



FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

August 14, 2012

The Honorable Jerry Holland
Supervisor of Elections, Duval County
105 E. Monroe Street
Jacksonville, Florida 32202-3215

RE: DE 12-09 Candidates; Supervisors of Elections
– Posting of names of write-in candidates on sample
ballots and at the polls -- §§ 99.061(4), 101.20, and
102.031(4), Florida Statutes

Dear Supervisor Holland:

This letter responds to your request for an advisory opinion. As the Duval County Supervisor of Elections, you desire to know if Florida's Election Code requires you to display the names of write-in candidates on sample ballots and on lists posted in polling rooms or early voting areas. If the Election Code does not require such display, you inquire if it is permissible to do so. The Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

The short answer to your inquiry is that a supervisor of elections may not display the names of write-in candidates on sample ballots. Also, the Division of Elections opines that supervisors should avoid posting lists in polling rooms or early voting areas containing write-in candidates' names.

Section 99.061(4)(b), Florida Statutes (2012), provides, "A write-in candidate is not entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in must be provided on the general election ballot." Also, section 101.20(1), Florida Statutes (2012), provides, "The sample ballot shall be in the form of the official ballot as it will appear at th[e] polling place on election day." Therefore, because the official ballot will only have a blank line for voters to write the name of a write-in candidate, the law does not permit a write-in candidate's name to appear on a sample ballot, nor would a supervisor of elections have the discretion to do so.

In regards to the posting of lists in polling rooms and early voting areas containing the names of write-in candidates, section 102.031(4), Florida Statutes (2012), prohibits any solicitation of voters inside the polling place or early voting area and within 100 feet of their entrance. The



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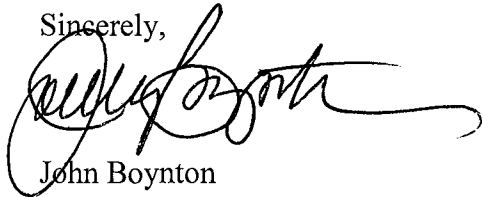
statute defines “solicitation” as “including, but not limited to” distributing any political or campaign material or handout. (*Emphasis supplied.*) Posting or displaying a list of candidates for each office in the polls arguably violates this section as the list would constitute political material. Without specific legislation like that existing for a copy of proposed constitutional amendments to be posted in each polling room (*see s. 101.171, Florida Statutes (2012)*), it would be inappropriate for a supervisor of elections to display the names of candidates (to include names of write-in candidates) on a list at each polling place. Except for write-in candidates, the names of candidates will be printed on the ballots which, of course, will be in the polling rooms and early voting areas. As stated above, however, the law only entitles a write-in candidate to have a blank space on the ballot whereon his or her name may be written. If a supervisor of elections publishes or displays the name of a write-in candidate at the polls, the Division believes that he or she would be impermissibly interjecting himself or herself into the write-in candidate’s political campaign.

Other than qualifying persons as write-in candidates, ensuring that a space is on the ballot for a voter to write the name of the write-in candidate, and executing the statutory responsibilities as a filing officer for a candidate’s campaign finance reports, a supervisor of elections has no additional direct duty or obligation regarding a write-in candidate other than as a member of the canvassing board to ensure that any votes for the write-in candidate are properly canvassed.¹ The Division’s opinion is that it is the sole responsibility of the write-in candidate to campaign and make his or her name known to the public so that the voter is aware of who the candidate is and how to vote for the candidate.

SUMMARY

A supervisor of elections may not display the names of write-in candidates on sample ballots and should not post lists in polling rooms or early voting areas containing the names of write-in candidates.

Sincerely,



John Boynton
Acting Director, Division of Elections
Deputy Secretary of State for Administrative Services,
Corporations and Elections

¹ However, the Division recognizes that supervisors of elections and the Division typically list all qualified candidates, to include write-in candidates, on their websites. The law does not preclude this listing of the names of write-in candidates on the websites as a public service to voters.