

DIRECTIVE 2009-16

November 2, 2009

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Unofficial Canvass – November 3, 2009 General Election

Unofficial Canvass

Pursuant to R.C. 3505.27, the unofficial canvass must be conducted in full view of the board members and any observer appointed under R.C. 3505.21.

The "unofficial canvass" shall be conducted on election night in accordance with Revised Code sections 3505.27 (*counting regular ballots cast at polling locations*), 3505.28 (*ballots not counted*), 3509.06 (*counting absentee ballots*), 3509.07 (*absentee ballots not counted*) and 3511.11-.13 (*armed service absentee ballots*).

The unofficial canvass must include all ballots that are determined by the board of elections under the Revised Code as eligible to be counted on election night (i.e., regular ballots cast at polling locations on the primary voting system and absentee ballots that are determined to be valid).

The unofficial canvass shall not include ballots that are determined by the board as not eligible to be counted on election night (i.e., provisional ballots, absentee ballots postmarked on or before November 2, 2009 and received after November 3, 2009, but no later than November 13, 2009, and in-country, armed service, or overseas citizens absentee ballots that have not yet been received as of the closing of the polls).

SOS Election Night Reporting Requirements

All boards of elections are required to report results electronically for the three state issues to the Secretary of State's office on election night. Instructions for reporting election results electronically have previously been transmitted to all boards of elections. All boards have received instructions on alternative reporting methods if technical difficulties prevent a board from reporting electronically.

Tabulation Instructions

In accordance with R. C. 3506.14(B), each board of elections shall test automatic tabulating equipment just prior to and just after the tabulation of ballots to ascertain that the central tabulation system will accurately count the votes cast for all offices and on all questions and issues. Please see Directive 2008-90 for detailed instructions for conducting the test prior to commencing the tabulation and after completing the tabulation of ballots on election night.

The board of elections must designate teams having an equal number of individuals from each major political party to inspect and/or tabulate the ballots. Depending on the type of voting system used in the county, the teams either inspect or tabulate the ballots as follows:

- Optical Scan - Precinct Count

Verify that memory cards and a corresponding report of results from each precinct are received.

Tabulate votes cast that are stored on the memory cards.

- Optical Scan - Central Count

Set the tabulator to reject any blank ballot or ballot containing one or more overvotes. Tabulator may also be set to reject undervotes, if desired.

Tabulate optical scan ballots.

Inspect any ballot rejected by the tabulator to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was in whole or in part due to one or more overvotes. R.C. 3506.21 requires the board to attempt to determine voter intent – an activity to be *confirmed* by the board by majority vote in public session. Determining voter intent may include determining whether a voter attempted to remove a mark from the ballot (e.g., erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote.

If it is determined that a voter wrote in the name of a candidate the voter has already voted for (known as a “double bubble” vote), that ballot should be set aside and the instructions in the “Tabulation Instructions for Ballots With Write-In Candidate Votes” section of this directive should be followed.

If, upon examination of the ballot, the board determines that the basis for tabulator rejection is that a voter marked the ballot more than the permissible number of times for a particular race or issue and that there is no indication of intent otherwise, an overvote exists.

When an overvote exists that does not involve a write-in candidate, it is impossible to determine voter intent for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection in order to make effective voter intent in any other contest.

If necessary, ballots may be remade using the guidelines provided in Directive 2008-69 and the guidelines provided in this directive for ballots with write-in candidates (page 3). Contests where overvotes have been determined to exist should be reflected on remade ballots. Remade ballots must be marked with an identifying mark or code to identify the remade ballot with the original ballot as provided in Directive 2008-69. Linking original and remade ballots will allow the ballots to be compared at a later time, to ensure integrity and accuracy.

Ballots for which it is determined that the *sole* reason for tabulator rejection is one or more overvotes shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots. (See tabulation instructions below.)

Remake any ballot where the intent of the voter has been determined so that it may be processed by a tabulator. Please see Directive 2008-69 and the instructions in the previous paragraph for more information on the proper procedures to remake an optical scan ballot.

Set the tabulator to override overvoted races and issues which will allow the tabulator to tabulate votes for races and issues which were otherwise properly marked.

Tabulate all remade optical scan ballots and ballots determined to have been rejected by the tabulator earlier solely due to an overvote.

- Direct Recording Electronic Machines (DRE)

Verify that cartridges, PCMCIA cards or other removable memory devices and a corresponding report is received from each precinct.

Tabulate votes cast that are stored on cartridges, PCMCIA cards or other removable memory devices.

Tabulation Instructions for Ballots with Write-in Candidates

Assuming a candidate has filed a valid declaration of intent to be a write-in candidate, boards of elections are hereby instructed to count a ballot in which a voter has written in only the last name of the candidate, if there is only one candidate with that last name. If there are two or more write-in candidates with the same last name, however, the voter must provide sufficient information for election officials to determine the voter's intent in order for the vote to be counted. For example, a voter who has written on the ballot the write-in candidate's first and last name, or the candidate's last name and the office sought should be considered to be a valid write-in vote.

- Optical Scan Ballots – Precinct Count

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid, unless no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who filed a valid declaration of intent form.

If there is a write-in candidate for a particular office in which the **voter has written in the name of a candidate for whom the voter has already voted (known as a “double bubble” vote)**, such a write-in vote is **NOT** an overvote. In this case, the ballot should be segregated and preserved for remake and separate tabulation at the official canvass, and at any subsequent recount or post-election audit. More detailed instructions will be included in the impending directive on the official canvass.

- Optical Scan Ballots – Central Count (Absentee)

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid, unless no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who filed a valid declaration of intent form.

If there is a write-in candidate for a particular office in which the **voter has written in the name of a candidate for whom the voter has already voted (known as a “double bubble” vote)**, such a write-in vote is **NOT** an overvote. In this case, ballots should be remade when “double bubble” votes are discovered using the guidelines for remaking a ballot outlined in Directive 2008-69. The remade ballots should then be tabulated and the results should be included in the unofficial canvass.

Otherwise, in a race where only one candidate is to be selected, a voter's selection of a candidate whose name is printed on the ballot and the selection of and writing in the name of a write-in candidate (whose name is **not** already printed on the ballot), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

Required Reports for the November 3 General Election

In addition to the electronically reported results on election night and in accordance with R.C. 3505.30, each board of elections shall submit certified unofficial results for the November 3, 2009, general election by using the report forms accompanying this directive. Subtotals for regular and absentee

ballots should be reported, along with a grand total for all ballots cast and tabulated as part of the unofficial canvass. Those forms are:

- Unofficial Vote for State Issues
- Supplemental Report
 1. Number of Regular Ballots Counted
 2. Number of Absentee Ballots Counted
 - In-country (in-country armed services and regular absentee ballots)
 - Armed Services
 - Overseas Civilians
 - Total Number of Absentee Ballots Counted
 3. Grand Total of Regular Ballots and Absentee Ballots Counted
 4. Number of Outstanding Absentee Ballots
 - In-country (regular absentee ballots)
 - Out-of-country Armed Services
 - Overseas Civilians
 - Total Number of Outstanding Absentee Ballots
 5. Number of Provisional Ballots Cast
 6. Number of Remade Ballots
 7. Number of Ballots Containing Overvoted Races or Issues

Please transmit the reports on election night or no later than noon on Wednesday, November 4, 2009. You may transmit your reports to the Elections Division to the attention of Kathy Malott by one of the following methods:

- Fax: 614-752-4360;
- Email: kmalott@sos.state.oh.us; or
- Mail: Secretary of State Jennifer Brunner, Elections Division, P. O. Box 2828, Columbus, OH 43216.

If you are not the most populous county for a district (office or issue), you must report your county results to the most populous county of the overlapping district before your board office closes. The results may be reported by phone, fax or e-mail. It is imperative that you make a final report to the most populous county of a district for which part of the district is in your county, before you close your board office.

If you have any questions regarding this directive, please contact your elections attorney assigned to your county at 614-466-2585.

Sincerely,

Jennifer Brunner