



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

MEMORANDUM

FROM: Ken Detzner *CD*
Florida Secretary of State

TO: Supervisors of Elections

DATE: November 25, 2013

SUBJECT: Directive 2013-01 – Return of Absentee Ballots

The Division of Elections has been asked for clarification regarding the law governing the return of absentee ballots. The Division of Elections' *Polling Place Procedures Manual* directs supervisors not to accept delivery of a voted absentee ballot at a polling place by a voter who does not want to vote in person, but instead to instruct the voter to "take the absentee ballot to the office of the supervisor of elections." Fla. Admin. Code R. 1S-2.034 (incorporating Form DS-DE11). A consistent understanding of the pertinent requirements of the Election Code is essential to ensure that the casting and counting of absentee ballots is conducted in a fair, secure, efficient, and impartial manner. For that reason, I have chosen to respond to this inquiry by directive to all supervisors of elections.

In my capacity as the chief election officer of the State of Florida, I hereby issue this directive for the purpose of maintaining uniformity in the interpretation and implementation of Florida election laws. Pursuant to my authority in section 97.012(16), Florida Statutes, I provide the following written direction to supervisors of elections on the performance of their official duties with respect to provisions of the Florida Election Code and rules governing the return of absentee ballots.

The Election Code provides voters who have requested absentee ballots with multiple options as to how they ultimately cast their votes. While a voter must return an absentee ballot to the supervisor in order for it to be counted, a voter may instead elect to vote in person by delivering the absentee ballot to the voter's precinct or an early voting cite to be cancelled. §§ 101.68, 101.69, Florida Statutes (2013).¹ In order to avoid confusion and ensure that every absentee voter has the opportunity to cast his or her ballot, supervisors must understand and adhere to the laws governing the proper location for receipt of absentee ballots under each circumstance.

¹ Voters residing at certain facilities may also cast their ballots through supervised voting pursuant to section 101.655, Florida Statutes (2013).



Supervisors should not solicit return of absentee ballots at any place other than a supervisor's office, except for the purpose of having the absentee ballots cancelled if the voter wants to vote in person. A supervisor of elections cannot accept delivery of a marked absentee ballot anywhere other than his or her office without violating the requirement that supervisors "shall safely keep *in his or her office* any envelopes received containing marked ballots of absent electors" § 101.67, Fla. Stat. (2013) (emphasis added); § 101.68 (providing that the supervisor "shall receive the voted ballot," at which time it is "deemed to have been cast," and that the supervisor shall "safely keep" it "in his or her office until the county canvassing board canvasses the vote").

Moreover, the Election Code directs voters who mail their absentee ballots to send those ballots to the supervisors' offices. *See* § 101.64, Fla. Stat. (requiring absentee ballot envelopes to be "addressed to the supervisor"); § 101.65, Fla. Stat. (requiring the absentee ballot to be placed in an envelope "which is addressed to the supervisor" and returned in a timely manner "so that it can reach the supervisor" no later than 7 p.m. on election day); § 101.68, Fla. Stat. (requiring the absentee ballot to be mailed or delivered "to your county supervisor of elections"). The only statute providing for the return of a ballot to a polling place or early voting site other than the supervisor's office is for the purpose of cancelling that ballot—not for the purpose of casting it. Section 101.69, Florida Statutes, provides that a voter who has not returned his or her voted ballot to the supervisor, but desires to vote in person, may return the ballot, "whether voted or not," to the voter's precinct or early voting site where the ballot "*shall* be marked 'canceled' . . . and placed with the other canceled ballots." § 101.69, Fla. Stat. (emphasis added); *see* DE 13-07 ("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.").

An absentee ballot is deemed to have been cast when it is received by the supervisor. § 101.68, Fla. Stat. After a voted absentee ballot is received, a supervisor is required to do two things: 1) keep the ballot safely in his or her office; and 2) determine whether the ballot was received by 7 p.m. on election day for it to be eligible to be counted. § 101.67, Fla. Stat. (requiring that ballots received after 7 p.m. be "marked with the time and date of receipt and filed in the supervisor's office," but not counted). Receipt of a voted absentee ballot by the supervisor somewhere other than the supervisor's office (e.g., an early voting site, polling place, or drop box not within the supervisor's office) renders the former task impossible and undermines the latter task of determining whether ballots were timely received.

For the foregoing reasons, supervisors should never solicit the delivery of absentee ballots to any location other than the supervisors' offices. Also, it is incumbent upon supervisors to educate voters regarding the proper method of casting absentee ballots to ensure timely receipt and safe keeping.

This directive remains in effect until such time as it is superseded or revoked by subsequent directive, law or final court order.