

DE 89-01 - February 16, 1989

**Children Accompanying Parents Into Voting Booth
Section 101.051 (1), (2), F.S.**

To: Honorable Ilene Lieberman, Mayor, City of Lauderhill, 2000 City Hall Drive, Lauderhill, Florida 33313

Prepared by: Division of Elections

This is in response to your request for an advisory opinion. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue opinion to any local officer having election-related duties. Your question is:

Whether young children may be prohibited from entering the voting booth with their parents?

Section 101.051(1), Florida Statutes, provides that an elector who requires assistance to vote because of blindness, disability or inability to read or write may have someone assist him in the voting booth. You asked whether this section prohibits young children from entering the voting booth with their parents. We answer in the negative.

The Supreme court of Florida has held that election laws are to be construed liberally in favor of the right to vote. State ex. rel. Whitley v. Rinehart, 140 Fla. 645, 192 So. 819 (1939).

Section 101.051(1), Florida Statutes, provides that when an elector does need assistance in the voting booth, the elector may request the assistance of two election officials or a person of his own choice as long as that person is not "his employer, an agent of his employer, or an officer or agent of his union." The overriding purpose of Section 101.051(1), Florida Statutes, is to encourage citizens to exercise their right to vote without impediment or undue influence from others.

Section 101.051(2), Florida Statutes, mandates that "It is unlawful for any person to be in the voting booth with an elector except as provided in subsection (1)." The Supreme Court of Florida, however, in a February 2, 1989 per curiam decision commented that this language should not be applied to exclude children of voting parents. The Court agreed with lower court Judge Schoonover who had stated in his decent:

The provisions of Section 101.121, therefore should not be interpreted to prohibit someone from accompanying an aged or infirm voter to the polls or to prohibit voters from bringing their children with them to the polls rather than hiring a baby sitter. Likewise, the statute should not be interpreted to prevent a doctor from entering the building to treat a voter who needs emergency care or to prevent a person bringing food or beverages to the election workers. These activities are all incidental to the voting process and are sometimes necessary to facilitate someone else's ability to vote.

Firestone v. News-Press Publishing Company, Inc., 527 So.2d at 228 (Schoonover, J., dissenting) (14 Fla. L. Weekly 54).

Therefore, prohibiting children from the voting booth could deter parents from exercising their right to vote. This interpretation defeats the overall purpose of the statute which is to protect the voter. The purpose of Section 101.051(1), Florida Statutes, is not frustrated by allowing a parent, or guardian, or other having the responsibility of a minor child, to be accompanied by the child into the polling booth as long as the child's behavior does not impede others in exercising their right to vote.

SUMMARY

Sections 101.051(1) and (2), Florida Statutes, are to encourage citizens to exercise their right to vote without impediment or undue influence from others when casting their vote. Therefore, these subsections of the law do not prohibit minor children from being in the voting booth with parents, or guardians, or others having the responsibility of minor children as long as the child's behavior does not impede others in exercising their right to vote.