



Office of the District Attorney
18th Judicial District of Kansas

For Immediate Release
July 13, 2007

District Attorney Nola Foulston announces today the results of her review of the Sheriff's Department's investigation of two complaints of electioneering and other election related offenses during the general election held on November 7, 2006. Electioneering is defined as "knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted." It includes "wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election within any polling place on election day ... or within a radius of 250 feet from the entrance thereof." K.S.A. 2006 Supp. 25-2430.

First Complaint Reported - Electioneering

The first complaint alleged that marked, rather than blank, ballots were displayed as sample ballots at polling places at St. Andrews Lutheran Church, 2555 Hyacinth Lane, and Northside Church of Christ, 4545 N. Meridian. The investigation revealed that a ballot marked "void" and marked to indicate votes for all Republican candidates had been displayed on the provisional ballot table at St. Andrews. When complaint was made about the display by a Democrat candidate for the Kansas House of Representatives, Walt Chappell, the ballot was removed by the supervising election judge. Subsequently, another sample ballot was observed by a poll agent (a person selected by a political party or candidate who monitors

activities at poll locations) for the Democrat party lying on the table with a mark in the voting circle corresponding to one write-in candidate space. A few minutes later, the same ballot was observed to contain two additional marks in voting circles. This ballot was also removed from public view after its existence was pointed out to an election official, a judge or clerk appointed by the election commissioner to serve at the polls to ensure the election procedures are carried out according to law. On a later visit to this polling station, the poll agent observed a partially exposed, marked ballot lying on a table. This ballot was also removed by an election official when its placement was noted.

At the polling station at 4545 N. Meridian, the same poll agent observed a voided, marked ballot lying on a table. After she pointed out the ballot to election officials, it was also removed from public view. The poll agent indicated she did not believe any of these ballots were marked or placed with the intent to influence others to vote in a particular way, but were the results of mistakes by officials or actions by citizens unknown to election officials until brought to their attention by others.

Interviews of poll workers and other individuals with knowledge of the ballots failed to establish the identity of anyone who made markings on the ballot or who placed the ballots in public view.

Based on these facts, there is insufficient evidence to establish that any person or persons committed the crime of electioneering.

Second Complaint Reported: Electioneering and Intimidation of a Voter

First Allegation

The second complaint involves alleged activities by State Rep. Raj Goyle, his campaign supporters and occurrences inside a polling site at Holy Cross Lutheran Church, 600 N. Greenwich Road.

The investigation revealed that a number of voters became upset that their names were being written down by poll agents as they were checking in to vote. Some felt this procedure was unlawful and intimidating, leading to vocal protestations and prompting the supervising election judge to summon police. Police arrived to find that the situation had calmed.

The act of recording names of voters by authorized poll agents is not unlawful. Poll agents are legally entitled to observe election proceedings. The law does not prohibit them from recording the names of voters whose names, by law, must be publicly stated when they present themselves to election officials to establish their authority to vote. Such conduct, standing alone, is insufficient to constitute the crime of Intimidation of Voters, which is defined as “intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such person to vote for, or not vote for, any candidate for any office or question submitted at any election.” K.S.A. 25-2415.

Second Allegation

A second complaint was raised at the same polling site. This complaint alleged that poll agents were “speaking to voters.”

Poll agents are legally entitled to be present and observe election proceedings including voting and original, intermediate and final canvasses of elections. They are subject to rules and regulations of the secretary of state, limitations imposed by laws regarding the election process, and the authority of the supervising judge of each voting place. Generally, poll agents are instructed **not to speak with voters** to avoid the possibility of improper influence; **however there is no criminal law** that strictly prohibits verbal interactions between poll agents and the voting public.

Third Allegation

A third complaint was made at this same polling site, that supporters of Rep. Goyle, a Democrat, were stationed within 250 feet of the entrance of the polling site at 600 N. Greenwich waving campaign signs and wearing shirts bearing the candidate's name. The investigation established that, with one exception, t-shirt wearing Goyle supporters were well outside the required 250 foot limit from the entrance to the polling location. These supporters were standing near the driveway entrance to the church off Greenwich, approximately 400 feet from the entrance to the polling place. Election Commissioner Bill Gale has stated that he construes the entrance to the polling place to be "the primary door designated for voters to enter the building to vote." This is also the position of the Kansas Secretary of State's Office, the office in charge of elections.

The one exception occurred when one of the Goyle supporters left the driveway area and went into the church to attempt to determine whether he could appropriately remain in the area of the driveway. This supporter, a 16 year-old male, had been approached by an individual in a vehicle and was told he could not engage in campaign activities in the area of the driveway. When he was not able to telephonically contact a companion who was serving as a poll agent in the church to determine the propriety of his position, he walked to the church to contact her in person. While there, he was informed that he should not be wearing the Goyle t-shirt in the church and he removed it. He contacted the poll agent and left the church a short time later. He did not put the t-shirt back on until he was leaving. He was instructed to return to the area of the driveway which he did. The teenager reports he did not realize wearing the t-shirt inside the church was a problem until he was confronted about it and told to remove it. Under these circumstances, a prosecution for electioneering against the young man is not warranted.

Complaints were also made regarding Goyle's conduct at the Holy Cross polling site and another voting location at Maranatha Worship Center, 888 S. Webb Road. At Marantha, Goyle was reported to have introduced himself as a candidate on the ballot to a man near the front door of the building. The investigation determined the man

Goyle spoke to was previously known to him and the man had already voted. The supervising judge at that location indicated she did not observe Goyle engage in any campaigning, though she did observe him speak with poll agents and say “hi” or wave to a few individuals he knew.

At Holy Cross, several individuals reported that they observed Goyle contact individuals in line to vote or in the general area where voting was occurring. He was reported to have talked briefly with either voters or poll agents and generally milled about observing the election activities. There were no reports of any specific conversations related to Goyle’s campaign. The supervising judge reported that she observed Goyle on the three occasions when he came to the church. On the first occasion she told him she felt his presence was inappropriate and asked him why he was there. He replied that he was a poll agent and was entitled to be there. The judge reported that Goyle stood around and observed. She also reported she received a complaint that Goyle supporters were campaigning within 250 feet of the entrance. When she checked the report, she felt that the one individual she saw was well outside the 250 feet limitation.

Goyle’s reported activities are insufficient to establish the commission of the crime of electioneering under Kansas law. He was a poll agent and entitled to be at polling places, subject to the same law, rules, regulations and limitations that apply to every poll agent, including the law against electioneering. **Candidates for elective office are made poll agents by operation of law. K.S.A. 25-3005a.** His mere presence therefore could not by itself legally suffice as electioneering. There were no specific allegations of any other acts that would show Goyle “knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted.” The only substantiated reports show that Goyle had some limited contact of a general nature with voters he knew or other poll agents. Such evidence does not constitute electioneering.

The Law

Kansas law properly provides criminal sanctions for those who would attempt to undermine our system of free and democratic elections by exerting undue influence on those seeking to exercise their constitutional and statutory rights to vote for those who represent them and on issues of public import. There are significant restrictions against campaign activities occurring at or near voting sites, and against other activities that would compromise the just determination of contested elections. All those seeking elective office or the determination of an issue of public import should thoroughly apprise themselves and their campaign supporters of these laws and endeavor to strictly comply with their terms. Such strict adherence promotes and protects the integrity of the electoral process and leaves no room for public questioning of the fairness and validity of election results.

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