STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#94084

NO.
STATE OF NEBRASKA
OFFICIAL
NOV 4 1994
DEPT. OF JUSTICE

DATE: November 4, 1994

SUBJECT: Electioneering; Voter Challenging

REQUESTED BY: Allen J. Beermann, Secretary of State

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested the opinion of this office as to whether a political party may appoint campaign workers, under the guise of "voter challengers", to observe voting at polling locations and gather information for use in efforts to increase voter participation by electors of that party. This general question has been addressed twice previously by this office under prior election codes. 1945-46 Report of the Attorney General 196 (Nov. 1, 1946); 1953-54 Report of the Attorney General 152 (July 30, 1954). However, due to subsequent statutory changes the question must be addressed once again.

Nebraska election law currently provides: "The party committee of each political party may appoint in writing one party agent or representative, with an alternate for each, who shall act as challengers for their respective parties or elements therein." Neb. Rev. Stat. § 32-468 (1993) (emphasis added). The purpose of "challengers" is to challenge any attempts by unqualified electors to vote. *See* Neb. Rev. Stat. §§ 32-467, 32-469 to 32-478 (challenges based on residency, citizenship, age, party affiliation).

Although challenging unqualified voters is permitted, electioneering at polling places is prohibited by Nebraska law. Neb. Rev. Stat. § 32-1221 (1993) provides:

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Lauren Lee Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Alan E. Pedersen
Paul N. Potadle
James D. Smith
James H. Spears
Mark D. Starr
John R. Thompson
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

> No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, any building in which an election is being held, or two hundred feet thereof, nor obstruct the doors or entries thereto or prevent free ingress to and egress from such building. Any election officer, sheriff, or other peace officer shall clear the passageways and prevent such obstruction and shall arrest any person so doing. No person shall conduct any exit poll, public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty feet of the entrance of any polling place room or, if inside the polling place building, within one hundred feet of any voting booth.

Clearly then, a political party may appoint a representative to act as a challenger at polling locations. Common sense, and a fair reading of the statutes, would indicate that such designated challengers are permitted to be within the 200 foot electioneering - free zone (in addition to electors actually casting ballots, who may also challenge other electors). Under the statute in effect at the time of the Attorney General's 1946 Opinion, ***supra***, challengers could come within eight feet of ballot boxes. ***See*** § 32-522, R.S. 1943. However, the current form of this statute, § 32-442, contains no provision allowing challengers to be within eight feet of the ballot boxes. The statute formerly allowing challengers close access was amended in 1951, and the provision for such close access for challengers was removed. Neb. Laws 1951 c.99 § 143, p.329. One might logically ask how a designated challenger could make challenges if he or she was not within eight feet of the ballot boxes. The election code may be harmonized by interpreting the applicable statutes to provide that the poll books (where electors sign in before voting) should be more than eight feet from the actual ballot box. This would allow challengers to perform their statutorily authorized function, while reducing any perceived intimidation, by means of keeping challengers more than eight feet from the actual ballot box.

The real question, however, under the facts presented is whether the stationing of campaign workers or poll watchers (under the guise of "challengers") for the purpose of aiding an effort to "get out the vote" for a particular party constitutes "electioneering" rather than "voter challenging". We conclude that such activity does constitute electioneering, and would be in violation of Neb. Rev. Stat. § 32-1221. First of all, section 32-1221 prohibits even voter preference surveys and exit polls within twenty feet of the entrance of any polling place room (or, if inside the polling place building, within one hundred feet of any

voting booth).[1] Secondly, Attorney General Clarence Beck came to this same conclusion in 1954.

> It has been submitted that a political party proposes, at the forthcoming primary election, to appoint poll watchers over both the receiving and counting boards, which watchers presumedly would observe the number of ballots cast for that party. It has been further submitted that the purpose of these watchers would be to attempt to increase the number of ballots cast for this political party by means of communicating, from time to time during the progress of the voting, with known voters registered in this party asking them to come to the poll and vote. The propriety of this procedure is questioned.
>
> . . .
>
> It is our opinion that any person loitering about the receiving board and observing the number of ballots being cast for a party, who then uses the information so gained to determine whether other registered party voters need be solicited to turn out to vote, is attempting to affect the result of the election, and, hence, <u>is clearly engaged in "electioneering"</u>. In our view, it is immaterial whether such watcher contacts the other registered party voters to turn out to vote himself, or whether he relays the information to a confederate; the result is that <u>it is an activity aimed at influencing the result of the election and constitutes "electioneering"</u>. 32-1221, ***supra***, states the penalty for violation.

1954-55 <u>Report of the Attorney General</u> at 452-453, 453-454 (emphasis added). The 1954 opinion went on to distinguish its conclusion from the 1946 opinion, ***supra***, noting that the statutes in 1954 did not permit challengers as the statute did in 1946. However, the fact that Nebraska once again has a challenger statute does not change our conclusion that the proposed activity constitutes electioneering. As discussed above, the contemplated activity is part of a "get-out-the-vote" effort, and is not actually for the purpose of challenging unqualified voters. The

---

[1]We also note that it is illegal for any person to conduct himself or herself in a noisy manner at or about the polls so as to disturb the election. Neb. Rev. Stat. § 32-466 (1993). This statute further indicates legislative intent to avoid activity at the polls except the voting process or activity necessary to prevent fraud.

electioneering statute, as noted above, prohibits even exit polling within a significant distance of the balloting area, let alone the monitoring of voting for purposes of contacting absent voters. As was concluded in 1954, such activity "is an activity aimed at influencing the result of the election and constitutes electioneering."

Sincerely yours,

DON STENBERG
Attorney General

Steve Grasz
Deputy Attorney General

Approved By:

Attorney General

3-1777-3