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Advisory 2006-08
November 1, 2006

To: All County Board of Elections

Re: Appointment of Observer Documents Filed Pursuant to R.C. 3505.21

Several inquiries have been made regarding the proper procedure for the appointment of observers under R.C. 3505.21. This Advisory clarifies the proper procedure for accepting notifications of appointment and amendments under R.C. 3505.21.

I. Acceptance of Filings

No notice of appointment that is filed timely by a proper party on the proper form prescribed by the secretary of state shall be rejected. A notice of appointment is filed timely if it is received by the close of business on October 27, 2006, at the Board of Elections unless otherwise specified herein. Technical defects regarding the specific location of appointment, such as to the Board of Elections, or to any of the county's precincts, shall not render the notice of appointment ineffective. Boards of Elections shall accept notices of appointments and amendments to such notices via facsimile or other electronic transmission. However, no facsimile or other electronic transmission shall be proper if it is not transmitted to the Board of Elections by the board's close of business.

Notice of appointments that name qualified electors shall be considered sufficient as to the identity of the persons to serve as observers in the county where the notice is filed. No other persons than the persons named in notice of appointments as described above shall be observers in the county where the notice has been filed. If a person named in a notice of appointment is found by the Board of Elections to not be a qualified elector as described in R.C. 3503.01, the person may not serve as an observer.

In general, a notice of appointment filed timely before an election need only contain the list of persons to be appointed as observers by the filer. This allows the Board of Elections sufficient time to verify the qualifications of the appointed observer. The filer/appointing party then has until 4:00 PM the day before the election to amend their notice of appointment with the specific designation of which appointee shall be designated for which specific precinct, or which one appointee shall be designated as an observer to the Board of Elections and all precincts in the county.

II. Amendments to Filings

R.C. 3505.21 permits a notice of appointment to be amended by filing an amendment with the Board of Elections where the notice was filed at any time until 4:00 PM of the day before the election. The amendment need not be in any specific format, but should clearly identify the notice of appointment being filed. The amendment may not add to the list of appointees provided in the original notice of appointment and must be signed by the same persons that signed the original notice of appointment. However, the amendment may be used to correct, clarify, or add any information necessary to otherwise make the notice of appointment proper under R.C. 3505.21.

Thus, while no additional person may be added to a notice of appointment through an amendment, an observer may be removed, their address corrected, the precinct to which they are designated changed, or the precinct to which an observer is appointed added for the first time. This permits the maximum opportunity for anyone who made an appointment to correct minor mistakes, while granting the maximum flexibility for their appointment of observers.

III. Certificates of Appointment

Certificates of appointment are issued to observers by their appointing political party, group of candidates, or issue committee. The certificate of appointment must identify the observer, the location for which the observer is designated (such as for the Board of Elections and all precincts, or for the specific precinct the observer is appointed for) and the person, entity, or group of candidates making the appointment. The information on the certificate of appointment must match the information submitted to the Board of Elections on the notice of appointment plus any proper amendments thereto.

- Certificates of appointment to a specific precinct must be presented to and filed with the presiding judge of the precinct to which the observer is appointed on the day of the election, or at a meeting held by the Board the evening prior to the election.
- A certificate of appointment for the one designee to the Board of Elections and all precincts must be filed with the Board of Elections on the day of the election, but the Board must return a date-stamped copy of the certificate to the person appointed. This date-stamped copy shall serve as the appointee's authorization to enter all precinct-polling locations within that county.

No person shall be permitted to serve as an observer that does not provide a valid certificate of appointment. A certificate of appointment is only invalid if it is not provided by the person, group, or committee making the appointment, if it does not bear the name of the observer, if it does not identify the location to which the observer has been designated, or if the information provided on the certificate is found to be different than the information provided in the notice of appointment of that person, as amended. A

certificate of appointment to observe the County Board of Elections is valid as to all precincts in the county, regardless of the presence or absence of additional wording to this regard.

IV. Oath

Upon filing a certificate of appointment with the Board of Elections or the presiding judge, every observer shall take the following oath, to be administered by one of the judges of elections:

“You do solemnly swear that you will faithfully and impartially discharge the duties as an official observer, assigned by law; that you will not cause delay to persons offering to vote; and that you will not disclose or communicate to any person how any elector has voted at such election.”

V. Designation of Locations

Only one person per notice of appointment may be designated to the Board of Elections and all precincts, except that separate observers may be designated to observe the casting and the counting of ballots. Only one observer may be appointed to any single precinct by the same person, group, or committee. The Board of Elections must receive final notice of the designation of location of observers by 4:00 PM the day before the election. In total, the Board of Elections must have the following information for each observer appointed:

- The name and address of the observer.
- The name, address, and precinct at which the observer will serve, unless referring to the appointment of an observer to the Board of Elections.
- If appointing to observe the Board of Elections and all precincts, the name and address of the Board of Elections shall suffice, provided that an appointment of one person to observe casting of votes and one person to observe counting of votes at the Board of Elections requires this further designation to the Board.
- The identity of the political party, group of candidates, or issue committee appointing the observer

VI. Limitations on Appointments by Issue Committees

R.C. 3505.21 provides:

"At any ... election, any political party supporting candidates to be voted upon at such election and any group of five or more candidates may appoint to the Board of Elections or to any of the precincts in the county or city **one person**, a qualified elector, who shall serve as observer for such party or such candidates during the casting and counting of the ballots; provided that separate observers may be appointed to serve during the casting and during the counting of the

ballots. *** Observers appointed to the Board of Elections under this section may observe at the Board of Elections and may observe at any precinct in the county. ***

*** Any such recognized *[ballot issue]* committee may appoint **an** observer to the count in each precinct. *** **In no case shall more than six observers be appointed for any one election in any one precinct.** If more than three questions are to be voted on, the committees which have appointed observers may agree upon not to exceed six observers, and the judges of elections shall appoint such observers. If such committees fail to agree, the judges of elections shall appoint six observers from the appointees so certified, in such manner that each side of the several questions shall be represented."

Emphasis added.

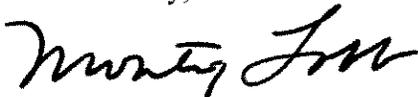
If the total number of observers appointed by issue committees at any one location exceeds six, the Board is directed to use this process to pare the number to no more than six.

VII. Notice to Appointing Parties, Groups of Candidates, or Committees

Each Board of Elections is instructed to promptly provide a copy of this Directive to each party, group of candidates, or issue committee that has filed a notice of appointment under R.C. 3505.21. Every Board that has provided a copy of this Directive as instructed is further directed to obtain confirmation of receipt of this Directive. A registered mail receipt will suffice to meet this requirement if a copy of the Directive is sent through registered mail to the known business address of the party, group of candidates, or issue committee that has filed a notice of appointment.

NOTE: Our office is aware that some boards have been contacted in writing by a group of candidates for statewide office. These candidates are seeking permission from boards of elections to permit observers to "document their observances via written notes, photography, video, or audio recording..." Please consult with your respective prosecutors on this issue.

Sincerely,



Monty Lobb
Assistant Secretary of State