



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

April 23, 2013

Ms. Penelope Townsley
Supervisor of Elections
Miami-Dade County
2700 NW 87th Avenue
Miami, Florida 33172-1607

RE: DE 13-07 Absentee Ballots; Canvassing Board – Delivering and tabulating absentee ballot at precinct; use of signature verification technology for absentee ballots -- §§101.68, 101.69, and 102.141(8), Florida Statutes

Dear Supervisor Townsley,

This letter responds to your request for an advisory opinion. As the Supervisor of Elections for Miami-Dade County you ask essentially three questions about actions you and the county canvassing board propose to take relating to the return of absentee ballots and the verification of signatures on absentee ballot certificates. The Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

The first question is whether absentee ballot voters may drop off their voted absentee ballot at their assigned precinct on Election Day. The law does not permit this option. Section 101.69, Florida Statutes (2012), in pertinent part, states the specific manner in which absentee ballots are handled at the polling place:

An elector who has received an absentee ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "cancelled" by the board and placed with other cancelled ballots.

The Division has opined previously when asked a similar question about delivery of a voted absentee ballot to a polling place. In *Division of Elections Opinion 83-06* (March 25, 1983), the Division stated:



Division of Elections
R.A. Gray Bldg., Rm. 316 • 500 S Bronough St. • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6200 • Facsimile: (850) 245-6217 elections.myflorida.com
Commemorating 500 years of Florida history www.fl500.com



[T]he statute expressly requires delivery to the supervisor ... [I]t is the duty of the supervisor of elections to carry out the requirements required by statute. To suggest that there is an alternative way to deliver marked absentee ballots creates a discretion which is not expressly found in the law The delivery of a marked absentee ballot to the supervisor of elections by 7 p.m. of the election day is a requirement essential to the validity of the ballot. Delivery to the polling place rather than to the supervisor would derogate from the law and would render the ballot invalid.

The Division's opinion remains unchanged. Florida law does not permit a voter to return the voted absentee ballot to the polling place rather than to the supervisor of elections unless the voter intends instead to return the absentee ballot to be cancelled and to cast a regular ballot at his or her assigned precinct.

The second question is whether voters may cast their absentee ballot by inserting it into the optical scanner at their assigned precinct. The answer is no. If a voter requests an absentee ballot and later desires to vote in person, section 101.69, requires the absentee ballot to be returned to the precinct location, marked "canceled," and placed with other canceled ballots "whether voted or not." Therefore, the absentee ballots may not be cast. Instead, the voter must vote a regular ballot at the polling place.

The third question is whether the Florida Election Code permits the use of automated signature verification technology to compare the signature on the absentee ballot to the voter's signature on the voter registration record and, if so, whether technology of this type must be certified by the State of Florida.

The answer is a qualified yes to the first part of the question. Florida law is silent as to whether signature verification services or technology may be used to assist the county canvassing board in performing its statutory duty to verify voter signatures.

What is clear is that the Supervisor and the canvassing board may not abdicate their statutory duties and responsibilities under the Florida Election Code. While the canvassing board is and remains the final authority on whether a voter signature matches for purposes of canvassing the ballots, the law already contemplates that the supervisor, who serves as one of the members of the canvassing board, may perform preparatory signature verification to assist the canvassing board.

Section 101.68(2)(c)1., in relevant part, provides:

The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books to see that the elector is duly registered in the county and determine the legality of that absentee ballot.

Additionally, the law authorizes the canvassing board to enlist clerical help for other work of the board under specified circumstances. Section 102.141(8), in part, provides:

The canvassing board may employ such clerical help to assist with the work of the board as it deems necessary, with at least one member of the board present at all times.

Thus, the Legislature recognized that there may be a need to “assist” the canvassing board and Supervisor in performing the duties efficiently, adequately and timely. It has long been within the Supervisor and the canvassing board’s discretion to determine what labor-saving measures or devices may be taken or used to perform canvassing duties. While this may include automated signature verification, the ultimate decision regarding the authenticity of a signature must be made by the canvassing board using their collective best judgment.¹

In answer to the second part of the question relating to automated signature technology, the Division of Elections lacks statutory authority to test or certify the use of automated signature technology in an elections context unless it is being presented for certification as part of an electronic or electromechanical voting system under chapter 101, Florida Statutes, or unless federal Help American Vote Act (HAVA) funds are to be used to pay for technology assuming it is an allowable expense.

SUMMARY

A voted absentee ballot may not be returned to a precinct polling place unless the voter intends to return the absentee ballot for cancellation in order to cast a regular ballot at the polling place.

A voter who has requested an absentee ballot may not cast it at his or her precinct by inserting it into the optical scanner, because a voter who has received an absentee ballot but who

¹ See, e.g., *Division of Elections Opinion 06-11* (Aug. 25, 2006), wherein the Division considered the use of handwriting consultants by the canvassing board and opined:

It is imperative that the canvassing board in no way abdicates its statutory duties and responsibilities under the Florida Election Code to be the final authority on whether a voter signature matches for purposes of canvassing the ballots. ... However, it is important to keep in mind that the Legislature did not incorporate in the Florida Election Code a scientific standard of handwriting comparison when charging canvassing boards with their duty to compare signatures. They certainly could have required professional or scientific comparison analysis if that had been their intention. Instead, the Legislature in essence created a standard of reasonableness and left it to the canvassing boards to make such determinations using their collective best judgment as to what constituted a signature match.

Ms. Penelope Townsley
April 23, 2013
Page 4 of 4

desires to vote in person must instead return the ballot for cancellation, whether voted or not, and cast a regular ballot at the polling place.

It is within the discretion of the supervisor and the canvassing board to use automated signature verification technology, provided it does not replace the duties and responsibilities of the Supervisor and the canvassing board to be the final arbiter as to whether a signature is verified.

The Division of Elections has no statutory authority to certify automated signature verification technology unless it is being presented for certification as part of an electronic or electromechanical voting system under chapter 101, Florida Statutes, or unless federal Help American Vote Act (HAVA) funds are to be used to pay for technology assuming it is an allowable expense.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maria I. Matthews', written over a horizontal line.

Maria I. Matthews, Esq.
Director, Division of Elections