

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

DE 98-14 - September 16, 1998

Requesting and Delivering Absentee Ballots

§§ 106.23(2), 101.62(1), 101.62(4)(b), Fla. Stat., as Amended by Ch. 98-129, Laws of Florida

TO: The Honorable Tom Slade, Chairman, Republican Party of Florida, Post Office Box 311, Tallahassee, Florida 32302

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding absentee ballot requests pursuant to chapter 98-129, Laws of Florida. You are the Chairman of the Republican Party of Florida. Therefore, pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to render this opinion to you. According to your letter, there is some variation among counties with respect to what constitutes an effective absentee ballot request, particularly when candidates, political parties, or other individuals or groups become involved in the absentee ballot request process. Accordingly, you ask for clarification as to what information is required in order for an elector to properly request an absentee ballot. To more easily answer your questions we have rephrased them.

1. What information must an elector provide to a county supervisor of elections in order to properly request an absentee ballot?
2. Are there any limitations on third parties delivering absentee ballot requests to a supervisor of elections?

For the reasons set forth below, an elector must provide his name, his address, the last four digits of his social security number, his signature, if it is a written request submitted by the elector, and his voter registration identification number, when requesting an absentee ballot. The elector must provide this information, whether requesting an absentee ballot by telephone or in writing. A person may request an absentee ballot on behalf of an elector, but only if the person making the request is a member of the elector's immediate family or is the elector's legal guardian. Immediate family members, etc., who are requesting ballots on behalf of electors must provide their name, address, their complete social security number, their driver's license number (if available), their relationship to the elector, and for a written request, their signature. These provisions do not prevent a political party or a candidate from mailing absentee ballot requests to the elector and the elector then mailing or personally delivering the request to the supervisor. Likewise, it is not unlawful for a candidate or political party to deliver the elector's request in person or through the mail.

Prior to the 1998 amendments to the Florida Election Code, *ch. 98-129, Laws of Fla.*, section 101.62, Florida Statutes, provided that supervisors could accept requests for absentee ballots from an elector or from any person designated by an elector. § 101.62(1), *Fla. Stat. (1997)*. The request could be made in person, by mail, or by telephone. *Id.* The 1997 law went on to provide that supervisors "...deliver or mail an absentee ballot to each elector by whom a request for that ballot has been made." § 101.62(4)

(b), *Fla. Stat. (1997)*. Based on the former statutory language, the Division opined that candidates could "mass mail" unsolicited absentee ballot requests to potential voters. *Op. Div. Elect. 90-31, (July 16, 1990)*. The opinion also concluded that the ballots could be returned to an address other than the office of the supervisor of elections for subsequent delivery to the supervisor by a third party. *Id.*

In 1998, the Legislature amended subsections (1) and (4) of section 101.62, Florida Statutes, to provide the additional requirements for requesting absentee ballots. § 13, *ch. 98-129, Laws of Fla.* These amendments struck the words "in person, by mail, or by telephone" and in lieu thereof inserted the words "in person or in writing." *Subsection (1), § 13, Laws of Fla.* In addition, language was added requiring the name, address, last four digits of the elector's social security number, and the elector's voter registration identification number in those cases where the elector is requesting a ballot, and the elector's signature (if the elector is also the requester and it is a written request). *Id.* If a member of the elector's immediate family or the elector's legal guardian is requesting the ballot on **behalf of the elector**, the requestor must provide his name, address, complete social security number, driver's license number, if available, describe his relationship to the elector, and his signature, if it is a written request. *Id.* (emphasis added).

Thus, it is readily apparent that nothing in the 1998 amendments to section 101.62, Florida Statutes, prevents electors from returning a completed absentee ballot request form that has been mailed or delivered to them by a third party. The only thing that has changed is that the elector requesting a ballot, or the immediate family member or legal guardian, must provide additional information as a means of verifying their identity. Therefore, there is nothing in the 1998 amendments to this section that causes us to depart from our opinion in DE 90-31, which permits the mailing of absentee ballot requests by candidates or political parties in order that the elector can complete the form and return it to the supervisor. The party, in this instance, is not requesting an absentee ballot on behalf of an elector, they are mailing a request form to the elector so that the elector can complete it and personally request a ballot themselves.

What has changed is the requirement that electors or persons requesting **ballots** on behalf of an elector must provide additional identifying information in order that voters who choose to do so may exercise the privilege and convenience of voting absentee. (emphasis added). These additional requirements are an effort by the legislature to preserve the privilege while at the same time providing additional security with respect to the handling of the ballots. *See Scheer, et.al. v. City of Miami, S.D. Fla. 1998, Case No. 98-0835-CIV-DAVIS, In Re: The Matter of the Protest of Election Returns and Absentee Ballots in the November 4, 1997 Election for the City of Miami, Florida, 707 So.2d 1170 (Fla. 3rd DCA 1998)*.

SUMMARY

Candidates, political parties, or other persons may provide absentee ballot request forms to electors in order that the elector can complete the form and return it to the supervisor of elections by mail, in person, or by delivery to a third party for transmittal to the supervisor. If the request is from an elector, it must include the elector's name, address, the last four digits of the elector's social security number, and the elector's voter registration number. If the requester is the elector, the elector must sign the

request. If the request is from a member of the elector's immediate family or the elector's legal guardian, either of whom is requesting a ballot on behalf of an elector, the request must include the requester's name, the requester's address, the requester's complete social security number, if available, the requester's drivers license number, the requester's relationship to the elector, and the requester's signature, if the request is in writing.