



FLORIDA DEPARTMENT *of* STATE

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Governor

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Secretary of State

May 27, 2009

The Honorable Paul A. Stamoulis
Charlotte County Supervisor of Elections
226 Taylor Street
Punta Gorda, Florida 33950

RE: DE 09-02
Polling Places – Combined Precincts;
§ 101.71(2), Florida Statutes

Dear Mr. Stamoulis:

This letter responds to your request for an advisory opinion. You are the Supervisor of Elections for Charlotte County; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

Your request concerns the situation when a supervisor of elections combines two or more voting precincts on Election Day into one building. You state that Charlotte County has several polling places¹ that house two or more precincts. The county uses different procedures in these polling places depending upon whether the polling place uses a paper precinct register or an EVID (Electronic Voter Identification) system. In the polling places using a paper precinct register, the voter enters the polling room² and reports to the applicable precinct register inspector who, after verifying the voter is on the precinct register, directs the voter to the ballot issuer for that voter's precinct. The ballot issuer provides the voter a precinct-specific coded ballot and directs the voter to one of the voting booths (shared by all precincts in the polling place) to mark the ballot or to an ADA-compliant electronic voting machine (again shared by all precincts). Once the voter marks the paper ballot, the voter is directed to one of the optical scanners (also shared by all precincts in the polling place) to cast the ballot. A roving inspector monitors the voting area (the comingled area for all precincts where the voter marks and casts a ballot) and one inspector is located at each optical scanner to assist voters. After the polls close, the clerks for each

¹ "Polling place" is the building which contains the polling room where ballots are cast. § 97.021(25), Fla. Stat. (2008).

² "Polling room" means the actual room in which ballots are cast on election day and during early voting. § 97.021(26), Fla. Stat. (2008).

precinct reconcile the totals for their precincts and account for the ballots issued for their precinct. In the polling places using the EVID system, the above process is identical, except the voter, upon entering the polling room, instead of being directed to his or her precinct register inspector, checks in with one of the EVID clerks who serve all precincts in the polling place.

You ask if the procedures satisfy the requirements of Section 101.71(2), Florida Statutes (2008).

The short answer is “No.”

The situation that you have presented may be likened to a “voting center” concept where people from several precincts vote in a comingled voting place. The polling place and polling room described in your request comingle the precincts by using poll workers,³ voting booths, and voting equipment in the same polling room for all voters regardless of precinct. The Election Code does not contemplate this concept except for early voting.⁴ The Election Code permits a supervisor of elections to place two or more precincts in one building only when polling places in a given precinct are unavailable, inadequate for handling voting and voting paraphernalia, or are not accessible by people with disabilities. § 101.71(2), Fla. Stat. (2008). When one of these criteria is met and it “results in the voting place for two or more precincts being located for the purposes of an election in one building, the voting places for the several precincts involved shall be established and maintained separate from each other in said building.” *Id.*

The clear language and plain meaning of section 101.71(2), Florida Statutes, are that the voting places for each precinct must be separate and distinct from another precinct’s voting place in the same building. Although the Election Code does not define “voting place,” we believe that it means, at a minimum, the specific location within a polling room where votes are actually cast; so, in a building housing two or more precincts, the specific area where the voter actually casts his or her ballot must be separately maintained for each precinct. Therefore, we believe the requirement that the voting places “be established and maintained separate from each other” requires, at a minimum, separate optical scanners for each precinct. The separateness of the optical scanners may be achieved within the same polling room by dedicating each machine solely to a specific precinct.

³ The Election Code provides that the supervisor of elections “shall appoint an election board comprised of poll workers who serve as clerks or inspectors for each precinct in the county.” § 102.012(1), Fla. Stat. (2008) (*emphasis supplied*). However, the sheriff deputizes a deputy sheriff for each polling place, not precinct. § 102.031(2), Fla. Stat. (2008).

⁴ Regardless of precinct, the supervisor of elections, as a convenience to the voter, shall allow a voter to vote early in the supervisor’s main office or branch office, and when designated, a city hall or permanent public library facility. “The supervisor shall mark, code, indicate on, or otherwise track the voter’s precinct for each early voted ballot.” § 101.657(1)(a), Fla. Stat. (2008).

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An exception to the separateness of the voting place exists for a shared accessible interface device when two or more precincts are placed in the same building. Section 101.56062(2), Florida Statutes (2008), provides that at least one accessible voter interface device must be installed in each polling place. Before January 1, 2006, this provision required such device in each precinct.⁵ Because the Election Code now specifies that the accessible voter interface device need only exist in each polling place, we interpret this provision in connection with section 101.71(2), Florida Statutes (2008), to allow two or more precincts to share an accessible voter interface device when the precincts co-exist in the same polling place. In all other respects, we believe the voting place (again, the specific location within a polling room where votes are actually cast) for each precinct located in the same polling place must be separately maintained.

SUMMARY

When two or more precincts are located for the purposes of an election in one building, the voting place (the specific location within a polling room where votes are actually cast) for each precinct shall be established and maintained separate from the voting place of any other precinct in the building. The only exception to having the voting place separate when two or more precincts are located in one polling place is that an accessible voter interface device may be shared between precincts in the same polling place.

Sincerely,



Donald L. Palmer
Director, Division of Elections

⁵ Ch. 2005-278, § 34, at 2729, Laws of Fla.