



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

October 22, 2018

ATTORNEY GENERAL OPINION NO. 2018- 15

The Honorable Brett Parker
State Representative, 29th District
8323 W. 108th St., Apt. F
Overland Park, KS 66210

Re: Elections—Election Crimes—Disorderly Election Conduct; Intimidation of Voters; Electioneering

Synopsis: The mere presence of a person offering non-partisan voter assistance, or signage advertising the same, within 250 feet of the entrance to a polling place does not constitute electioneering so long as such activities do not include acts prohibited by K.S.A. 2018 Supp. 25-2430(a). The offering of non-partisan voter assistance or signage advertising such assistance, by themselves, do not constitute unlawful disorderly election conduct or intimidation of voters unless the person or persons conducting such activities also engaged in conduct prohibited by K.S.A. 25-2413 or K.S.A. 2018 Supp. 25-2415, respectively. Whether the offering of non-partisan voter assistance and education, or the posting of signage advertising a non-partisan voter assistance hotline or website, constitutes the crimes of electioneering, disorderly election conduct, or intimidation of voters depends on the facts of each individual case.

A polling place is a nonpublic forum subject to reasonable restrictions on speech. The election board of each polling place is authorized to guide, manage, direct, and oversee the polling place to ensure that voting is conducted in an orderly manner. Cited herein: K.S.A. 25-2413; K.S.A. 2018 Supp. 25-2415; 25-2430; 25-2810.

Dear Representative Parker:

As State Representative for the 29th District, you ask our opinion on the following:

- 1) Whether Kansas law prohibits individuals who are not authorized polling place workers from being present within 250 feet of the entrance of a polling location for the purpose of assisting voters who encounter problems casting their ballot and providing non-partisan information concerning voting rights; and
- 2) Whether Kansas law prohibits a person from erecting signs within 250 feet of the entrance of a polling location that solely promote a website or hotline offering non-partisan voter assistance.

In your letter, you state that during the 2018 primary election, some counties prohibited individuals from engaging in the activities you describe within 250 feet of the entrance to a polling place on the grounds that such activities were electioneering. You also clarify that for the purposes of your theoretical questions, the individuals and signage described above would not be affiliated with a particular candidate or ballot question, and would not be attempting to persuade or influence voters to vote in a particular manner.

K.S.A. 2018 Supp. 25-2430(a) defines electioneering as follows:

Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicate support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof. Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.

In general, the mere presence of a person offering non-partisan voter assistance such as you describe, or a sign advertising such assistance, within 250 feet of the entrance to a polling place would not constitute electioneering because neither the person nor the signage would be “attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted.”

However, it is possible for electioneering to occur depending on the facts of a particular case. For instance, an individual offering non-partisan voter assistance might also knowingly wear or exhibit materials clearly supporting or opposing a candidate, party, or ballot question. Similarly, signage advertising a voter assistance website or hotline

might also clearly identify a candidate in the election. Thus, whether electioneering occurs depends on what the person or signage is *actually* doing, rather than what they claim to be doing.

You also ask whether the non-partisan voter assistance activities you describe would constitute disorderly election conduct or intimidation of voters. K.S.A. 25-2413 defines disorderly election conduct as willfully engaging in any of the following activities:

- (a) Disturbing the peace in or about any voting place on election day;
- (b) leaving or attempting to leave a voting place in possession of any ballot, except as is specifically permitted by law;
- (c) approaching or remaining closer than three feet to any voting booth, voting machine or table being used by an election board except as admitted for the purpose of voting or by authority of the supervising judge;
- (d) interrupting, hindering or obstructing any person approaching any voting place for the purpose of voting;
- (e) engaging in any of the following activities within 250 feet from the entrance of a polling place during the hours the polls are open on election day:
 - (1) solicitation of contributions; or
 - (2) conduct of advisory elections other than those specifically authorized by law, including the exercise of home rule power, to be conducted by a county election officer.

K.S.A. 2018 Supp. 25-2415(a) defines intimidation of voters as follows:

- (1) Intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such person to vote for, or not to vote for, any candidate for any office or question submitted at any election; or
- (2) mailing, publishing, broadcasting, telephoning or transmitting by any means false information intended to keep one or more voters from casting a ballot or applying for or returning an advance voting ballot.

Generally speaking, the mere presence of a person offering non-partisan voter assistance such as you describe, or a sign advertising such assistance, would not fall within the definitions of disorderly election conduct or intimidation of voters. But again, it

is possible for a violation to occur depending on the facts of a particular case. For example, a person offering non-partisan voter assistance who willfully interrupts, hinders, or obstructs the path of persons approaching the polling place could be engaging in disorderly election conduct as defined in K.S.A. 25-2413(d). Likewise, intimidation of voters could occur if a person offering non-partisan voter assistance intimidates, threatens, or coerces voters arriving at a polling place.

However, even though the mere presence of a person offering non-partisan voter assistance, or signage advertising the same, generally would not constitute electioneering, disorderly election conduct, or intimidation of voters, that does not mean a person has the right to engage in those activities at a polling place. Although a polling place is operated by governmental entities, it is considered a nonpublic forum within which reasonable restrictions on speech are allowed.¹

K.S.A. 2018 Supp. 25-2810(a) states that the election board of each polling place “shall have control of its voting place and election procedure under the sole supervision of the secretary of state, county election officer, deputy county election officers and the supervising judge.”² The statute does not define the term “control,” so we apply its ordinary meaning,³ which is “[the] power or authority to guide or manage,”⁴ or “the power or authority to manage, direct, or oversee.”⁵

Thus, the election board of each polling place is authorized to guide, manage, direct, and oversee the polling place to ensure that voting is conducted in an orderly manner. The extent to which the state or a local election board may restrict non-partisan speech in or around a polling place is beyond the scope of this opinion.

To summarize, it is our opinion that the mere presence of a person offering non-partisan voter assistance, or signage advertising such assistance, within 250 feet of the entrance to a polling place does not constitute electioneering so long as those activities do not include acts prohibited by K.S.A. 2018 Supp. 25-2430(a). It is also our opinion that such activities, by themselves, do not constitute unlawful disorderly election conduct or intimidation of voters unless the person or persons conducting such activities also engaged in conduct prohibited by K.S.A. 25-2413 or K.S.A. 2018 Supp. 25-2415,

¹ See, e.g., *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1879-80 (2018) (“A polling place in Minnesota qualifies as a nonpublic forum under the Court’s precedents. As such it may be subject to content-based restrictions on speech, so long as the restrictions are reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”) (citations and quotations omitted). While *Mansky* dealt only with political speech *inside* the polling place, the Court in a plurality opinion previously upheld a Tennessee law that prohibited the solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance to a polling place. *Burson v. Freeman*, 504 U.S. 191 (1992).

² See also K.S.A. 2018 Supp. 25-2810(b) (when an election board of five or more members is divided by the county election officer into a receiving board and a counting board, the receiving board shall have such control over the voting place and election procedure).

³ See, e.g., *State v. Paul*, 285 Kan. 658, Syl. ¶ 3 (2008) (“When interpreting statutes, ordinary words are given their ordinary meanings.”).

⁴ <https://www.merriam-webster.com/dictionary/control>, accessed on October 15, 2018.

⁵ Black’s Law Dictionary (10th ed. 2014).

The Honorable Brett Parker
Page 5

respectively. Whether the crime of electioneering, disorderly election conduct, or intimidation of voters occurs depends on the facts of each individual case.

At the same time, a polling place is a nonpublic forum, and K.S.A. 2018 Supp. 25-2810(a) empowers the election board of each polling place to “control . . . its voting place and election procedure.”

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Special Assistant Attorney General

DS:AA:SF:sb