

ADVISORY 2008-20

August 19, 2008

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Election Night Bipartisan Team Transport of Ballots

Effective September 12, 2008, Amended Substitute House Bill No. 350 will amend R.C. 3505.31 to require bipartisan teams of poll workers to transport ballots and other election materials from polling places to the board of elections after the close of the polls on Election Day. As amended, R.C. 3505.31 provides that, once ballots are counted and election materials are sealed at the end of Election Day,

“The presiding judge and an employee or appointee of the board of elections who has taken an oath to uphold the laws and constitution of this state, including an oath that the person will promptly and securely perform the duties required this section and who is a member of a different political party than the presiding judge, shall then deliver to the board the containers of ballots and the sealed pollbook, poll list, and tally sheet, together with all other election reports, materials, and supplies required to be delivered to the board.”
(Emphasis supplied.)

Boards must therefore comply with the bipartisan transport requirement on Election Day, November 4, 2008.

The Secretary of State’s office has received several inquiries concerning this new requirement. The purpose of this advisory is to provide answers to some of these recurring questions. As used in this advisory, the phrase “bipartisan team” means the two individuals identified in the amended statute (i.e., 1) the presiding judge of a precinct and 2) a board employee or appointee who has taken the required oaths and is a member of a different political party than the presiding judge).

Discussion

Under amended R.C. 3505.31, bipartisan control – meaning possession by both a Republican and a Democrat election official – over all election night materials is critical to comply with the new law and to maintain voter confidence in the work of elections officials. The statute specifically focuses on election materials from the time those items leave the polling place to the time they are delivered to the board. Accordingly, the statute contemplates that:

- Members of the bipartisan team must ride together in the same vehicle when transporting ballots.

The risk that a bipartisan team separated between two vehicles might become separated by traffic, traffic signals, or other circumstances precludes the use of two vehicles. Separation of the two members of the bipartisan team, leaving

only one person in physical proximity to the ballots, is inconsistent with the language provided in the Revised Code.

- If authorized and deemed necessary by the board, the bipartisan transport team may be accompanied by one or more other persons, including law enforcement personnel.

However, bipartisan control over election night materials being transported is still of paramount importance. The board should maintain a partisan balance of individuals when an expanded transport team is authorized. That means, for every Republican present in a vehicle, a Democrat should also be present and vice versa.

- One bipartisan team may transport the election materials for an entire polling location where a single polling location hosts multiple precincts.

The language of the statute merely requires the bipartisan team to contain at least one presiding judge and one employee or appointee of the board of elections who is a member of a different political party than the presiding judge.

However, *if a court orders a precinct polling place to remain open past 7:30 p.m. on Election Day, please refer to Directive 2008-60 for supplemental instructions on transport of election night materials.*

- Delivery of election night materials to the board may occur at locations other than the board's primary place of business.

However, *if a board establishes drop-off points in contemplation of further transport to a central location, the board must assure that at least one Democrat and one Republican are present at the location where ballots are delivered and during each period of transport until the election night materials arrive at the final board tabulation destination.*

Am. Sub. H.B. No. 350 provided no changes to the laws governing poll worker compensation. Accordingly, as before under R.C. 3501.36, the owner of the vehicle used to return the election materials may receive a sum not to exceed 5 dollars for each leg of the trip to and from the board, plus mileage for each trip at the rate provided by rules governing travel adopted by the State of Ohio Office of Budget and Management.

Conclusion

Amended R.C. 3505.31 requires bipartisan control over election night materials. Accordingly, boards should consider this to be the guiding principle in determining their ballot transport plans for election night.

If you have any questions about this advisory, please feel free to contact the elections attorney assigned to your board by email or at telephone number (614) 466-2585.

Sincerely,

Jennifer Brunner