



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 8, 2012

Ms. Patricia Snider
City Clerk, City of Palm Beach Gardens
10500 N. Military Trail
Palm Beach Gardens, Florida 33410

RE: DE 12-11 Absentee Ballots; Public Records –
Election officials – § 101.62(3), Florida Statutes

Dear Ms. Snider:

This letter responds to a request for an advisory opinion submitted on your behalf by the City Attorney for the City of Palm Beach Gardens regarding your status as an "election official" under the provisions of section 101.62(3), Florida Statutes (2012). Because you are a local officer having election-related duties and have a question regarding a provision of the Florida's election laws, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

Your attorney has asked essentially the following question:

Does the public records exemption in section 101.62(3), Florida Statutes (2012), permit the disclosure of absentee ballot request information held by a county supervisor of elections to a city clerk who serves as the supervisor of elections for municipal elections where the municipality's involvement in a federal, state, or county election is limited to only having a referendum issue on the ballot?

The short answer to your question is "yes." Section 101.62(3) Florida Statutes (2012), in part, provides:

For each request for an absentee ballot received, the supervisor shall record the date the request was made, the date the absentee ballot was delivered to the voter or the voter's designee or the date the absentee ballot was delivered to the post office or other carrier, the date the ballot was received by the supervisor, and such other information he or she may deem necessary. . . . This information shall be confidential and exempt from the provisions of s. 119.07(1) and shall be made



available to or reproduced only for the voter requesting the ballot, a canvassing board, *an election official*, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees or registered committees of continuous existence, for political purposes only.” (Emphasis added).

Florida’s broad public records law requires agencies to disclose to the public all records that are not classified as confidential and exempt by Florida statute.¹ As noted above, the Election Code provides an exemption to the public records law for absentee ballot request information for certain statutorily-listed persons and entities. One such exemption is for an election official.² So, if the requesting party is an election official, the person is authorized to copy or inspect the normally protected absentee ballot request information within the possession of a supervisor of elections. The general purpose of the state’s public records law “is to open public records to allow Florida’s citizens to discover the actions of their government.”³ The law is to be liberally construed in favor of open government; whereas, exemptions are to be strictly construed.⁴ A strict construction of exemptions opens public records to more people, which fosters the general purpose of the public records law.

The City Charter and Code of Ordinances for the City of Palm Beach Gardens provide that the City Clerk has certain responsibilities, among others, to conduct city elections, provide notices of elections, and to be involved in the processing of municipal initiatives and referenda. Moreover, the city’s official website indicates that the City Clerk serves “as the Supervisor of Elections for the City.”⁵ While Florida’s Election Code uses the term “election official” in several provisions⁶ besides section 101.62(3), the Election Code contains no definition of the term. Resort to the common dictionary definition reflects that an “official” is one who holds or is invested with an office (for example, a government office).⁷ A city clerk is an official. Also, based upon the partial description of the City Clerk’s responsibilities set forth above, the City Clerk certainly has election-related duties in connection with the office; therefore, my opinion is that the City Clerk of Palm Beach Gardens is an “election official.”

Unlike the restriction imposed on a candidate, who must have filed qualifying papers and be opposed in an upcoming election before being able to obtain the absentee ballot request information, section 101.62(3), Florida Statutes (2012), does not place any limiting criteria on an “election official” to have access to the same information. The person only must be an “election

¹ See generally, § 119.07(1), Fla. Stat. (2012).

² § 101.62(3), Fla. Stat. (2012).

³ *Christy v. Palm Beach County Sheriff’s Office*, 698 So. 2d (1365, 1366) (Fla. 4th DCA 1977).

⁴ *Krischer v. D’Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996).

⁵ See <http://www.pbgfl.com/content/72/124/default.aspx>.

⁶ See, e.g., §§ 98.045(2)(b), 100.351, 101.048(1), 101.51(1), 101.56062(10(f), 102.168(30(a), 104.051(1), 104.0615, 104.23, and 104.29, Fla. Stat. (2012)

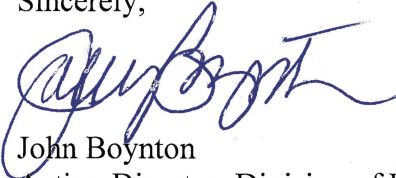
⁷ *Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/>, “official.”

official.” If the Legislature desired to place a limitation on an election official’s ability to inspect and copy absentee ballot information, it could have done so like it did for candidates. Because no restriction exists other than to be an “election official,” the “election official” may inspect and copy absentee ballot request information regardless of the lack of the election official’s involvement in an ongoing election. This conclusion serves the purpose of the public records law and its exemptions.⁸ Because you are an “election official” by being the City Clerk for the City of Palm Beach Gardens, you fit within the statutory exemption and may receive the absentee ballot request information that is otherwise confidential and exempt from public disclosure even when there is a federal, state, or county election in which the city has limited or no involvement. Because your request is made in your “election official” capacity as the City Clerk, you are entitled to inspect and copy the absentee ballot request information maintained by a county supervisor of elections.

SUMMARY

An “election official” may inspect and copy absentee ballot request information within the possession of a county supervisor of elections which is normally confidential and exempt under section 101.62(3), Florida Statutes (2012), regardless of the lack of the election official’s involvement in the instant election.

Sincerely,



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

cc: R. Max Lohman, Esq.

⁸ The public records exemption within § 101.62, Florida Statutes, first came into existence on October 1, 1987. § 4, Ch. 87-363, Laws of Fla. (1987). At that time, except for a select few categories of persons, an individual could not vote absentee unless the voter would be absent from the voter’s county during the voting hours on Election Day (§§ 97.021 and 101.64, Fla. Stat. (1987)); therefore, one of the apparent purposes underlying the exemption was that disclosure of the absentee ballot information should be limited to certain persons and entities to protect absentee voters from the potential of home burglaries. Since January 1, 2002, Florida has had no-excuse absentee voting – a voter may vote absentee even if the voter will be present on Election Day; therefore, the rationale to protect voters from the threat of home burglaries is less applicable today. § 34, Ch. 2001-40, Laws of Fla. (2001).