

DIRECTIVE 2010-03

January 27, 2010

To: ALL COUNTY BOARDS OF ELECTIONS MEMBERS, DIRECTORS AND DEPUTY DIRECTORS

Re: **Circulation of petitions by individuals convicted of felony offenses**

On January 15, 2010, Ohio Attorney General Richard Cordray issued formal Advisory Opinion No. 2010-002. The opinion addresses the issue of whether persons who have been convicted of a felony criminal offense may circulate part petitions or serve as a witness for election-related documents. The opinion impacts how boards of elections should review part petitions that the Secretary of State has submitted to the boards for verification under R.C. 3519.06. This Directive provides instructions consistent with the Attorney General's Opinion and directs the boards to complete a form providing additional information regarding the LetOhioVote.org referendum part petitions that were the subject of Directive 2010-001. The part petitions are due to be returned to the Office of the Secretary of State no later than January 28, 2010. The form contained with this Directive must be returned to our office no later than February 5, 2010.

Background

The Secretary of State's office has previously advised Ohio's boards of elections that no individual who has been convicted of a felony criminal offense under the laws of this state, any other state, or the United States may circulate a declaration of candidacy and petition or a nominating, initiative, referendum or recall petition, unless that individual's conviction has been expunged, sealed, or subject to a pardon or unless the individual's right to serve as a circulator has been restored pursuant to Ohio law. Directive 2010-01; Directive 2009-14; Directive 2009-10. This direction was based on R.C. 2961.01(B), enacted by the General Assembly as part of Am. Sub. H.B. 3 in 2006.¹ See Advisory 2006-05. An opinion issued by the Attorney General of Ohio in 2009, however, raised questions regarding the proper application of the law regarding the privilege of circulating or serving as a witness for election-related documents by individuals who have been convicted of felony offenses. See 2009 Op. Att'y Gen. No. 2009-011. On January 7, 2010, my office requested an opinion from the Attorney General seeking clarification regarding the application of state law regarding these situations.

Attorney General Advisory Opinion 2010-002

On January 15, 2010, the Attorney General issued an advisory opinion clarifying the effect of Ohio law on the privilege of circulating or serving as a witness for election-related documents by individuals who have been convicted of a felony criminal offense. In this opinion, Advisory Opinion No. 2010-002, the Attorney General reached four conclusions:

- (1) "R.C. 2961.01(B), as enacted by Am. Sub. H.B. 3, 126th Gen. A. (2006) (eff. May 2, 2006, with certain sections effective on other dates) and amended by Sub. H.B. 195, 127th Gen.

¹ The relevant portion of Am. Sub. H.B. 3, enacting R.C. 2961.01(B), took effect on May 2, 2006.

A. (2008) (eff. Sept. 30, 2008), does not apply to a person who was convicted of a felony under the laws of Ohio prior to May 2, 2006.”

- (2) “R.C. 2967.16(C)(1)(a) restores the privilege of circulating or serving as a witness to the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition, which had been forfeited by operation of R.C. 2961.01(B), to a person who was convicted of a felony under the laws of Ohio on or after May 2, 2006, and who has served his entire prison term and not had any post-release control sanctions imposed upon him.”
- (3) “R.C. 2967.16(C)(1)(b) restores the privilege of circulating or serving as a witness to the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition, which had been forfeited by operation of R.C. 2961.01(B), to a person who was convicted of a felony under the laws of Ohio on or after May 2, 2006, and who has been granted a final release by the Adult Parole Authority pursuant to R.C. 2967.16(A) or R.C. 2967.16(B).”
- (4) “R.C. 2967.16(C)(1)(c) restores the privilege of circulating or serving as a witness to the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition, which had been forfeited by operation of R.C. 2961.01(B), to a person who was convicted of a felony under the laws of Ohio on or after May 2, 2006, and who has completed the period of a community control sanction or combination of community control sanctions imposed by a sentencing court.”

Instructions to Boards in Applying the Law as Interpreted by the Ohio Attorney General

Based on the Attorney General’s opinion, we provide the following clarification to boards of election in relation to our earlier instructions regarding the LetOhioVote.org petitions now under review:

- An individual who was convicted of a felony under the laws of this state, any other state, or the United States **prior to** May 2, 2006, may circulate a declaration of candidacy and petition or a nominating, initiative, referendum or recall petition.
- An individual who has been convicted of a felony under the laws of this state, any other state, or the United States **on or after** May 2, 2006, may circulate a declaration of candidacy and petition or a nominating, initiative, referendum or recall petition, **only if** that individual meets one of the following three qualifications:
 - (1) the individual has served his or her entire prison term and has not been placed under any post-release control sanctions;
 - (2) the individual has been granted a final release by the Adult Parole Authority pursuant to R.C. 2967.16(A) or R.C. 2967.16(B); or
 - (3) the individual has completed the period of a community control sanction or combination of community control sanctions that was imposed by the sentencing court.
- In verifying part petitions, a circulator’s statement may be accepted at face value absent “satisfactory evidence” that the statement is false in any respect. R.C.

3519.06(D). By extension, boards of elections may accept a circulator's eligibility to circulate petitions absent "satisfactory evidence" that the individual is ineligible to serve as a circulator.²

- If a board of elections is presented with satisfactory evidence that a circulator was ineligible, the board may invalidate the part petition. If a board determines that an individual's last felony conviction occurred before May 2, 2006 or if a board determines that an individual's last felony conviction occurred on or after May 2, 2006 but that he or she has been released from incarceration and/or supervision by the Ohio Adult Parole Authority or the probation department imposing the supervision as determined by the sentencing court, the circulator's statement may be accepted to allow for the signatures of the part petition circulated by that individual to be counted as valid. The board may feel free to seek the assistance of the county clerk of courts, the county prosecutor, the Ohio Adult Parole Authority, or any applicable corrections or law enforcement agency to obtain information related to the time frames and existence of convictions and any related incarceration and/or supervision information, including convictions from out-of-state courts for which there may be supervision in Ohio pursuant to an interstate compact.

This Directive supersedes the relevant portions of Directive 2010-01 (paragraph 2 under "Reminders" and the second paragraph under section A of the attachment, "Ohio Secretary of State's Instructions to County Boards of Elections regarding Examination of State Issue Petitions"). This Directive **does not** relate to the voting rights of individuals convicted of felony criminal offenses, which are discussed in Advisory 2008-16.

Form Required to be Completed Concerning LetOhioVote.org Referendum Part Petitions

In early January, the Secretary of State distributed for review part petitions seeking to place on the November 2, 2010 statewide election ballot a referendum of certain sections of Am. Sub. H.B. 1. The Attorney General issued Advisory Opinion 2010-002 after the boards of elections had begun examining those part petitions and signatures. In order to ensure that those part petitions are processed in a manner consistent with the Attorney General's opinion, boards are directed to complete the form that accompanies this Directive and return it to the Office of the Secretary of State by February 5, 2010. You will be notified if the Secretary later determines that additional action by your board is needed.

If you have any questions about this directive or its implementation, please contact the elections attorney in this office assigned to assist your county board of elections.

Sincerely,

Jennifer Brunner

² The Ohio Supreme Court's rules regarding petition challenges require that the challenger must "demonstrat[e] by a preponderance of the evidence that the petition * * * do[es] not comply with applicable law." S.Ct. Prac. R. 13.1(B). Therefore, any challenger claiming that a petition should be invalidated because the circulator was ineligible, due to conviction of a felony criminal offense or otherwise, has the burden of proving by a preponderance of the evidence that a circulator was ineligible.

