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To: All County Board of Elections

Re: Pollworker Compensation

Our office has received inquiries from boards of elections conducting August elections about how much to pay their pollworkers. Please be advised that, on July 24, 2007, the federal minimum wage increased from \$5.15 per hour to \$5.85 per hour. Consequently, from this point forward, all boards of elections are required to pay a pollworker who works a full election day of 14 hours not less than \$81.90.

Last November, Ohioans voted to amend the Ohio Constitution to increase the *Ohio* minimum wage for 2007 to \$6.85 per hour, which means the state minimum wage is currently \$1 per hour more than the federal minimum wage. This difference has prompted questions as to the correct wages for pollworkers in Ohio.

In mid-June, I requested a formal opinion from Attorney General Marc Dann on several questions concerning the effect of the November 2006 constitutional amendment on pollworker pay. One of the questions I asked the Attorney General was, "What is the current minimum compensation that Ohio board of elections are required to pay pollworkers under Ohio and/or federal law." Another question I posed was, "If Article II, section 34a of the Ohio Constitution applied to pollworkers who worked in February and May 2007 elections, what steps, if any, must board of elections take if those pollworkers were paid less than required by amended Article II, section 34a?"

I have not yet received an opinion from the Attorney General but want to reassure you that I will inform all boards of elections of the Attorney General's opinion as soon as I receive it.

In Ohio, pollworker compensation is governed by statute, and R.C. 3501.28(C) provides that pollworkers shall be paid "not less than the minimum hourly rate established by the [federal] Fair Labor Standards Act." Accordingly, this office previously advised boards that payment of the federal minimum wage constituted the minimum amount that boards must pay pollworkers. However, the Ohio Constitution is the supreme law of state of Ohio, and it is not clear that the Ohio Constitution any longer permits payment of wages to pollworkers at the federal minimum wage rate in periods (like the current time) when the Ohio minimum wage is higher than the federal minimum wage.

A board of elections must pay its pollworkers at least the new federal minimum wage of \$5.85 per hour, consistent with the requirements of R.C. 3501.28(C). The Attorney General may subsequently determine that the Ohio Constitutional amendment will control, requiring boards of elections to pay pollworkers the higher rate of \$6.85 per hour. A board may want to consider this for budgetary purposes.

I leave it to each board of elections to determine whether it will pay its pollworkers based on the current federal minimum wage of \$5.85 per hour, or the current state minimum wage of \$6.85 per hour until the Attorney General releases an opinion on the questions posed. Our office will keep you informed as further developments occur.

Sincerely,



Jennifer Brunner