



ALAN WILSON  
ATTORNEY GENERAL

January 26, 2024

Howard M. Knapp  
Executive Director  
South Carolina Election Commission  
P.O. Box 5987  
Columbia, SC 29250

Dear Director Knapp:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

The South Carolina State Election Commission (SEC) writes to request an opinion as to scope of political activity covered by South Carolina Code of Laws § 7-25-180, which states:

(A) It is unlawful for a person to distribute any type of campaign literature or place any political posters within five hundred feet of any entrance used by the voters to enter the polling place, during polling hours on an election day and during the early voting period. The poll manager shall use every reasonable means to keep the area within five hundred feet of any such entrance clear of political literature and displays, and the county and municipal law enforcement officers, upon request of a poll manager, shall remove or cause to be removed any material within five hundred feet of any such entrance distributed or displayed in violation of this section.

(B) A candidate may wear within five hundred feet of the polling place a label no larger than four and one-fourth inches by four and one-fourth inches that contains the candidate's name and the office he is seeking. If the candidate enters the polling place, he may not

display any of this identification including, but not limited to, campaign stickers or buttons.

This question is prompted by an inquiry from the presidential campaign of Robert F. Kennedy, Jr., who is conducting a petition drive to be placed on the ballot as an independent in the 2024 election for United States President. His campaign would like to be able to collect signatures outside of polling places, including the upcoming Presidential Preference Primaries that will be held in February 2024.

Petition drives are a person's attempt for their name to be placed on the ballot for an upcoming election. With regards to any polling place where people are actively voting, a petition drive cannot relate directly to the matter currently being voted on. In the context of a partisan PPP, a petition drive conducted by an independent candidate for U.S. President would not directly relate to the matter being decided in the PPP, though it would obviously relate to who may be on the ballot as candidate for President in the upcoming election.

The State Election Commission asks this question of the Attorney General:

Does Section 7-25-180 prevent petition drive activities, such as collection of signatures in support of a person's independent candidacy for United States President, from being conducted within 500 feet of an active polling place's entrance during a Presidential Preference Primary? If so, are there any elections during which petition drive activities may be conducted within 500 feet of an active polling place entrance, or does Section 7-25-180 bar all kinds of political expression and activities within 500 feet of a polling place entrance regardless of the nature of the matter currently undergoing the vote?

#### **Law/Analysis**

It is this Office's opinion that S.C. Code § 7-25-180 does not prohibit a candidate or their campaign workers from collecting signatures in support of a nominating petition within five hundred feet of any entrance used by voters to enter a polling place. See S.C. Code § 7-11-70 (nomination by petition). Our opinions construed prior versions of this statute narrowly to prohibit "distributing' campaign literature or 'placing' political posters." Op. S.C. Att'y Gen., 1970 WL 17204 (October 16, 1970). Section 7-25-180 was originally adopted in 1968 and codified as 1962 Code § 23-658.2. Our October 16, 1970 opinion to Mr. C. Kenneth Powell, Richland County

Republican Party Chairman, was our earliest opinion considering whether activity beyond displaying campaign literature and placing posters was prohibited by the statute. Id. In relevant part, the requester asked whether “it is permissible for a person to stand 200 feet away from a polling place with a list of electors and check off on the list each voter as he approaches to vote.” Id. We concluded that because “the person or persons checking the names off would not be ‘distributing’ campaign literature or ‘placing’ political posters,” section 23-658.2 would not prevent “this activity ... even less than two hundred feet from the building wherein a polling place might be located.”

The next opinion addressing this statute was authored by Attorney General McLeod on October 30, 1970, wherein he was asked, “Is it legal for a candidate whose name is on the general election ballot to make observations and surveillance of the election at various precincts, provided he does not impede the election process?” Op. S.C. Att’y Gen., 1970 WL 17139 (October 30, 1970). Attorney General McLeod responded:

This Office knows of no provision of the election law which would make it unlawful for a candidate to merely be present in and around a polling place on election day. A candidate, because of his candidacy, has no special privileges and would be subject to the authority of the poll managers within the polling place. ...

Concerning the presence of a candidate outside the building wherein a polling place is located, it is our opinion that managers have no control over their activity in such areas, except that candidates cannot, as in the case of any other person, distribute any type of campaign literature or place any political posters within two hundred (200) feet of such building. See Section 23-658.2.

Id.

Finally, our August 9, 1974, opinion to Mr. James B. Ellisor, Executive Director of the South Carolina State Election Commission, addressed what “campaign literature” was prohibited from being displayed. Op. S.C. Att’y Gen., 1974 WL 28125 (August 9, 1974).

We are in receipt of your letter of July 23, 1974, requesting clarification of South Carolina Code of Laws, 1962, as amended, Section 23-658.2. Specifically, the question has been raised as to what campaign literature is prohibited from being displayed within two hundred (200) feet of the polls. The statute expressly forbids placing political posters or political literature and displays within two hundred (200) feet of a polling place. Therefore, any material which would advertise a

candidate, i.e., name tags, bands on hats, bumper stickers, etc. would come within the prohibition of this statute and could not be displayed within two hundred (200) feet of the polls.

The statute does not deal specifically with candidates or their workers campaigning within two hundred (200) feet of the polls. However, it would be permissible for a candidate to stand inside the two hundred (200) feet and shake hands with persons coming to vote. It would be permissible for the person to wear a simple name badge if the badge did not in any way advertise his political campaign.

Id. (emphasis added); see also Op. S.C. Att’y Gen., 2008 WL 4489043, at 2-3 (September 30, 2008) (“Consistent with the above, in the opinion of this office, campaign literature and materials such as campaign t-shirts, hats, pins, etc. should not be displayed or worn in an absentee precinct and/or other polling places.”). These opinions consistently construed section 23-658.2 narrowly to prohibit distributing campaign literature and placing political posters, but did not construe the prohibition to apply to candidates or their campaign workers mere presence at polling places.

This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. Ops. S.C. Atty. Gen., 2017 WL 5203263 (October 31, 2017); 2017 WL 3438532 (July 27, 2017); 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). As described above, 1962 Code § 23-658.2 is now codified at S.C. Code § 7-25-180 (2019). Section 7-25-180 has been amended several times since these opinions were originally issued. Therefore, we will review these amendments to determine if modification of these prior opinions is appropriate.

The amendments to section 7-25-180 do not expand the conduct prohibited thereunder. In 1990, the General Assembly amended the statute to change the 200-foot prohibition zone to be calculated from “any entrance used by the voters to enter the polling place” rather than from “the building in which a polling place is located.” See 1990 Act No. 393, § 1. In 1996, the statute was amended to add subsection (B) which expressly permits candidates to be within the prohibition zone with “a label ... that contains the candidate’s name and the office he is seeking.” 1996 Act No. 466, § 10.<sup>1</sup> Within the polling place, a candidate “may not display any of this identification.”

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<sup>1</sup> The 1996 Amendment appears to endorse the conclusion of our August 9, 1974, opinion to Mr. James B. Ellisor quoted above that suggests a candidate may have a name badge. Op. S.C. Att’y Gen., 1974 WL 28125 (August 9, 1974). The legislation also clarifies that it is permissible for the name badge to display the office sought.

Id. The prior prohibitory language was moved to subsection (A) and was otherwise unaltered by the amendment. Id. Finally, in 2022, section 7-25-180 was amended “to expand the prohibition on distribution of campaign literature outside of polling places from two hundred to five hundred feet,” and to extend the time it applies to include “the early voting period.” 2022 Act No. 150, § 39. In summary, these amendments have changed the location from which the prohibition zone is calculated, its size, included the early voting period, and clarified that candidates may be present with a name badge within the prohibition zone. The amendments did not, however, modify the statutory language describing what conduct is prohibited. As a result, we do not find the General Assembly intended to prohibit further conduct when it adopted the amendments to section 7-25-180. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.”).

This Office is unaware of any decision issued by our state courts that have construed section 7-25-180 to prohibit the collection of signatures. This Office is aware of one South Carolina Supreme Court decision interpreting S.C. Code § 7-25-180. In W.J. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261 (2003), the Court found the statute applied even to poll managers distributing campaign material drafted by a governmental body.

South Carolina Code Ann. § 7–25–180(A) prohibits the distribution of any type of campaign literature within 200 feet of a polling place on election day. S.C. Code Ann. § 7–25–180(A) (Supp.2002). The statute gives law enforcement officers the authority to remove any such material upon the request of the poll manager. Id. Section 7–25–180(A) was intended to grant poll managers authority to prevent certain activity by members of the public on election day. In this case, the poll managers themselves distributed the alleged “campaign literature” at the behest of the County Election Commission.

Id. at 613, 594 S.E.2d at 267. The Court found “no logical distinction” to permit the distribution of campaign materials drafted by a governmental body within the prohibition zone while refusing to allow private parties to do the same. Id. at 614, 594 S.E.2d at 267. The facts in W.J. Douan decision did not afford an opportunity to explore the statute’s applicability to activities beyond the distribution of campaign literature.

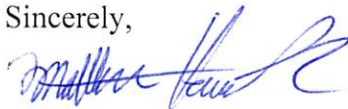
Because the amendments to section 7-25-180 did not change the statutory language describing what conduct is prohibited, nor are we aware of a decision of our state courts contrary to our prior opinions, we do not find those opinions to be clearly erroneous nor that there has been a change in applicable law. Consequently, the August 9, 1974, opinion to James B. Ellisor remains this Office’s opinion with modification that the prohibition zone extends to five hundred feet. Op.

S.C. Att’y Gen., 1974 WL 28125 (August 9, 1974). Again, section 7-25-180 “does not deal specifically with candidates or their workers campaigning,” nor does it address conducting a petition drive. Therefore, consistent with our narrow interpretation of the conduct prohibited by section 7-25-180, it is this Office’s opinion that the statute does not prohibit conducting a petition drive within the prohibition zone.

### **Conclusion**

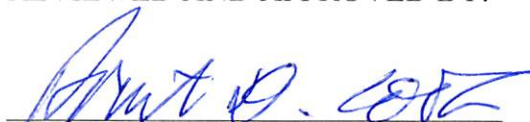
For the reasons discussed more fully above, it is this Office’s opinion that S.C. Code § 7-25-180 does not prohibit a candidate or their campaign workers from collecting signatures in support of a nominating petition within five hundred feet of any entrance used by voters to enter a polling place. It is, however, possible for persons conducting a petition drive to violate section 7-25-180 depending on the facts of a particular case. One can certainly envision a scenario where a candidate or their workers wear clothing or set up a display which advertises the candidate to draw attention to the petition drive. As our prior opinion stated, the display of those materials “would come within the prohibition of this statute and could not be displayed within” the prohibition zone. Op. S.C. Att’y Gen., 1974 WL 28125 (August 9, 1974). Finally, we note that activities within the vicinity of a polling place are subject to election managers’ “authority to maintain good order.” S.C. Code § 7-13-140; see also W.J. Douan, supra (“Section 7–25–180(A) was intended to grant poll managers authority to prevent certain activity by members of the public on election day.”); Cleveland v. City of Seneca SC, No. C.A. 8:09-626-HMHWMC, 2010 WL 1257566, at \*3 (D.S.C. Mar. 23, 2010) (“South Carolina provides election managers, like Moses, with the ability to maintain peace and order in the immediate vicinity of a voting area on an election day.”).

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General