



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

November 2, 2020

The Honorable Wendy Sartory Link
Palm Beach Supervisor of Elections
240 South Military Trail
West Palm Beach, Florida 33415

RE: DE 20-03 Vote-by-Mail Ballot; Drop
Box – §100.011, 101.031, 101.67, 101.68,
101.69, Florida Statutes

Dear Supervisor Link:

On October 16, 2020, we received your revised request for an advisory opinion regarding your responsibility to accept vote-by-mail ballots. As a Supervisor of Elections inquiring about your duties under the Election Code, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

FACTS

Specifically, you ask whether you must accept a completed vote-by-mail ballot from a voter waiting in line to use a drop box *at or before* 7 p.m. on Election Day.¹ Although we find it difficult to envision a scenario where such a line should exist, we recognize that a voter who arrives at a supervisor's office and attempts to cast a *completed* vote-by-mail ballot on or before 7 p.m. must be permitted to cast the ballot.

¹ In your revised request, you ask about both mandatory *and* discretionary drop boxes on Election Day. Pursuant to sections 101.69(2) and 101.657(1)(d), however, only mandatory drop boxes at your main and branch offices should be available on Election Day. Early voting ends on the "2nd day before an election," § 101.657(1)(d), so there are no "early voting site[s]" or "sites that would otherwise qualify as [] early voting site[s]" on Election Day. §101.69(2), Fla. Stat. Thus, there should not be any drop boxes available on Election Day at those sites. This advisory opinion therefore concerns only your duty to accept vote-by-mail ballots from voters waiting in line to use mandatory drop boxes *at your main or branch offices*.

ANALYSIS

The vote-by-mail statute requires the ballot to be “received by the supervisor by 7 p.m. the day of the election” in order to be counted. § 101.67(2), Fla. Stat. Section 101.67(2) does not mention lines; other parts of the election code do. It is the policy of this State that voters “in line at the time of the official closing of polls” must be allowed “to cast a vote in the election.” *Id.* § 100.011(1). The Voter’s Bill of Rights further provides that “[e]ach registered voter in this state has the right to” “[c]ast a vote if he or she is in line at the official closing of polls in that county.” *Id.* § 101.031(2). Voters in line at the office of the supervisor on or before 7 p.m. on Election Day armed with their completed vote-by-mail ballot who are seeking to place it into a drop box must be permitted to do so; completed vote-by-mail ballots are deemed “cast” once received by the supervisor.² *Id.* § 101.68; *see also id.* § 101.69(1).

Deadlines are of crucial importance to elections administration, including the 7 p.m. deadline for the return of vote-by-mail ballots. Florida law does not, however, penalize voters who arrive to cast their ballot on Election Day prior to 7 p.m. but who are unable to immediately do so because of a line at your office and your inability to otherwise accept the completed ballot timely delivered to your office.³ Section 101.67(2)—read together with section 101.68, 100.011(1), 101.031(2), and 101.69(1)—requires us to conclude that you must allow voters in line before polls close to cast their completed vote-by-mail ballots.

As stated above, long lines for depositing vote-by-mail ballots in drop boxes on Election Day should rarely occur, if at all. Unlike waiting in a physical polling location to fill out and cast one’s ballot, a voter who shows up to the office to deliver a completed vote-by-mail ballot need only approach the drop box and return the completed ballot or otherwise deliver it to the supervisor or supervisor’s staff. We expect that through proactive management and advance planning strategies long lines can be mitigated, if not avoided completely as the deadline approaches.

SUMMARY

It is thus the opinion of the Florida Division of Elections that you must accept a vote-by-mail ballot from a voter who is in line at the office of the supervisor on or before 7 p.m. on Election Day armed with his or her completed vote-by-mail ballot seeking to place it into a drop box, and

² This opinion concerns only the return of completed vote-by-mail ballots through drop boxes on Election Day where the ability to meet the 7 p.m. deadline is frustrated because of the supervisor’s failure to manage Election Day drop box lines. More specifically, this opinion concerns a voter’s attempt to use a drop box on or before 7 p.m. on Election Day to deposit “[t]he envelope containing” the voter’s “marked ballot.” § 101.69(2), Fla. Stat. A voter waiting in line at a drop box with a completed—i.e., marked and sealed—ballot is distinct from one who is requesting an emergency ballot for the first time or has not yet marked the ballot. *Cf. Hoover v. Mobley*, 253 So. 3d 89, 92 (Fla. 1st DCA 2018) (distinguishing someone “ready, willing, and able” to submit the requisite materials to a supervisor of elections from someone who comes unprepared to the supervisor’s office on or before the deadline).

³ You rely on the Fourth District’s decision in *Goldsmith v. McDonald*, 32 So. 3d 713 (Fla. 4th DCA 2010) in asking for a contrary opinion. We note, however, that *Goldsmith* dealt with the voter’s responsibility to timely deliver the ballot. Again, this opinion concerns the supervisor’s responsibility to *accept* a ballots timely delivered to the supervisor’s office.

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that such ballots deposited are timely received for purposes of counting. We do not address your concerns about marketing materials or our website as nothing in this opinion modifies the 7 p.m. statutory deadline. *See* Original Request at 2-3 (October 15, 2020).

Thank you for submitting your request. Should you have any questions, please do not hesitate to contact us.

Respectfully,



Maria Matthews, Esq.
Director, Division of Elections