annually, but enforces the statute requiring vehicle inspection, see Acts 1967, ch. 317, §10, Burns §47-3410, the consent and cooperation of the Indiana State Police Department to such a plan would be necessary.

With the cooperation of all three of these state agencies, the adoption of Department standards by the Committee would be feasible as well as legal.

OFFICIAL OPINION NO. 12
April 10, 1968


Opinion Requested by Hon. Chester K. Watson, State Senator.

The following is my answer to your letter requesting my opinion on the legality of the use of sample voting machines as is permitted by the Allen County, Indiana Election Board. Your question, restated, is whether or not it is legally permissible to display the model voting machine, outside the "chute" at a precinct polling place at an election conducted pursuant to the Indiana Election Code.

It is not legally permissible to so place the model voting machines because the machine would be beyond the use, control and jurisdiction of the Precinct Election Officials.

No voting machine may be used at official elections unless it is accompanied by a mechanical model machine suitable for instructing voters, Acts 1945, ch. 208, §382, as found in Burns IND. STAT. ANN. §29-5802.

The "chute" leads toward the structure where the voting machines and most of the other official election board paraphernalia are housed. The legislative definition of the term "chute" follows:
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"'Chute.' The word 'chute' shall mean that area or pathway fifty feet in length and five feet in width measured from the door or entrance-way of the room of the structure, permanent or temporary, containing the voting machine or machines or booths or both whenever either or both are used; provided, however, that if there is more than one door or entrance-way into the room of the structure wherein the voting machine or machines or booths, or both, whenever either or both are used, then the door or entrance-way from which the aforementioned fifty feet shall be measured, shall be that door or entrance-way designated by the inspector for people to enter for the purposes of voting."

Acts 1945, ch. 208, as amended, as found in Burns IND. STAT. ANN. § 29-2802.

The Legislature contemplated, inferring from the foregoing definition, that the voter should travel down the "chute" to the polls and find the machines to vote.

"Polls" is defined in the election law as:

"'Polls.' The word 'polls' shall mean the room of a structure, temporary or permanent, wherein the machines or booths used in the actual act of voting are situated whether such voting be by machine or paper ballot."

Our Election Code mandates that each precinct shall have the following election officials: One (1) inspector and two (2) judges, two (2) clerks and two (2) assistant clerks, if it is found necessary, §§ 29-3201, 29-3202, and two (2) election sheriffs, § 29-3208.

The precinct judges are under a duty to decide the question when a person's right to vote is challenged; they shall assist and instruct voters when assistance is requested and they shall assist the inspector and clerks in the performance of their duties, § 29-3203.

The duties of the precinct inspector are as follows:

"The inspector shall be chairman of such board, and before the reception of any votes, shall adminis-
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ter an oath to the judges, clerks and sheriffs of the
election that they will faithfully discharge their duties
as such. After the organization of the election board,
the inspector may administer all necessary oaths which
may be required in the discharge of his duties, and
all oaths shall be written or printed, and shall be
signed by the persons making such oaths in the pre-

cence of such election board, and the person adminis-
tering such oaths shall affix his jurat thereto, and said
affidavit shall be attached to and returned with the
poll-lists to the office of the county clerk. . . .” (Acts
1945, ch. 208, § 28, Burns IND. STAT. ANN § 29-
3204.)

The duties of the precinct clerks and assistant clerks are
as follows:

“In precincts where there are clerks and assistant
clerks, and the voting is wholly by the Australian bal-
lot system, such assistant clerks shall perform the
same duties as is [are] required of the clerks, in
reference to the initialing and giving out of the bal-
lots and pencils; Provided, In any precinct, it shall be
necessary for only the two (2) clerks or assistant
clerks giving out any ballot to place their initials on
the back thereof, but such clerks or assistant clerks
must be of opposite politics. If any elector is entitled to
receive instructions as to the method of voting, such
instruction shall be given by the judges. After the
close of the polls, said assistant clerks shall, under
the direction of the election board, assist the regular
clerks in tallying the votes. In any such precinct,
the election returns or other certificates required by
this act to be signed by the clerks of such precinct
need not be signed by such assistant clerks.” (Act
1945, ch. 208, § 30, Burns IND. STAT. ANN. § 29-
3206.)

“In any precinct where the voting is both by ma-
chine and printed ballot, the regular clerks of such
precinct shall attend to all the duties connected with
voting by machine, and the two (2) assistant clerks shall attend to all the duties connected with voting by printed ballots, and it shall be necessary for only said two (2) assistant clerks to place their initials on the back of such ballots. In any such precinct, the regular clerks shall tally the vote cast by printed ballots, in such precinct, and they alone shall sign the election certificates and returns, but said board of election may call upon the assistant clerks to assist the regular clerks in any of their duties.” (Acts 1945, ch. 208, § 31, Burns IND. STAT. ANN. § 29-3207.)

The portions of the last two sections cited which refer to Australian paper ballots are not applicable to your question.

The precinct election sheriffs are required to attend the “polling places” from the opening of the polls to the conclusion of the court. The sheriffs are to preserve order at the polls and make arrests. The section of the Election Code which states the duties of the sheriff provides further:

“Such county election board shall appoint for each precinct in the county (2) election sheriffs of opposite political faith, who shall attend the polling-places in their respective precincts from the opening of the polls to the conclusion of the count. It shall be their duty to preserve order at the polls and enforce the provisions of the election law under the direction of the election board, and make arrests on the demand of a member of the board, or on affidavit, as provided in this act. If any election sheriff shall fail to appear at the opening of the polls, the member or members of the election board of his political party shall appoint a person to act in his place. No other peace officers of the state, or any division thereof, shall be allowed within fifty (50) feet of the polls, except to serve process of courts or to vote, unless summoned by the election sheriffs. No person other than the election officers shall remain within fifty (50) feet of the polls except when voting. . . .” (Acts 1945, ch. 208, § 32, Burns § 29-3208.)
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No person shall remain within 50 feet of the polls except when voting—including peace officers, other than the precinct election officials.

The clear intent of the Legislature that only election officials and electors presenting themselves to vote shall remain within 50 feet of the polls is evidenced throughout the election code.

Acts 1945, ch. 208, § 405, as found in Burns IND. STAT. ANN. § 29-5919, which concerns interference with election officials or watchers, reads as follows:

"Any person who shall interfere with any watcher, election or canvassing official, or obstruct or hinder him in the discharge of such duty, shall be guilty of a felony."

The last quoted section of the Election Code was amended in 1951 by chapter 19 of the Acts, section 2, as found in Burns IND. STAT. ANN. § 29-5919, and now reads in part as follows:

"Any person who shall interfere with any watcher, election or canvassing official, or obstruct or hinder him in the discharge of such duty, or who shall interfere with, obstruct, molest or attempt to interfere with, obstruct or molest any voter within fifty feet of a polling place, or shall directly or indirectly, by himself, or by and through another person, give or offer or promise to any person any money, gift, advantage, preferment, entertainment, aid, emolument, or any other valuable thing for the purpose of inducing or procuring any precinct election judge, clerk, or other member of any precinct election board, either in a primary, general, municipal or special election to vote for any candidate in any other manner than as directed by a person, who has legally asked for assistance in voting at any such election, or to vote any person registered who does not actually appear at the polls to vote, or to permit any person to vote at any such election who is not duly registered to vote in any such precinct, or to permit any duly registered voter
asking assistance to vote at any such election unless he has legally asked for assistance, or to make any false return of votes cast for each candidate at such an election shall be guilty of a felony.’’

The 1951 amendment shows that the Legislature intends that the precinct officials perform their official duties within 50 feet of the polls. In order to effectively perform those duties those officials should maintain their election paraphernalia within the circle of their official control.

Electioneering, campaigning or attempting to influence voters within 50 feet of the polls is a crime. (Acts 1945, ch. 208, § 426, Burns § 29-5940.)

‘‘No officer of election shall disclose to any person the name of any candidate for whom any voter has voted. No officer of election shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling-place, or within fifty (50) feet of any polling-place. . . . Whoever shall violate any provision of this section shall be deemed guilty of a felony.’’

Model election machines are an election convenience which the law mandates to be furnished with each regular voting machine and must be suitable for the instruction of voters. I have previously observed that the certain precinct election officials are responsible to instruct voters on the use of the voting machine among other duties. These instructions should be given after the voter arrives at the polling place and to effectively instruct that the model voting machine should be maintained at the polls and not beyond the ‘‘chute.”

We have seen that no electioneering is permissible within 50 feet of the polls. We have also seen that electioneering is prohibited when a voter is being instructed on the use of the voting machine. The model voting machine must not be maintained outside the ‘‘chute.” (Acts 1945, ch. 208, § 425, Burns § 29-5939.)

‘‘Any person who shall, during the election, remove or destroy any of the supplies or other conveniences
placed in the booths as aforesaid or delivered to the voter for the purpose of enabling the voter to prepare his ballot, or shall, during an election, remove, tear down or deface the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booth, railing or other convenience provided for such election, or shall induce, or attempt to induce, any person to commit any of such acts, whether or not any of such acts are committed or attempted to be committed, shall be guilty of a misdemeanor."

Any person who even remains within 50 feet of the polling place without authority is guilty of a crime. See Montgomery v. Oldham (1895), 143 Ind. 34, 42 N.E. 474 (1895), and Huffman v. State, 183 Ind. 698, 109 N.E. 401 (1915), on the questions of tampering with election convenience and electioneering within 50 feet of the polling place.

It is my opinion that it is not legally permissible to place the model voting machine outside the "chute" at elections conducted pursuant to the Indiana Election Code.

OFFICIAL OPINION NO. 13

April 19, 1968

OFFICERS, STATE—OFFICERS, CITY—Required of Claim Forms Prior to Payment of Claim. Authority to Prescribe Forms.

Opinion Requested by Mr. Richard L. Worley, State Examiner.

I am in receipt of your request for an opinion concerning the claim forms to be required by a disbursing officer of the state or a municipality prior to payment of the claim.