

ELECTIONS:
POLLING PLACE:
CRIMINAL LAW:
CORRUPT PRACTICES:

The boundaries of a "polling place" are determined by the perimeter of the area actually occupied by the election personnel, supplies, and equipment of the place at which the voters cast their ballots. Where a room is fully occupied, the walls of the room define this perimeter. Where less than the total area of an enclosure is occupied, the perimeter of the area actually occupied defines the boundaries.

OPINION NO. 32

February 1, 1972

Honorable Wayne Groner
Representative, District 145
Room 235B, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Groner:

This opinion has been prepared in response to your recent request. The question you presented in that request was:

"Please define the boundaries of a polling place as used in Section 129.840 Rsmo. Is a polling place the booth in which voting takes place, the room in which the booth is located, the building in which the room is located or the land on which the building sits?"

The relevant portion of Section 129.840, RSMo 1969, states:

". . . No person whatever shall do any electioneering on election day within any polling place, or within one hundred feet of any polling place. . . ."

The context of that sentence, as well as the context of the sentences which surround it, indicates that the term "polling place" as used in this section would be that place to which qualified voters must come to cast their ballots. There does not appear to be any definition of the term "polling place" in Chapter 129, RSMo 1969, or in any of the other sections of the Revised Statutes. In State ex rel. Fahrman v. Ross, 160 Mo.App. 682, 143 S.W. 502 (Spr. Ct.App. 1912), a mandamus action against judges of a county court to compel them to issue a license to keep a dram shop, the validity of an election was in issue. In determining the issue, the court contrasted the term "polling place" with the term "place of election." In explaining the difference between these terms, the court

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indicated that the term "polling place" referred to that place where voters come to cast their ballots. At 29 C.J.S 28, Elections, 1(10), the word "polls" is defined by the following:

"The word 'polls' has a meaning which is well-defined and understood, and signifies the place to which voters go to cast their ballots."

Therefore, it can be inferred that the term "polling place" would also signify the place to which voters go to cast their ballots.

The result of this basic research, then, indicates that the term "polling place" is used to identify a location in which the characteristic activity occurs. The term "polling place" does not, however, imply characteristic physical boundaries which can be found at every location. In other words, a "polling place" is identified by the character of the activities occurring there and not by the type of enclosure or physical boundary surrounding it. Nevertheless, if the purpose of Section 129.840, RSMo 1969, is to be accomplished, boundaries must be found from which a uniform one hundred foot non-electioneering zone can be measured.

It is clear that Section 129.840, RSMo 1969, affects Missouri citizens' rights to solicit votes and distribute literature, which are both rights protected by the First Amendment to the United States Constitution. Mills v. Alabama, 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966); Marsh v. Alabama, 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946). The language of Section 129.840, RSMo 1969, taken as a whole, indicates that the purpose of this section is to protect voters from annoyance or possible surveillance during the time they are casting their ballots. This would appear to be a substantial governmental interest which would justify the incidental restriction of First Amendment freedoms. The legislature in seeking to enact a statute which would meet the current federal constitutional standards, must have intended to impose only incidental restrictions on First Amendment freedoms which would be no greater than essential to accomplish this substantial state interest. U. S. v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968); Cox v. Louisiana, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965). Thus, the legislature must have intended to create a non-electioneering zone no larger than necessary to isolate individuals in the process of voting from the annoyance and surveillance of electioneers. In addition, because Section 129.840, RSMo 1969, defines a misdemeanor, it should be strictly construed in favor of possible defendants. State v. Katz Drug Company, 352 S.W.2d 678 (Mo. banc 1961).

The uniform boundaries which the legislature intended to establish, then, must be the perimeter of the area actually occupied by those items and pieces of equipment necessary for the voters to cast

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their ballots. These would include the poll books, voting machines or ballots boxes, the voting booths, the places where notices of election are displayed, and the chairs, tables and other equipment used by the election judges and clerks. Where one room is fully occupied by these items and pieces of equipment, the boundaries would be the walls of the room. Where a gymnasium or larger enclosure has been designated as a polling place, and only a portion of the area within the designated enclosure is actually used, the boundary should be the perimeter of the area actually occupied by the items and equipment. In this case, at least part of the perimeter would be an imaginary line, or a line drawn by election officials, which circumscribes the area actually occupied by the items and equipment of the "polling place." These boundaries are sufficient to accomplish the substantial state interest, while providing the least possible infringement on the interests of citizens exercising their First Amendment rights and possible defendants charged with a violation of the statute.

CONCLUSION

For the purposes of construing Section 129.840, RSMo 1969, prohibiting electioneering within one hundred feet of any polling place, it is the opinion of this office that the boundaries of a "polling place" are determined by the perimeter of the area actually occupied by the election personnel, supplies, and equipment of the place at which the voters cast their ballots. Where a room is fully occupied, the walls of the room define this perimeter. Where less than the total area of an enclosure is occupied, the perimeter of the area actually occupied defines the boundaries.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Stephen D. Hoyne.

Yours very truly,



JOHN C. DANFORTH
Attorney General