Frank LaRose
Ohio Secretary of State

ADVISORY 2025-02

March 17, 2025

To: All County Boards of Elections
Board Members, Directors, and Deputy Directors

Re: Update to the Ohio Ballot Questions and Issues Handbook regarding election procedures for municipal income tax increases

BACKGROUND AND SUMMARY

This Advisory informs Board Members, Directors, and Deputy Directors of an update to the Ohio Ballot Questions and Issues Handbook ("Handbook") regarding the necessary steps for placing a proposed municipal income tax increase on the ballot.

Ohio law requires an election in all cases where a municipal corporation seeks to tax income at a rate in excess of one percent. The Handbook previously stated that the process for placing such an issue on the ballot required, among other steps, the municipal corporation's legislative authority to "pass an ordinance authorizing the income tax."[1] The Ohio Supreme Court determined in a decision issued on March 11, 2025, that this step is unnecessary. Therefore, the Handbook has been revised to reflect the Court's interpretation of the statute.

UPDATE TO THE BALLOT QUESTIONS AND ISSUES HANDBOOK

Ohio law provides, in relevant part, that "no municipal corporation shall levy a tax on income at a rate in excess of one percent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election."[2] The statute further provides that the legislative authority of the municipal corporation "shall file with the board of elections at least ninety days before the day of the election a copy of the ordinance together with a

1 Ohio Ballot Questions and Issues Handbook, Chapter 4: Income Tax for Municipal Corporations and School Districts, at 38 (January 2023 version).

2 R.C. 718.04(C)(2)

resolution specifying the date the election is to be held and directing the board of elections to conduct the election."

The Secretary of State's office has traditionally interpreted this law to require two actions by the legislative authority before submitting the question of a municipal income tax to the voters. First, the legislative authority must pass an ordinance approving the income tax. Then the legislative authority must pass a resolution establishing the date of the election at which the question is to be put before the voters and stating the rate (as a percentage) and purpose of the income tax. These requirements were set forth on page 38 of the Handbook.[3]

On March 11, 2025, the Ohio Supreme Court held in *State ex rel. City of New Carlisle v. Clark County Board of Elections*[4] that the legislative authority does not need to pass an ordinance in order to place a question of a municipal income tax to the voters. Rather, the statute's use of the word "ordinance" includes a "proposed ordinance being submitted" for the ballot.[5] The Court held that "[t]he General Assembly's use of the phrase 'a copy of the ordinance' in R.C. 718.04(C)(2) refers to the proposed ordinance being submitted to the municipality's electors for approval."[6]

The Secretary of State's office has updated the Handbook to reflect the Court's authoritative interpretation of R.C. 718.04(C)(2). The legislative authority of the municipal corporation wishing to impose an income tax greater than one percent must still pass a resolution containing the information previously required. It must also file the resolution, along with a copy of the ordinance, with the board of elections no later than 90 days before the day of the election. However, the legislative authority does not need to pass the ordinance in order to place a question of a municipal income tax to the voters. It may file a proposed ordinance instead. Questions concerning this Advisory should be directed to the Secretary of State's elections counsel at 614-728-8789.

Yours in service,

Frank LaRose
Secretary of State

3 Chapter 4: Income Tax for Municipal Corporations and School Districts

4 *State ex rel. City of New Carlisle v. Clark County Board of Elections,* 2025-Ohio-814 (March 11, 2025).

5 *Id.* at 25.

6 *Id.*