

073-377—October 8, 1973

ELECTIONS

ACTIVITIES PERMITTED IN VICINITY OF POLLING PLACE

*To: Wilma Sullivan, Leon County Supervisor of Elections, Tallahassee**Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General*

QUESTION:

At what distance from the door of a polling place are persons and organizations permitted to question, advise, or engage in commercial or other nonelection activities during the hours of voting, under the provisions of §§101.121 and 104.36, F. S.?

SUMMARY:

Under §§101.121 and 104.36, F. S., only specifically authorized persons are allowed within 15 feet of any polling place and no distribution of political pamphlets, cards, or literature of any type, or the solicitation or attempted solicitation of any votes, shall be permitted within 100 yards of any polling place. General questioning and advising of voters, and commercial and other nonelection activities not otherwise prohibited by law, are permitted beyond the 15-foot prohibited activity zone around any polling place.

Section 101.121, F. S., entitled "[p]ersons allowed in polling places," provides in part:

. . . [N]o person is permitted *under any pretext* to come within fifteen feet of any polling place whatever from the opening to the closing of the polls except the sheriff or his deputy, officially designated watchers, the inspectors and clerks of election. . . . (Emphasis supplied.)

Section 104.36, F. S., entitled "[d]istribution of literature, etc., near polling places," provides in part:

On the day of any election it shall be unlawful for any person to distribute any political pamphlets, cards or literature of *any kind*, or solicit votes, or approach any elector *in an attempt to solicit* votes within 100 yards of any polling place. . . . (Emphasis supplied.)

The intent contained in the above-cited excerpt from the Election Code (§101.121, *supra*), would appear to preclude authorization of anyone within 15 feet of a polling place except those persons who are officially involved in the election procedures and the electorate participating in the election.

For example, though the sheriff of a county shall deputize a deputy sheriff for each precinct (§102.081, F. S.), and the sheriff himself is to exercise strict vigilance for violations of various election laws (§102.091, F. S.), neither the sheriff nor his deputy is allowed "within the polling place" unless admitted by the clerk or a majority of the inspectors. *See* §102.101, F. S. A sheriff has nothing whatsoever to do with the conduct of an election except to see that order is maintained, and in that connection his deputy is subject to the lawful commands of the election inspectors. *See* §102.081; *Joughin v. Parks*, 147 So. 273 (Fla. 1933).

Section 104.36, *supra*, on the other hand, appears to be addressed solely to prohibiting the distribution of political literature and the solicitation of votes within 100 yards of any polling place. This section does not make reference to any nonpolitical activities which may occur within the immediate vicinity of a polling place.

Section 104.36, F. S., is a penal or criminal law and as such it is to be strictly construed. The only specified prohibited activities within 100 yards of any polling place are the distribution of political pamphlets, cards, or political literature of any kind and the solicitation of votes or attempts to solicit votes. From the language used in §104.36, it is impossible for anyone to consider that the legislature intended to imply that any other activity within the 100 yard area should also be prohibited.

Except for the specifically enumerated activities, all other implied activities are excluded under the legal doctrine *expressio unius est exclusio alterius*, and it would be impossible to apply the provisions of §104.36, *supra*, against an individual participating in activities not otherwise prohibited within 300 feet of a polling place, but beyond 15 feet therefrom.

We have received reports from a number of areas that various types of charitable, civic, educational, commercial, and noncommercial activities, including voter polls and the questioning of voters, have been permitted within the 300-foot areas by local election officials.

Assuming that we are guided by the legislative intent, that §§101.121 and 104.36, *supra*, were enacted with the ultimate objective of protecting the sanctity of the ballot and the body politic to freely participate in an election, it is difficult to assume that apparently lawful activities, not otherwise prohibited by the statutes, will per se violate the "good order" or "peace and order" at the polls by their existence within 300 feet of the polling place, but beyond 15 feet therefrom. If such were the case, would it then be proper to have a polling place at a site adjacent to a store, in the hallway of a school, or inside a commercial facility of some sort such as a general store and thus prohibit these activities within 100 yards of the polling place? I think not.

Section 101.131, F. S., provides that only political parties and individual candidates for office are permitted to have one watcher for each candidate or political party in the polling place, and the manner and procedure by which such a "watcher" is to be designated, appointed, and qualified to serve in the several election precincts or districts is set forth in this section. Organizations or individuals who are indirectly, or only incidentally, associated with a particular candidate or political party do not appear to be included in the authorized category of organizations or individuals permitted to designate persons whom they desire to be designated as watchers in an election. Only if such an organization or individual directly, indirectly, or in any manner distributes any political literature of any kind, or solicits or attempts to solicit the vote of any elector, would he be subject to the 100-yard limitation prescribed by §104.36, F. S.

It therefore appears that nonpolitical activities, *i.e.*, questioning voters, advising voters, or selling items to voters and commercial activities do not come within the scope of §104.36, *supra*, notwithstanding that such acts may result in some congestion near the entrance to a polling place. In this regard, it should also be noted that "congestion" per se is not prohibited and that the "peace and good order" which should be maintained at the polling place is not defined but rather left to the discretion of the several election boards and inspectors to act in accord with those activities which are not otherwise prohibited generally in and about the polling place and its adjacent areas. *Joughin v. Parks, supra*; and §§102.031 and 102.081, F. S.

Therefore, based upon the above authority, I am of the opinion that except for those activities enumerated in, and specifically prohibited by, §§101.121 and 104.36, F. S., persons and organizations are permitted to question or advise voters or engage in commercial and other nonelection activities beyond 15 feet of the entrance way to any polling place, and may advise or engage in any political activity beyond 100 yards of any such designated polling place during the time the polls are open on an election day.