

DE 90-42 - September 18, 1990

**Issuing Additional Absentee Ballots
Sections 101.011(5) and 101.5608(2)(b), F.S.**

To: Honorable Dorothy Walker Ruggles, Supervisor of Elections, Pinellas County, 315 Court Street, Clearwater, Florida 34616-5190

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on absentee ballots. You are the Pinellas County Supervisor of Elections, and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You have asked the following questions:

1. When an absentee ballot has been voted and returned, may the supervisor of elections issue another ballot if the voter states that he did not vote all of the positions?
2. When an absentee voter calls regarding a spoiled ballot, may the supervisor of elections issue the elector another ballot?

In answer to your first question, the supervisor may not issue another ballot to an elector once the ballot has been voted and returned to the supervisor.

The elective franchise is the cornerstone of our system of government and in its exercise the elector should employ care that he complies with requirements and conditions. See Lock v. St. Petersburg Beach, 5 Fla. Sop. 126 (Fla. 6th Cir. Ct. 1954). Absentee voting statutes are in derogation of the common law and, therefore, must be strictly construed. See Boardman v. Esteva, 323 So.2d 259 (Fla. 1976). Strict construction, however, does not necessarily mean strict compliance. In Esteva, the court held that substantial compliance with the absentee voting laws is all that is required to give legality to the ballot.

In Lock, the circuit court held that absent a claim of fraud, an elector cannot be heard in a court of equity on the grounds that he was negligent in the exercise of his right to vote. The court emphasized that the election laws provide every possible safeguard to insure that each elector has the opportunity to express his choice in the election without interference from any source. The elector has absolute control of his ballot until it is completed and deposited with the proper election official. However, once a ballot is cast, the elector has no more control over it. There must be an end to the transaction in order that the final results may be ascertained. The court also noted that an absentee ballot cannot be opened and changed by anyone once it has been sealed and deposited with its proper custodian.

Therefore, once an elector has voted his absentee ballot and returned the ballot to the supervisor of elections, the supervisor may not issue a new absentee ballot to the elector.

In answer to your second question, the supervisor of elections may issue another ballot to an absentee voter who has spoiled the original ballot if the voter returns the original ballot to the supervisor. See Section 101.011(5), Fla. Stat. (Voting by paper ballot) and Section 101.5608(2)(b), Fla. Stat. (Voting by electronic or electromechanical method). However, in no case may the supervisor furnish more than three ballots to the absentee voter. Section 101.011(5), Fla. Stat.

SUMMARY

Once an elector has voted his absentee ballot and returned the ballot to the supervisor of elections, the supervisor may not issue a new absentee ballot to the elector.

The supervisor of elections may issue another ballot to an absentee voter who has spoiled the original ballot if the voter returns the original ballot to the supervisor. However, in no case may the supervisor furnish more than three ballots to the absentee voter.