

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

DE 00-12 - November 13, 2000

**Manual Recount Procedures
§ 102.166, Florida Statutes**

To: The Honorable Jane Carroll, Broward County Supervisor of Elections, Post Office Box 029001, Ft. Lauderdale, Florida 33302-9001

Prepared by: Division of Elections

Dear Ms. Carroll:

This is in response to your request for an advisory opinion concerning manual recount procedures. You are the Supervisor of Elections for Broward County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask:

If a county canvassing board authorizes a manual recount of ballots of the presidential election pursuant to section 102.166(4)(c), Florida Statutes, and determines that the number of votes for one or more candidates changes and such changes are due to voter errors (such as failing to properly follow voting procedures), is the board authorized to conduct a manual recount of all ballots of the remainder of the county?

The answer to your question is no. Section 102.166(5), Florida Statutes, provides 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. Voter error is not an "error in the vote tabulation." Therefore, the county canvassing board is not authorized to conduct a manual recount of the remainder of the county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

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. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Voter error is not an "error in the vote tabulation." Therefore, the county canvassing board is not authorized to conduct a manual recount of the remainder of the county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

Sincerely,

L. Clayton Roberts
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