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ADVISORY NO. 2007-17

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To: All County Boards of Elections
Re: Funding Options and Approaches

It has long been apparent that some Boards of County Commissioners have available to them only limited funds, and thus, have provided, or may in the future provide, correspondingly limited funds to their respective boards of elections for the purposes of conducting elections. While understandable, such limited funding may create difficulties for boards in properly carrying out their statutory duties. This advisory provides guidance to boards of elections on requesting additional funds from their county commissioners under R.C. §3501.17. Please note that boards of elections should also seek guidance from their legal counsel, the county prosecutor, when considering requesting additional funding from their county commissioners.

Please be advised that section 3501.17(A) of the Ohio Revised Code ("R.C.") appears to prohibit a board of elections from incurring any "obligation involving the expenditure of money" for which the county commissioners have not appropriated sufficient funds. However, R.C. 3501.11 requires that all boards "shall" complete the various tasks necessary to conducting all necessary elections. These two provisions, when read together, create a significant hardship for boards of elections in counties where funding is insufficient.

The goal of this advisory is to educate boards of elections on possible solutions to such circumstances and to empower boards to take necessary and appropriate action to resolve such problems. Under current law, and sections of law to take effect later this year, boards of elections do have statutory remedies for obtaining the funds necessary to comply with their statutory duties. However, this process should begin with laying important groundwork in advance of any financial crisis situation.

First, boards should always strive to cultivate and maintain professional, cordial, and collegial relationships with their county commissioners. Boards should also consistently strive to provide their county commissioners with detailed, well-researched, well-planned, and well-documented budget materials to ensure that county commissioners understand exactly what funding is required and how it is proposed to be spent and with specificity.

Boards should, when requesting appropriations from their commissioners, note that the duties imposed on boards of elections are statutorily mandated, and that boards could face legal and administrative repercussions for failure to complete their duties. While commissioners have discretion to limit the actions of other county agencies based on budget constraints, no such discretion is provided with respect to boards of elections; state law mandates a wide array of minimum duties of all boards of elections (R.C.

3501.11). Further, the secretary of state is charged, as the chief elections official for the State of Ohio, both with ensuring that boards complete their duties and with taking appropriate action with respect to boards unable or unwilling to do so.

When a board finds itself short of funding necessary to properly conduct a particular election, it should respectfully communicate that fact, as well as the reasons for the shortfall, to the commissioners as early as possible, along with a request for additional appropriations that will remedy the problem. Such circumstances should also be communicated to the secretary of state through a board's elections attorney or the director of elections or elections administrator in the secretary of state's office.

Second, the General Assembly recently enacted new legislation (Am. Sub. H.B. 199), which, among other things, provides a new method by which boards may obtain additional funding. Newly enacted R.C. 3501.17(I), which took effect on September 29, 2007, provides as follows:

At the request of a majority of the members of the board of elections, the board of county commissioners may, by resolution, establish an elections revenue fund. Except as otherwise provided in this division, the purpose of the fund shall be to accumulate revenue withheld by or paid to the county under this section for the payment of any expense related to the duties of the board of elections specified in section 3501.11 of the Revised Code, upon approval of a majority of the members of the board of elections. The fund shall not accumulate any revenue withheld by or paid to the county under this section for the compensation of the members of the board of elections or of the director, deputy director, or other regular employees in the board's offices, other than compensation for overtime worked.

Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the board of county commissioners may, by resolution, transfer money to the elections revenue fund from any other fund of the political subdivision from which such payments lawfully may be made.

Use of this new statute will allow boards of elections to accumulate funds in a manner previously unavailable to them. Specifically, if the Commissioners in a particular county adopt a resolution as outlined in the statute, the board in that county may receive all or part of charge-backs, which the board may then apply to future elections. If a board is interested in using this new statutory tool, it should address a request for a resolution to its county commissioners.

Finally, if a board does not initially receive sufficient funds from the commissioners, and/or does not receive sufficient additional funds from the commissioners after a request for additional, necessary funds, such that the board is unable properly conduct elections, the board should, in consultation with its legal counsel, the county prosecutor, turn to the remedy provided in R.C. 3501.17(A). That statute provides that if the commissioners fail to appropriate an amount sufficient to provide for the necessary and proper expenses of the board "pertaining to the conduct of elections, the [board] may

apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and the amount shall be appropriated.”¹

All boards should adopt procedures for requesting necessary funds from their county commissioners, using any of the tools or methods discussed above, to ensure that they will successfully meet their statutory duties.

Boards are also encouraged to communicate the needs of their offices, and the actions they intend to take to procure necessary funds, to our office as they may deem necessary, so that we may attempt to be of assistance in any way we can. In particular, boards should always advise our office if they have not received, or have been advised that they will not receive, the funds necessary to complete their statutory duties. Depending on the circumstances, our office may also have information regarding other limited funding sources.

If you have additional questions or concerns please feel free to contact your assigned Elections Counsel at (614) 466-2585 or by e-mail.

Sincerely,



Jennifer Brunner

¹ Please note that the secretary of state's office attempted to achieve amendment to this law to allow the secretary to initiate the action on behalf of a board and at the board's request, but it was ardently opposed by the County Commissioners Association of Ohio. We made this effort to save both boards and the commissioners the expense of outside legal counsel, because of the inherent conflict for county prosecutors in dual representation.