Poll list compiled on election day

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Subject:
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PUBLIC RECORDS--POLL LIST COMPILED ON ELECTION DAY AVAILABLE TO PUBLIC ONLY AFTER ELECTION DAY

To: Mrs. Alma K. Bethea, Alachua County Supervisor of Elections, Gainesville

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QUESTION:

Should the poll list kept by the election board at a polling place on the day of election be made available for inspection and copying by the public?

SUMMARY:

A poll list kept by the election board at the polling place on the day of election is not available for inspection and copying by the public. Upon the transmission of the poll list and the registration books to the supervisor of elections following an election, such records in the custody of the supervisor are subject to public inspection as provided in the Election Laws and the Public Records Law.

Your question is answered in the negative.

Section 101.23(1), F. S., provides:

"When any person has been admitted to vote, his name shall be checked at the place indicated upon the registration books, by one of the inspectors. *One of the inspectors shall at the same time keep a poll list* containing names of electors who have voted." (Emphasis supplied.)

A "poll list" is recognized as a list of qualified electors who have actually participated in an election, as distinguished from electors merely qualified to participate in such an election as shown by the permanent registration list maintained by a supervisor of elections. *See* 33 Words and Phrases 3, citing Gillman v. Sioux City, 245 N.W. 868, 869 (Ia. 1932). "Poll lists" and "registration lists" or books are not synonymous, nor are the terms interchangeable, Application of Superintendent of Elections, 15 A.2d 813 (N.J. 1940).

Following the tabulation of votes and proclamation of results by a *precinct* election board, the poll list of the precinct is returned with the precinct registration books to the supervisor of elections. The poll list is *not* sealed in the ballot box as are other papers or other memoranda

used in the election which are also transmitted to the supervisor. *See* s. 102.071, F. S.

Section 98.211, F. S., provides in part:

"*The registration books are public records*. Every citizen is *allowed to examine* the registration books *while they are in the custody of the supervisor*, but is not allowed to make copies or extracts therefrom. The supervisor may furnish copies of the names, political affiliation, resident address, and mailing address of any electors upon reasonable compensation. . . ." (Emphasis supplied.)

Likewise, the supervisor's records covering registration renewals and transfers are also specifically designated as being open to public inspection, *see* s. 98.221, F. S.; but apart from the previously cited statutes, no further mention is made of poll lists or public records in the Florida Election Code.

Section 119.07, F. S., in summary provides that every person having custody of public records (as defined by s. 119.011(1), F. S.) shall permit them to be inspected at reasonable times and shall furnish certified copies of each record on the payment of fees prescribed by law. Section 119.07(2)(a) does, however, contain a proviso to the effect that public records which are prohibited from being inspected by the public, whether provided by general or special acts, shall be exempt from the provisions of s. 119.07.

A polling list is compiled by a precinct inspector during the course of an election, while at the same time another inspector is verifying the voter's registration and marking the registration book to indicate on his permanent registration record the person's participation in the election. In effect a dual record is thus made of a voter's participation in an election at the time he votes. Section 101.23(1), F. S.

No one except inspectors of election is allowed to speak to an elector within the polling place, and no inspector shall speak to an elector except in the performance of his duties as an inspector. Section 101.71(1), F. S. Only a limited number of authorized persons are permitted within a polling place while the polls are open, *see* s. 101.121, F. S., and even then the authorized and designated watchers, representing political committees and individual candidates, are only permitted to "watch and observe" the conduct of the election at a particular precinct as it is prescribed that "[d]uring the election the officials *shall call out* the names of electors loud enough to be heard by the watchers." (Emphasis supplied.) *See* s. 101.131(1), F. S. Since watchers are required to furnish their own materials and necessities, and electors are "called out" for watchers to hear, it must be concluded that if a "watcher" wants to check off or list the participating electors he will make *his own list* with his own material and nothing is furnished the watcher at the polls, s. 101.131(1).

With such limitations prescribed for watchers and electors, as well as those on the general public, it is obvious that during the course of an election, while the polls are open, and afterwards when the vote is tabulated, the election laws operate to prohibit or otherwise prevent public inspection and copying of poll lists maintained and compiled at the polling place. Section 119.07(2)(a), F. S.

Voter registration books, before they are returned to custody of a supervisor of elections, are not open for public examination or copying (s. 98.211, *supra*), and the poll list is not in the custody of a supervisor until it is transmitted with the registration books following an election (s. 102.071, *supra*).

No mention is made regarding disposition of a poll list after it is received by the supervisor following an election. But the information contained thereon is listed in the registration books on an individual, elector-by-elector basis which is a public record available for public examination. Section 98.211, F. S.

A polling list per se, after it is received by the supervisor, in the absence of any legislative prohibition or confidential designation, would appear to fall within the scope of a public record as defined by s. 119.011, F. S., which in summary designates all documents, papers, or other material, regardless of form or characteristic, made or received pursuant to law or in connection with the transaction of official business, public records open to public examination. *See* ss. 119.01 and 119.07, F. S.

Therefore, based upon the above authority, it is my opinion that a polling list compiled at a polling place on the day of election is *not* a public record available to the public for inspection and copying until it is transmitted to, and in the custody of, the supervisor of elections following an election.

Your question in answered in the negative.