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July 22, 2021

The Honorable Thomas R. Ford, Chair  
Nassau County Board of County Commissioners  
96135 Nassau Place, Suite 1  
Yulee, Florida 32097

Dear Commissioner Ford,

Per Florida Statutes section 102.141, I would like to request two County Commissioners to be appointed to serve on the Nassau County Canvassing Board in the 2022 Election Cycle. Respectfully, two appointments are requested, a Canvassing Board Member and an Alternate Canvassing Board Member.

Should Commissioners be unable to serve or are otherwise disqualified, an elector within Nassau County can be appointed to serve on the board. An elector can serve, provided the elector is not a candidate, a candidate with opposition, or an active participant in a campaign in the election being canvassed. Attached for your review are *Florida Statutes 102.141, County Canvassing Board; Duties*, and Division of Elections Opinion, *DE 08-10, Canvassing Board Disqualification of Member*.

I look forward to working with you and the appointed Commissioners in the 2022 Election Cycle.

Should you have questions or need additional assistance, please do not hesitate to contact me.

Sincerely,

Janet H. Adkins  
Supervisor of Elections

Attachments:

Section 102.141, Florida Statutes, County canvassing board; duties

Division of Elections Opinion 08-10, Canvassing Board Disqualification of Member

Select Year: 2020 ▼ Go

## The 2020 Florida Statutes

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[Title IX](#)  
ELECTORS AND  
ELECTIONS

[Chapter 102](#)  
CONDUCTING ELECTIONS AND ASCERTAINING THE  
RESULTS

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### **102.141 County canvassing board; duties.—**

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners. Alternate canvassing board members must be appointed pursuant to paragraph (e). In the event any member of the county canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member shall be replaced as follows:

(a) If no county court judge is able to serve or if all are disqualified, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board shall meet and elect a chair.

(b) If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners shall appoint as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.

(c) If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(d) If a substitute member or alternate member cannot be appointed as provided elsewhere in this subsection, or in the event of a vacancy in such office, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member or alternate member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(e)1. The chief judge of the judicial circuit in which the county is located shall appoint a county court judge as an alternate member of the county canvassing board or, if each county court judge is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (a).

2. The chair of the board of county commissioners shall appoint a member of the board of county commissioners as an alternate member of the county canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (d).

3. If a member of the county canvassing board is unable to participate in a meeting of the board, the chair of the county canvassing board or his or her designee shall designate which alternate member will serve as a member of the board in the place of the member who is unable to participate at that meeting.

4. If not serving as one of the three members of the county canvassing board, an alternate member may be present, observe, and communicate with the three members constituting the county canvassing board, but may not vote in the board's decisions or determinations.

(2)(a) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor to publicly canvass the absent electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. As soon as the absent electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor.

(b) Public notice of the time and place at which the county canvassing board shall meet to canvass the absent electors' ballots and provisional ballots must be given at least 48 hours prior thereto by publication on the supervisor's website and published in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county. The time given in the notice as to the convening of the meeting of the county canvassing board must be specific and may not be a time period during which the board may meet.

(c) If the county canvassing board suspends or recesses a meeting publicly noticed pursuant to paragraph (b) for a period lasting more than 60 minutes, the board must post on the supervisor's website the anticipated time at which the board expects to reconvene. If the county canvassing board does not reconvene at the specified time, the board must provide at least 2 hours' notice, which must be posted on the supervisor's website, before reconvening.

(d) During any meeting of the county canvassing board, a physical notice must be placed in a conspicuous area near the public entrance to the building in which the meeting is taking place. The physical notice must include the names of the individuals officially serving as the county canvassing board, the names of any alternate members, the time of the meeting, and a brief statement as to the anticipated activities of the county canvassing board.

(3) The canvass, except the canvass of absent electors' returns and the canvass of provisional ballots, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor, and the county canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before 2 a.m. of the day following any primary, general, or other election. If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a retabulation of the returns from such precinct. Before canvassing such returns, the canvassing board shall examine the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4)(a) The supervisor of elections shall upload into the county's election management system by 7 p.m. on the day before the election the results of all early voting and vote-by-mail ballots that have been canvassed and tabulated by the end of the early voting period. Pursuant to ss. 101.5614(8), 101.657, and 101.68(2), the tabulation of votes cast or the results of such uploads may not be made public before the close of the polls on election day.

(b) The canvassing board shall report all early voting and all tabulated vote-by-mail results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all

results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department.

(5) The canvassing board shall submit on forms or in formats provided by the division unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure no later than noon on the third day after any primary election and no later than noon on the fourth day after any general or other election. Such returns shall include the canvass of all ballots as required by subsection (2).

(6) If the county canvassing board determines that the unofficial returns may contain a counting error in which the vote tabulation system failed to count votes that were properly marked in accordance with the instructions on the ballot, the county canvassing board shall:

- (a) Correct the error and retabulate the affected ballots with the vote tabulation system; or
- (b) Request that the Department of State verify the tabulation software. When the Department of State verifies such software, the department shall compare the software used to tabulate the votes with the software filed with the department pursuant to s. 101.5607 and check the election parameters.

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been processed through such equipment, the canvassing board is not required to put each ballot through any automatic tabulating equipment again.

(b) Each canvassing board responsible for conducting a recount where touchscreen ballots were used shall examine the counters on the precinct tabulators to ensure that the total of the returns on the precinct tabulators equals the overall election return. If there is a discrepancy between the overall election return and the counters of the precinct tabulators, the counters of the precinct tabulators shall be presumed correct and such votes shall be canvassed accordingly.

(c) The canvassing board shall submit on forms or in formats provided by the division a second set of unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure. The returns shall be filed no later than 3 p.m. on the 5th day after any primary election and no later than 3 p.m. on the 9th day after any general election in which a recount was ordered by the Secretary of State. If the canvassing board is unable to complete the recount prescribed in this subsection by the deadline, the second set of unofficial



returns submitted by the canvassing board shall be identical to the initial unofficial returns and the submission shall also include a detailed explanation of why it was unable to timely complete the recount. However, the canvassing board shall complete the recount prescribed in this subsection, along with any manual recount prescribed in s. 102.166, and certify election returns in accordance with the requirements of this chapter.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system, which shall be uniform to the extent practicable.

(8) The canvassing board may employ such clerical help to assist with the work of the board as it deems necessary, with at least one member of the board present at all times, until the canvass of the returns is completed. The clerical help shall be paid from the same fund as inspectors and other necessary election officials.

(9) Each member, substitute member, and alternate member of the county canvassing board and all clerical help must wear identification badges during any period in which the county canvassing board is canvassing votes or engaging in other official duties. The identification badges should be worn in a conspicuous and unobstructed area, and include the name of the individual and his or her official position.

(10)(a) At the same time that the official results of an election are certified to the Department of State, the county canvassing board shall file a report with the Division of Elections on the conduct of the election. The report must describe:

1. All equipment or software malfunctions at the precinct level, at a counting location, or within computer and telecommunications networks supporting a county location, and the steps that were taken to address the malfunctions;
2. All election definition errors that were discovered after the logic and accuracy test, and the steps that were taken to address the errors;
3. All ballot printing errors or ballot supply problems, and the steps that were taken to address the errors or problems;
4. All staffing shortages or procedural violations by employees or precinct workers which were addressed by the supervisor of elections or the county canvassing board during the conduct of the election, and the steps that were taken to correct such issues;
5. All instances where needs for staffing or equipment were insufficient to meet the needs of the voters; and
6. Any additional information regarding material issues or problems associated with the conduct of the election.

(b) If a supervisor discovers new or additional information on any of the items required to be included in the report pursuant to paragraph (a) after the report is filed, the supervisor shall notify the division that new information has been discovered no later than the next business day after the discovery, and the supervisor shall file an amended report signed by the supervisor of elections on the conduct of the election within 10 days after the discovery.

(c) Such reports shall be maintained on file in the Division of Elections and shall be available for public inspection. The division shall utilize the reports submitted by the canvassing boards to determine what problems may be likely to occur in other elections and disseminate such information, along with possible solutions, to the supervisors of elections.

(11) The supervisor shall file with the department a copy of or an export file from the results database of the county's voting system and other statistical information as may be required by the department, the Legislature, or the Election Assistance Commission. The department shall adopt rules establishing the required content and acceptable formats for the filings and time for filings.

**History.**—s. 46, ch. 6469, 1913; RGS 350; CGL 407; s. 11, ch. 13761, 1929; s. 6, ch. 26870, 1951; s. 1, ch. 57-104; s. 6, ch. 65-129; s. 19, ch. 73-334; s. 26, ch. 77-175; s. 47, ch. 79-400; s. 18, ch. 84-302; s. 4, ch. 86-33; s. 600, ch. 95-147; s. 41, ch. 2001-40; s. 20, ch. 2002-17; s. 26, ch. 2003-415; s. 58, ch. 2005-277; s. 33, ch. 2007-30; s. 14, ch. 2010-167; s. 43, ch. 2011-40; s. 19, ch. 2013-57; s. 34, ch. 2016-37; s. 10, ch. 2018-112; s. 36, ch. 2019-162; s. 4, ch. 2020-109.

**Note.**—Former s. 102.45.





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## FLORIDA DEPARTMENT of STATE

**CHARLIE CRIST**  
Governor

**KURT S. BROWNING**  
Secretary of State

September 26, 2008

Ms. Debra E. Eastman  
Town Clerk, Town of Miami Lakes  
15700 NW 67<sup>th</sup> Avenue  
Miami Lakes, Florida 33014

RE: DE 08-10  
Canvassing Board – Disqualification of Member  
§ 102.141(1), Florida Statutes

Dear Ms. Eastman:

This letter responds to your request for an advisory opinion. You are the Town Clerk for the Town of Miami Lakes, and you serve as the supervisor of elections for its municipal elections. As a local officer having election-related duties, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008). In the absence of a town charter provision, you state that Miami Lakes follows section 102.141, Florida Statutes (2008), concerning the composition and selection of its canvassing board members.

You ask essentially the following question:

Does a contribution by a canvassing board member to a candidate in a contested race to be canvassed by the canvassing board member disqualify that member from serving on the canvassing board under the provisions of section 102.141(1), Florida Statutes (2008)?

The short answer to your question is “no” if the contribution is the extent of the canvassing board member’s participation in the campaign of the candidate.

Section 102.141(1)(a)-(d), Florida Statutes (2008), disqualifies a canvassing board member or a substitute member of a canvassing board if the member is a candidate with opposition in the election being canvassed or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed. The Election Code does not define “active participant,” nor have we found it defined in any Florida appellate case law or Attorney General Opinions. We believe the focus must be on the modifier “active” in the phrase “active participant.” If the member is a passive participant, the member would not be disqualified from being a member of a canvassing board. We do not believe that a monetary

Ms. Debra E. Eastman  
September 26, 2008  
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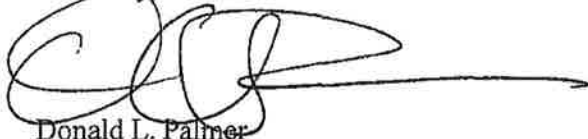
contribution to a candidate's campaign by itself makes a canvassing board member an "active participant" in the campaign.

Consistent with prior informal opinions provided by the Division of Elections, we interpret being an "active participant" in the campaign or candidacy of any candidate who has opposition in the election being canvassed to require something beyond giving of a campaign contribution.

#### SUMMARY

A contribution by a canvassing board member to a candidate in a contested race to be canvassed by the canvassing board member by itself does not disqualify that member from serving on the canvassing board. To be disqualified, the member must be an "active participant," which means something more than the mere giving of a campaign contribution.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Palmer', with a long horizontal line extending to the right.

Donald L. Palmer  
Director, Division of Elections

Prepared by:  
Gary J. Holland  
Assistant General Counsel