

DE 82-13--June 23, 1982

**POLLING ADVERTISEMENT
AND PARAPHENALIA
s. 104.36, 102.012, 102.031,
101.121, 101.131, 104.19 and 101.051, F.S. (1981)**

To: Mrs. Muriel W. Rickard, CMC, City Clerk, City of Deerfield Beach, 150 Northeast Second Avenue, Deerfield Beach, Florida 33441

Prepared By: Division of Elections

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

1. May a person wear political advertising on his/her person, such as a t-shirt, buttons, hats, etc., while in the polling place?
2. If the above is answered affirmatively, may a pollworker or pollwatcher wear such political advertising?
3. May electors carry marked ballot samples into the voting booth while they vote?

Based on the following discussion, your first question is answered in the affirmative.

Your questions relate to an interpretation of s. 104.36, Florida Statutes (1981), which reads:

“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 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.”

It was recently noted in DE 82-4, dated April 5, 1982, that s. 104.36, F.S., prohibits specific activities within a 100 yard zone of the polling place; namely:

“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”.

I further stated, "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."

The Attorney General in interpreting former s. 104.36, F.S., stated:

"The act of an elector going to and from a polling place while wearing a campaign button is clearly not a distribution of "any political pamphlets, cards or literature." Accordingly, such conduct is prohibited by s. 104.36, F.S., only if it constitutes a solicitation of votes or an attempt to solicit votes." AGO 076-74

Similarly, I am of the view that electors wearing of campaign or political advertisements such as t-shirts, buttons, hats, etc., to and from the polling place is not violative of s. 104.36, F.S., and is a mere expression of a preference to the public at large which is protected under both the Florida and Federal Constitutions. However, should the wearer make overtures at the polling place of advocating the candidacy of a particular candidate or his/her views regarding an issue campaign, such activities are prohibited by s. 104.36, F.S.

Your first question is answered accordingly.

Regarding your second question, I am of the opinion that a pollwatcher may not wear political advertisements or paraphernalia while acting in such capacity. Persons appointed as coworkers pursuant to s. 102.012, F.S., or appropriate county or municipal charters are election officers. *Pickett v. Russell*, 42 Fla. 116. 634; 20 So. 764 (Fla. 1900). As such, pollworkers should present an appearance of impartiality and fairness at the polling place to preclude any thoughts or suggestions of impropriety in the integrity of the electoral process. Therefore, Coworkers should not be permitted to wear any political advertisements or paraphernalia while performing their official duties at the polling place.

Pollwatchers are not election officials or public officers charged with the duty of conducting fair and impartial elections. Their function is partisan, not non-partisan in character. *Preisler v. Calcaterra*, 243 S.W. 2d 62(Mo. 1951). However, such person, are subject to reasonable control and decorum established by the Election Board pursuant to s. 102.031, F.S.

The polling room is the place where the electors actually cast their votes. Persons allowed to remain in this room is narrowly prescribed in s. 101.121 and 101.131, F.S. Thus, this room should be free of partisan political advertisement peddling and campaign sloganeering. Thus, the sanctity of the polling place should be maintained to enhance the integrity of the voting process. Therefore, I am of the opinion that political advertisements and other political paraphernalia may be prohibited from being worn by a pollwatcher in the polling room.

Your second question is answered accordingly.

The third question pertains to the use of marked ballot samples in the voting booth. Faction 104.19(1)(a), F.S., makes it “unlawful for any person casting a ballot at any election to use stickers or rubber stamps or to carry into a voting booth any mechanical device, paper, or memorandum which might be used up affect adversely the normal voting election process. (Emphasis supplied). Violation of the preceding provision is punishable as a second degree misdemeanor.

It is the longstanding policy of this Division that an elector may take papers or other aids into the voting booth to refresh his/her memory and assist in expediting the voting process provided such use does not appear to be part of a concerted effort by any individual(s) or group(s) to subvert the normal election process. Where a pattern or practice is found with a large number of electors using papers or aids to assist in voting, such assistance should not be permitted, if it appears the normal election process is being affected. However, special attention must be given to electors unable to read and write and those physically disabled. These voters should be processed according to s. 101.051, F.S.

Your third question is answered accordingly.

SUMMARY

The wearing of political advertisements or paraphernalia such as t-shirts, buttons, hats, etc., by electors to and from the polling place is not violative of s. 104.36, F.S., provided there is no advocacy for any political candidacy or issue. However, pollworkers appointed pursuant to s. 102.012, F.S., or appropriate county or municipal charters are election officers and may be prohibited from wearing political advertisements or paraphernalia while performing their official duties at the polls.

Although pollwatchers are not election officers or officials, political advertisements and other political paraphernalia may be prohibited from being worn by them while they are observing in the polling room.

Electors, may take papers or other aids into the voting booth to refresh their memory and assist in expediting the voting process provided such use does not appear to be part of a concerted effort by any individual(s) or group(s) to subvert the normal election process. Special attention must be given to electors unable to read and write and those physically disabled. Such electors should be processed according to s. 101.051, F.S.