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ADVISORY NO. 2006-01

March 13, 2006

To: All County Boards of Elections
Re: Election Law & Procedures Governing the May 2, 2006 Election –
Substitute House Bill No. 234 and Amended Substitute House Bill No. 3

On December 29, 2005, I issued Advisory 2005-07 to alert election officials of changes in election law created by Sub. H.B. 234. Those changes, which became effective on January 27, 2006, affected certain aspects of election administrative, including the use of 17-year olds as pollworkers, the issuance and counting of absentee ballots, absentee voters being allowed to cast provisional ballots, and the decriminalization of some elections-related conduct.

Of significant concern to election officials were the provisions of Sub. H.B. 234 that:

- changed the procedures for issuing and counting absentee ballots (R.C. 3509.09) and
- created new procedures allowing most absentee voters to cast a provisional ballot on election day.

In response to election officials' concerns, the General Assembly amended another piece of legislation then pending, Am. Sub. H.B. 3, to revise some of the changes created by Sub. H.B. 234 and to delay the enactment of other changes until after the May 2, 2006 election. Although some provisions of Am. Sub. H.B. 3 will become effective on May 2, 2006, most of them will not become effective until June 1, 2006. I will be issuing a separate advisory to review the provisions of Am. Sub. H.B. 3.

In the interim, this advisory is intended to acquaint the boards of elections with the statutory changes that will govern absentee and provisional voting at the May 2 election. As this advisory indicates, but for the exceptions discussed below, the boards will conduct the May 2, 2006 election in generally the same way as they conducted the November 2, 2004 election.

Provisions in Effect for the May 2, 2006 Election

I. Absentee Voting

A. Application

The provisions of Sub. H.B. 234 that change the process for requesting an absentee ballot are in effect for the May 2 election. Electors will not have to state a reason to request and vote an absentee ballot. However, every application for an absentee ballot must satisfy all the requirements set forth in

R.C. 3509.03 (the general application process used by most absentee voters), 3509.031 (the process for militia members), 3509.08 (the process for confined voters) or 3511.02 (the process for members of the uniformed services). Please refer back to Advisory 2005-07 for the lists of those requirements.

B. Notice of incomplete application – R.C. 3509.04(A), 3511.04(A)

Each board of elections must comply with the provisions of Sub. H.B. 234 that require a board to notify an applicant for an absentee ballot if the application is missing any of the information mandated by R.C. 3509.04(A) or 3511.04(A). As was noted in Advisory 2005-07, the General Assembly did not dictate how a board must notify an applicant. Therefore, I advised every board to adopt, by majority vote, procedures for giving the required notice to an absentee applicant.

C. Reasons for rejecting absentee ballots

As noted in the Overview section, above, R.C. 3509.07 as amended by Sub. H.B. 234 is not affected by any provision in Am. Sub. H.B. 3. Consequently, a board of elections that is determining whether to count an absentee ballot cast in the May 2 primary must apply the rules set forth in R.C. 3509.07.

Thus, a vote shall not be accepted or counted if election officials find that:

- the statement accompanying an absent voter's ballot is insufficient, or
- the signatures do not correspond with the person's registration signature, or
- the applicant is not a qualified elector in the precinct, or
- the ballot envelope contains more than one ballot of any one kind, or any voted ballot that the elector is not entitled to vote, or
- Stub A is detached from the absent voter's ballot, or
- the elector has not included with the elector's ballot any identification required under section 3509.05 or 3511.09 of the Revised Code of Ohio.

Additionally, the vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the election officials must determine the legality of that ballot. Every ballot not counted must have "Not Counted" endorsed on its back, along with the reasons the ballot was not counted, and must be retained by the board of elections along with the contested ballots.

D. Counting Absentee Ballots

The law as it will be in effect on May 2 will allow the boards of elections to process absentee ballots and to count valid absentee ballots prior to the close of the polls, as they have done in the past.

II. Provisional Voting

The procedures for provisional voting in the May 2, 2006 election are the same procedures that the boards of elections followed in the November 4, 2004 election. Please review Directives 2004-05 and 2004-42, and Memorandum of October 26, 2004, concerning provisional voting.

Am. Sub. H.B. 3, SECTION 9. (A) ***

(B) For the primary election conducted on May 2, 2006, and for any special election conducted on the day of that primary election, provisional ballots that meet the requirements of the *Help America Vote Act of 2002* ... shall be made available to voters for all elections for statewide office, county office, ..., and for all elections on questions and issues, as if the ballots for those offices, questions, or issues were ballots for an election for federal office.

(C) *** for the primary election conducted on May 2, 2006, provisional ballots that meet the requirements of the *Help America Vote Act of 2002* ... shall be made available to all voters for an election for federal office in the manner provided in that act.

Certain Provisions Not Applicable to the May 2 Elections

Many boards of elections have asked whether changes in the following areas will be in effect for May 2; they will not:

- reduced advertising requirements
- changes regarding election day challengers and witnesses
- new identification requirements for all voters

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A board of elections that has any question concerning this advisory should contact my Elections Division at telephone number (614) 466-2585.

Sincerely,



J. Kenneth Blackwell