

Law Enf. Off/Weapon in polling place when voting

Number: AGO 93-37

Date: September 13, 1995

Subject:

Law Enf. Off/Weapon in polling place when voting

The Honorable Fred D. Galey
Supervisor of Elections
Post Office Box 1119
Titusville, Florida 32780

RE: LAW ENFORCEMENT OFFICERS--SUPERVISOR OF ELECTIONS--VOTING--
WEAPONS--POLLING PLACE--FIREARMS--COUNTIES--
ELECTIONS--FLORIDA ELECTION CODE--law enforcement officer required to carry a weapon while on duty may carry a weapon into the polling place when voting. ss. 790.053, 790.06 and 102.101, F.S.

Dear Mr. Galey:

As supervisor of elections, you ask the following question:

May a law enforcement officer who has been authorized by the law enforcement agency to vote while on duty and who is required to carry a weapon while on duty carry a weapon into the polling place when voting?

In sum:

A law enforcement officer who has been authorized by the law enforcement agency to vote while on duty and who is required to carry a weapon while on duty may carry a weapon into the polling place when voting.

You state that the Brevard County Sheriff's Office and various municipal law enforcement agencies allow their law enforcement officers to vote while on duty. A question has been raised as to whether such officers who are on duty may carry their firearms into the polling place. You state that the officers in question are required to carry weapons while on duty.

The Florida Election Code places certain restrictions on the presence of law enforcement officers in polling places. The sheriff is required to deputize a deputy sheriff for each precinct to be present while the polls are open; such deputy is subject to the lawful commands of the clerk or election inspectors and is required to maintain good order.[1]

Pursuant to s. 102.101, F.S., "[n]o sheriff, deputy sheriff, policeman, or other officer of the law shall be allowed within the polling place without permission of the clerk or a majority of the inspectors, *except to cast his ballot.*" (e.s.) Thus, the statute itself recognizes an exception to the

prohibition against law enforcement officers entering the polling place by permitting such officers to enter when they are voting.

Section 790.06, F.S. (1992 Supp.), states that no license issued thereunder "shall authorize any person to carry a concealed weapon or firearm into . . . any polling place . . . "[2] However, s. 790.06, F.S. (1992 Supp.), as well as s. 790.053, F.S., which prohibits the open carrying of weapons, except as provided by law, do not apply to "[s]heriffs, marshals, prison or jail wardens, policemen . . . and law enforcement officers and their deputies . . . who are carrying out official duties while in the state." [3] Since you have advised this office that the law enforcement officers are on duty and are required to carry firearms while on duty, the above provisions would appear to be inapplicable. [4]

Accordingly, I am of the opinion that a law enforcement officer who has been authorized by the law enforcement agency to vote while on duty and who is required to carry a weapon while on duty may carry a weapon into the polling place when voting.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] Section 102.031(2), F.S. *Cf.* Joughin v. Parks, 147 So. 273 (Fla. 1933) (sheriff has nothing to do with conduct of election except to see that order is maintained about the polls as elsewhere in the county and to apprehend violators of the election laws; he is not allowed within polling place unless summoned by the election inspectors).

[2] Section 790.06(12), F.S. (1992 Supp.). Any person who wilfully violates any provision of the subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

[3] Section 790.25(3)(d), F.S. *And see* s. 790.051, F.S. (law enforcement officers are exempt from the licensing and penal provisions of Ch. 790 when acting at any time within the scope or course of their official duties or when acting at any time in the line or performance of their official duties); and s. 790.052, F.S., relating to the carrying of weapons by off-duty law enforcement or correctional officers as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.

[4] *Cf.* AGO 71-50 (if police officer is required by police department to be in possession of a firearm and be subject to duty call at any time, he may lawfully carry his firearm at any time).