

DE 94-08 - March 24, 1994

**Public Official's Authority to Obtain and Allow Public Access to Voter Information
Sections 98.081, 98.101, 98.111, 98.161(3), 98.211(1)(a),(b), (2), and (3), 98.301(2), 119.011(1),
119.07(1)(a), 119.07(3)(a), F.S.; and DE 88-29.**

*TO: The Honorable Wilma Anderson, Supervisor of Elections, Citrus County, Post Office Box 965,
Inverness, Florida 32651-0965*

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding a public official's authority to request and to allow public access to election records. You are the Citrus 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 essentially the following questions:

1. May a supervisor of elections provide to a requesting county property appraiser copies of voter registration cancellations received from other jurisdictions and copies of the lists of resident deaths received from the county and the Bureau of Vital Statistics?
2. May a supervisor of elections provide to a requesting county property appraiser a tape of registered voters for the purpose of making the name, address, and date of birth of each voter available on computer for public access in the public official's office?

For the reasons which follow, your first question is answered in the affirmative; your second question is answered in the negative.

As to your first question, Section 119.011(1), Florida Statutes, provides:

"Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Additionally, Section 119.07(1)(a), Florida Statutes, provides in relevant part:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee....

However, Section 119.07(3)(a), Florida Statutes, provides an exception to the above:

All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, are exempt from the provisions of subsection (1). (Emphasis added.)

Under Sections 98.211(1)(a) and (b) and (2), Florida Statutes, the Legislature has expressly provided such an exemption to the public examination and copying of registration books. Section 98.211(1)(a), Florida Statutes, provides:

The registration books are public records. Every citizen is allowed to examine the registration books while they are in the custody of the supervisor, but is not allowed to make copies or extracts therefrom except as provided by this section. Within 15 days of a request, the supervisor shall furnish any requested information, excluding a voter's signature, which the supervisor maintains pursuant to "The Florida Election Code." (Emphasis added.)

Similarly, Sections 98.211(1)(b) and 98.211(2), Florida Statutes, provide:

(1)(b) Notwithstanding the provision of paragraph (a), after an election, if there is a request for information relating to electors who voted in the most recent election, within 15 days of the request the supervisor shall either provide the information or allow the persons, entities, or agents thereof, as authorized in this section, to personally extract or copy the information.

(2) The information provided pursuant to this section shall be furnished only to:

(a) The courts for the purpose of jury selection;

(b) Municipalities;

(c) Other governmental agencies;

(d) Candidates, to further their candidacy;

(e) Registered political committees, registered committees of continuous existence, and political parties or officials thereof, for political purposes only; and

(f) Incumbent officeholders, to report to their constituents.... (Emphasis added.)

Consequently, the county property appraiser is authorized to receive copies of information from voter registration records pursuant to Sections 98.211(1)(a) and (b) and 98.211(2), Florida Statutes, provided an Oath of Acquisition is completed in accordance with Section 98.211(3), Florida Statutes.

Another question which must be addressed here, however, is whether voter registration cancellations

received from other jurisdictions and the lists of resident deaths received from the county and the Bureau of Vital Statistics are part of the information contained in voter registration books. If this information is not part of the information contained in voter registration books, then such information is not exempt from disclosure under Chapter 119, Florida Statutes, and must be open to public inspection and copying. The public records exemptions provided for purposes of examination and copying set forth in Section 98.211, Florida Statutes, are limited to information that is contained in a supervisor's registration books.

It should be pointed out that Section 98.101, Florida Statutes, provides that registration books are made up of visible record binders, files, and registration forms. Further, Section 98.111, Florida Statutes, prescribes what information must be obtained from the voter registration form:

- (a) Registration number;
- (b) Date of registration;
- (c) Full name;
- (d) Sex;
- (e) Party affiliation;
- (f) Date of birth;
- (g) Race;
- (h) State or country of birth;
- (i) Residence address at time of registering;
- (j) Post-office mailing address at time of registering;
- (k) Whether the registrant is permanently disabled;
- (l) Precinct number;
- (m) Whether or not the registrant is able to write his name or mark his ballot and, if not, the reason therefor;

Section 98.081, Florida Statutes, provides for removal of names from voter registration books when an elector has not voted for the past two years or made a written request that his registration record be updated. To fulfill this obligation, the supervisor must keep records on each elector establishing whether the elector has voted in each election and whether the elector has updated the registration

record when necessary. These records are all part of the registration records.

However, it is the Division's legal opinion that the voter registration cancellations received from other jurisdictions and the lists of resident deaths received from the county and the Bureau of Vital Statistics are not part of the voter registration books and are, therefore, not exempt from disclosure under Chapter 119, Florida Statutes. Likewise, the lists of convicted felons and persons adjudicated mentally incompetent furnished by the clerk of the court to the supervisor pursuant to Section 98.301(2), Florida Statutes, are also not a part of the voter registration books.

In reference to your second question, under Section 98.211(2), Florida Statutes, the county property appraiser, as an incumbent officeholder or as a governmental agency, may receive a magnetic tape of voter registration records from a supervisor of elections' office. A magnetic tape is comparable to a written list and is distinguishable from "inquiry" or "on-line" computer access. Therefore, our opinion in DE 88-29 would not prohibit the distribution of a magnetic tape to the requesting public official if the Oath of Acquisition is completed by the public official.

However, any subsequent use by the property appraiser must be in accordance with the use authorized by Section 98.211(2), Florida Statutes. That section provides:

[N]o person who acquires such a list, shall use any information contained therein for purposes which are not related to elections, political or governmental activities, voter registration, law enforcement, or jury selection. (Emphasis added.)

Similarly, the Oath of Acquisition set forth in Section 98.211(3), Florida Statutes, provides:

I hereby swear or affirm that I am a person authorized by s. 98.211, Florida Statutes, to acquire information on registered voters of _____ County, Florida; that the information acquired will be used only for the purposes prescribed in that section and for no other purpose; and that I will not permit the use or copying of such information by persons not authorized by the Election Code of the State of Florida. (Emphasis added.)

Thus, it is clear that the public may examine information contained in the registration books, excluding a voter's signature, while such information is in the custody of the supervisor of elections. It is also clear from the statutory provisions set forth in Sections 98.211(2) and (3), Florida Statutes, that any person, entity or agent thereof, who acquires such information, cannot use such information for purposes which are not related to elections, political or governmental activities, voter registration, law enforcement, or jury selection. It is equally clear that the copying of such information is limited to the courts for purposes of jury selection, to municipalities, to governmental agencies, to candidates to further their candidacy, to registered political committees, to registered committees of continuous existence, political parties or officials thereof, for political purposes only, and to incumbent officeholders to report to their constituents.

Additionally, Section 98.161(3), Florida Statutes, states that "[t]he supervisor is the official custodian of the registration books and has the exclusive control of matters pertaining to registration of electors."

Computer access by the public in another public official's office would circumvent the supervisor's "exclusive control" of the registration books.

Therefore, it is the division's opinion that the exemption contained in Section 98.211, Florida Statutes, carries forward when this information is provided to others, and a property appraiser may neither permit the public to have computer access to voter registration records he has obtained from the supervisor of elections nor extract information from such records for purposes of public disclosure.

SUMMARY

A county property appraiser is authorized to receive copies of voter registration cancellations and lists of resident deaths from a supervisor of elections. However, a property appraiser may neither permit the public to have computer access to voter registration records he has obtained from the supervisor of elections nor extract information from such records for purposes of public disclosure.