

ADVISORY 2008-07

June 20, 2008

TO: All County Board Of Elections

RE: Chargebacks

On September 29, 2007, provisions of Amended Substitute H.B. 119, related to the apportionment of election expenses and generally known as “chargebacks,” became effective. This new law changed R.C. 3501.17 in the following ways:

- expanded the list of election-related expenses that must be charged back to subdivisions conducting elections;
- defined “subdivisions” for the purpose of specifying what entity may be charged for the expenses of conducting an election; and
- provided for the establishment of an elections revenue fund.

Because the secretary of state’s office has received requests to clarify several items regarding these changes, we are providing this Directive to assist boards of elections in complying with the chargeback process under the new law.

Additional Election Expenses that May be Charged Back to Political Subdivisions

In addition to the previous expenses¹ permitted by law to be charged back to appropriate subdivisions, a list of additional expenses to be included as chargeable to a political subdivision for which an election was held is as follows:

- Compensation of intermittent employees (i.e., seasonal employees hired to perform duties required and associated with the preparation and conduct of the election in question,
- Cost of placing and removing voting machines, marking devices and automatic tabulation equipment,
- Registration lists required by R.C. 3503.23 (list prepared and available at the board office fourteen days before the election and the 6:30 a.m. 11 a.m. and 4 p.m. lists to be posted at the polling place on Election Day),
- Supplies required for the Voter Verified Paper Audit Trail (VVPAT) in accordance with R.C. 3506.01 (H),
- Costs of contractors engaged by the board of elections to prepare, program, test and operate voting machines, marking devices and automatic tabulating equipment,
- Compensation of overtime worked by the director, deputy director and regular employees of the board office. Overtime hours worked must be for duties required for, and associated with, the preparation and conduct of the election in question. However, our office is aware that there are concerns that the new law’s language relating to charging back expenses for overtime compensation may be subject to challenge and, as a result, may not provide sufficient authority for boards to include this particular expense in its chargebacks.

¹ The compensation of judges and clerks of elections; the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof; and the cost of printing and delivering ballots, cards of instructions, and other election supplies.

Subdivisions Subject to Chargebacks for Elections

Previous law did not specify what types of subdivisions may be charged for the costs of conducting elections. R.C. 3501.17(J)(1) now defines “political subdivision” or “subdivision” to mean “any board of county commissioners, board of township trustees, legislative authority of a municipal corporation, board of education, or any other board, commission, district, or authority that is empowered to levy taxes or permitted to receive the proceeds of a tax levy, regardless of whether the entity receives tax settlement moneys as described in [R.C 3501.17(A)].”

This change now permits a chargeback for the cost of conducting elections for the Members of Boards of Educational Service Centers, which was previously prohibited.

In determining the appropriate amount of expenses to chargeback to a subdivision, boards should follow the process provided in R.C. 3501.17 (C), (D), (E) and (F) for prorating expenses for each subdivision for which an election was held.

As a reminder, the expenses for conducting elections in a precinct for local liquor option questions are charged back to the city, village or township in which the precinct is located, in accordance with R.C. 4301.35, .351, .352, .353, .354, and .355.

Creation of an Election Revenue Fund

New subdivision (I) of R.C. 3501.17 provides that county commissioners may establish an election revenue fund at the request of a majority of members of the board of elections. The purpose of the fund is to accumulate revenue withheld by or paid to the county under R.C. 3501.17 for the payment of any election expense related to the board of elections, as specified in R.C. 3501.11. The fund may *not* be used to pay the compensation of board of elections members, director, deputy director, and other regular employees in the board office, other than compensation for overtime worked.

If you desire to establish an Election Revenue Fund in your county to segregate chargeback funds paid by political subdivisions from the county general fund, your board must first adopt by majority vote a resolution requesting that the county commissioners establish this fund. You may want to seek the assistance of your prosecutor in developing this resolution. Once you have adopted this resolution by majority vote, it should be transmitted to your county commissioners for their consideration.

Once established, an election revenue fund can be rescinded. The rescission is accomplished by resolution of the county commissioners after an affirmative vote of the majority of the election board members to eliminate the fund. Any money that has accumulated in the fund at the time the fund is dissolved must be transferred to the county general fund.

Estimate of Cost of Conducting an Election

To provide boards of elections with a tool to estimate the costs of conducting elections, the secretary of state’s office has prescribed Form #76. Boards of elections are not required to use the form; however, it provides boards with a simple format for estimating costs, and when used by the various counties of the state, provides uniformity and predictability for the political subdivisions of the state.

To further assist you, we have included a list of chargeable and non-chargeable expenses for different types of elections. If you have any questions concerning this Directive, please call your assigned Elections Attorney at 614-466-2585.

Sincerely,

Jennifer Brunner