



Florida Department of State

Questions and Answers

GARY HOLLAND

ASSISTANT DIVISION DIRECTOR

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Background

- **The following are some selected questions that we have received in recent months.**
- **The names have been changed to protect the innocent.**
- **How would you answer?**

Category

3PVRO

Question #1

- What is the deadline for a 3PVRO to deliver the voter registration applications it collects to the Division or the Supervisor of Elections?

Question #1 – Response

Despite s. 97.0575, F.S., providing that the 3PVRO is liable for a \$50 fine if not delivered within 48 hours, the 48-hour period was declared unconstitutional and Rule 1S-2.042 correctly reflects the court's ruling that the 3PRVO has **10 days** to deliver the application to the Division or SOE. (This is one time that a rule controls over what is in statute.)

Note, however, if the application was collected by the 3PVRO prior to book closing, then the 3PVRO must deliver it before book closing even if within the 10-day period.

Question #2

If a 3PVRO collects an application signed before book closing but does not hand deliver the application to the SOE Office until after book closing, would you process the application and what would the date of registration be?

Question #2 - Response

You must process the application as you would any application received into your office. However, the voter regrettably would not be eligible to vote in the upcoming election because the application was untimely submitted (albeit through no fault of voter) – the date of the registration is the hand delivery date. The voter assumes the risk that the 3PVRO will turn in the application timely. You will need to report the violation to the Division – see Rule [1S-2.042\(8\)\(c\)](#), FS.

The voter may likewise file a complaint against 3PVRO.

Category

Write-in Candidates

Question #3

- According to statute, when must a write-in candidate reside in the district represented by the office sought?

Question #3 – Response

Section 99.0615, F.S., requires that a write-in candidate must reside within the district represented by the office sought **at the time of qualifying.**

Note: Litigation is ongoing if this imposes a requirement for state legislators not contained in the Florida Constitution.

Category

Campaign Finance

Question #4

- If a candidate has qualified by the petition method, must the candidate reimburse for the waived election assessment before disposing of surplus funds?

Question #4 – Response

No – the candidate need not reimburse for a waived election assessment, but must reimburse the applicable governmental entity for waived candidate **petition verification fees**. (*See s. 106.141(7), F.S.*)

Question #5

- May a candidate accept a campaign contribution in a church?

Question #5 – Response

Yes – The only prohibition on where a candidate may accept a contribution is found in s. 106.15(4), F.S. (in a building owned by a governmental entity).

Question #6

Is the mere act of giving of a contribution sufficient to disqualify a canvassing board member?

Question #6 -- Response

No. See DE 09-07 (which also makes reference to DE 08-10). These opinions explain when a canvassing member becomes disqualified based upon the language in section 102.141, F.S.

Question #7

Is it permissible for a person to distribute free water and snacks within the 100' No Solicitation Zone?

Question #7 – Suggested response

As long as the water and snacks do not have campaign advertisements on them or the person passing them out is not campaigning; as such, there is no *direct* prohibition in law.

Note that s. 102.031, FS, defines “solicitation” non-exclusively - so just because it is not listed, does not mean it is allowed. It could be very difficult for precinct deputies to police what is happening with the giveaways. Authority is to take whatever action necessary to maintain order at precinct.

Category

Early Voting

Question #8

- During a special election for a state legislative seat, must the SOE have the same number of early voting sites that the county had in the 2012 presidential election?
- Does it make a difference if the district for the state legislative seat covers only a portion the county?

Question #8 – Suggested Response

The Division interprets F.S. 101.657, to set the minimum number of early voting sites for a special primary or special election involving a state or federal race held by a county as:

- The Supervisor of Elections must **always** permit early voting in main or branch office of the supervisor. (The 1-year requirement for a branch office to be used as an early voting site still applies.) In addition:
- For a special primary or special election that covers the **entire county**, the number of early voting sites must at a minimum be the same number that existed in the county for the 2012 general election.
- For a special primary or special election **for an office covering only a portion (district) of a county**, the number of early voting sites must at a minimum be the same number that existed in that portion (district) of the county for the 2012 general election.

Category

Public Records

Question #9

- The SOE receives a public records request for the names, voter ID numbers, and the date and reason for removal of all voters removed from the voter rolls in the last 6 months.
- Should the SOE include removals based upon deaths received from SSA?

Question #9 – Suggested Response

The SOE may not disclose any information from the SSA Death Master File, except the fact of death for a 3-year period after the date of death.

The name, voter ID, and date of removal are matters the SOE has apart from the SSA Master File, so the SOE may disclose those items and the reason for removal as death (i.e., the fact of death).

Question #10

- One of three active candidates who have filed the appointment of campaign treasurer form (DS-DE 9) for 2016 has requested access to the absentee ballot data for a special election occurring in 2015.
- Is the candidate entitled to the absentee data information?

Question #10 – Response

No – F.S. 101.62(3) permits a candidate “opposed in an upcoming election” to have access. The Division’s interpretation is that a candidate cannot be determined to be “opposed in an upcoming election” until after the end of the qualifying period for that candidate (which would not occur until 2016).

Question #11

- Your office has been contacted by an out-of-state district attorney who seeks to obtain a voter's signature from the voter registration rolls in your county. May you provide it?
- Would it matter if the request came from your local state attorney?

Question #11 – Response

You may not provide it to either without a court order or subpoena.

F.S. 97.0585(2): “The signature of a voter registration applicant or a voter is exempt from the copying requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.”

Category

Mail Ballot Election

Question #12

- May a mail ballot election be held in any circumstance other than a referendum election at which all or a portion of the qualified electors of a subdivision of government are the only electors eligible to vote?

Question #12 – Response

No – Section 101.6102, F.S., provides that an election by mail ballot may be conducted *if* the election is a referendum election at which all or a portion of the qualified electors of one of the following subdivisions of government are the only electors eligible to vote: counties, cities, school districts covering no more than one county, or special districts.

Category

Absentee Ballots

Question #13

- Does the 10-day after-the-election provision for overseas voters to have their absentee ballot received by the SOE apply to a primary election?
- What about to a special primary election to fill a vacancy in office?

Question #13 – Response

F.S. 101.6952(5) provides that the 10-day provision applies to a PPP or general election.

It applies to the special primary election due to F.S. 100.191 (“All laws applicable to general elections are applicable to special elections or special primary elections to fill a vacancy in office or nomination).”

Thus, the answers are “No to a primary election” and “Yes to the special primary election.”

Question #14

- Does the 10-day overseas absentee ballot extension apply to city elections held in conjunction with a state/county general election?

Question #14 – Response

Yes ... the county canvassing board cannot certify the results for the municipal election until after the expiration of the 10-day period if any of outstanding 10-day ballots include a municipal race/issue on the ballot.

Question #15

- An overseas voter returned a Federal Write-in Absentee Ballot (FWAB). Must the voter previously have requested an absentee ballot for the election for the canvassing board to count the FWAB?

Question #15 – Response

Yes – per 52 U.S.C. 20303(a)(1) and F.S. 101.6952(2)(a), the voter must have made a timely application for an official absentee ballot before using a FWAB.

Question #16

General Election Absentee Ballot scenario:

- A married couple registered in County A were sent absentee ballots. They subsequently registered in County B on October 27, 2014.
- Their Voter Certificate envelopes have a postmark of October 27, 2014 from County B.
- Their Voter Certificate envelopes were received in County A's SOE Office on October 29, 2014.

Can these ballots be counted in County A? If not, can these voters vote in County B in the general election?

Question #16 –Response

- The absentee ballot cannot be counted, nor can they legally vote in County B.
- Per s. 101.68, F.S., at the time of receipt of the ballot, the SOE is to determine if the voter is a duly registered voter in the county. Based upon the scenario, the voters were not (i.e., they were registered in another county by the time the SOE received their ballots). The statute provides only one corrective fix to the law that an absentee ballot is deemed cast at the time the SOE receives the ballot and that is when the voter forgets to sign the voter's certificate.
- Thus, the voters have cast an illegal ballot in County A since they were not registered voters in the county at the time of receipt. Nor can they vote in County B since they cannot vote more than once in the same election.

Question #17

- The SOE had mailed an absentee ballot to a military voter. On October 7th, the SOE received notice from another state the voter had registered there. On October 10th, the SOE received the military voter's voted ballot for the general election.
- Does the ballot count in Florida?

Question #17 -- Response

F.S. 98.045(2)(a) provides that information from an election official in another state that the person has registered in the other state shall be considered a written request to have the voter's name removed from the voter rolls. Here, if the removal occurred before the SOE received the ballot, it is an invalid ballot since the voter would no longer be an eligible

voter. [Comment: What happens if the voter registered in the other state after its book closing date? Answer: The voter is still able to vote presidential and vice-presidential race only in a presidential election year.]

Question #18

Voter A requests an absentee ballot but Voter B in same household returns Voter A's absentee ballot signed by Voter B. Voter B did not request an absentee ballot. When comparing signatures, the ballot is rejected by the canvassing board for signature (and name) not matching.

Is Voter A still entitled to cast a ballot?

Question 18 -- Suggested response

Voter A has never voted, so A should at least be able to vote a provisional ballot and be able to explain the circumstances so that the canvassing board may decide to count his ballot.

Voter B cannot vote again because B has already voted (albeit fraudulently) – if B insists, then he votes a provisional ballot that should not be counted due to voting twice in the same election.

Question #19

Can a voted sample ballot returned in an absentee ballot envelope be canvassed and counted?

Question #19 – Suggested Response

It is the discretion of the canvassing board to canvass and count the ballot. The Election Code is silent. However, the recommended course of action is if the board is able to determine the voter's choices, then duplicate choices onto an official absentee ballot as it would do for a damaged absentee ballot.

Question #20

May a 91-year old person who is registered to vote, blind, suffers from dementia and residing in an assisted living facility vote by absentee ballot?

Question #20 – Suggested Response

Yes, until a court order holds the person to be mentally incapacitated and the person's right to vote is removed.

The absentee ballot request must be on record either submitted by the person or an immediate family member. *Absentee ballot requests are by default good through the end of the calendar year after the 2nd general election from the date of the request. It must be renewed thereafter.*

Signature submitted on ballot certificate must match signature on record.

Such person can also vote through **supervised voting in an assisted living facility** by operation of section 101.655, F.S.

It is a criminal offense for someone to mark a choice on a ballot for another unless it is done in accordance with section 101.655, F.S. or by voter assistance statutes (Sections [101.051\(3\)](#) and [101.661](#), F.S.) If you or anyone is aware that there may be potential fraud, you can refer directly to your local state attorney or file an election fraud complaint with DOS.

Category

Pre-Election Miscellaneous

Question #21

- What is the minimum number of training hours that a poll clerk must have prior to each election?

Question #21 – Response

Section 102.014(4)(a), F.S., provides that no clerk shall be entitled to work at the polls unless he or she has had a minimum of **3 hours** of training prior to each election.

Question #22

- Is a U.S. Passport “Card” an acceptable form of ID at the Early Voting or Election Day polls?

Question #22 - Response

Yes. Based on U.S. Department of State information, the Division interprets that the United States passport to encompass the U.S. passport *card*.

Question #23

- An elected member of a Community Development District (CDD) resigned. Does the Governor appoint someone to replace him for the remainder of the term?

Question #23 – Response

No – CDDs are governed by Chapter 190, Florida Statutes.

F.S. 290.006(4) provides in part: “If, during the term of office, a vacancy occurs, the remaining members of the board shall fill the vacancy by an appointment for the remainder of the unexpired term.”

Question #24

- Does the Division of Elections have the authority to adopt emergency rules when there is not enough time to go through the normal rule making process?

Question #24 – Response

Yes. Section 120.54(4), Florida Statutes, permits emergency rules when there is “an immediate danger to the public health, safety, or welfare.” The law specifically provides that rules pertaining to the public health, safety, or welfare include rules pertaining to the Election Code (except chapters 103 and 106).

Category

Post- Election and
Canvassing

Question #25

- What is the mandatory deadline for the canvassing board to report all early voting and tabulated absentee ballots after the polls close on election day?

Question #25 – Response

The deadline is 30 minutes after the polls close – s. 102.141(3)(b), F.S., makes this mandatory (“shall” not “may”).

Question #26

When may provisional ballots be canvassed?

Question #26 – Suggested Response

If the voter can be determined to be eligible without waiting until the 5 pm deadline on the 2nd day after the election for the voter to bring in evidence of eligibility, then the provisional ballot may be canvassed, *e.g.*, the voter otherwise eligible voted provisionally solely because he or she did not have proper ID.

Otherwise, do not canvass provisional ballots until after the deadline.

Provide notice the board may be canvassing provisional ballots, if any.

Question #27

Is it an overvote if a voter fills in an oval/arrow for a candidate and then fills in oval/arrow for a write-in candidate and writes in a name of a non-qualified person?

Question #27 - Response

Yes, it is an overvote.

See Rules 1S-2.027(5)(e), F.A.C.

Question #28

When would a statewide recount be called in a general election in a gubernatorial election year (or in a presidential election year)?

Question #28 -- Response

All counties must report the 1st set of unofficial returns (due by noon, 4th day after general election) before Secretary of State cannot order a statewide machine recount.

If machine recount triggered, the Secretary will order immediately.

10-day overseas absentees are not included in the machine recount, except if received and tabulated before recount. (continued)

Continued Response to Question #28

Machine recount results are included in the 2nd set of unofficial returns – no later 3pm, 9th day after election.

If 2nd set triggers manual recount (i.e., over and under votes only), the Secretary will order immediately).

The results of the manual recount, if done, will be included in the official returns due at Noon, 12th day after the election.

The official results will include all 10-day overseas ballots received and tabulated.

Question #29

- The SOE conducted a city election in conjunction with the November 4, 2014, general election.
- Must the SOE prepare the certificate of election for those candidates elected to city office in the general election?

Question #29 – Response

Yes – F.S. 102.155 provides: “The supervisor shall give to any person the election of whom is certified by the county canvassing board a certificate of the person’s election.”

Question #30

- Must all canvassing board members sign the post-election voting system audit report?

Question #30 – Suggested Response

At a minimum, 2 of the 3 canvassing board members must sign the post-election voting system audit report.

See Advisory Opinion DE 05-08 as to the number of canvassing board members required to participate at various stages of the election process. “A canvassing board may act in an official capacity when a majority of the members are present, unless otherwise specified in statute or rule.”

Conclusion

Any questions? ...

If you ask, we will make an effort to answer!