

June 2, 2003

The Honorable Kurt Browning
Supervisor of Elections
Pasco County
Post Office Box 300
Dade City, Florida 33526-0300

**RE: DE 03-06
Use of “Smart Box Delivery System” for Mailing
Items Required to be Sent by Certified or
Registered Mail §98.0977(3)(d), §106.07(2)(b),
Florida Statutes**

Dear Mr. Browning:

This is in response to your request for an advisory opinion regarding the use of the “Smart Box Delivery System” for mailing items required by provisions of the Florida Election Code to be mailed by certified or registered mail. You are the Supervisor of Elections for Pasco County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask the following question:

Is the supervisor of elections permitted to utilize the Smart Box Delivery System, as authorized and regulated by DMM S918, to satisfy the certified or registered mail requirements as specified in Florida Statutes (i.e. file list maintenance, candidate qualifying/reporting, etc.)?

The short answer to your question is no.

As you know, the Florida Election Code (Chapters 97-106, Florida Statutes) contains various provisions that require the mailing of certain correspondence or notices by certified mail or registered mail. For example, in the area of voter registration list maintenance, section 98.0977(3)(d), Florida Statutes, requires the supervisor to notify the voter by “certified United States mail” if the supervisor finds information through the central voter database that suggests that the voter has been convicted of a felony and has not had their civil rights restored or has been adjudicated mentally incompetent and their mental capacity to vote has not been restored.

Also under that provision, notice of a determination that the voter has been found ineligible to be registered to vote must be sent to the voter by “certified United States mail.” In the area of campaign financing, section 106.07(2)(b), Florida Statutes, requires the filing officer to notify the campaign treasurer of an incomplete report by “registered mail.”

The term “certified mail” is not defined in Florida Statute. Section 1.01(11), Florida Statutes, states that, “the words ‘registered mail’ include certified mail with return receipt requested.” The *America Heritage College Dictionary* (3d ed. 2000), defines “certified mail” as, “uninsured first-class mail for which proof of delivery is obtained.” It defines “registered mail” as, “mail recorded by the post office when sent and at each point on its route so as to assure safe delivery.”

The “Smart Box Delivery System” that you refer to in your question is actually a form of first class mail that is sent through the United States Postal Service. Section S918 of the United States Postal Service Domestic Mail Manual (DMM) outlines the specifications under which a postal customer (mailer) can electronically create their own bar coded mailing labels. It is important to note that the item of mail is still handled and delivered by the United States Postal Service. The United States Postal Service offers various services that can be added to first class mail. Your inquiry letter was sent using the “Smart Box Delivery System” which consisted of first class mail, with the additional service option of “signature confirmation.” According to DMM S919, the signature confirmation service provides the mailer with information regarding the date and time an article was delivered or attempted to be delivered, if delivery was attempted but not successful. Signature confirmation service can be combined with “registered mail.” When using the electronic option, no mailing receipt is provided.

According to the United States Postal Service Domestic Mail Manual, certified mail and registered mail are distinctly unique and separate mail services. Pursuant to DMM S912, certified mail service provides the sender with a mailing receipt and a delivery record is maintained by the Postal Service. Only first-class mail may be accepted as certified mail. Purchasing certified mail service also allows the customer to purchase restricted delivery service or return receipt. Further, pursuant to DMM S911, registered mail is the most secure service that the United States Postal Service offers. It incorporates a system of receipts that monitor the movement of the mail from the point of acceptance to the point of delivery. Registered mail service provides the sender with a mailing receipt and a delivery record is maintained by the Postal Service. Registration can only be obtained from a retail employee at a post office or from a rural carrier. Restricted delivery service, return receipt, collect on delivery (COD) service, delivery confirmation and signature confirmation services may be also added to the registered mail service. Clearly, the “Smart Mail Delivery System” you ask about is neither certified nor registered mail. It is merely first class mail with the signature confirmation service added to it.

Therefore, such a mailing would not comply with a statutory requirement that a letter or notice be sent by certified mail or registered mail.

SUMMARY

The “Smart Mail Delivery Service,” whereby a third party electronically creates first class and signature confirmation mailing labels for use by the United States Postal Service, does not constitute certified mail or registered mail for purposes of the Florida Election Code.

Sincerely,

Edward C. Kast
Director, Division of Elections

Prepared by:
Sharon D. Larson
Assistant General Counsel

EK/SDL/cm