

**Summary:**

**Scope of prohibition on electioneering at or near polling place on election day. Campaign signs placed on public property within 100 feet of the entrance to a polling place on election day are unlawful. Violative signs may be removed from public property. The mere presence of a candidate at or within 100 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 100 feet of the polling place are prohibited. One who engages in electioneering should not be thereby disenfranchised. §12.03, Stats. (Issued to Richard J. Steffens, June 22, 1978)**

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was revised to reflect statutory changes to the distance from the polling place electioneering is prohibited and made the prohibition inapplicable on private property. 1993 Wisconsin Act 173; §12.03, Stats. The opinion below was reaffirmed by the Government Accountability Board on June 9, 2008 and fully incorporates the revisions directed by the G.A.B.

**Opinion:**

You have asked a number of questions about application of the prohibition on electioneering at or near the polling place in §12.03, Stats. That statute reads:

12.03 Campaigning restricted.

12.03(1) No election official may engage in electioneering on election day. No municipal clerk or employee of the clerk may engage in electioneering in the clerk's office or at the alternate site under s. 6.855 during the hours that ballots may be cast at those locations.

12.03(2)(a)1 No person may engage in electioneering during polling hours on election day at a polling place.

12.03(2)(a)2 No person may engage in electioneering in the municipal clerk's office or at an alternate site under s. 6.855 during the hours that absentee ballots may be cast.

12.03(2)(b)1 No person may engage in electioneering during polling hours on any public property on election day within 100 feet of an entrance to a building containing a polling place.

12.03(2)(b)2 No person may engage in electioneering during the hours that absentee ballots may be cast on any public property within 100 feet of an entrance to a building containing the municipal clerk's office or an alternate site under s. 6.855.

12.03(2)(b)3 No person may engage in electioneering within 100 feet of an entrance to or within a nursing home or qualified retirement home or community-based residential facility while special voting deputies are present at the home or facility.

12.03(2)(d) This subsection does not apply to the placement of any material on the bumper of a motor vehicle that is parked or operated at a place and time where electioneering is prohibited under this subsection.

12.03(3) A municipal clerk, election inspector or law enforcement officer may remove posters or other advertising which is placed in violation of this section.

12.03(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 §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 100 feet of the entrance to the polling place violate the statute.

Signs which advocate an election result come within the definition of "electioneering" above, but the prohibition of electioneering within 100 ft. of a polling place only applies on public property. §12.03(2)(b)1, Stats. The statute clearly authorizes removal of offending signs on public property. §12.03(3), Stats.

Your next question is whether a candidate's presence at or within 100 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 100 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 100 feet of the polls is within the purview of §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 100 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, §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.