

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

DE 98-11 - July 31, 1998

**Voting Systems and Standards for Ballots Used With Such Systems**

**§§101.015, 101.5609(1),(5),(6),(7), and (8) Fla. Stat., Fla. Admin. Code R.'s 1S-5.001(1), 5.005, and 5.007**

*TO: Honorable Sandra S. Goard, Supervisor of Elections, Seminole County, Post Office Box 1479, Sanford, Florida 32772-1479*

*Prepared by: Division of Elections*

This is in response to your request for an advisory opinion on voting systems and standards for ballots used with such systems. You are the Supervisor of Elections for Seminole County. Therefore, pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to render this opinion to you.

In your opinion request, you state that prior to 1996 you used a punch card voting system which, in order for the ballot card to fit properly into the punching device and to accommodate proper positioning of the ballot card, required the use of a second ballot stub.<sup>1</sup> You no longer use a punch card system having replaced it with an optical scan system manufactured by "Global Accu-Vote" and ask whether a rule could be adopted which removed the necessity for a second ballot stub.

While such a rule might be useful, the Division does not believe it necessary.

Sections 101.5601 through 101.5615, Florida Statutes, make up the "Electronic Voting Systems Act." This law contains a variety of requirements, standards, and procedures for use with electronic or electromechanical voting systems.

The focus of your inquiry is section 101.5609, Florida Statutes, which deals specifically with ballot requirements. For example, ballots are required to have two stubs and tear off stubs must be suitable for the requirements of the voting device. §101.5609(1),(6), Fla. Stat. Apparently, with regard to the Global system, stub number two is of dubious value since, at least with respect to absentee ballots, the supervisor of elections may either retain the second stub or send it with the mailed ballot. §101.5609(1)(b), Fla. Stat. Of further interest is the frequent reference in this section of the law to "booklets" and "cards." §101.5609(1),(5), and (7)(b), Fla. Stat. It appears that this language is more suitable to punch card systems than to optical scan systems like Global's which do not use booklets and cards. Finally, pursuant to section 101.5609, Florida Statutes, the Division has already adopted extensive rules prescribing standards for ballots used in electronic voting systems including the physical characteristics of such ballots. §101.5609(8)(a), Fla. Stat.

For example, the Department is authorized to establish minimum standards for ballots pursuant to the Electronic Voting Systems Act and **punch card and optical scan voting systems must have the capability to generate records from which all operations of the system may be audited.** Fla.

*Admin. Code R.'s 1S-5.001(1)(c), 5.005, and 5.007.* Nowhere in these standards have we found any prohibition against a supervisor from removing, or not using, a useless or unnecessary consumable item associated with a voting system provided the basic integrity of the system is not compromised. To do so would mean that every time the supervisor wanted to change from a number two pencil to a felt tip pen, it would be necessary to obtain the approval of the Division of Elections or for the Division to engage in rule making. However, we are not suggesting that supervisors may make wholesale modifications to their voting systems without Department approval under existing rules. What we are saying is that the county supervisor of elections has primary responsibility for the accuracy and security of the voting system and procedures used in his or her county. *§101.015, Fla. Stat.* Supervisors are not prohibited from conducting their elections in an efficient manner as long as controls, procedures, and audit parameters are in place such that an election can be accurate, fair, and capable of being reconstructed in the face of a protest or contest. *See also, Op. Div. Elec. 95-4, (September 13, 1995)* (it is not the desire of the Division of Elections to apply the election code in a manner that prevents supervisors from performing their duties in an efficient, economical, and reasonable manner unless the law permits no other alternative).

For the foregoing reasons, it is the opinion of the Division of Elections that, under the circumstances described in your opinion request, it is within your discretion to use or not use the second ballot stub in conjunction with the voting system used in your county.

### **SUMMARY**

It is within your discretion as to whether to use the second ballot stub in conjunction with the voting system used in your county. Approval of the Division of Elections is required for modifications to voting systems. However, this cannot be construed to prevent supervisors from conducting their elections in an efficient manner as long as controls, procedures, and audit parameters are in place such that the election is accurate, fair, and capable of being reconstructed in the face of a protest or contest.

<sup>1</sup> Voting systems using punch card ballots emerged in the middle 1960's. In addition to accountability, part of the reason for the stub is proper positioning of the ballot in order that the votes and races can be properly aligned. This technology is rapidly being replaced by optical scan or "mark sense" devices which use a marking pen or pencil in lieu of a stylus or punching device. The use of a punching device mandates that a ballot be properly aligned in a "holder" which usually has small posts. The ballot is properly positioned when the stub is fitted over these posts. *Fla. S. Comm. On Ethics and Elections, Alternative Methods of Vote Casting (1990).*

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