



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

March 23, 2022

The Honorable Michael Bennett
Supervisor of Elections, Manatee County
600 301 Boulevard West, Suite 108
Bradenton, Florida 34206

Re: DE 22-04 Early Voting – Location of
Early Voting Polling Place – §§
101.657(1)(a); 101.71(5), Florida Statutes

Dear Supervisor Bennett:

This letter responds to your request for an advisory opinion regarding the authority of a supervisor of elections to use “public, tax-supported buildings” as an early voting site. Because you are a supervisor of elections proposing to take action related to Florida’s election laws, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2019). Specifically, the Division interprets your request for an advisory opinion as proposing to use various “public, tax-supported buildings” as early voting sites.

FACTS

Your request for an advisory opinion asks several questions:

- (1) Does section 101.71(5), Florida Statute’s requirement that “Public, tax-supported buildings be made available for use as polling places upon the request of the supervisor” apply to early voting sites?
- (2) If the requirement does apply, is the selected location required to make all reasonable efforts to be available as an early voting site at the request of the supervisor?
- (3) Does a Community Development District Community Center/Clubhouse qualify as a “public, tax-supported building” under section 101.71(5)?

Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6200 • 850.245.6217 (Fax) • [DOS.MyFlorida.com/elections](https://dos.myflorida.com/elections)



- (4) Does a Fire District Administration building, Water Management building, or a Florida Department of Transportation building qualify as a “public, tax-supported building” under section 101.71(5)?

The short answer to your first question is no as section 101.71, as a whole, refers exclusively to polling places on “election day.” A “polling place” is a statutorily defined term that is distinct from the statutory definition of “early voting site.” Section 101.71(5) applies exclusively to polling places, not to early voting sites. The short answer to your second question is no, for the same reason. The Department declines to answer your third and fourth questions since section 101.71(5) does not apply to early voting sites.

ANALYSIS

The first portion of your request for an advisory opinion asks whether the requirement that “public, tax-supported buildings [] be made available for use as polling places upon the request of the supervisor of elections,” applies to early voting sites. § 101.71(5), Fla. Stat. Section 101.71(5), states that “Public, tax-supported buildings shall be made available for use as polling places upon the request of the supervisor of elections.” However, the statute, read as a whole, exclusively refers to the location of polling places on election day. Section 101.71 is titled “Polling Places” and repeatedly refers to polling place locations on “election day.” § 101.71(1)-(4), Fla. Stat. (“There shall be in each precinct in each county one polling place which shall be accessible to the public on *election day*...”) (emphasis added). The statute, when read in its entirety, only applies to the location of a polling place on election day. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167-69 (2012) (discussing the importance of construing one part of a statute in harmony with the other provisions of the same statute); *see also* Scalia & Garner *Reading Law* at 167-69 (2012) (discussing the importance of interpreting the whole text of a document in order to ascertain the context for each of its parts). Thus, a “public, tax-supported building,” is not required to operate as an early voting site.

This interpretation is further buttressed by other portions of the Florida Election Code. Chapter 101 contains a statute that requires supervisors of elections to establish an early voting site and provides limitations on locations that may serve as early voting sites:

As a convenience to the voter, the supervisor of elections shall allow an elector to vote early in the main or branch office of the supervisor. The supervisor shall mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot. In order for a branch office to be used for early voting, it shall be a permanent facility of the supervisor and shall have been designated and used as such for at least 1 year prior to the election. *The supervisor may also designate any city hall, permanent public library facility, fairground, civic center, courthouse, county commission building, stadium, convention center, government-owned senior center, or government-owned community center as an early voting site;* however, if so designated, the sites must be geographically located so as to provide all voters

in the county an equal opportunity to cast a ballot, insofar as is practicable, and must provide sufficient nonpermitted parking to accommodate the anticipated amount of voters. In addition, a supervisor may designate one *early voting site* per election in an area of the county that does not have any of the eligible *early voting locations*. Such additional *early voting site* must be geographically located so as to provide all voters in that area with an equal opportunity to cast a ballot, insofar as is practicable, and must provide sufficient nonpermitted parking to accommodate the anticipated amount of voters. Each county shall, at a minimum, operate the same total number of *early voting sites* for a general election which the county operated for the 2012 general election. The results or tabulation of votes cast during early voting may not be made before the close of the polls on election day. Results shall be reported by precinct.
§ 101.657(1)(a), Fla. Stat.

Section 101.657 does not mention “polling places,” rather, it refers to “early voting sites.” These different terms must have different meanings, otherwise the legislature would have used the same term consistently. *See Scalia & Garner Reading Law* at 170-73 (2012) (“[W]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea”). This interpretation is further buttressed by section 101.657(1)(b), Florida Statutes, which specifically sets forth when a supervisor must designate early voting sites. Reading section 101.71, which applies to polling places, as equally applying to early voting sites would thus disregard these differences in the statutory text.

Additionally, the terms “polling place” and “early voting site” are defined separately in chapter 97:

“Polling place” is the building which contains the polling room where ballots are cast.

....

“Early voting site” means those locations specified in s. 101.657 and the building in which early voting occurs.

§ 97.021(12); (29), Fla. Stat.

The distinct definitions provided by the legislature underscore the differences in the statutory text between section 101.71 and 101.657. *See Scalia & Garner Reading Law* at 225-233 (2012) (discussing the importance of carefully following the definitions sections of statutes). Since “early voting site” is a separate and distinct term from “polling place,” section 101.71(5), which pertains to polling places, cannot be used to require a “public, tax-supported building” to become an early voting site.

The remainder of your request for an advisory opinion is premised on the applicability of section 101.71(5) to section 101.657. Since the Division of Elections has determined that section 101.71(5) does not apply to early voting, we decline to address those additional questions.

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SUMMARY

Section 101.71(5)'s requirement that "public, tax-supported buildings" be made available for use as polling places does not apply to early voting because the statutory text makes a clear distinction between a "polling place" and an "early voting site." That distinction precludes using the statute governing polling places to procure an early voting site. The Division of Elections declines to address the remainder of your questions because they are predicated on using section 101.71(5) to procure an early voting site.

Respectfully,

A handwritten signature in blue ink, appearing to read "M. Matthews".

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