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November 13, 2000

INFORMATION ONLY

Mr. Al Cardenas
 Chairman
 Republican Party of Florida
 Post Office Box 311
 Tallahassee, Florida 32302

DE 00-11
 Definition of Error in Vote
 Tabulation
 § 102.166(5), Fla. Stat.

Dear Mr. Cardenas:

This is in response to your request for an opinion relating to section 102.166(5), Florida Statutes. You are the Chairman for the Republican Party of Florida and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask:

1. What is the meaning of the term "error in the vote tabulation" as used in section 102.166(5), Florida Statutes?
2. What is the meaning of "affecting the outcome of the election" as used in section 102.166(5), Florida Statutes?
3. What manner of "error" and what type and/or degree of effect on the outcome would serve as a lawful predicate for a manual recount of all ballots under section 102.166(5)(c), Florida Statutes?

Your questions involve the interpretation of election laws and can be answered with an advisory opinion. Section 102.166(5), Florida Statutes, provides in pertinent part that if the manual recount indicates an error in the vote tabulation which could affect the

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outcome of the election, the county canvassing board shall: (a) correct the error and recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

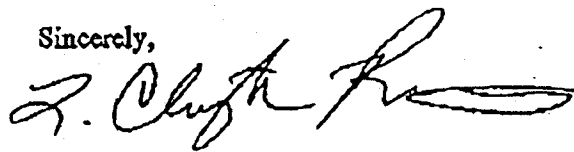
An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. The inability of a voting systems to read an improperly marked marksense or improperly punched punchcard ballot is not a "error in the vote tabulation" and would not trigger the requirement for the county canvassing board to take one of the actions specified in subsections 102.155(5)(a) through (c), Florida Statutes.

An error that could "affect the outcome of the election" is an error of a magnitude sufficient to make a difference as to which candidate wins the election.

SUMMARY

An "error in the vote tabulation," means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. An error that could "affect the outcome of the election" is an error of a magnitude sufficient to make a difference as to which candidate wins the election.

Sincerely,



L. Clayton Roberts
Director, Division of Elections

LCR/KRB



COUNTY COURT
PALM BEACH COUNTY FLORIDA

CHAMBERS OF
CHARLES E. BURTON
COUNTY COURT JUDGE
November 13, 2000

COUNTY COURTHOUSE
WEST PALM BEACH, FLORIDA 33401
PHONE 561/355-2172

Honorable Robert A. Butterworth
Attorney General
400 Monroe Street
Tallahassee, Florida 32399

RE: Request for Attorney General Opinion

Dear General Butterworth:

I have been authorized by the Palm Beach County Canvassing Board to request an opinion from your office on the following issues:

1. Would a discrepancy between the number of votes determined by a tabulation system and by a manual recount of four precincts be considered an "error in voting tabulation which could affect the outcome of" an election within the meaning of Section 102.166(5), Florida Statutes thereby enabling the canvassing board to request a manual recount of the entire county, or are "errors" confined to errors in tabulation system/software?
2. May a county canvassing board do a partial certification of the votes pursuant to Section 102.151, Florida Statutes for the November 7, 2000 election that excludes the votes for the candidates for the presidential election which will be certified by the county canvassing board at a later date?

A memorandum of law follows.

MEMORANDUM OF LAW

Question 1.

Section 102.166(5) provides:

If the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall:

- (a) Correct the error and recount the remaining precincts with the vote tabulation system;
- (b) Request the Department of State to verify the tabulation software; or
- (c) Manually recount all ballots.

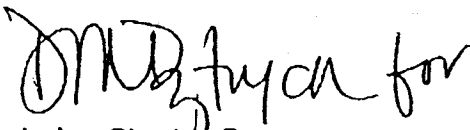
See also, Broward County Canvassing Board v. Hogan, 607 So. 2d 508 (Fla. 4th DCA 1992) (stating "the statutes clearly leave the decision to conduct a manual recount within the discretion of the board.")

The Palm Beach County Canvassing Board has voted to conduct a manual recount of the votes for the presidential election based on Section 102.166(5), Florida Statutes.

Question 2.

Section 102.151, Florida Statutes does not indicate whether a county canvassing board may certify the votes for less than all of the elections held on the November 7, 2000. The Palm Beach County Canvassing Board would like to exclude the votes for the presidential election based on an ongoing manual recount of the ballots for that election.

Respectfully submitted,



Judge Charles Burton
Chairperson, Palm Beach County Canvassing Board

cc: Denise Dytrych, Palm Beach County Attorney
Katherine Harris, Secretary of State

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