

DE 02-08 - June 3, 2002

**Absentee Ballot Requests**  
**§ 101.635, 98.181, 101.62(1)(b), Florida Statutes**

*To: The Honorable Donald L. Hersey, Sr., Supervisor of Elections, Putnam County, Post Office Box 977, Palatka, Florida 32178-0977*

*Prepared by: Division of Elections*

Dear Mr. Hersey:

This is in response to your request for an advisory opinion regarding absentee ballot requests. You are the Supervisor of Elections for Putnam County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You have asked essentially the following question:

Does the new provision in section 101.635, Florida Statutes, which states "[t]his section does not permit the supervisor to deny a local political party's requests for absentee ballots," allow a political party to make a request for an absentee ballot directly to the supervisor of elections on behalf of the voter?

The brief answer to your question is no.

Section 101.635, Florida Statutes, as amended by Chapter 2002-17, Laws of Florida, provides the following:

101.635 Distribution of blocks of printed ballots.--In any county in which the supervisor of elections maintains deputies in a municipality other than the county seat and such municipality has a population in excess of 90,000, blocks of numbered ballots shall be made available as required and as the supervisor may direct, in order to comply with the provisions of s. 98.181. All ballots made available in any such municipality shall be fully accounted for to the supervisor.

*This section does not permit the supervisor to deny a local political party's requests for absentee ballots. (emphasis added)*

Until the 2002 legislative session, this section had not been amended since its enactment in 1977.

Section 98.181, Florida Statutes, as referenced by section 101.635, Florida Statutes, requires the supervisors of elections to keep records in certain municipalities in order to provide registration services to voters in that municipality. It too has not been amended since 1977.

Since the late 1970's numerous provisions of the election code relating to registration and voting have been enacted. In 1995, Florida implemented the National Voter Registration Act, which allows registration by mail, at the Department of Highway Safety and Motor Vehicles, and at numerous locations within each county. No longer are potential voters required to appear at the office of the supervisor of elections, or in the case of section 98.181, Florida Statutes, for a municipality, appear before a deputy supervisor of elections, usually the city clerk.

Various sections of the election code specifically provide who is allowed to vote an absentee ballot, procedures for requesting an absentee ballot and procedures for the delivery of absentee ballots. During the 1998 Legislative Session, the Legislature enacted numerous provisions designed to enhance the absentee ballot rules to deal with absentee ballot fraud. Section 101.62 (1)(b), Florida Statutes, provides that only the voter, a member of the voter's immediate family, or the voter's legal guardian may request an absentee ballot for the voter. Certain information is required to assure that the person requesting the ballot has the authority to do so. This section does not permit a political party to request an absentee ballot for a voter.

The sentence added to section 101.635, Florida Statutes, during the 2002 Legislative Session appears to be misdrafted. Certainly the Legislature did not intend to circumvent the stringent requirements for requesting absentee ballots by a one-line addition to a section of law dealing specifically with municipalities with a population of over 90,000, which are not county seats.

In fact, the sponsor of the amendment attempted to correct the drafting error on the last day of the 2002 Legislative Session. In her explanation to the members, the sponsor stated:

"This amendment would allow the supervisor of elections to *provide absentee ballot request forms* to any political party requesting them ... for distribution by the party to its members. It is basically the same amendment but it was drafted technically incorrect the other day and we're just correcting that." (emphasis added)

Unfortunately, this bill was passed during the last few minutes of the 2002 Regular Legislative Session and the corrected language did not get incorporated into the final bill that passed.

Based on the other provisions of the election code which substantially restricts who can request an absentee ballot for a voter, along with the explanation of the sponsor of the amendment, the division is of the opinion that the amendment to section 101.635, Florida Statutes, does not allow a political party to make absentee ballot requests.

## **SUMMARY**

The amendment to section 101.635, Florida Statutes, made by Chapter 2002-17, Laws of Florida, does not allow a political party to make direct requests for absentee ballots.

Sincerely,

L. Clayton Roberts  
Director, Division of Elections

Prepared by:  
LCR/ATW/ees