



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

March 8, 2012

The Honorable Mary Jane Arrington  
Supervisor of Elections, Osceola County  
2509 East Irlo Bronson Highway  
Kissimmee, Florida 34744

RE: DE 12-02 Absentee Ballots – Signatures on return envelopes; Canvassing Boards – Substitute or Alternate Members -- §§ 101.64, 101.65, 101.68, & 102.141, Florida Statutes

Dear Supervisor Arrington:

This letter responds to your request for an advisory opinion. As the Osceola County Supervisor of Elections, you desire answers to questions about canvassing absentee ballots and appointment of alternate members on county canvassing boards. The answers to your questions will assist you in your duties to provide accurate advice to canvassing boards in the future. You essentially inquire:

1. If a returned absentee ballot mailing envelope contains the valid signature of the voter in or under the return address (or in any other place on the front of the envelope), may the ballot contained within the envelope be counted?
2. If the Chair of the Board of County Commissioners is unable to attend a scheduled county canvassing board meeting due to an absence from the county or because of a scheduling conflict, may the Board of County Commissioners appoint another qualified member of the County Commission as an alternate member of the canvassing board to attend the scheduled canvassing board meeting?
3. If the answer to Question #2 is yes, may the alternate canvassing board member also be appointed by the Chair of the Board of County Commissioners to



serve on the canvassing board in the place of the Supervisor of Elections who is running for reelection and who has opposition?

With regard to the first question, the short answer is “No.” Based upon the reading of applicable law, the signature of the elector must be in close proximity to the designated signature line on the Voter’s Certificate in order for the signature on the certificate to be compared with the one on record. If the signature on the certificate and the one on record match, only then may the ballot be counted.

First, the ballot instructions to the absentee ballot voter direct the voter to complete the Voter’s Certificate and to sign on the signature line. Specifically, the instructions read as follows:

6. Seal the mailing envelope and *completely fill out the Voter’s Certificate on the back of the mailing envelope.*

7. VERY IMPORTANT. *In order for your absentee ballot to be counted, you must sign your name on the line above (Voter’s Signature). [Emphasis supplied.]*<sup>1</sup>

Second, subsections 101.68(1) and (2)(c), Florida Statutes (2011), specifically state that the supervisor of elections and canvassing board, respectively, are to compare “the signature of the elector *on the voter’s certificate* with the signature of the elector in the registration books.” *[Emphasis supplied.]*

Third, the absentee voter is on fair notice from the wording on the Voter’s Certificate. The certificate states that failure to sign the certificate “will invalidate [the voter’s] ballot.”<sup>2</sup> According to law, the certificate must be “on the back side” of the mailing envelope and “The absent elector shall execute the certificate on the envelope.”<sup>3</sup> Therefore, an absentee voter’s signature on the front of the return envelope (opposite the side on which the Voter’s Certificate appears) cannot be considered in close proximity to the certificate so as to permit the canvassing board to compare signatures as required by law. Even if the voter’s signature on the front of the return envelope were to match the signature on record, the signature is not in sufficiently close proximity to the oath or affirmation on the Voter’s Certificate to be considered legally executed for purposes of the statements made in the certificate.

With regard to Questions #2 and #3, the short answer is that substitution of members on the canvassing board should be done only if absolutely necessary and the appointments of alternate

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<sup>1</sup> §101.65, Fla. Stat. (2011); *See also* §101.6923(2), Fla. Stat. (2011) (Special absentee ballot instructions for certain first-time voters).

<sup>2</sup> §101.64, Fla. Stat. (2011); *see also* §101.6921(3), Fla. Stat. (2011)(voter certificate for certain first-time voters).

<sup>3</sup> §101.64, Fla. Stat. (2011).

or substitute members must be as prescribed in section 102.141(1), Florida Statutes (2011). The only permissible reasons to have a substitute member of a canvassing board are that a canvassing board member is “unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed.”<sup>4</sup> In particular, as it pertains to your questions, if the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners appoints a substitute member from the county commission who is not otherwise disqualified.<sup>5</sup> If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners appoints a member of the county commission, who is not otherwise disqualified, as the replacement for the supervisor of elections.<sup>6</sup>

While nothing in law prohibits the temporary substitution of a canvassing board member for parts of the canvassing process if a member of the canvassing board is unable to serve (*e.g.*, during a scheduled meeting for the canvassing of absentee ballots), the integrity of the process and the appearance of propriety are enhanced when the canvassing board members serve the full duration of their appointment (from canvassing board training to certification of election results) or for the remaining duration of their substitute appointment (*i.e.*, from time of appointment to certification of election results). The members of the canvassing board for an election should coordinate well before the election the meeting schedule for the entire canvassing process and all members should ensure that they are available for each of the scheduled meetings. Each member’s canvassing board duty should take priority over the member’s other responsibilities; however, the law recognizes that there will be times when a board member unavoidably or unexpectedly becomes unavailable to serve. Even if a member is temporarily unable to serve, it may be unnecessary to have a substitute member appointed in all instances since two members of the canvassing board may take official action for the canvassing board if they agree on the action being taken.<sup>7</sup>

The above statements are not meant, however, to prohibit the practice of appointing alternate canvassing board members in advance as substitutes in the event that a member of the canvassing board is unexpectedly unable to serve or is disqualified; however, any appointment of alternates must be accomplished as prescribed in section 102.141(1), Florida Statutes (2011).

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<sup>4</sup> §102.141(1), Fla. Stat. (2011). *See Division of Elections Opinion 09-07* (October 15, 2009) for an explanation of the meaning of “an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed.”

<sup>5</sup> §102.141(1)(c), Fla. Stat. (2011).

<sup>6</sup> §102.141(1)(b), Fla. Stat. (2011).

<sup>7</sup> *See Division of Elections Opinion 05-08* (December 15, 2005) (a canvassing board may act in an official capacity when a majority of the members are present if the two members are in agreement as the action being taken; however, at least in one instance, all members of the canvassing board must act, *i.e.*, while one member may represent the canvassing board for the testing of the tabulating equipment, s. 101.5612(2), Florida Statutes (2011), requires each member of the canvassing board to certify to the accuracy of the test).

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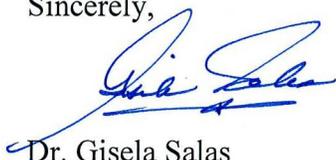
For example, in answer to your Question #2, if the chair of the board of county commissioners is unable to serve on the canvassing board, the board of county commissioners may appoint a qualified member of its board in advance as the substitute for its chair on the county canvassing board. Also, in answer to your Question #3, that same alternate could be appointed by the chair of the board of county commissioners in advance to replace the supervisor of elections as a substitute member of the canvassing board; however, the designated alternate member could not serve simultaneously as an actual member of the canvassing board substituting for both the chair of the county commission and the supervisor of the elections at any single meeting of the canvassing board. Thus, if the alternate member had been appointed as the substitute member for the supervisor of elections for the entire canvassing process, the same alternate could not also serve as a substitute for the chair of the board of county commissioners at one of the canvassing board's meetings during the election.

#### SUMMARY

The signature of the elector on an absentee ballot return envelope must be in close proximity to the designated signature line on the Voter's Certificate in order for the signature to be valid for comparison purposes. Even if the voter's signature on the front of the returned envelope matches that in the registration books, the signature would not be considered in close proximity so that it would legally permit a comparison of signatures for verification purposes.

Substitution of members on the canvassing board should be done only if absolutely necessary and any appointments of alternate or substitute members must be as prescribed in section 102.141(1), Florida Statutes (2011). While nothing in law prohibits the temporary substitution of a canvassing board member for parts of the canvassing process if a member of the canvassing board is unable to serve, the integrity of the process and the appearance of propriety are enhanced when the canvassing board members serve the full duration of their appointment. If a member is temporarily unable to serve, it may be unnecessary to have a substitute member appointed in all instances since two members of the canvassing board normally may take official action for the canvassing board if they agree on the action being taken. However, nothing prohibits appointing alternate canvassing board members in advance as substitutes in the event that a member of the canvassing board is unable to serve or is disqualified; however, any appointment of such alternates must be accomplished as prescribed in section 102.141(1), Florida Statutes (2011), and a designated alternate member could not serve simultaneously as an actual member of the canvassing board substituting for more than one member at any single meeting of the canvassing board.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gisela Salas", with a horizontal line underneath.

Dr. Gisela Salas  
Director, Division of Elections