

DE 93-03 - May 26, 1993

Mail Ballot Elections

§§ 97.021(25); 101.6102(1)(a)2,(3), and (4); 101.6103(5); and 102.141(1), F. S.

TO: The Honorable Mary Morgan, Supervisor of Elections, Collier Government Center, 3301 Tamiami Trail East, Naples, Florida 32043

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding mail ballot elections. The Division of Elections has authority pursuant to Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections.

You have posed several questions regarding Sections 101.6101-101.6107, Florida Statutes, the "Mail Ballot Election Act." Each question is answered separately and, in some cases, the question has been rephrased.

Question 1.

Does the term "supervisor of elections," as used in the Act, include the municipal clerk?

Answer: No.

The term "supervisor of elections" means the supervisor of elections within each of the 67 counties. See, Section 97.021(25), Florida Statutes, which states "wherever the word 'supervisor' is used, it means the supervisor of elections." Therefore, the term "supervisor of elections" as used in the Act can only refer to the county supervisor of elections.

Question 2.

Can a governing body call a mail ballot election without the authorization of the supervisor of elections? Answer: No.

Section 101.6102(1)(a)2., Florida Statutes, allows election by mail if, among other things, the governing body responsible for calling the election and the supervisor of elections responsible for the conduct of the election authorize the mail ballot election. This provision is plain and unambiguous and, therefore, requires no interpretation. See, State v. Egan, 287 So. 2d 1 (Fla. 1973).

Question 3.

Can any individual, other than the supervisor of elections, conduct a mail ballot election?

Answer: No.

Section 101.6102(3), Florida Statutes, clearly mandates that the supervisor of elections has the statutory duty of conducting mail ballot elections. Unless the Legislature, by special or general law, creates an exception, the supervisor must perform this duty. See, Op. Att'y Gen. Fla. 90-40 (May 11, 1990).

Question 4.

Can a canvassing board other than the county canvassing board canvass the mail ballots?

Answer: No.

Again, the statute is plain and unambiguous. Section 101.6103(5), Florida Statutes, specifically states that the canvass is to be conducted by the county canvassing board.

Question 5.

Are canvassing board members, who are unable to serve, replaced pursuant to Section 102.141 (1), Florida Statutes? Answer: Yes. This section provides the only method of replacement for such board members.

Question 6.

May a supervisor of elections supervise the requesting governmental unit's employees and have such employees perform tasks associated with preparing for a mail ballot election? Answer: Yes.

A supervisor of elections may supervise employees who have been furnished by the requesting governmental unit to assist in conducting a mail ballot election. However, the requesting governmental unit is under no statutory obligation to provide employees to conduct the mail ballot election. Sections 101.6102(3) and (4), Florida Statutes, provide that the supervisor of elections is responsible for conducting the election and that the governmental entity calling the election is responsible for the costs of the election.

Question 7.

If the answer to question 6 is yes, what specific tasks must the supervisor perform? Answer: The supervisor statutorily is responsible for whatever tasks are required to conduct a mail ballot election. Even though a supervisor and a requesting governmental unit may agree to certain tasks being performed by each, a supervisor may not delegate or contractually abolish his statutory duties regarding the conduct of a mail ballot election.

Question 8.

If a city conducts its own elections, are mail ballot elections a city election option if conducted totally without the involvement of the supervisor? Answer: No.

As stated previously, the county supervisor of elections statutorily is responsible for conducting a mail ballot election. Therefore, a city does not have the option of conducting its own mail ballot election. A mail ballot election can only be conducted by a county supervisor of elections, absent a general or special law to the contrary.

SUMMARY

As used in the Mail Ballot Election Act, Sections 101.6101- 101.6107, Florida Statutes, the term "supervisor of elections" means the supervisor of elections within each of the 67 counties. A governing body cannot call a mail ballot election without the authorization of the supervisor of elections, and such election may be conducted only by the supervisor of elections. The county canvassing board must canvass the ballots cast in a mail ballot election, and canvassing board members must be replaced pursuant to Section 102.141(1), Florida Statutes. While the supervisor of elections and the requesting governmental unit may agree to perform tasks associated with a mail ballot election, the supervisor of elections statutorily is responsible for the conduct of such election and cannot delegate or contract away his statutory duties.