

Scope of prohibition on electioneering at or near polling place on election day. Campaign signs placed within 500 feet of the entrance to a polling place on election day are unlawful, even if located on private property. Violative signs may be removed from public property and from open areas on private property, but not from private dwellings or other privately owned buildings. The mere presence of a candidate at or within 500 feet of the polling place is not prohibited, provided that the candidate does not engage in electioneering. Car-top carriers and campaign buttons bearing campaign messages at or within 500 feet of the polling place are prohibited. One who engages in electioneering should not be thereby disenfranchised. Sec. 12.03, Stats. (Issued to Richard J. Steffens, June 22, 1978)

You have asked a number of questions about application of the prohibition on electioneering at or near the polling place in s. 12.03, Stats. That statute recently amended by chapter 427, Laws of 1977, reads:

"Election day campaigning restricted. (1) No election official under this title may engage in electioneering on election day.

(2) No person may solicit votes for a candidate or political party or engage in electioneering on election day within 500 feet of an entrance to a building containing a polling place.

(3) A municipal clerk, election inspector or law enforcement officer may remove posters or other advertising which is placed in violation of this section.

(4) In this section, 'electioneering' means any activity which is intended to influence voting at an election."

Preliminarily the Board notes that questions of whether prohibited electioneering has taken place must be answered on a case-by-case basis, with an eye toward the primary purpose of the statute -- the protection of the polling place and polling process from disruption -- and a recognition that the degree of potential disruption accompanying the activity in question should be weighed against constitutional rights which may accompany the activity. 61 Op. Atty. Gen. 441. Also, even if a person violates s. 12.03, Stats., and thereby becomes liable to penalties, he or she should not be deprived of the right to vote.

With that in mind, the Board answers your questions as follows:

First, you ask whether campaign signs located on private property within 500 feet of the entrance to the polling place violate the statute.

Signs which advocate an election result come within the definition of "electioneering" above. And the statute makes no distinction between electioneering on public property and electioneering on private property. The latter may carry as much potential for disruption as the former. The Board is of the opinion that visible campaign signs on private property placed within 500 feet of the entrance to a polling place violate s. 12.03, Stats. This would include window signs and yard signs.

Next, you ask whether a pollworker, municipal clerk or police officer could go on private property to remove an offending sign. The Board is of the opinion that in order to avoid constitutional problems, the authorization in s. 12.03 (3), Stats., for these officials to remove violative "posters or other advertising" was not intended to and should not be read to include material inside a privately owned dwelling or other privately owned building. However, the constitutional protection against warrantless search and seizure does not include a yard or open field. Air Pollution Variance Board v. Western Alfalfa Corp., 40 LEd 2d 607. Therefore the statute should be read to authorize removal of tree or yard signs which violate s. 12.03, Stats., even if located on private property. Also, the statute clearly authorizes removal of offending signs on public property.

Your third question is whether a candidate's presence at or within 500 feet of the polling place violates the statute. You give two examples: a candidate who lives next door to the polling place and greets people from his front lawn as they pass to or from the polls, and a candidate who walks within the 500 foot area throughout election day, "without speaking unless spoken to."

The electoral process is generally public. Section 12.03 is penal, and should be strictly construed. Further, the mere presence of a candidate at or near the polls, without some act of soliciting votes, does not carry a significant potential for disruption. Hence the Board is of the opinion that the statute is not violated by a candidate's presence at or near the polls, unless he or she engages in some affirmative act of soliciting votes, such as distributing written campaign messages or verbally espousing his or her candidacy.

Finally, you ask whether the presence of car-top carriers or buttons carrying campaign messages at or within 500 feet of the polls is within the purview of s. 12.03, Stats. The Board believes that the use of such items is an affirmative act of electioneering and is therefore proscribed within the subject area on election day. Of course, the statute should not be construed to discourage voting. If the only parking area near the polling place is within 500 feet of the polling place, a voter driving a car with a car-top carrier or bumper sticker should be allowed to park there, provided that the voter proceeds to cast his or her ballot and remove the car within a reasonable time.

Again the Board notes that, while a person violating the statute is subject to penalty for violation, s. 12.60, Stats., he or she should not be deprived of the right to vote. A would-be voter cannot be required to remove buttons or car-top carriers in order to exercise the franchise. 61 Op. Atty. Gen. 441.