



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

April 7, 2021

The Honorable D. Alan Hays
Supervisor of Elections, Lake County
P.O. Box 457
Tavares, Florida 32778

Re: DE 21-02 Polling Place – § 101.71,
Florida Statutes

Dear Supervisor Hays:

This letter responds to your request for an advisory opinion regarding the requirement under section 101.71(1), Florida Statutes, that a designated polling place be “accessible to the public” on election day, and specifically in the context of designated polling places within gated communities. Because you are a supervisor of elections proposing to take action related to Florida’s election laws, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2020).

FACTS

Your request for an advisory opinion states that your office has been confronted with challenges by gated communities to allowing persons who are not residents of a gated community access to the property when a designated Election Day polling place is located therein. You state that the property owners have requested that because all voters live within that gated community, access from others who are not considered residents should be restricted. In other words, the contention of the gated community is that “public” under section 101.71(1) refers, in the instance described, to residents of the gated community and not the general public. You seek an opinion as to the meaning of “accessible to the public” in the context of gated communities so that you can act accordingly.

ANALYSIS

Section 101.71(1), Florida Statutes, provides in pertinent part:

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There shall be in each precinct in each county one polling place which shall be accessible to the public on election day.

§ 101.71(1), Fla. Stat. (2020). There is no statutory definition of “public” within this statute nor within the generally applicable Election Code definitions section (97.021).

A basic rule of statutory construction is that in the absence of a statutory definition, words of common usage are to be construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of a word can be ascertained by referring to a dictionary.¹ Dictionary definitions were found online for “public” when used as a noun, such as is the usage here in section 101.71. These sources defined “public” as, among other things, “the people as a whole,”² and “all ordinary people.”³ Case law in other areas of the law was also consulted. For example, a common defense to burglary is that the premises were in fact “open to the public.” *See* 810.02(1), Fla. Stat. (2020); *Vargas v. State*, 751 (finding a store “open to the public,” notwithstanding the fact that the manager had to physically open the door to customers, *where the record was devoid of evidence that the business limited admittance or required membership to enter*).

There is nothing within section 101.71 itself, nor with reference to the dictionary definitions or case law, to imply that “the public” as used in section 101.71(1), Florida Statutes, is actually meant to be limited only to members of the public entitled to vote at a particular location. To the contrary, the dictionary definitions confirm that a polling place is to be open to “the people as a whole” and “all ordinary people,” as opposed to being subject to “limited admittance or require[ing] membership to enter.”⁴

This conclusion is buttressed by other provisions of the Election Code providing for general access to designated polling places by members of the public. For example, sections 102.031(4)(d) and (e) provide that:

(d) Except as provided in paragraph (a)⁵, the supervisor may not designate a no-solicitation zone *or otherwise restrict access* to any person, political committee, candidate, or other group or organization for the purpose of soliciting voters. This

¹ *See Sieniarecki v. State*, 756 So. 2d 68, 75 (Fla. 2000) (in absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary).

² The definition is from Merriam-Webster found at https://www.merriam-webster.com/dictionary/public?utm_campaign=sd&utm_medium=serp&utm_source=jsonld.

³ This definition is from the Cambridge Dictionary found at <https://dictionary.cambridge.org/us/dictionary/english/public>.

⁴ Of course, the public’s ability to traverse all nooks of a designated polling place is not unlimited, as orderly management, health and safety, and election security requirements, among other things come into play in other areas of the statutes and regulations.

⁵ Paragraph (a) provides for a 150-foot no-solicitation zone at a polling place. § 102.031(4)(a), Fla. Stat. (2020).

paragraph applies to any public or private property used as a polling place or early voting site.

(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or an agent or employee thereof, may not prohibit the solicitation of voters outside of the no-solicitation zone during polling hours.

§ 102.031(4), Fla. Stat. (2020). These provisions of section 102.031(4) mean that members of the public – whether they be “person[s], political committee[s], candidate[s], or other group[s] or organization[s]” – must be allowed access to a designated polling place in order to solicit voters. As such, the gated communities’ proposed or asserted limitation of “the public” to only those members of the public entitled to vote at the designated polling place within the gated community would further conflict with the provisions of section 102.031(4) set forth above.

The Division notes that it has dispensed similar informal guidance from time to time in the past, advising supervisors of elections that if a designated polling place is located within a gated community, the community must be open to the public during voting hours.

SUMMARY

“Accessible to the public” under section 101.71(1), Florida Statutes, means all members of the public at large. It does not mean only those members of the public residing within a gated community who are entitled to vote at the designated polling location housed within the gated community. If a designated polling place is unable or unwilling to meet that legal requirement, proper procedures should be followed to select an alternative location for the precinct.

Respectfully,

A handwritten signature in blue ink, appearing to read 'M. Matthews', is written over a faint, illegible printed name.

Maria I. Matthews, Esq.
Director, Division of Elections