

Obsolete. Please consult current Florida law.

DE 93-11 - December 3, 1993

Counting Absentee Ballots Section 101.68(1), F.S.

TO: The Honorable Patricia Hollarn, Supervisor of Elections, Okaloosa County, 1804 Lewis Turner Boulevard, Suite 404, Fort Walton Beach, Florida 32547-1285

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the canvassing and counting of absentee ballots on election day. You are the Okaloosa County Supervisor of Elections and, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

You ask:

(1) May absentee ballots be run through the vote tabulation equipment before 7 P.M., if the results are not printed?

(2) If the answer to question one is yes, does that negate the need for the public logic and accuracy test pursuant to Section 101.5612(2), Florida Statutes?

For the reasons which follow, the answer to your first question is no. Therefore, there is no need to answer your second question.

Section 101.68(1), Florida Statutes, provides that the county canvassing board "may begin the canvassing of absentee ballots at 7 A.M. on the day of the election. . . however, the counting of votes on absentee ballots shall begin no earlier than 7 P.M. on the day of the election." (Emphasis added.) Thus, there are two separate procedures, a canvass and a count.

Prior to 1986, Section 101.68(1), Florida Statutes, required the canvassing board to begin canvassing the absentee ballots not later than noon the day following the election. Section 101.68(1), Fla. Stat. (1986). However, this law was changed to its present form by Chapter 86-33, Laws of Florida. According to the legislative history, the intent of this legislation was to allow the canvassing board to begin preparation and examination of the absentee ballots, but under no circumstances was the actual counting of votes to begin until 7 P.M. on the day of the election. House of Representatives Committee on Ethics and Elections, Final Staff Analysis, HB 278, May 13, 1986; Senate Staff Analysis and Economic Impact Statement, Senate Bill 161, April 29, 1986.

This intent is evidenced by the plain meaning of the words used by the Legislature in the statute. It is that plain meaning upon which we must rely. State v. Stewart, 374 So. 2d 1381, at 1383, (Fla. 1979). The word canvass means to examine, scrutinize, or discuss thoroughly; the word count or counting means the process of counting so as to find the total number of units involved. Webster's Ninth New

Collegiate Dictionary, 1984.

Therefore, if a vote tabulation system engages in a process of counting votes on an absentee ballot when such a ballot is fed into the tabulation equipment, this process cannot begin until 7 P.M. Whether the results are actually printed is of no consequence; the votes have been processed in order to determine a total.

SUMMARY

Absentee ballots may not be processed through the vote tabulation equipment prior to 7 P.M. on election day where such equipment is not only counting ballots, but also reading each ballot and counting votes on the ballot.