

A statute addressed in this opinion has changed. Please consult current Florida law.

DE 95-04 - September 13, 1995

Counting Absentee Ballots
§ 101.68(1), FS.; DE 93-11; and Fla. Admin. Code R. 1S-2.015.

TO: The Honorable Deanie Lowe, Supervisor of Elections, Volusia County, Post Office Box 1467, DeLand, Florida 32721-1467

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the counting of absentee ballots. You are the Supervisor of Elections for Volusia County. Therefore, pursuant to Section 106.23(2), Florida Statutes, the division has the authority to render this opinion to you.

You ask:

May absentee ballots be processed through the vote tabulation system before 7:00 p.m. on election day, if the tabulation system is such that the results can be delayed until after 7:00 p.m. and safeguards which prevent premature results are spelled out in written security procedures?

For reasons which follow, the answer to your question is yes.

In Op. Div. Elect. 93-11 (December 3, 1993), (hereafter DE 93-11), we held that absentee ballots could not be processed through the vote tabulation equipment prior to 7:00 p.m. on election day. In reaching this conclusion, the division relied on both the plain meaning of Section 101.68(1), Florida Statutes, as well as the legislative history of this law. In addition, in DE 93-11, the division did not consider the application of any applicable security procedures which a supervisor may have in place with respect to the processing of absentee ballots.

While the wording of a statute must be construed in its plain and ordinary sense, State v. Stewart, 374 So. 2d 1381, (Fla. 1979), it has also been held that statutes need not be interpreted so as to lead to unreasonable conclusions. Johnson v. Presbyterian Homes of the Synod of Florida, Inc., 239 So. 2d 256 (Fla. 1970), City of Boca Raton v. Gidman, 440 So. 2d 1277 (Fla. 1983).

You state in your letter that, pursuant to Fla. Admin. Code R. 1S-2.015, you have written security procedures in place which insure that no vote totals can be deliberately or accidentally counted by any human prior to 7:00 p.m. on election day. We are also aware that technologically speaking, voting systems have become increasingly tamper proof. For example, some voting systems are equipped with restrictive controls such as passwords, keys, time controls or end cards. The presence of these controls, along with security procedures, insures that there will be no tampering or accidental counting of vote totals by the Supervisor's personnel, or by others, prior to 7:00 p.m. on election day. During the voting day, counties employing these type systems engage in a process of reading ballots all day. After 7:00 p.m. the password is given or the end-card is inserted and a total is counted.

Therefore, given these types of systems, it would be unreasonable to disallow the tabulation or "reading" of absentee ballots by a machine prior to 7:00 p.m. when the same thing is occurring at the polling site throughout the voting day. It is not our desire to apply the election code to reach a result where supervisors are prevented from accomplishing their duties in an efficient, economical and reasonable manner unless the law permits no other alternative.

Accordingly, the division is of the opinion that absentee ballots may be processed through vote tabulation equipment on election day provided there are verifiable security procedures and restrictive controls in place which would prevent the accidental or intentional counting by the Supervisor's personnel of any results prior to 7:00 p.m. on election day. To the extent DE 93-11 is inconsistent with this opinion, we hereby recede from that opinion.

SUMMARY

Absentee ballots may be processed through the vote tabulation equipment provided there are security procedures and restrictive controls in place which prevent the accidental or intentional release of results prior to 7:00 p.m. on election day.