

**LETTER OPINION
2018-L-04**

August 7, 2018

Mr. Eliot Glassheim
619 3rd St
Grand Forks, ND 58203-3203

Dear Mr. Glassheim:

Thank you for your questions about whether the city of Grand Forks may ban the gathering of petitions from inside the Alerus Center, a venue owned by the city. Specifically, you ask whether the 100 foot buffer zone provided in N.D.C.C. § 16.1-10-06.2 is to be measured from the entrance to the room in which voting is taking place or from the entrance to the building. Finally, you ask whether there is a right to gather signatures at public events held in a public building.

ANALYSIS

You first ask whether the 100 foot buffer zone referenced in N.D.C.C. § 16.1-10-06.2 means 100 feet from the outer entrance door or 100 feet from an interior entrance of the room in which polling is taking place.

The ability to approach people who are voting is addressed in N.D.C.C. § 16.1-10-06.2:¹

A person may not approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. A person may not approach a person attempting to enter a polling place, who is in a polling place, or who is leaving a polling place for the

¹ There is another statute, N.D.C.C. § 16.1-10-06 “Electioneering within boundary of an open polling place” which specifically restricts solicitation of a voter within one hundred feet from the entrance to the room containing a polling place. You do not ask about that statute so this opinion focuses on N.D.C.C. § 16.1-10-06.2 “Sale or distribution at polling place.” N.D.C.C. § 16.1-10-06.2 specifically addresses gathering of signatures from voters and only refers to 100 feet from any entrance leading into a polling place.

purpose of gathering signatures for any reason. These prohibitions apply in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place while it is open for voting.

The North Dakota Supreme Court recently addressed N.D.C.C. § 16.1-10-06.2 in *State v. Francis*. In the case, Francis and another person were collecting signatures outside the Jamestown Civic Center, a designated polling place, on voting day.² It began to rain so they moved under a canopy covering an entrance to the polling place where they continued to collect signatures.³ Charges were filed against Francis for collecting signatures within 100 feet of an open polling place in violation of N.D.C.C. § 16.1-10-06.2.⁴ The Court held that the prohibition on the collection of signatures within 100 feet of an open polling place is a constitutional limit on speech and that N.D.C.C. § 16.1-10-06.2 is a constitutional time, place, and manner restriction.⁵ The Court stated:

It is narrowly tailored to serve the government's compelling interest in protecting the sanctity of the voting process and curbing election fraud, it does not significantly impinge on constitutionally protected rights, and it leaves open ample alternatives for communication. We hold its prohibition on the collection of signatures within 100 feet of an open polling place is a constitutional limit on speech.⁶

In its opinion the Court characterized the Jamestown Civic Center as the polling place without distinguishing between the outside or inside doors.⁷ This is consistent with the language of N.D.C.C. § 16.1-10-06.2. This statute clearly states that a person may not approach a person "attempting to enter a polling place, who is in a polling place, or who is leaving a polling place" for the purposes of selling any merchandise, etc. or for the purpose of gathering signatures for any reason.⁸ "Sentences of a statute should not be read in isolation; they should be read in light of the entire statute."⁹ Thus, the clarity of the first two sentences of N.D.C.C. § 16.1-10-06.2 may be used to help understand the 100 foot buffer zone from "any entrance leading into a polling place" set forth in the last sentence. The first two sentences are not effective if the 100 foot zone is measured from a location that allows for a person to be approached while entering, or waiting inside a polling place to vote.

² *State v. Francis*, 882 N.W.2d 270 (2016).

³ *Id.* at 274.

⁴ *Id.*

⁵ *Id.* at 277.

⁶ *Id.*

⁷ *Id.* at 274.

⁸ N.D.C.C. § 16.1-10-06.2.

⁹ N.D.A.G. 89-5.

Therefore, in most circumstances, in order to protect voters from being approached for solicitation or for sale or gathering of signatures, it is my opinion that the 100 feet may be measured from outside “any entrance leading into a polling place” referenced in N.D.C.C. § 16.1-10-06.2.¹⁰

You also explain that the group of people soliciting signatures were directed to the “free speech zone” outside the Alerus which is far beyond 100 feet from the outside entrance leading into the area inside the Alerus where voting was taking place.¹¹ You ask whether a place like the Alerus, which is owned by the City of Grand Forks, may put restrictions on collecting signatures.

In *Bolinske v. North Dakota State Fair Ass’n*, the North Dakota Supreme Court determined that the North Dakota State Fair may restrict the gathering of signatures for an initiative petition to booths rented for that purpose.¹² In a 2004 opinion, I found that the University of North Dakota buildings and grounds may be used as a public forum for free speech pursuant to the First amendment of the United States Constitution, subject to reasonable content-neutral time, place, and manner regulations, to the extent they are traditionally or by designation made available for public use.¹³

Recently, the 8th Circuit Court of Appeals upheld a similar free speech zone policy in place at the Pinnacle Bank Arena, a large sports and entertainment venue owned by the city of Lincoln, Nebraska.¹⁴ The 8th Circuit Court found that the Arena was properly designated as a nonpublic forum and those restrictions on leafleting and similar activities was a reasonable restriction.¹⁵

Further, had the Legislature intended the buffer zone in N.D.C.C. § 16.1-10-06.2 to be measured from the entrance to the room containing the polling place instead of from the exterior entrance, it would have written the statute differently. Another statute, N.D.C.C.

¹⁰ This applies only to the gathering of signatures and not “electioneering” as referenced in N.D.C.C. § 16.1-10-06 which plainly states that the 100 foot zone begins from the “entrance to the room containing a polling place.”

¹¹ The designated free speech zone is immediately adjacent to the primary vehicular entrance into the parking facilities from 42nd Street in Grand Forks, ND. Letter from Howard D. Swanson, Att’y, City of Grand Forks, to Mary Kae Kelsch, Asst. Att’y Gen. (Dec. 1, 2017).

¹² *Bolinske v. N.D. State Fair Ass’n*, 522 N.W.2d 426 (N.D. 1994). See also N.D.A.G. 2004-L-75.

¹³ N.D.A.G. 2004-L-75.

¹⁴ *Ball v. City of Lincoln, Neb.*, 870 F.3d 722 (8th Cir. 2017).

¹⁵ *Id.*

§ 16.1-10-06, restricts electioneering in a zone located “within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing a polling place while it is open for voting to vote.”¹⁶ Where a phrase is used in a like context in a related statute, the Legislature is presumed to intend that the phrase is being used in the same sense and with the same effect.¹⁷ “This implies that when different phrases are used in similar contexts in related statutes, the Legislature intended different results to occur.”¹⁸ The difference in phrasing between these two statutes implies that the Legislature intended the buffer zone in N.D.C.C. § 16.1-10-06.2 to be measured from the point other than the entrance to the room containing the polling place.

Therefore, a building like the Alerus Center may have a free speech zone policy that restricts the gathering of signatures at most events. However, the above mentioned cases and opinion did not address the ability to restrict the gathering of signatures outside a polling place while voting is taking place. A policy of the Alerus does not supersede the statutory requirements of N.D.C.C. § 16.1-10-06.2. Therefore, in the particular situation of gathering signatures outside a polling place during voting, the Alerus must comply with N.D.C.C. § 16.1-10-06.2, and may not prohibit gathering signatures except in the polling place or within one hundred feet from any entrance leading to the polling place while open for voting.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁹

¹⁶ N.D.C.C. § 16.1-10-06(1), emphasis added.

¹⁷ *State v. E.W. Wylie Co.*, 58 N.W.2d 76, 82 (N.D. 1953).

¹⁸ N.D.A.G. 2001-L-38.

¹⁹ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).