

ADVISORY 2008-02

February 22, 2008

To: All County Boards of Elections

Re: Summary Statements

This office has received inquiries concerning the posting of election results at polling places on election night. We want to inform county Boards of Elections using direct recording electronic ("DRE") voting systems or central count optical scan systems that election judges are not required to post summary statements at the polling place.

On October 4, 2005, the Secretary of State issued a Special Notice to all Boards of Elections that stated:

"Pursuant to R.C. 3505.27, all boards of elections shall accumulate all vote totals at the board of elections' office or its designated tabulation site. Therefore, poll workers will not be required to post summary statements at the polling place."

In November 2006, the advice contained in the Special Notice was challenged in the Supreme Court of Ohio. The plaintiff (Ohio Citizen Action) asked the court to issue an order requiring that boards of elections post a summary of election results at polling places. See, R.C. 3505.30. The Supreme Court, however, refused to issue an order to that effect. Instead, the Court stated, in a 6-0 decision:

"R.C. 3505.30 must be construed in pari materia with R.C. 3505.27 and in light of the implementation of electronic voting technology pursuant to the Help America Vote Act of 2002, Sections 15301 et seq., Title 42, U.S. Code. When so construed, there is no clear legal duty on the part of respondents to perform the requested acts. Therefore, in the absence of any clear legal duty on the part of respondents, the cause is dismissed." *State ex rel. Ohio Citizen Action v. Blackwell* (2006), 111 Ohio St.3d 1476, 856 N.E.2d 271 (Table)

Pursuant to R.C. 3505.27, therefore, each board of elections may accumulate all vote totals at the board of elections' office or its designated tabulation site.

If you have any questions please contact your assigned elections attorney at 614-466-2585.

Sincerely,

Jennifer Brunner