

**OPINION**  
**56-105**

October 25, 1956            (OPINION)

**ELECTIONS**

**RE: Polling Places - Persons Authorized to be Present**

This is in reply to your letter of 19 October requesting an opinion of this office in regard to persons authorized to be present in polling places during elections.

You inform us that in past years it has been the custom of individuals, not members of the Board of Elections, poll clerks or challengers, to frequent the individual polling places for the purpose of taking down a list of names of those who have voted. There have been instances where such persons have actually gone so far as to procure the poll list from the election clerk for the purpose of copying names therefrom.

You request our opinion on whether such practices are permissible and further as to the power of the inspector of elections to request such persons to remain outside the polling place.

As you point out, the statutes of the State of North Dakota do not specifically forbid the practices to which you have reference, although, of course, extensive provisions have been enacted to prevent violations of the secrecy of the ballot. Obviously, of course, dependent upon the particular circumstances involved, the presence of persons not specifically authorized by the statutes to be present can have the result of interfering with the voter himself in the action of voting and with the election officials in preventing unauthorized practices. Thus, it is entirely possible that unauthorized persons could actually electioneer, at the polls in the very presence of the inspector of elections, without such inspector being able to otherwise prevent such electioneering due to the fact that all conversations were carried on in a tone of voice so low that he would be unable to overhear the comments made.

We find no decisions of the Supreme Court of this state determinative of the questions you raise. We do find the following general statement in 29 C.J.S. 285, Elections, section 200:

Unauthorized persons shall be excluded from the polling place; the mere fact that a man happens to be representing his party as a precinct captain or outside worker does not entitle him to enter unless on invitation of the election officers and then for a lawful purpose; and to avoid crowding no greater number of voters shall be allowed in the poll than there are booths to accommodate. Admission to the polling place of unauthorized persons may result in the rejection of the entire vote, especially where there has been an opportunity for the practice of fraud. Whether persons other than the election officers and the voters may lawfully be present in a voting place depends on the provisions of the particular statute. An otherwise proper

election may not be avoided because of the presence of unauthorized persons where no substantial harm resulted. \* \* \*."

Thus, while we find no statute specifically prohibiting the presence of loiterers at the polls, it is the opinion of this office that no person has a right to be present at the polls other than voters, the election officers, challengers and clerks and conclude that, dependent upon the circumstances involved, the inspector of elections would be justified and in some circumstances required to request other unauthorized persons to leave.

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