



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

November 5, 2021

The Honorable Brian E. Corley
Supervisor of Elections, Pasco County
P.O. Box 300
Dade City, Florida 33526

Re: DE 21-03 Vote-by-Mail Ballot –
Canvassing – §§ 101.68; 101.69, Florida
Statutes

Dear Supervisor Corley:

This letter responds to your request for an advisory opinion regarding the criteria that a Canvassing Board should utilize when deciding whether to accept or reject a vote-by-mail ballot that was lawfully requested, received, voted, and returned but the voter in question moved outside of the voting jurisdiction before your office received the ballot. Because you are a supervisor of elections proposing to take action related to Florida's election laws, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2021).

FACTS

Your request for an advisory opinion states that you are asking what criteria Canvassing Boards should utilize when determining whether to count vote-by-mail ballots that were lawfully sent, but were not received by your office until after the voter had moved outside of your jurisdiction. You give examples of criteria that could affect the decision of a Canvassing Board including the date the voter moved to another county, the date the elector signed the vote-by-mail return envelope, or the postmark on the vote-by-mail envelope.

The short answer to your question is that there is a single criterion a Canvassing Board should utilize when faced with the aforementioned situation: Whether the registered elector was properly registered with the original county on the supervisor of elections received the vote-by-mail ballot.

ANALYSIS

The Florida Election Code defines when a vote-by-mail ballot has been cast:

The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books to determine whether the elector is duly registered in the county and must record on the elector's registration certificate that the elector has voted. . . Except as provided in (4), **after an absentee ballot is received by the supervisor, the ballot is deemed to have been cast**, and changes or additions may not be made to the voter's certificate.

§ 101.68 (1), Florida Statutes. (Emphasis added).

The plain language of the statute states that a voter utilizing a vote-by-mail ballot has cast a ballot when it is received by the supervisor. Accordingly, when the Supervisor of Elections receives a vote-by-mail ballot, the voter who cast it has voted in that election and any eligibility determination must be made with respect to the date the supervisor received the vote-by-mail ballot. *See Div. of Elections Op. 06-08* (June 1, 2006).

During the early voting period, a voter's eligibility determination is made based upon the voter's status when they present themselves to cast their ballot at an early voting site. If the voter is eligible on that particular day, they are able to cast a ballot which is immediately tabulated. Their ballot is not held for an eligibility determination based upon the voter's eligibility on a future date. *Id.*; *see also* § 101.657(2) Fla. Stat. (2020).

Accordingly, a vote-by-mail ballot that is received after a voter has moved to another jurisdiction must be rejected and the voter is not entitled to vote in the new jurisdiction. § 101.69(1)(a), Fla. Stat. (2021) ("An elector who has returned a voted vote-by-mail ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board"); *see Div. of Elections Op. 06-08* (June 1, 2006). However, if the vote-by-mail ballot has not been received when the voter moves to a new jurisdiction, then the voter is entitled to vote in person and the vote-by-mail ballot shall be marked "Rejected as Illegal." § 101.69(1)(b), Fla. Stat.

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SUMMARY

A vote-by-mail ballot is deemed cast when the Supervisor of Elections receives the ballot. If the voter was eligible to vote on the day the vote-by-mail ballot was received, the County Canvassing Board can count the ballot cast by the voter. If the voter moves to another jurisdiction after casting the vote-by-mail ballot, but before the ballot is received, that voter may vote in person prior to the date the vote-by-mail ballot is received.

Respectfully,

A handwritten signature in blue ink, appearing to read "M. Matthews".

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