

DE 00-11
Definitions of Errors in Vote Tabulation

November 13, 2000

§ 102.166(5), Fla. Stat.

TO: Mr. Al Cardenas, Chairman
Republican Party of Florida
Post Office Box 311
Tallahassee, Florida 32302

Dear Mr. Cardenas:

This is in response to your request for an opinion relating to section 102.166(5), Florida Statutes. You are the Chairman for the Republican Party of Florida and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask:

1. What is the meaning of the term "error in the vote tabulation" as used in section 102.166(5), Florida Statutes?
2. What is the meaning of "affecting the outcome of the election" as used in section 102.166(5), Florida Statutes?
3. What manner of "error" and what type and/or degree of effect on the outcome would serve as a lawful predicate for a manual recount of all ballots under section 102.166(5)(c), Florida Statutes?

Your questions involve the interpretation of election laws and can be answered with an advisory opinion. Section 102.166(5), Florida Statutes, provides in pertinent part that if the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall: (a) correct the error and recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. The inability of a voting systems to read an improperly marked marksense or improperly punched punchcard ballot is not a "error in the vote tabulation" and would not trigger the requirement for the county canvassing board to take one of the actions specified in subsections 102.155(5)(a) through (c), Florida Statutes. An error that could "affect the outcome of the election" is an error of a magnitude sufficient to make a difference as to which candidate wins the election.

SUMMARY

An "error in the vote tabulation," means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. An error that could "affect the outcome of the election" is an error of a magnitude sufficient to make a difference as to which candidate wins the election.

Sincerely,

L. Clayton Roberts

Director, Division of Elections

Prepared by:
Kristi Reid Bronson Assistant
General Counsel

LCR/KRB

**DE 00-12
Manual Recount Procedures****November 13, 2000**

§ 102.166, Fla. Stat.

TO: The Honorable Jane Carroll
Broward County Supervisor of Elections
Post Office Box 029001
Ft. Lauderdale, Florida 33302-9001

Dear Ms. Carroll:

This is in response to your request for an advisory opinion concerning manual recount procedures. You are the Supervisor of Elections for Broward County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask:

If a county canvassing board authorizes a manual recount of ballots of the presidential election pursuant to section 102.166(4)(c), Florida Statutes, and determines that the number of votes for one or more candidates changes and such changes are due to voter errors (such as failing to properly follow voting procedures), is the board authorized to conduct a manual recount of all ballots of the remainder of the county?

The answer to your question is no. Section 102.166(5), Florida Statutes, provides that if the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall: (a) correct the error and recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Voter error is not an "error in the vote tabulation." Therefore, the county canvassing board is not authorized to conduct a manual recount of the remainder of the county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

SUMMARY

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Voter error is not an "error in the vote tabulation." Therefore, the county canvassing board is not authorized to conduct a manual recount of the remainder of the county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

Sincerely,

L. Clayton Roberts

Director, Division of Elections

Prepared by:
Kristi Reid Bronson Assistant
General Counsel

LCR/KRB

DE 00-13**Manual Recount Procedures and Partial Certification of County Returns****November 13, 2000**

§§ 102.166(5) and 102.151, Fla. Stat.

TO: The Honorable Charles E. Burton, Chairperson
Palm Beach County Canvassing Board
Palm Beach County Courthouse
West Palm Beach, Florida 33401

Dear Judge Burton:

This is in response to your request for an opinion. You are chairperson of the Palm Beach County Canvassing Board and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you. Essentially, you ask:

1. Would a discrepancy between the number of votes determined by a tabulation system and by a manual recount of four precincts be considered an "error in voting tabulation" that could affect the outcome of an election within the meaning of section 102.166(5), Florida Statutes, thereby enabling the canvassing board to manually recount ballots for the entire county?
2. May a county canvassing board do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the votes for the candidates of the presidential election?

With regard to your first question, section 102.166(5), Florida Statutes, provides that if the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall: (a) correct the error and The Honorable Charles E. Burton November 13, 2000 Page Two recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

With regard to your second question, the answer is yes. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results of the presidential election.

SUMMARY

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing

board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results for the presidential election.

Sincerely,

L. Clayton Roberts
Director, Division of Elections

Prepared by:
Kristi Reid Bronson Assistant
General Counsel

LCR/KRB