

Legal Opinion from the Office of Florida Secretary of State Katherine Harris,
Division of Elections
to assist Palm Beach County in its decision regarding the Nov. 14, 5 p.m. recount
deadline.

November 14, 2000

Dear Judge Burton:

This is in response to your request for an opinion. You are chairperson of the Palm Beach County Canvassing Board and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you. Essentially, you ask:

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 that could affect the outcome of an election within the meaning of section 102.66(5), Florida Statutes, thereby enabling the canvassing board to manually recount ballots for the entire county?

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?

With regard to your first question, section 102.166(5), Florida Statutes, provides that 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.

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. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

With regard to your second question, the answer is yes. The county canvassing board may do a partial certification of votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results of the

presidential 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. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statute. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results for the presidential election.

Sincerely,
L. Clayton Roberts
Director, Division of Elections

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