

Obsolete with respect to Example 2.

DE 90-46 - December 14, 1990

Election Recount Section 102.141(4), F.S.

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

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on election recounts. You are the Supervisor of Elections for Pinellas County, 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 ask:

In reference to ordering a recount of votes, what is the definition of "votes cast with respect to such office or measure" as provided in Section 102.141(4), Florida Statutes?

In answer to your question, the phrase "votes cast with respect to such office or measure" refers to the votes actually counted for a race, office or measure appearing on the ballot. "Under" votes or "over" votes are not included. An "under" vote is a ballot on which the elector did not vote in that particular race. An "over" vote is a ballot on which the elector voted for more than the legal number of candidates or measures in a particular race. While the "over" and "under" votes are not included in the recount calculations, the canvassing board should review these ballots during a recount to ensure that the determination of an "under" or "over" vote is correct.

Section 102.141(4), Florida Statutes, provides, in part:

If the returns for any office reflect that a candidate was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, the board responsible for certifying the results of the vote on such race or measure shall order a recount of the votes cast with respect to such office or measure. (Emphasis added.)

As indicated by the words "defeated" and "eliminated," the focus of the recount is not on the winner of the race. It serves as precautionary measure to protect the person who has been eliminated from a race or office. Since the recount statutes are somewhat complex, especially in view of the differences which may occur in a recount in a first primary and recounts in the second primary or general election, we are providing the following examples to explain the recount process.

EXAMPLE 1:

The first example is the most common and simplest form of the recount issue. This example involves a general election with two candidates.

Candidate	Votes Received
A	9,755
B	9,845
TOTAL VOTES CAST	19,600

To determine whether a recount is necessary, calculate how many votes constitute more than one-half percent of the total votes cast. More than one-half percent of the total votes cast in this example election would be more than 98 votes.

$$\text{Total votes cast} \times .5\% =$$

$$19,600 \times .005 = 98 \text{ votes}$$

Unless Candidate B, who has the most votes, received more than 98 votes than Candidate A, there must be a recount. Here, Candidate B received 9,845 votes, and Candidate A received 9,755 votes.

$$9,845 - 9,755 = 90$$

Candidate B received only 90 more votes than Candidate A. Thus, a recount is necessary.

EXAMPLE 2:

This example involves a first primary election with four candidates, one whom withdrew from the race (Candidate A) shortly before the election. Candidate A's name remained on the ballot due to the short notice of his withdrawal, and received 925 votes. Although Candidate A had withdrawn from the race, the votes cast for this candidate are still included in the total number votes cast when determining whether a recount or a run-off election is necessary. See Merrill v. Dade County Canvassing Robin Bd., 300 So.2d 28 (Fla. 3rd DCA 1974).

Candidate	Votes Received
A	925
B	5,802
C	1,282
D	3,509
TOTAL VOTES CAST	11,518

In this situation, Candidate B received a majority of the votes cast, so that a run-off election is not necessary. See Section 100.061, Fla. Stat.

Total votes cast x 50%

$$11,518 \times .50 = 5,759$$

Our focus is not the winner, Candidate B, and how many more votes he received than the second place candidate, but rather our focus is Candidate D and how many votes separated him from being in a second primary run-off election. Candidate B needed more than 5,759 votes to have a majority of the votes cast. Candidate B actually received 5,802 and, therefore, only received 43 more votes than necessary.

$$5,802 - 5,759 = 43$$

As in example 1, to determine whether a recount is necessary, calculate how many votes constitute one-half percent of the total votes cast. More than one-half percent of the total votes cast in this example election would be more than 57.59 votes.

Total votes cast x .5% =

$$11,518 \times .005 = 57.59$$

Unless Candidate B, who has the most votes, received more than 57.59 votes than necessary to have a majority of the votes cast, there must be a recount. Candidate B received less than 57.59 votes more than necessary for there not to be a run-off election. Thus, a recount is necessary.

EXAMPLE 3:

This example involves a first primary election with three candidates.

Candidate	Votes Received
A	4,010
B	7,315
C	4,075
TOTAL VOTES CAST	15,400

As in the previous examples, to determine whether a recount is necessary, calculate how many votes constitute more than one-half percent of the total votes cast. More than one-half percent of the total votes cast in this example would be more than 77 votes.

Total votes cast x .5% =

$$15,400 \times .005 = 77 \text{ votes}$$

As in example 2, calculate whether a run-off election is necessary. Unless Candidate B received a majority of the votes there must be a run-off election.

$$\text{Total votes cast} \times 50\% =$$

$$15,400 \times .50 = 7700$$

Candidate B received only 7,315 votes. Therefore, there must be a run-off election between Candidate B and the candidate who received the second largest number of votes, Candidate C. This means that Candidate A was eliminated from the run-off election. Therefore, the supervisor of elections must determine whether Candidate A was eliminated by more than one-half percent of the total votes cast

Unless Candidate A was eliminated by more than 77 votes, there must be a recount. Here, Candidate C received 4,075 votes and Candidate A received 4,010 votes.

$$4,075 - 4,010 = 65$$

Candidate A was eliminated from the run-off election by only 65 votes, which is less than one-half percent of the total votes cast. Consequently, there must be a recount.

SUMMARY

The phrase "votes cast with respect to such office or measure" refers to the votes actually counted for a race, office or measure appearing on the ballot. See opinion for specific recount examples.