



November 7, 2017

The Honorable Danny Leeper, Chairman
Nassau County Board of County Commissioners
96135 Nassau Place, Suite 1
Yulee, Florida 32097

Dear Commissioner Leeper:

Pursuant to Section 102.141, Florida Statutes, I respectfully request that two members of the Board of County Commissioners be appointed as a Nassau County Canvassing Board Member and an Alternate Canvassing Board Member. If no member is able to serve or is otherwise disqualified, an elector of Nassau 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 may serve.

Please find attached a copy of Section 102.141, *County canvassing board; duties* for your review. Additionally, attached is a copy of the Division of Elections opinion DE 08-10 pertaining to canvassing board members being active participants in campaigns for your information.

I look forward to working with you and the appointed commissioners in the upcoming election cycle! Should you have questions, or if I can be of assistance to you in any way, please do not hesitate to contact me.

Sincerely,

Vicki P. Cannon
Supervisor of Elections

Attachments: Section 102.141, Florida Statutes
Division of Elections Opinion 08-10



 **COPY**

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 67th 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

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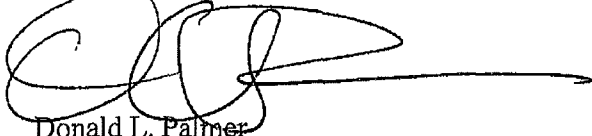
contribution to a candidate's campaign by itself makes a canvassing board member an "active participant" in the campaign.

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 dark ink, appearing to be "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

ch. 77-122; s. 25, ch. 77-175; s. 6, ch. 82-143; s. 39, ch. 2001-40; s. 56, ch. 2005-277; s. 12, ch. 2010-167.

Note.—Former s. 99.49.

102.112 Deadline for submission of county returns to the Department of State.—

(1) The county canvassing board or a majority thereof shall file the county returns for the election of a federal or state officer with the Department of State immediately after certification of the election results. The returns must contain a certification by the canvassing board that the board has compared the number of persons who voted with the number of ballots counted and that the certification includes all valid votes cast in the election.

(2) Returns must be filed by 5 p.m. on the 7th day following a primary election and by noon on the 12th day following the general election. However, the Department of State may correct typographical errors, including the transposition of numbers, in any returns submitted to the Department of State pursuant to s. 102.111(2).

(3) If the returns are not received by the department by the time specified, such returns shall be ignored and the results on file at that time shall be certified by the department.

(4) If the returns are not received by the department due to an emergency, as defined in s. 101.732, the Elections Canvassing Commission shall determine the deadline by which the returns must be received.

History.—s. 30, ch. 89-338; s. 7, ch. 99-140; s. 40, ch. 2001-40; s. 57, ch. 2005-277; s. 32, ch. 2007-30; s. 26, ch. 2008-95; s. 13, ch. 2010-167.

102.121 Elections Canvassing Commission to issue certificates.—The Elections Canvassing Commission shall make and sign separate certificates of the result of the election for federal and state officers, which certificates shall be written and contain the total number of votes cast for each person for each office. The certificates, the one including the result of the election for presidential electors and representatives to Congress, and the other including the result of the election for state officers, shall be recorded in the Department of State in a book to be kept for that purpose.

History.—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 250; RGS 294; CGL 350; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 25, ch. 77-175.

Note.—Former s. 99.51.

102.131 Returns before canvassing commission.—If any returns shall appear to be irregular or false so that the Elections Canvassing Commission is unable to determine the true vote for any office, nomination, constitutional amendment, or other measure presented to the electors, the commission shall so certify and shall not include the returns in its determination, canvass, and declaration. The Elections Canvassing Commission in determining the true vote shall not have authority to look beyond the county returns. The Department of State shall file in its office all the returns, together with other documents and papers received by it or the commission. The commission shall canvass the returns for presidential electors and representatives to

Congress separately from their canvass of returns for state officers.

History.—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 249; RGS 293; CGL 349; s. 6, ch. 26870, 1951; s. 5, ch. 65-129; ss. 10, 35, ch. 69-106; s. 25, ch. 77-175; s. 46, ch. 79-400.

Note.—Former s. 99.50.

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) 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 of elections 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. Public notice of the time and place at which the county canvassing board shall meet to canvass the absent electors' ballots and provisional ballots shall be given at least 48 hours prior thereto by publication on the supervisor of elections' website and once 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. 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 of elections.

(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(9), 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(5). 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.

(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)(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.

(10) 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.

Note.—Former s. 102.45.

102.151 County canvassing board to issue certificates; supervisor to give notice to Department of State.—The county canvassing board shall make and sign duplicate certificates containing the total number of votes cast for each person nominated or elected, the

names of persons for whom such votes were cast, and the number of votes cast for each candidate or nominee. One of such certificates which relates to offices for which the candidates or nominees have been voted for in more than one county shall be immediately transmitted to the Department of State, and the second copy filed in the supervisor's office. The supervisor shall transmit to the Department of State, immediately after the county canvassing board has canvassed the returns of the election, a list containing the names of all county and district officers nominated or elected, the office for which each was nominated or elected, and the mailing address of each.

History.—s. 47, ch. 6469, 1913; RGS 351; CGL 408; s. 12, ch. 13761, 1929; s. 5, ch. 25388, 1949; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 27, ch. 77-175; s. 31, ch. 89-338.

Note.—Former s. 102.46.

102.155 Certificate of election.—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. The Department of State shall give to any person the election of whom is certified by the state canvassing board a certificate of the person's election. The certificate of election which is issued to any person shall be prima facie evidence of the election of such person.

History.—s. 32, ch. 3879, 1889; RS 186; s. 63, ch. 4328, 1895; GS 245; RGS 289; CGL 345; s. 2, ch. 26870, 1951; s. 5, ch. 77-175; s. 1393, ch. 95-147.

Note.—Former s. 99.46.

102.166 Manual recounts of overvotes and undervotes.—

(1) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter 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-quarter 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-quarter of a percent or less of the votes cast on such measure, a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from contention by one-quarter of 1 percent or fewer of the votes cast for such office request in writing that a recount not be made; or

(b) The number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.

The Secretary of State is responsible for ordering a manual recount for federal, state, and multicounty races. The county canvassing board or local board responsible for certifying the election is responsible for ordering a manual recount for all other races.

(2)(a) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State as part of the voting system pursuant to s. 101.015. Any such hardware or software must be capable of simultaneously counting votes.

(b) Overvotes and undervotes shall be identified and sorted while recounting ballots pursuant to s. 102.141, if the hardware or software for this purpose has been certified or the department's rules so provide.

(3) Any manual recount shall be open to the public.

(4)(a) A vote for a candidate or ballot measure shall be counted if there is a clear indication on the ballot that the voter has made a definite choice.

(b) The Department of State shall adopt specific rules for the federal write-in absentee ballot and for each certified voting system prescribing what constitutes a "clear indication on the ballot that the voter has made a definite choice." The rules shall be consistent, to the extent practicable, and may not:

1. Exclusively provide that the voter must properly mark or designate his or her choice on the ballot; or

2. Contain a catch-all provision that fails to identify specific standards, such as "any other mark or indication clearly indicating that the voter has made a definite choice."

(c) The rule for the federal write-in absentee ballot must address, at a minimum, the following issues:

1. The appropriate lines or spaces for designating a candidate choice and, for state and local races, the office or ballot measure to be voted, including the proximity of each to the other and the effect of intervening blank lines.

2. The sufficiency of designating a candidate's first or last name when no other candidate in the race has the same or a similar name.

3. The sufficiency of designating a candidate's first or last name when an opposing candidate has the same or a similar name, notwithstanding generational suffixes and titles such as "Jr.," "Sr.," or "III." The rule should contemplate the sufficiency of additional first names and first initials, middle names and middle initials, generational suffixes and titles, nicknames, and, in general elections, the name or abbreviation of a political party.

4. Candidate designations containing both a qualified candidate's name and a political party, including those in which the party designated is the candidate's party, is not the candidate's party, has an opposing candidate in the race, or does not have an opposing candidate in the race.

5. Situations where the abbreviation or name of a candidate is the same as the abbreviation or name of a political party to which the candidate does not belong, including those in which the party designated has another candidate in the race or does not have a candidate in the race.

6. The use of marks, symbols, or language, such as arrows, quotation marks, or the word "same" or "ditto," to indicate that the same political party designation applies to all listed offices or the elector's approval or disapproval of all listed ballot measures.

7. Situations in which an elector designates the name of a qualified candidate for an incorrect office.

8. Situations in which an elector designates an otherwise correct office name that includes an incorrect district number.

(5) Procedures for a manual recount are as follows:

(a) The county canvassing board shall appoint as many counting teams of at least two electors as is