

**DE 076-17 - August 9, 1976**

**CHAPTER 104, FLORIDA  
STATUTES - POLLING PLACES:  
SOLICITATION OF OPINIONS**

*To: Aaron M. Kanner, Esquire, Attorney at Law, City National Bank Building, 25 West Flagler Street, Miami, Florida 33130*

*Prepared by: Division of Elections*

By letter of July 30, 1976, Mr. Gene Strul (News Director, WCKT-TV, Miami) requested waiver of Section 104.36, Florida Statutes, as amended by Chapter 76-61, Laws of Florida, 1976, which prohibits any person from, inter alia, soliciting or attempting to solicit any "vote, opinion, or contribution for any purpose" within 100 yards of any polling place on the day of election.

WCKT, we are informed by Mr. Strul, wishes to continue its hitherto successful practice of asking electors departing from the polls how they had voted, in order to relay such information promptly to the WCKT computer and thereafter to broadcast vote projections or forecasts. [Your letter of July 19, 1976, to Mr. Strul (a copy of which you were so kind to enclose) states that WCKT interviewers would "question voters who they will vote for" rather than for who they did vote.]

This office cannot, of course, waive Section 104.36, or any other statute.

Section 104.36, Florida Statutes, formerly prohibited persons from distributing political materials or from soliciting votes or from approaching electors for the purpose of soliciting votes within 100 yards of any polling place on election day. Section 104.36, Florida Statutes, 1975. Hence, the procedures which WCKT has heretofore employed were not proscribed, and could not have been subject to the criminal prosecution threatened by Section 104.36 Attorney General Opinion 073-377 (October 8, 1973).

The 1976 Legislature, however, explicitly broadened the scope and proscriptions of Section 104.36 by prohibiting the solicitation of any opinion for any purpose, inter alia, within 100 yards of any polling place on election day.

Accordingly, it should be asked: Does solicitation of a statement of fact (how electors voted or how electors will or shall vote) within 100 yards of the polling place fall outside the scope of the prohibition upon solicitation of opinion?

First, it is unnecessary to plumb the philosophical or etymological depths, or to contrast the terms doxa, episteme or scientia in order to acknowledge the pragmatic principle that a statement of fact, so-called, is after all a declaration of opinion: an opinion of events to come or of events recollected. Did an elector vote for candidate X? In his opinion, as a matter of fact, he did: "Yes, I voted for candidate X (in my best opinion of my sharpest recollection of what I earlier did)." Will an elector vote for candidate X? "Yes, I shall vote for X (in my opinion of my most

predicable behavior)."

Second, and beyond such epistemological analysis, it is my understanding of the legislative intent foundationing Chapter 76-61, that the statute was amended to prohibit the very kind of media agglomeration at the polls — to inquire of electors' votes — which WCKT now proposes. Legislative intent is, of course, the polestar by which we are to be guided in our interpretive endeavors.

Accordingly, it is the opinion of the Division that the procedures proposed by WCKT are prohibited by Section 104.36, Florida Statutes.