

December 15, 2005

The Honorable Deborah Clark  
Pinellas County Supervisor of Elections  
315 Court Street, Room 117  
Clearwater, Florida 33756-4158

RE: DE 05-08  
Canvassing Boards; Required  
Number of Members to take Official  
Action; §§ 101.5612(2), and  
102.141, 102.151, Florida Statutes

Dear Ms. Clark:

This is in response to your request for an advisory opinion regarding the number of canvassing board members that are required to be present to take various actions under the Florida Election Code. You are the Supervisor of Elections for Pinellas County and by law a member of your county canvassing board. Pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You have essentially asked how many canvassing board members are required to be present during or are necessary to take the following official actions of the county canvassing board:

1. Public Testing of Absentee Ballot Tabulation Equipment;
2. Canvassing Absentee Ballots (Opening and Processing);
3. Election Night Tabulation (Ballot Duplication);
4. Canvassing of Provisional Ballots (Accept or Reject); and
5. Certifying Official Election Results?

Section 102.141, Florida Statutes, specifies who shall constitute the members of the county canvassing board and outlines the duties of the board. While the statute is specific as to the three persons who shall serve as canvassing board members, i.e., the county supervisor of elections, a county judge and the chair of the board of county commissioners, it is silent with regard to the actual number of members of the board that must be present to conduct the official business of the board. However, the Attorney General has previously opined in AGO 050-248 that a canvassing board may act in an official capacity when a majority of the members are present. Therefore, unless otherwise specified in statute or rule, the canvassing board may act when two members of the board are present, thereby constituting a majority,

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as long as the two members present are in agreement as to the action to be taken. If they are not in agreement, then a majority of the board has not approved the action.

Let us now take these principles and apply them to the specific canvassing board actions about which you inquire.

The public testing of voting equipment is governed by section 101.5612, Florida Statutes. As you note in your inquiry, section 101.5612(2), Florida Statutes, specifically provides, "For the test, the canvassing board may designate one member to represent it." However, that same section also requires that the canvassing board shall convene and that each member of the canvassing board shall certify to the accuracy of the test. Therefore, for any public testing conducted pursuant to section 101.5612, Florida Statutes, including the testing of absentee ballot tabulators, the canvassing board may designate one member to be present, i.e. represent it, at the actual testing, but all members of the canvassing board must certify to the accuracy of the test.

The canvassing of absentee ballots, i.e., the opening and processing of absentee ballots, is governed by sections 101.68, 101.6925 and 102.141(2), Florida Statutes. There being no specific provision contained therein to the contrary, the board action of approving and ordering the opening and processing of the absentee ballots requires that a majority of the members of the canvassing board be present. Once approved and ordered, the clerical work of actually opening the absentee ballots and running them through the tabulators may be done with at least one member of the canvassing board present at all times pursuant to section 102.141(7), Florida Statutes.

Election night ballot duplication is governed by sections 101.5614(5) and 101.68, Florida Statutes. There being no specific provision contained therein to the contrary, this board action requires that a majority of the members of the canvassing board be present to approve the duplicate ballots. Again, the clerical activity of creating the duplicate ballot for approval by the canvassing board may be done with only one member of the canvassing board present pursuant to section 102.141(7), Florida Statutes.

The canvassing of provisional ballots, i.e., determining whether to accept or reject, is governed by sections 101.048, 101.049, 101.6925 and 102.141(2), Florida Statutes. There being no specific provision contained therein to the contrary, this board action requires that a majority of the members of the canvassing board be present.

The certification of the official election results by the canvassing board is governed by section 102.151, Florida Statutes. There being no specific provision contained therein to the contrary, this board action requires only a majority of the members of the canvassing board. Therefore, the certificate can be signed by just two canvassing board members.

You also ask if the answers to these questions would be the same for a municipal canvassing board if the municipality has adopted the Florida Election Code and there are no municipal charter provisions or ordinances that specifically address these municipal canvassing board actions. The answer to this question is yes.

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#### SUMMARY

A canvassing board may act in an official capacity when a majority of the members are present, unless otherwise specified in statute or rule. Therefore, generally the canvassing board may act when two members of the board are present, thereby constituting a majority, as long as the two members present are in agreement as to the action to be taken. If they are not in agreement, then a majority of the board has not approved the action. However, for any public testing conducted pursuant to section 101.5612, Florida Statutes, the canvassing board may designate one member to be present, i.e. represent it, at the actual testing, but all members of the canvassing board must certify to the accuracy of the test. Additionally, once a majority of the canvassing board members has approved and ordered the opening and processing of absentee ballots, the clerical work of actually opening the absentee ballots and running them through the tabulators may be done with at least one member of the canvassing board present at all times. Finally, the certification of the official election results by the canvassing board can be signed by just two members of the canvassing board. These answers would also apply to a municipal canvassing board if the municipality has adopted the Florida Election Code and there are no municipal charter provisions or ordinances that specifically address these municipal canvassing board actions.

Sincerely,

Dawn K. Roberts  
Director, Division of Elections

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