

March 3, 2006

The Honorable Ann McFall
Volusia County Supervisor of Elections
125 West New York Avenue
Deland, Florida 32720-5415

RE: DE 06-02
Early Voting; §§ 97.021(7)
and 101.657, Florida Statutes

Dear Ms. McFall:

This is in response to your request for an advisory opinion regarding the requirements of section 101.657, Florida Statutes. You are the Supervisor of Elections for Volusia 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 questions:

1. Is a voter at an early voting site permitted to place their marked optical scan ballot into a secured container for later tabulation at the main office of the Supervisor of Elections or is the voter required to immediately deposit the marked optical scan ballot into a tabulation device located at the early voting site?
2. Must every ballot style used in the election be offered at each of the early voting sites?

The short answer to Question 1 is that the voter must deposit the marked optical scan ballot into a tabulation device located at the early voting site. The short answer to Question 2 is yes.

Section 97.021(7), Florida Statutes, defines "early voting" as, "casting a ballot prior to election day at a location designated by the supervisor of elections and depositing the voted ballot in the tabulation system." By definition, the act of early voting includes the depositing of the voted ballot into the tabulating system by the voter. Therefore, the

voter must deposit the marked optical scan ballot into a tabulation device located at the early voting site.

As you note in your inquiry, the words, “by depositing the voted ballot in a voting device used by the supervisor to collect or tabulate ballots” were stricken by the Florida Legislature from the early voting provision of the statutes, section 101.657(1)(a), Florida Statutes, effective January 1, 2006. However, that revision merely removed redundant language from the section which had been a carry over from a time in which what is now referred to as “early voting” was permitted in a more limited manner and referred to as “in-person absentee voting.” Because the definition of early voting, codified in 2004¹, contained the same requirement, the language contained in section 101.657(1)(a), Florida Statutes, was seen as superfluous and stricken during the 2005 legislative session.

As to Question 2, subsections 101.657(1)(a)-(d), Florida Statutes, read as follows:

(1)(a) As a convenience to the voter, the supervisor of elections shall allow an elector to vote early in the main or branch office of the supervisor. The supervisor shall mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot. In order for a branch office to be used for early voting, it shall be a permanent facility of the supervisor and shall have been designated and used as such for at least 1 year prior to the election. **The supervisor may also designate any city hall or permanent public library facility as early voting sites; however, if so designated, the sites must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable.** The results or tabulation of votes cast during early voting may not be made before the close of the polls on election day. Results shall be reported by precinct.

(b) The supervisor shall designate each early voting site by no later than the 30th day prior to an election and shall designate an early voting area, as defined in s. 97.021, at each early voting site.

(c) **All early voting sites in a county shall be open on the same days for the same amount of time** and shall allow any person in line at the closing of an early voting site to vote.

(d) **Early voting shall begin on the 15th day before an election and end on the 2nd day before an election.** For purposes of a special election held pursuant to s. 100.101, early voting shall begin on the 8th day before an election and end on the 2nd day before an election. **Early voting shall be provided for 8 hours per weekday and 8 hours in the aggregate each weekend at each site during the applicable periods. Early voting**

¹ See Sections 9 and 13, Chapter 2004-252, Laws of Florida.

sites shall open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day.

[Emphasis added.]

As stated in the statute, early voting is offered as a convenience to the voter. That convenience is provided by allowing a voter the option of multiple dates and places at which they can cast their ballot, thereby providing them with voting opportunities outside the traditional election day and absentee ballot voting options. The law makes it clear that uniformity in the offering of this convenience to voters was of paramount importance to the Legislature. To ensure equal access by all voters, the statute sets specific parameters as to the locations of early voting sites, the dates upon which early voting will occur and the hours of operation of such sites. Further, in no way did the Legislature statutorily limit a voter's access to any and all early voting sites being utilized during a particular election. By comparison, the Legislature has specifically limited an election day voter to voting in their assigned precinct, rather than at any precinct in use on election day. As a result, a voter may vote at **any** early voting site operating during an election. Therefore, you must have every ballot style used in that election at each of the early voting sites.

SUMMARY

A voter must deposit the marked optical scan ballot into a tabulation device located at the early voting site. Further, as a voter may vote at any early voting site operating during an election, all ballot styles used in that election must be provided at each of the early voting sites.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

Prepared by:
Sharon D. Larson
Deputy General Counsel

DKR/SDL/lmg