

DE 02-18 - November 1, 2002

**Solicitation near polling places
§ Section 102.031, Florida Statutes**

To: The Honorable Mark Andersen, Supervisor of Elections, Bay County, 205 Mosley Drive, Lynn Haven, Florida 32444

Prepared by: Division of Elections

Dear Mr. Andersen:

This is in response to your request for an advisory opinion. You are the Supervisor of Elections for Bay County and pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you. You ask essentially the following:

1. Are lawyers who are offering legal advice at the polling places required to abide by the 50-foot solicitation requirements?
2. Are these lawyers, if not licensed in Florida, violating any laws?
3. Should someone, who is not voting or serving as a poll worker, contact the Supervisor of Elections prior to approaching the polls on election day?

Please note, I have restructured your letter into three basic questions in order to better provide an advisory opinion.

Your first question is answered in the affirmative. Section 102.031, Florida Statutes, provides that only certain people are allowed in the polling place. More specifically, Section 102.031(3)(c), Florida Statutes, provides that "[n]o person, political committee, committee of continuous existence, or other group or organization may solicit voters within 50 feet of the entrance to any polling place, or polling room...on the day of any election." In addition, the term "solicit" is defined to include, but not be limited to, seeking or attempting to seek any vote, fact, opinion or contribution. Section 102.031(3)(d), Florida Statutes.

The activity described would come under the definition of solicit by seeking or attempting to seek a fact or opinion. Either of these would be essential in obtaining legal services regarding voting. Based on the facts you presented, a person who is at the polling room with a sign or other paraphernalia offering legal advice to voters on election day must remain 50 feet away from the entrance. If you have set up a marked area at any polling place within the 50 foot no solicitation zone for people to solicit but not disturb, obstruct or interfere with voter access, then the lawyers in question may be in that area. While there are some exceptions to this restriction in the statutes, based on the facts presented, it does not appear that any of these activities would fall under any of these exceptions.

These attorneys may be present outside the polling places as long as they are not within the solicitation

zone, are not interfering with voters who are not seeking their help and do not in anyway give the impression that they are a part of the official polling place activities. However, interfering or with a voter would run afoul of Section 104.061, Florida Statutes.

Your second question is not within our authority of statutes to provide an advisory opinion. The Florida Bar provides regulation for the "Unlicensed Practice of Law." Chapter 10 of the Florida Bar Rules provides for the governing, investigation and prosecution of the unlicensed practice of law. A copy of your request as well as this advisory opinion will be forwarded to the appropriate person at the Florida Bar for further information.

The answer to your third question is not as clear an answer. As long as the lawyers, or anyone soliciting, stay out side the 50 foot no solicitation zone, they do not have to notify your office. However, Section 102.031, Florida Statutes, provides that only certain persons may actually enter the polling room or polling place on election day during voting hours. This list includes official poll watchers; inspectors; clerks; the supervisor of elections or his or her deputy; persons there to vote, persons in the care of a voter or caring for a voter; law enforcement officers or emergency personnel (with the consent of the clerk or a majority of inspectors); and a person who is assisting with or participating in a simulated election for minors. Other than that, no one is allowed in the polls during voting hours on election day.

SUMMARY

If lawyers are present at the polls to give legal advice, they fall within the requirements of Section 102.031(3)(c), Florida Statutes, and must remain 50 feet from the entrance of the polling place. An attorney who is practicing law in Florida is subject to the requirements of the Florida Bar. Finally, only certain people are allowed in the polling place during voting hours on election day. While anyone may approach the polls, in order to enter the polls, they must fall within the persons "allowed" to be in the polling place.

Sincerely,

Edward C. Kast
Director, Division of Elections

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