

# Administration

1769 E. Moody Blvd Bldg 2  
Bunnell, FL 32110



[www.flaglercounty.org](http://www.flaglercounty.org)

Phone: (386)313-4001

Fax: (386)313-4101

December 5, 2014

By Email and US Mail

Ms. Maria Matthews, Director  
Florida Division of Elections  
Room 316, R.A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Re: Advisory Opinion Regarding the Removal of a Canvassing Board Member

Dear Ms. Matthews:

The Flagler County Board of County Commissioners at its November 17, 2014, meeting asked staff to request an opinion from the Florida Division of Elections regarding various elements of county canvassing boards. Several of our commissioners served on the canvassing board for the 2014 elections, and two have been named for the upcoming special election. We are requesting the opinion on their behalf in their capacities as past and present members of the canvassing board for Flagler County. As you may be aware, our County Attorney, Al Hadeed, has been discussing these issues with Jordan Jones of your General Counsel Office.

The request seeks your opinion regarding the following three questions:

1. Does a county canvassing board have the legal authority to vote to remove or disqualify a member of the canvassing board and, if so, is there a process through which the disqualified member may appeal?
2. May a quote in a campaign mailer containing an endorsement mistakenly attributed to a member of a county canvassing board as a result of a publishing error be deemed "active participation" in a campaign for the purposes of disqualifying a county canvassing board member?
3. If a county canvassing board member may be removed by the vote of the canvassing board based on a mistaken and erroneous endorsement, must the canvassing board establish a factual basis, consistent with the member's right to due process, in seeking to disqualify the member?

Background:

On Tuesday, November 4, 2014 (Election Day), the Flagler County Canvassing Board convened in order to process absentee votes and to conduct the canvass of the election.

**Charles Ericksen, Jr.**  
District 1

**Frank Meeker**  
District 2

**Barbara Revels**  
District 3

**Nate McLaughlin**  
District 4

**George Hanns**  
District 5

Ms. Maria Matthews  
December 5, 2014  
Page Two

The Canvassing Board members included Kimberle Weeks, the Supervisor of Elections, County Commissioner George Hanns (who was chairman of the Board of County Commissioners at the time) and the Honorable Melissa Moore Stens, County Judge who had been appointed by the Chief Judge of the Circuit.

During the meeting, Ms. Weeks raised an objection to Mr. Hanns' continued service on the Canvassing Board due to the content of a campaign mailer that was distributed on October 8, 2014, to 1,509 households by the campaign team for incumbent county commissioner Frank Meeker. The subject campaign mailer included a quote in support of Mr. Meeker that was attributed to Mr. Hanns. This quote was mistakenly attributed to Mr. Hanns as a result of an error by the mailer's publisher. Upon discovery, Mr. Meeker immediately retracted the endorsement and contacted the Election Commission indicating that no such endorsement had occurred. The retraction was announced on Friday, October 24, 2014, after discovering the error the previous evening. He contacted the Election Commission on the same day as the retraction.

In addition to the retraction, Mr. Meeker sent out a corrective mailer on Monday, October 27, 2014, to all of the recipients of the erroneous first mailer stating that Mr. Hanns had not endorsed him.

During the Canvassing Board meeting, in response to Ms. Weeks' objections, Mr. Hanns stated that he never in fact endorsed Mr. Meeker, nor did he ever articulate or author the quote that was included in Mr. Meeker's campaign mailer. In addition, a copy of the corrective mailer, along with the erroneous mailer, was presented to the Canvassing Board members. No factual evidence was presented at any point in this process to substantiate the claim that Mr. Hanns was involved in Mr. Meeker's campaign in any way. Nonetheless, the Canvassing Board voted (2-1) to remove Mr. Hanns, effective immediately. As a result of the vote, the alternate commissioner, Ms. Barbara Revels, took over Mr. Hanns position. Please note this occurred at a time when the Canvassing Board was at its busiest, canvassing the general election results for all races.

(A copy of the campaign mailer sent with the misattributed quote, as well as a copy of the mailer sent by Mr. Meeker's campaign which retracted the erroneous endorsement, are enclosed for your information. Also be aware that there is a verbatim transcript of the meeting which, should you need, please advise and we will furnish it.)

***Question #1: Does a county canvassing board have the legal authority to vote to remove or disqualify a member of the canvassing board and, if so, is there a process through which the disqualified member may appeal?***

Section 102.141, Florida Statutes, defines the composition of county canvassing boards and the procedures for designating alternate members in case of a member's inability to serve, as well as the duties and responsibilities of the canvassing board. However, there is no express grant of authority for the canvassing board to judge the qualifications of its designated members. In addition to the lack of statutory authority for a canvassing board to in effect adjudicate the qualifications of its members, the judiciary has opined that a canvassing board is a "neutral body whose functions are ministerial in nature." See *generally, Morse v. Dade County Canvassing Board*, 456 So.2d 1314, 1316 (Fla. 3<sup>rd</sup> DCA 1984). Allowing a canvassing board to evaluate the qualifications of its membership appears to be contrary to the non-adversarial role that the canvassing board should be required to maintain and involves a level of discretionary authority that the canvassing board does not possess. See *generally, 1977 Fla. Op. Atty. Gen. 87* (In the absence of statutory authorization, a county judge cannot be replaced as a member of the canvassing board because he is a candidate in the election canvassed, *citing State v. McLin*, 16 Fla. 17 (1876), and, further, a county canvassing board possesses no authority to determine whether the supervisor of elections, a canvassing board member and election candidate, solicited absentee ballots).

If you do conclude that there is such removal authority in the board, then what is the proper forum for review or appeal? Does the removal authority, if so found, extend to the removal of the Supervisor of Elections and the designated county judge, as well as to county commissioners?

The outcome in our opinion is that the claim of disqualification should be presented to the canvassing board member in order that they can evaluate their eligibility based on the Division's opinions and decide on their own whether they should excuse themselves from service. If the claimant is not satisfied with that decision, then the claimant can bring the matter to the appointing source or authority for its review. In the case of the commission representative, that would be the county commission. In the case of the county judge, it would be the chief judge of the circuit. In the case of a supervisor, there is no appointing source, and thus there would be no review. For any member who is excused, the statute lays out the process for designating an alternate.

***Question #2: May a quote in a campaign mailer containing an endorsement mistakenly attributed to a member of a canvassing board as a result of a publishing error be deemed "active participation" in a campaign for the purposes of disqualifying a canvassing board member?***

Division of Elections Advisory Opinions 08-10 (September 26, 2008) and 09-07 (October 15, 2009) offer the Division's insight regarding the types of activities by a member of a canvas-

Ms. Maria Matthews  
December 5, 2014  
Page Four

sing board that would constitute being an "active participant" in a political campaign. From Advisory Opinion 09-07, Section 102.141(1)(a)-(d), Florida Statutes "disqualifies a canvassing board member... 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."

Advisory Opinion 09-07 concludes that "active participation" in a campaign or candidacy, in the context of the disqualification of a canvassing board member, "means that a canvassing board member undertakes an effort intentionally to demonstrate or generate public support of a candidate." The intentionality of the conduct by the member is reflected in other passages of this opinion and is consistent with the Division's language in Opinion 08-10. Contrary to these directives by the Division, the conduct involving Commissioner Hanns could not have amounted to "active participation" given: (a) the acknowledgement by Commissioner Hanns that he had not, in fact, endorsed Mr. Meeker's election; (b) the acknowledgement of the error by, and retraction efforts of, Mr. Meeker on behalf of his campaign which initially mailed the erroneous flyer; and (c) by Mr. Meeker's action to send retraction notices to each household which had been sent the erroneous mailer. No evidence demonstrating any intentional involvement by Commissioner Hanns in the campaign of Mr. Meeker, much less active participation, had been presented in or outside of the canvassing board proceedings.

For the benefit of future county canvassing boards, whether in Flagler County or elsewhere, guidance is needed from the Division on how to determine when a canvassing board member can be deemed to be "actively participating" in a campaign for actions not undertaken by the member or anyone acting on his or her behalf.

***Question #3: If a county canvassing board member may be removed by the vote of the canvassing board based on a mistaken and erroneous endorsement, must the canvassing board establish a factual basis, consistent with a member's right to due process, in seeking to disqualify the member?***

Factually, Mr. Meeker's campaign did erroneously distribute a mailer with a misattributed quote from Mr. Hanns. Mr. Meeker's campaign, upon discovering the error, retracted the endorsement and sent a corrective mailer. Mr. Hanns maintains that he in fact never endorsed Mr. Meeker's candidacy. There is no factual basis establishing that Mr. Hanns undertook any effort intentionally to demonstrate or generate public support for Mr. Meeker's candidacy. The Canvassing Board sought to remove Mr. Hanns based upon a presumption that Mr. Hanns was an active participant in the campaign or candidacy of Mr. Meeker. This begs the question of whether due process protects members of county canvassing boards.



Ms. Maria Matthews  
December 5, 2014  
Page Five

Accordingly, we are seeking your opinion as to whether, if a canvassing board does indeed possess the authority to remove or disqualify one of its members, and if in this case the canvassing board sought to remove Mr. Hanns by considering him an active participant in Mr. Meeker's campaign, must the canvassing board protect Mr. Hanns' right to due process by factually establishing that Mr. Hanns intended to endorse Mr. Meeker's candidacy? Once established factually, then can the Canvassing Board ask the Division for an advisory opinion on whether the conduct so established amounts to "active participation"? Or is there an alternative process to be prescribed by the Division?

Thank you very much for your time and consideration in formulating a response to this request. If I can be of any assistance to you in this matter, please do not hesitate to contact me at (386) 313-4001.

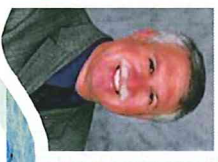
Sincerely,

A handwritten signature in blue ink that reads "Craig M. Coffey". The signature is written in a cursive, flowing style.

Craig M. Coffey  
County Administrator

Enclosures

## Vote November 4th for a dedicated Leader who stands with us.



"I support Frank J. Meeker and hope you will too. Frank's experience has proven to be invaluable. He has given back to his community and supported me with the veterans. He is a Flagler recognized leader." BOCC Chair George Hanns

Campaign to Re-Elect

Frank J. Meeker

41 Gehlke Court  
Palm Cove, Florida  
32917



[www.facebook.com/electFrankMeeker](http://www.facebook.com/electFrankMeeker)

**Vote For Frank November 4th**

## Frank Meeker looks out for all Flagler Residents,...always has.

As a City Council Member in Palm Coast, Frank fought for the African American Cultural Society when a \$10,000 grant was going to be denied. Frank got it turned around and approved.

As a competitive soccer coach, Frank was always looking out for our kids. He wasn't afraid to get his hands dirty either laying sod with his soccer team at Eddie Johnson Park in Bunnell.

Working as a team, got the budget back on track, kept taxes low, provided mandated services, protected our homes, saved millions.

Helps Commissioner Revels and the community by making pizzas for Carver Gym fund raisers.

Paid political advertisement, paid for and approved by Reelect Frank J. Meeker, Republican for Flagler County Board of County Commission.



Endorsed by the Flagler County Professional Fire Fighters Association, Flagler County Association of Realtors and the Florida Professional Fire Fighters Association, as well as neighbors, friends, colleagues, and citizens around Flagler.



October 24, 2014

*Dear Friends,*

In one of several different mailers recently sent, a political ad inadvertently appeared to include an endorsement from Commissioner George Hanns. Commissioner Hanns as Chairman of the Flagler County Board of County Commissioners, and a member of the County's Canvassing Board, cannot, and has not endorsed any candidate in this election, including me. Please disregard the error we made, and accept my apology as well.

*Frank J. Meeker*

Republican Candidate for re-election to Flagler Co, FL Board of County Commissioners, Dist. 2