

DE 00-11 - November 13, 2000

**Definitions of Errors in Vote Tabulation  
§ 102.166(5), Fla. Stat.**

*To: Mr. Al Cardenas, Chairman, Republican Party of Florida, Post Office Box 311, Tallahassee, Florida 32302*

*Prepared by: Division of Elections*

Dear Mr. Cardenas:

This is in response to your request for an opinion relating to section 102.166(5), Florida Statutes. You are the Chairman for the Republican Party of Florida and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask:

1. What is the meaning of the term "error in the vote tabulation" as used in section 102.166(5), Florida Statutes?
2. What is the meaning of "affecting the outcome of the election" as used in section 102.166(5), Florida Statutes?
3. What manner of "error" and what type and/or degree of effect on the outcome would serve as a lawful predicate for a manual recount of all ballots under section 102.166(5)(c), Florida Statutes?

Your questions involve the interpretation of election laws and can be answered with an advisory opinion. Section 102.166(5), Florida Statutes, provides in pertinent part that if the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall: (a) correct the error and recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. The inability of a voting systems to read an improperly marked marksense or improperly punched punchcard ballot is not a "error in the vote tabulation" and would not trigger the requirement for the county canvassing board to take one of the actions specified in subsections 102.155 (5)(a) through (c), Florida Statutes. An error that could "affect the outcome of the election" is an error of a magnitude sufficient to make a difference as to which candidate wins the election.

**SUMMARY**

An "error in the vote tabulation," means a counting error in which the vote tabulation system fails to

count properly marked marksense or properly punched punchcard ballots. An error that could "affect the outcome of the election" is an error of a magnitude sufficient to make a difference as to which candidate wins the election.

Sincerely,

L. Clayton Roberts  
Director, Division of Elections

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