



Deborah Clark

Pinellas County Supervisor of Elections

December 2, 2013

The Honorable Ken Detzner
Florida Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Dear Secretary Detzner:

I am writing to you in response to your Directive 2013-01 (Return of Absentee Ballots), which was emailed to the state's Supervisors of Elections late in the day on Monday, November 25, 2013.

I must admit that I am disappointed the State of Florida did not consult the 67 Supervisors of Elections regarding this directive, particularly since it is the Supervisors who are responsible for the conduct of elections. As you are no doubt aware, I have been a strong proponent of mail ballots in Pinellas County and it is a method of voting to which our voters have grown accustomed. During the last several years, we have been able to increase voter turnout while decreasing the cost of conducting elections in Pinellas County. Our voters appreciate the convenience of mail ballots, particularly when coupled with the numerous drop-off sites located throughout Pinellas County. Our statistics show that Pinellas County voters have increasingly used these drop-off locations in every primary and general election since 2008.

I would like to take this opportunity to share with you the security measures undertaken at our drop-off locations to ensure the integrity of the election process in Pinellas County. Drop-off locations in Pinellas County include locked ballot boxes which are staffed by deputy supervisors of elections, who are required by statute to take an election oath. Numbered seals are used to secure the drop-box after each time the box is opened. Sealed transport carriers are used when transporting ballots from drop sites. No ballots are left at any drop-off location overnight. Audit forms and ballot counts are verified when ballots are delivered to my main office. These procedures are essentially the same for absentee ballots dropped off at my branch offices, since these ballots must also be delivered to my main office in order to be canvassed. I am confident that the drop-off locations maintained throughout Pinellas County are secure.

Much of the authority cited in Directive 2013-01 in support of your ultimate conclusion referenced statutes that require absentee ballots be addressed to the Supervisor of Elections, delivered to the Supervisor of Elections, or otherwise placed within the custody of the Supervisor of Elections no later than 7 p.m. on Election Day. See, §§ 101.64, 101.65 and 101.68, Fla. Stat. None of these statutes prohibits staffed drop-off locations.

Courthouse

315 Court Street • Room 117
Clearwater, FL 33756-5190
727-464-6788 • FAX: 727-464-4158

Election Service Center

13001 Starkey Road
Largo, FL 33773-1416
727-464-6788 • FAX: 727-464-7636

St. Petersburg Office

501 First Avenue North
St. Petersburg, FL 33701-3726
727-464-6788 • FAX: 727-582-7798

The Election Code clearly anticipates that electors be allowed to hand deliver completed absentee ballots, as the instructions to absent electors specifically advises them to “be sure there is sufficient postage *if mailed.*” See, § 101.65(9) Fla. Stat. Section 98.015(8), Fla. Stat., specifically allows each Supervisor to “select and appoint . . . as many deputy supervisors as are necessary . . . who shall have the same powers and whose acts shall have the same effect as the acts of the supervisor.” Thus, my practice of having ballots dropped off at remote locations that are staffed by deputy supervisors of elections is in full compliance with the Election Code.

You bolstered your conclusions by citing § 101.69 Fla. Stat., which 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 cancelled. You then conclude that receipt by a Supervisor of an absentee ballot that a voter wishes to cast somewhere other than a Supervisor’s office is inappropriate, and you use an early voting site as an example of such a site. This conclusion ignores the requirement of § 101.657 Fla. Stat., which requires Supervisors of Elections to allow electors to vote early in the main or branch offices of the Supervisor.

You have indicated in media coverage of Directive 2013-01 that it does not change anything in the law, but merely clarifies existing law. As previously stated, I have openly used drop-off locations for absentee ballots since 2008. The use of such sites at locations other than my main or branch offices has been clearly indicated in my Federal Election Activities Plan (Plan) submitted to the State in support of Pinellas County’s receipt of Help America Vote Act (HAVA) grant funds. On more than one occasion, the State has tacitly sanctioned my practice of using drop-off sites by disbursing HAVA funds to me for use in accordance with my Plan. I believe this to be further indication that use of drop-off sites other than at my main or branch offices is and has always been in compliance with Florida’s Election Code.

I agree with your fundamental goal, as set forth in Directive 2013-01, to “avoid confusion and ensure that every absentee voter has the opportunity to cast his or her ballot.” In establishing procedures for my remote drop-off locations, I have followed both the Election Code and the guidance set forth by the Florida Supreme Court in *Boardman v. Esteve* 323 So 2d 259, (Fla 1976). There, the Court found that in determining the validity of absentee ballots cast, the following factors should be considered: (1) the presence or absence of fraud, gross negligence, or intentional wrong doing; (2) whether there has been substantial compliance with the essential requirements of the absentee voting law; and (3) whether any irregularities exist that adversely affect the sanctity or integrity of the ballot or the election.

The security measures used at drop-off locations in Pinellas County are in full accord with these principles. They are specifically directed at ensuring the sanctity and integrity of both the ballots and the election. Given my firm belief that my use of drop-off locations for absentee ballots as set forth herein is in full compliance with the law, I plan to continue using them, including in the impending special primary election.

Respectfully,

/s/ Deborah Clark

Deborah Clark
Pinellas County Supervisor of Elections

DC/jw