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**ADVISORY 2007-15**

November 6, 2007

To: All County Board of Elections

Re: Pollworker Compensation

In November 2006, Ohio voters approved a constitutional amendment to increase the *Ohio* minimum wage for 2007 to \$6.85 per hour (\$1 per hour more than the current *federal* minimum wage). In June 2007, I requested a formal opinion from Attorney General Marc Dann on several questions concerning the effect of this change 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?"

In response to my request the Attorney General issued **Opinion No. 2007-033** on October 15, 2007. Later that day David Farrell, Deputy Assistant Secretary of State and Director of Elections, informed all Boards of Elections of the Attorney General's opinion by sending them an email that contained a brief summary and a copy of the opinion. In addition, Opinion No. 2007-033 is currently available on the Attorney General's website at <http://www.ag.state.oh.us/legal/opinions/2007/2007-033.pdf>.

In Opinion No. 2007-033 Attorney General Dann states that pollworkers should be paid in accordance with the provisions of R.C. 3501.28, rather than the new provision of Article II, Section 34a of the Ohio Constitution. Specifically, the Attorney General concluded:

"According to the terms of Ohio Const. art. II, Section 34a, therefore, an election judge is not an 'employee' who is entitled to receive the state minimum wage rate provided therein. Our analysis supports the presumption that the Amendment did not repeal R.C. 3501.28 by implication; thus, boards of elections must continue to pay judges of election in accordance with R.C. 3501.28."

**Minimum Pollworker Pay.** Based on Attorney General Opinion No. 2007-033, each Board of Elections is required to pay pollworkers no less than the current federal minimum wage of \$5.85 per hour. Therefore, all Boards of Elections must pay a pollworker who works a full election day of 14 hours no less than \$81.90. This rate is consistent with SOS Advisory 2007-06, the most recent advisory from my office on this matter.

**Maximum Pollworker Pay.** R.C. 3501.28(C) and (D) govern the maximum amount of per diem compensation that may be paid to pollworkers. Under the prior federal minimum wage, and pursuant to R.C. 3501.28(C), the maximum per diem amount payable to pollworkers was \$95. R.C. 3501.28(D) states:

"The secretary of state shall establish, by rule adopted under 111.15 of the Revised Code, the maximum amount of per diem compensation that may be paid to

judges of an election under this section each time the Fair Labor Standards Act is amended to increase the minimum hourly rate established by the act. Upon learning of such an increase, the secretary of state shall determine by what percentage the minimum hourly rate has been increased under the act and establish a new maximum amount of per diem compensation that judges of an election may be paid under this section that is increased by the same percentage that the minimum hourly rate has been increased under the act.”

In compliance with R.C. 3501.28(D) our office has calculated the allowable maximum per diem amount in light of recent changes to the federal minimum wage. The change in the FLSA increased the federal hourly minimum wage from \$5.15 to \$5.85, an increase of \$0.70. Our office has determined that the percentage by which the federal minimum hourly rate has been increased is 13.59%. Increasing the current allowable maximum per diem by that percentage results in a new allowable maximum per diem in the amount of \$107.91.

It was not until October 15, 2007 that the Attorney General clarified the question whether Ohio or federal minimum wage governed pollworker pay. This left insufficient time before the November 6, 2007 election for this office to adopt a formal administrative rule establishing the maximum per diem rate payable to pollworkers. With the benefit of the Attorney General’s opinion our office is now able to initiate the formal rulemaking process established in the Revised Code.

After the new administrative rule is formally adopted our office will provide a copy of the new administrative rule to all Boards of Elections. In the interim, each board may determine the maximum per diem amount to pay its pollworkers, so long as that amount does not exceed \$107.91.

If you have any questions, or need additional information please contact the Secretary of State election attorney assigned to your county.

Sincerely,



Jennifer Brunner