



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-126

March 10, 2016

Michael J. Adam, Chairman
Jefferson County Election Commission
101 West Barraque Street
Pine Bluff, AR 71601

Dear Mr. Adam:

You have requested my opinion on several questions about Ark. Code Ann. § 7-4-109, as amended by Act 1253 of 2015. Specifically, you ask:

1. May a county election commissioner place a campaign sign regarding a candidate on property owned by the election commissioner?
2. May a county election commissioner place a campaign sign regarding a ballot issue on property owned by the election commissioner?
3. May the spouse of a county election commissioner place a campaign sign regarding a candidate on property jointly owned by the election commissioner and spouse?
4. May the spouse of a county election commissioner place a campaign sign regarding a ballot issue on property jointly owned by the election commissioner and spouse?
5. May a county election commissioner or spouse place a bumper sticker regarding a ballot issue or candidate on a vehicle jointly owned by the election commissioner or spouse? And,
 - a. Is solely driven by the spouse or another family member;
 - b. Is driven by the election commissioner.
6. May a person who lives in an election commissioner's home and primary residence place a yard sign at the home?

7. May a person unrelated to an election commissioner and who does not reside with the election commissioner place a yard sign at the election commissioner's home?
8. If a yard sign or bumper sticker is placed by a spouse, a co-tenant, or third person on property owned by the commissioner, and the election commissioner allows it to remain, is the election commissioner disqualified from service on the election commission?
9. May an election commissioner hand out political party-related literature at the county fair?
10. May a county election commissioner write a letter to the editor regarding a candidate or ballot issue?
11. May a county election commissioner post onto social media regarding a candidate or ballot issue?

RESPONSE

Act 1253 of 2015 amended Ark. Code Ann. § 7-4-109, which establishes the qualifications for state and county election commissioners, election officials, poll workers, and certified election monitors. Subsection (c)(2) of the statute generally prohibits such commissioners from participating “in the campaign of any candidate listed on a ballot or of a write-in candidate seeking election in that county that falls under the county board of election commissioners’ jurisdiction or authority.”¹ The statute then lists six specific prohibited actions:

A member of the county board of election commissioners shall not:

- (a) Manage a campaign;
- (b) Perform labor for a campaign;
- (c) Solicit on behalf of a candidate or campaign;
- (d) Pass out or place handbills, signs, or other literature concerning a candidate’s campaign;
- (e) Assist a candidate’s campaign at a rally or parade; or
- (f) Display candidate placards or signs on an automobile.²

¹ Ark. Code Ann. § 7-4-109(c)(2)(A) (Supp. 2015).

² Ark. Code Ann. § 7-4-109(c)(2)(B)(i) (*italics in original*).

In addressing your questions, I am guided by the reasonable rules of statutory interpretation, the primary rule being to read a statute as it is written:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. [Courts] construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.³

Additionally, “the meaning of a statute must be determined from the natural and obvious import of the language used by the legislature without resorting to subtle and forced construction for the purpose of limiting or extending the meaning.”⁴

With these principles in mind, I will turn to your specific questions.

Question 1: May a county election commissioner place a campaign sign regarding a candidate on property owned by the election commissioner?

The statute at issue prohibits a county election commissioner from “plac[ing] ... signs ... concerning a candidate’s campaign.”⁵ Accordingly, in my opinion, the answer to Question 1 is “no.” A county election commissioner may not place a campaign sign on his own property (or anyone else’s property).⁶

³ *MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878, 882-83 (2005) (internal citations omitted).

⁴ *City of N. Little Rock v. Montgomery*, 261 Ark. 16, 18, 546 S.W.2d 154, 155 (1977).

⁵ Ark. Code Ann. § 7-4-109(c)(2)(B)(i)(d).

⁶ My opinion on this question and all the remaining questions you ask takes as given that the candidate is “listed on a ballot” in the “county that falls under the county board of election

Question 2: May a county election commissioner place a campaign sign regarding a ballot issue on property owned by the election commissioner?

Section 7-4-109(c)(2) only addresses actions concerning *candidate* campaigns; it does not address ballot issue campaigns.⁷ Therefore, in my opinion, it would not be a violation of the statute in question for a commissioner to place a sign relating to a ballot issue on his property (or anyone else's property).

Question 3: May the spouse of a county election commissioner place a campaign sign regarding a candidate on property jointly owned by the election commissioner and spouse?

Section 7-4-109(c)(2) does not address or control the actions of a county election commissioner's spouse. I believe it is clear from the text of the statute that the statute only addresses the conduct and actions taken by an election commissioner. Even if the statute were ambiguous on this point, and thus there were two reasonable interpretations of the statute, the doctrine of constitutional avoidance⁸ would counsel in favor of the interpretation that limits the prohibition to an

commissioners' jurisdiction or authority" or is "a write-in candidate that is seeking election in that county...." Ark. Code Ann. § 7-4-109(c)(2)(A).

⁷ The general prohibition in section 7-4-109(c)(2)(A) prohibits election commissioners from participating in the "campaign of any candidate listed on a ballot or of a write-in candidate seeking election" in the county that falls under that particular county board of election commissioners' jurisdiction or authority. By its express terms, and especially in light of the statutory interpretation rule known as *expressio unius est exclusio alterius*, this language excludes all other matters submitted to the voters, such as ballot initiatives, "wet-dry" measures, or even the campaigns of candidates running for office outside of a county election commissioner's jurisdiction. See *MacSteel Div. of Quanex*, note 3 *supra*, 363 Ark. at 31, 210 S.W.3d at 88 (explaining that "*expressio unius est exclusio alterius*" is the well-established rule that the express designation of one thing may be properly construed to mean the exclusion of another). It follows logically that the list of prohibited activities in section 7-4-109(c)(2)(B)(i) relates to only *candidate* campaigns and not to other matters submitted to the voters.

⁸ See, e.g., *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516, 129 S. Ct. 1800, 1811 (2009) (stating that "[t]he so-called canon of constitutional avoidance is an interpretive tool, counseling that ambiguous statutory language be construed to avoid serious constitutional doubts.") (internal citations omitted).

election commissioner. Applying these prohibitions to a commissioner's family members or others raises significant constitutional concerns.⁹

I understand your question to take as given that the commissioner had no role in the sign's placement and that the spouse acted unilaterally. If such were the case, then, in my opinion, the statute at issue does not apply. I must note, however, that this response would not be controlling in cases where the spouse placed the sign *at the commissioner's behest*. In such cases, it well may be considered, for the purposes of this statute, that the commissioner personally placed the sign. Such cases would entail individual factual determinations concerning the circumstances around the placement of the sign that are beyond the scope of an Attorney General's opinion.

Question 4: May the spouse of a county election commissioner place a campaign sign regarding a ballot issue on property jointly owned by the election commissioner and spouse?

Please see my response to Question 2. As stated therein, section 7-4-109(c)(2) only addresses actions regarding candidate campaigns, not ballot issues.

Question 5: May a county election commissioner or spouse place a bumper sticker regarding a ballot issue or candidate on a vehicle jointly owned by the

⁹ See generally U.S. Const., amend I; Ark. Const. art. 2, § 6; *Eu v. San Francisco Cty. Democratic Central Comm.*, 489 U.S. 214, 223, 109 S. Ct. 1013, 1020 (1989) ("The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.") (internal quotation omitted). With respect to political speech of public officials, the Court has said, in *dictum*, that "the States have a legitimate interest in preserving the integrity of their electoral processes. Just as a State may take steps to ensure that its governing political institutions and officials properly discharge public responsibilities and maintain public trust and confidence, a State has a legitimate interest in upholding the integrity of the electoral process itself." *Brown v. Hartlage*, 456 U.S. 45, 52, 102 S. Ct. 1523, 1528 (1982). But it cannot be gainsaid that restrictions that burden political speech "are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010). In my opinion, controlling the speech of an election commissioner as provided in the statute likely meets the strict scrutiny standard. But it is far less clear whether controlling the speech of a commissioner's spouse or family member meets the strict scrutiny standard.

election commissioner or spouse, and, a) is solely driven by the spouse or another family member, or; b) is driven by the election commissioner?

With respect to the placement of a bumper sticker by either the Commissioner or his spouse regarding a ballot issue, please see my response to Question 2.

With respect to the placement of a bumper sticker on a vehicle by the Commissioner regarding a candidate, please see my response to Question 1.¹⁰

With respect to the placement of a bumper sticker regarding a candidate on a vehicle by a spouse, please see my response to Question 3. As stated therein, assuming the spouse is not acting at the behest of the election commissioner, the statute does not limit what a spouse may do. Accordingly, section 7-4-109(c)(2)(B)(i)(d) would not be violated by a spouse placing a bumper sticker on his or her car or even on an election commissioner's car.

But this is not the end of the inquiry. Because this question concerns signs on automobiles, it also implicates the prohibition against "display[ing] candidate ... signs on an automobile."¹¹ Even if the commissioner did not personally place the bumper sticker, he might be violating section 7-4-109(c)(2)(B)(i)(f) by allowing it to remain on the car, depending on the statute's meaning.

Section 7-4-109(c)(2)(B)(i)(f) is ambiguous as to whether it applies to all automobiles owned (even in part) by the election commissioner, or whether it is limited to automobiles in which an election commissioner drives or rides. If the latter, it is also ambiguous as to whether there is a frequency threshold concerning the numbers of times or regularity with which a commissioner rides in or drives the automobile. The plain language of that subsection—simply referencing "an

¹⁰ With respect to what a commissioner may not "place," the statute speaks of "handbills, signs, or other literature concerning a candidate's campaign." Ark. Code Ann. § 7-4-109(c)(2)(B)(i)(d). The statute also provides that a commissioner shall not "[d]isplay candidate placards or signs on an automobile." *Id.* at § 7-4-109(c)(2)(B)(i)(f). I believe bumper stickers would be considered "signs" or "other literature." See *New Oxford American Dictionary* 1626 (Oxford Univ. Press, 2010) (defining "sign" as "a notice that is publicly displayed giving information or instructions in a written or symbolic form"); *The American Heritage Dictionary of the English Language* 1630 (5th ed. 2011) (defining "sign" in most relevant part as "[a] posted notice bearing a designation, direction, or command.").

¹¹ Ark. Code Ann. § 7-4-109(c)(2)(B)(i)(f).

automobile”—does not resolve this question. Accordingly, a court would likely look to the purposes and objectives of the statute for guidance in interpreting the language.

A significant purpose and objective of this statute is to give the voters greater trust in the impartiality of county election commissioners—and thus greater confidence in the conduct of the State’s elections—by trying to avoid a reasonable observer from believing that a county election commissioner is too closely tied to or is actively working for the benefit of a particular candidate.

In light of the foregoing, but also taking into account the doctrine of constitutional avoidance mentioned above,¹² my opinion is that section 7-4-109(c)(2)(B)(i)(f) prohibits an election commissioner from allowing a bumper sticker to remain on a vehicle that the commissioner owns (completely or in part) *and* drives on anything more than an emergency basis. On the other hand, if the car is primarily driven by the commissioner’s spouse or another member of the family, and if the commissioner only drives the car on an emergency basis, it is my opinion that the prohibition likely does not apply.

Question 6: May a person who lives in an election commissioner’s home and primary residence place a yard sign at the home?

Please see my responses to Question 2 regarding ballot issue campaigns and to Question 3 regarding candidate campaigns.

Question 7: May a person unrelated to an election commissioner and who does not reside with the election commissioner place a yard sign at the election commissioner’s home?

Question 8: If a yard sign or bumper sticker is placed by a spouse, a co-tenant, or third person on property owned by the commissioner, and the election commissioner allows it to remain, is the election commissioner disqualified from service on the election commission?

To address Questions 7 and 8 with respect to yard signs on real property, unless it is factually established that the commissioner placed the sign or caused the sign to

¹² See note 8 *supra*.

be placed (please review the relevant portion of my response to Question 3), the answer is “no,” in my opinion. The statute is silent as it relates to “displaying” (or allowing to remain, as the question puts it) signs on any property other than an automobile, and thus does not prohibit the commissioner from allowing the sign to remain on real property—as long as he was not the person who placed it there or caused it to be placed there. It is important to recognize, however, that a court would likely conclude an election commissioner caused the sign to be placed if the commissioner or someone acting at his behest gave permission for the sign to be placed by a third party who otherwise would have no right to put the sign on the property.

With regard to a sign, including a bumper sticker, placed on a commissioner’s automobile by someone other than the commissioner, I believe allowing the sign to remain likely would violate the prohibition against “display[ing] candidate ... signs on an automobile” as discussed in my response to Question 5 above. But as illustrated in that response, the question of which automobiles are covered by the prohibition of displaying a candidate bumper sticker is a factual one that is unanswerable as part of a hypothetical.

Question 9: May an election commissioner hand out political party-related literature at the county fair?

“Yes,” as long as the hand-outs are limited to promoting a political party. In my opinion, however, such literature may not solicit on behalf of a candidate, multiple candidates, or the party’s entire slate of candidates. If the literature does solicit for one or more candidates, the election commissioner may not hand out such literature.

Question 10: May a county election commissioner write a letter to the editor regarding a candidate or ballot issue?

Question 11: May a county election commissioner post onto social media regarding a candidate or ballot issue?

In my opinion, the *general* answer to questions 10 and 11 is “no” with respect to candidates whose names will be on the ballots in the commissioner’s county. These acts, in my opinion, would likely be viewed as soliciting on behalf of a candidate. Of course, you have not provided me with any facts concerning the content of the letters or social media posts. There may theoretically be content

that does not qualify as solicitation, but it is not clear to me what such content might be.

In my opinion, the answer to your questions is "yes" with respect to ballot issues. See my response to Question 2 regarding the statute's restrictions being limited to candidates and therefore not applying to ballot issues.

Sincerely,



LESLIE RUTLEDGE
Attorney General