



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 26, 2015

Flagler County Board of County Commissioners
c/o Craig M. Coffey, County Administrator
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Re: DE 15-03 Canvassing Board –
Disqualification of Member; Authority of
Canvassing Board to Remove Member;
§ 102.141, Fla. Stat.

Dear Commissioners:

As the Flagler County Board of County Commissioners, you have asked for an advisory opinion through your county administrator regarding the conduct of the county canvassing board under section 102.141, Florida Statutes. Because this answer will assist the board in its election-related duties, the Division has the authority to issue an opinion pursuant to section 106.23(2), Florida Statutes.

According to your request, two members of Flagler County's canvassing board voted to remove its third member during its official meeting on November 17, 2014. This removal ostensibly occurred pursuant to section 102.141, Florida Statutes, which requires the replacement of a canvassing board member who is an "active participant" in the campaign of a candidate. You now ask whether the county canvassing board had the authority to remove and replace one of its members. The short answer to this question is no.¹

¹ You also present other related questions, such as whether the county canvassing board must establish a factual basis for the removal or disqualification of a board member and whether there is a process by which the disqualified member may appeal. The answer to your first question obviates the need to reach these two additional questions. You also ask, presumably within the context of the county canvassing board's action, whether it is considered "active participation" in a campaign under section 102.141 where a campaign mailer containing an endorsement is mistakenly attributed to a member of the county canvassing board. While an answer to this question does not appear necessary within the context of this opinion, you should note that

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The membership of the county canvassing board is statutorily set: It “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.” § 102.141(1), Fla. Stat. (2015). “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” with a “substitute member” as specified in the ensuing subparagraphs. *Id.*²

The statute is silent about who determines whether a member is *disqualified*. But it does set out specifically who makes a substitution when necessary: The chief circuit judge “shall appoint [] a substitute member” when all county judges are “disqualified”; the chair of the board of county commissioners “shall appoint [] a substitute member” if the supervisor is “disqualified”; and the board of county commissioners “shall appoint [] a substitute member” when the county commission chair is “disqualified.” § 102.141(1)(a) – (c), Fla. Stat. If a substitute member otherwise cannot be appointed, or if the substitute then becomes disqualified, the chief circuit judge “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.” § 102.141(1)(d), Fla. Stat.

Subparagraphs (a) through (d), taken together, indicate that ordinarily the statutory member must decide for him- or herself, based on personal knowledge of pertinent facts or circumstances, whether he or she is disqualified. Any dispute over whether a statutory member should or could be disqualified and replaced with a substitute might ultimately require judicial resolution. In any event, the canvassing board has no authority to disqualify or remove one of its members. The only vote a canvassing board *is* authorized to take regarding its membership is for the election of a chair if no county judge can be appointed by the chief circuit judge to serve on the board. *See* § 102.141(1)(a), Fla. Stat. The canvassing board’s statutory powers and duties otherwise are clearly prescribed.

previously, the Division has opined that an “active participant” is “one who undertakes an action intentionally to demonstrate or generate public support of the candidate.” Div. of Elections Op. 09-07 (Oct. 15, 2009).

² The Division emphasizes the distinction between a *substitute* member of the canvassing board and an *alternate* member. A substitute member permanently replaces a statutory member; by contrast, the alternate member serves as “back-up” for any statutory or substitute member who may be unable to serve for a temporary period or during a portion of a board meeting. *See* § 102.141(1), (1)(e), Fla. Stat. (2015). The chief circuit judge and county commission chair each selects an alternate in advance to serve in place of a statutory member or substitute member “unable to participate at [a particular] meeting.” § 102.141(1)(e)1. – 3., Fla. Stat. The canvassing board chair decides which of the two alternates will serve as a temporary member in place of a permanent member unable to participate from meeting to meeting. § 102.141(1)(e)3., Fla. Stat.

SUMMARY

There are three permanent members of a county canvassing board. Those members are set by statute as a county judge appointed by the chief circuit judge; the supervisor of elections; and the chair of the board of county commissioners. If one of those members is disqualified, the vacancy must be filled permanently with a substitute member appointed in accordance with section 102.141(1)(a) – (d), Florida Statutes. The county canvassing board does not have the authority to disqualify or remove one of its members or to determine who will serve as the permanent replacement for a disqualified member.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Matthews", with a long horizontal flourish extending to the left.

Maria I. Matthews, Esq.
Director, Division of Elections