections, Alachua County, County Administration Building, Gainesville, Florida 32601

Prepared by: Division of Elections

This is in reference to your request for an opinion regarding the advance absentee ballots sent to overseas electors pursuant to Section 101.62(4)(a), Florida Statutes. You are the Alachua County Supervisor of Elections, 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 supervisors of elections. Therefore, the Division has authority to issue this opinion to you.

Your question is as follows:

Should special municipal elections, local questions, and regular municipal elections, that happen to appear on the ballot at the time of the second primary or general election, be included on the advance ballot for each election respectively?

Section 101.62(4)(a), Florida Statutes, provides that the supervisor of elections will send an advance absentee ballot to each overseas elector at least 35 days before the first primary election and 45 days before the second primary and general election. The advance absentee ballot for the second primary is the same as the first primary absentee ballot as to the names of candidates, except for offices where there were only two candidates and political party executive committee offices. When there were only two candidates for an office at the first primary, those offices are omitted from the advance absentee ballot for the second primary. In addition, no political party executive committee offices will appear on the advance second primary absentee ballots.

The advance absentee ballot for the general election is the same as the regular general election ballot, except where political party nominations were not made in the first primary, when this happens, the names of the candidates placing first and second in the first primary will both be printed on the advance absentee ballots.

Chapters 97-106, Florida Statutes, are the Florida Election Code. The election code primarily applies to county, state, and national offices. However, certain sections do apply to municipalities. See Op. Div. Elect. Fla. 77-37. Chapter 101, Florida Statutes, provides procedures for voting. Certain sections specifically refer to municipal elections and are, therefore, applicable to municipal elections. If other sections are specifically adopted by a municipality, either by charter or ordinance, they are applicable to municipal elections.

Chapter 97, Florida Statutes, contains definitions for use in election code, although a few definitions are contained in Chapter 106, Florida Statutes, which definitions specifically refer to Chapter 106, Florida Statutes. In looking at the definitions contained in Chapter 97, Florida Statutes, it is obvious that municipal elections are not included. For example, election is defined as "any primary election, special primary election, special election, general election, or presidential preference primary election." Section 97.021(8), Fla. Stat. Likewise, general election is defined as the "election held on the first Tuesday after the first Monday in November...for the purpose of filling national, state, county, and district offices...." Section 97.021(12), Fla. Stat. Primary election is defined as "an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office...." Section 97.021(20), Fla. Stat.

In view of the definitions contained in Chapter 97, Florida Statutes, it is our opinion that Section 101.62(4)(a), Florida Statutes, does not mandate that advance absentee ballots be sent in municipal elections, whether or not such elections are held in conjunction with the primary or general elections. This includes elections for filling municipal office as well as issues which a municipality may place on the ballot. Issues which are placed on the ballot by the county, a district, or the state and which appear on the primary or general election ballot must appear on the advance absentee ballots.

SUMMARY

When a municipal election is held in conjunction with the first primary, second primary or general election, advance absentee ballots sent to overseas electors will not include municipal offices or issues. However, issues placed on the ballot by a county, a district, or the state must appear on the advance absentee ballots.