



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 2, 2023

The Honorable Michael Watson
Secretary of State, Mississippi
401 Mississippi Street
Jackson, Mississippi 39201

Re: Use of Noise Amplifying Devices Around Polling Places

Dear Secretary Watson:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, you have received inquiries from circuit clerks and election commissioners as to what action, if any, may be taken by a poll manager designated as election bailiff when noise amplifying devices, specifically bullhorns, are being used around polling places during an election. You are concerned that these noise amplifying devices would amplify the words of candidates and/or candidate supporters who may be standing more than one hundred fifty feet from the polling place, but who, by virtue of the increased volume and noise, could still be disturbing the peace and interfering with the election process in violation of Mississippi Code Annotated Section 23-15-241.

Question Presented

In making a determination as to whether or not an improper intrusion or interference with the election has occurred as contemplated in Section 23-15-241, are election bailiffs authorized to request that the use of noise amplifying devices be discontinued if the use of such devices causes a disturbance about the voting place or other improper intrusion and interference with the election?

Brief Response

If an election bailiff determines, based on the scene before him or her, that the use of a noise amplifying device is creating a disturbance about the voting place, causing an improper intrusion upon the voting place, or interfering with the election, he or she has the authority pursuant to Section 23-15-241 to take action, with the assistance of local law enforcement if necessary, to stop

the disturbance and to enable all qualified voters, who have not voted and who desire to vote, to have unobstructed access to the polls.

Applicable Law and Discussion

Section 23-15-241 provides:

The poll manager designated an [sic] election bailiff shall, in addition to his or her other duties, be present during the election to keep the peace and to protect the voting place, and to prevent improper intrusion upon the voting place or interference with the election, and to arrest all persons creating any disturbance about the voting place, and to enable all qualified electors who have not voted, and who desire to vote, to have unobstructed access to the polls for the purpose of voting when others are not voting.

In your request, you also reference Sections 23-15-245 and 23-15-895. Section 23-15-245, which mandates a space of thirty feet "be kept open and clear of all persons except the election officials, individuals present to vote and credentialed poll watchers," and Section 23-15-895, which prohibits the distribution of campaign literature within one hundred fifty feet of the entrance of the building where an election is being held, both establish physical boundaries inside of which voters are free to exercise their vote without influence or interference. However, a bullhorn or other noise amplifying device may create the same issues of influence or interference without crossing those physical boundaries. Neither Section 23-15-241, which authorizes the election bailiff to prevent improper intrusion upon the voting place or interference with the election, nor Section 23-15-245, which also authorizes the election bailiff to "take such steps as will accomplish the purpose of his or her appointment," are limited by physical distance. It is, therefore, the opinion of this office that if the election bailiff makes the determination that a noise amplification device is creating an improper intrusion upon the voting place, interfering with the election, or creating a disturbance, he or she may take appropriate action to stop the interference or disturbance regardless of the distance from the polls, with assistance from local law enforcement, if necessary. We encourage the Secretary of State's Office to incorporate appropriate guidelines into election officials' training.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General