

# Obsolete. Please consult current Florida law.

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## POLLING PLACE SECTIONS 98.031, 101.71, 101.715 and 104.36, FLORIDA STATUTES

*To: Honorable David Leahy, Supervisor of elections, Post Office Box 01-2241, Miami, Florida 33101*

*Prepared by: Division of Elections*

This is in response to your request for an opinion relating to the following questions:

What is the definition of a "polling place" as referenced in Florida Election Code, Sections 98.031, 101.71, 101.715 and 104.36, Florida Statutes?

A. Is a "polling place" the entire building housing the voting process, e.g., an entire school?

OR

B. Is a "polling place" the room or voting area within a building, e.g., the classroom of a school?

The term "polling place" does not have a fixed meaning but is subject to the facts, circumstances and context in which it is used. It can denote the geographical location of the place for the holding of an election within a district, precinct or other territorial unit. 26 Am. Jr. 2d Elections Section 228.

In Webster's Third New International Dictionary-unabridged, "polling place" is defined as: The locality of the building where the voters in an election cast their ballots. It is a well settled rule of statutory construction that "words of common usage, when used in a statute, should be construed in their plain and ordinary signification." *Gasson vs. Gay* 49 So. 2d 525 (Fla 1950).

There is no statutory definition of a polling place. However, the legislature has clearly defined the area where the voting machines are located and ballots cast as the polling room. Section 101.37, Florida Statutes, provides:

"At all elections where voting machines are used, the arrangement of the polling room shall be as follows: The exterior of the voting machine and every part of the polling room shall be in plain view of the election officers; the voting machine shall be placed at least 1 foot from every wall or partition of the polling room and at least 4 feet from any table where any of the election officers may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the election officers and the party watchers when

not in use by electors. The election officers shall not themselves be, or permit any other person to be in any position or near any position that will permit one to see or ascertain how an elector votes, or how he has voted...." (Emphasis Supplied).

The term polling room is further used for that area where poll watchers may observe. Section 101.131, Florida Statutes, provides:

“(1) Each political party and each candidate may have one watcher in each polling place at any one time during the election. No watcher shall be permitted to come closer to the officials' table or the voting booths than is reasonably necessary to properly perform his functions, but each shall be allowed within the polling room to watch and observe the conduct of electors and officials. The watchers shall furnish their own materials and necessities and shall not obstruct the orderly conduct of any election. Each watcher shall be a qualified and registered elector of the county in which he serves. During the elections the officials shall call out the names of electors loudly enough to be heard by the watchers. (Emphasis Supplied).

(2) Each party and each candidate requesting to have poll watchers shall designate, in writing, poll watchers for each precinct prior to noon of the 10th day preceding the election. The poll watchers for each precinct shall be approved by the supervisor of elections at least 5 days prior to the election. The supervisor shall furnish to each precinct a list of the poll watchers designated and approved for such precinct.

(3) No candidate or sheriff, deputy sheriff, policeman, or other law enforcement officer may be designated as a poll watchers.”

Thus, the determination of the polling place must have some reasonable relationship to the polling rooms.

In Section 98.031(1), F.S., the legislature authorizes the Supervisor of Elections to designate the polling place in each precinct. This statute clearly establishes the authority of the Supervisor of Elections to designate the place where the balloting will be conducted; hence, the designation of the polling place within each precinct.

Section 101.71, F.S., sets forth the manner of conducting the balloting at the Balloting place. It discusses accessibility to and management of the polling place. Additionally, this statute establishes the criteria for the Supervisor of Elections in selecting, identifying and notifying regarding alternate polling places.

Procedures are enunciated in Section 101.715, F.S., for making polling places accessible for the elderly and handicapped persons. This statute provides that any place selected for conducting the balloting process in an election must provide access or reasonable access for all members of the electorate to cast their ballot including the elderly and the handicapped.

Thus, the foregoing Sections 98.031(1), 101.71, 101.715, Florida Statutes, provide legislative guidance to the Supervisors of Elections in selecting, identifying and conducting elections at the polling place. Hence, any place that meets the statutory requirements outlined in the preceding statutes may be utilized as a polling place.

Section 104.36, Florida Statutes, provides:

“Any person who, within 100 yards of any polling place on the day of any election, distributes or attempts, to distribute any political or campaign material; solicits or attempts to solicit any vote, opinion or contribution for any purpose; solicits or attempts to solicit a signature on any petition; or, except in an established place of business, sells or attempts to sell any item.”

The above statute prohibits specific activities, within a 100 yard zone of the polling place. The distribution or attempted distribution of political or campaign material, the solicitation or attempted solicitation of any vote, opinion or contribution, the solicitation or attempted solicitation of any signature on a petition and the selling of any item except at an established place of business are specifically proscribed. Section 104.36, F.S., is a penal or criminal statute and as such is to be strictly construed. AGO 073-377. Thus, a protective zone surrounding the polling place is established prohibiting the above activities.

Further restrictions on activities of the polling site are found in action 101.121, F.S., which provides:

“. . .no person who is not in line to vote may come within 15 feet of any polling place. . .except the officially designated watchers, the inspectors, the clerks of elections, and the supervisor of elections or his deputy. . . .”

Statutes that relate to the same person or thing, to the same class of persons or things, or to the same or a closely allied subject or object, are regarded as in pari materia. Harrington & Co., Inc. v. Tampa Port Authority, 358 So. 2d 601 (Fla. 1977). Such enactments should be construed together and compared with each other. Markham v. Blout 175 So. 2d 526 (Fla. 1965). Thus, where section 101.121, F.S., refers to the 15 feet minimum distance that must be maintained from the polling place by any person not in line, such language must be read in conjunction with and compared to language in Sections 101.131 and 101.37, F.S. On comparison of this statutory language, it is clear the legislature is using the term "polling place" in action 101.121, F.S., synonymously with "polling room" in Sections 101.131 and 101.37, F.S. All three sections refer to the same persons being in and at the same place for supervision or observation purposes; similar persons, law enforcement officers, are excluded from the same place; the same or similar references are made to the space, equipment and personnel for voting purposes. Therefore, I am of the view that a person not in line to vote cannot come within 15 feet of the polling room as provided in Section 101.131 and 101.37, F.S., despite the terminology used in Section 101.121, F.S. Consequently, an exclusionary zone of 15 feet

has been created surrounding the polling room.

From the above discussion and unless and until other wise judicially or legislatively clarified, I am of the opinion that a polling place is the building where the members of the electorate cast their ballots in an election and is comprised of the entrance way housing the voting process, e.g., the school or other building where the balloting is conducted. The selection of the polling place is performed by the Supervisor of Elections based on the criteria set forth in Sections 98.031, 101.71 and 101.715, F.S. Activities restricted at the polling place are governed by section 104.36. F.S.

The polling room is the actual room in which ballots are cast and is restricted to the voting machines or other voting apparatus, the election officials, the electors casting their ballots and the poll watchers. A 15 feet exclusionary zone surrounds the polling room except for those electors in line to vote, e.g., the classroom of the School or a room in a building in which ballots are actually cast. Governance of the polling room is specified in Sections 101.131 and 101.37, F.S.

Your questions are answered accordingly.

#### SUMMARY

Unless and until judicially or legislatively clarified, a polling place is the building where members of the electorate cast their ballots in an election and is comprised of the entranceway of the building and a 100 yard zone surrounding the entranceway in which the polling room is located. Polling places are selected by the Supervisors of Elections based on the criteria provided in Sections 98.031, 101.71 and 101.715, F.S. Section 104.36, F.S., governs prohibited activities at the polling place.

The polling room is the actual room in which ballots are cast by electors and is restricted to the voting machines or other voting apparatus, the election officials and the electors casting their ballots. A 15 foot exclusionary zone surrounds the polling room, except for those electors in line to vote, e.g., the classroom of a school or a room in a building in which ballots are actually cast. Governance of the polling room is specified in Sections 101.131 and 101.37, Florida Statutes.