

Opinion No. 89-09

May 4, 1989

OPINION OF: HAL STRATTON, Attorney General

BY: Scott Spencer, Assistant Attorney General

TO: Thomas Rutledge, District Attorney, Fifth Judicial District, 101 West Mermod, P.O. Box 1448, Carlsbad, New Mexico 88220

QUESTIONS

1. May a candidate whose name appears on the ballot have workers at the polling place and enter the polling place on the day of the election?

CONCLUSIONS

The candidate and campaign workers usually may not approach nearer than fifty feet of a polling place.

ANALYSIS

Section 1-20-16 NMSA 1978 provides:

Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the building in which the polling place is located, and includes the display of signs or distribution of campaign literature.

Whoever commits electioneering too close to the polling place is guilty of a petty misdemeanor.

Section 1-20-17 NMSA 1978 provides in part:

Obstructing the polling place consists of:

A. approaching nearer than fifty feet from any polling place during the conduct of the election unless a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election official having business in the polling place or a person authorized by the Election Code [Chapter 1 NMSA 1978] to give assistance to a voter; or

B. ...whoever obstructs the polling place is guilty of a petty misdemeanor.

It is our opinion that, unless a candidate or a campaign worker falls within the exceptions outlined in Section 1-20-17(A), those persons' physical presence within fifty

feet of the polling place on the day of the election constitutes a violation of Section 1-20-17 NMSA. We do not have enough facts to determine whether in the particular instance you have in mind Section 1-20-16 NMSA also has been violated. The violation of either section by a candidate or campaign workers is a petty misdemeanor.