

**ADVISORY 2008-28**

October 6, 2008

To: All County Boards of Elections

Re: Absentee Ballot Applications from Voters whose 60-day Notices were Returned

When a voter whose 60-day notice was returned to the board of elections applies for an absentee ballot using the residence address (mailing address may be different from residence address) that appears in the records of the board of elections, the board of elections may send to that voter an absentee ballot, as long as the voter has provided the required information set forth in R.C. 3509.03 for requesting an absentee ballot, including the providing of one form of required proof of identity.

I have previously directed that the return of the 60-day notice is insufficient, by itself, to cancel a voter's registration. (Directive 2008-79). The purpose of this advisory is to inform boards that the return of a voter's 60-day notice as "undeliverable" by the post office is also, by itself, insufficient to reject a voter's application for an absentee ballot.

R.C.3501.19(C) provides that, if a 60-day notice is returned as "undeliverable,"

\* \* \* the board shall cause the elector's name in the official registration list and in the poll list or signature poll book for that elector's precinct to be marked to indicate that the notice was returned to the board.

At the first election at which an elector whose name has been so marked appears to vote, the elector shall be required to provide identification to the election officials.

If the elector provides to the election officials a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of an election mailed by a board of elections under division (A) of this section or a notice of voter registration notification mailed by a board of elections under section 3503.19 of the Revised Code, the voter shall be permitted to cast a ballot in accordance with division (B) of section 3505.18 of the Revised Code. The board shall correct that elector's registration, if needed, and shall remove the indication that the elector's notice was returned from that

elector's name on the official registration list and on the poll list or signature pollbook.

If the elector provides to the election officials a photo identification that does not contain the elector's current address, if the elector provides the last four digits of the elector's social security number, if the elector is unable to provide any of the required forms of identification, if the elector refuses to provide any of the required forms of identification, or if the elector executes an affirmation under division (A)(4) of section 3505.18 of the Revised Code, the elector shall be permitted to vote by provisional ballot under section 3505.181 of the Revised Code. If the provisional ballot is counted pursuant to division (B)(3) of section 3505.183 of the Revised Code, the board shall correct that elector's registration, if needed, and shall remove the indication that the elector's notice was returned from that elector's name on the official registration list and on the poll list or signature pollbook.

Under this provision, a board must mark in the poll list or signature poll book the name of any voter whose 60-day notice was returned. As with any application for an absentee ballot, upon receiving an application from a voter whose name has been marked, the law requires that the board confirm that the application meets all of the legal requirements and that the person submitting the application is an eligible elector. If any required information is missing from the application, the board is required to reject it and notify the voter within 48 hours that it has been rejected. Any such notice should be sent to the voter to the address to which he or she has applied for his or her ballot to be sent and not to the address listed in the board's records. This is because the voter may be temporarily away at the address to which he or she wants the ballot sent, and notice of the application's deficiency will actually reach the voter in time to correct it. The board should provide a new absentee ballot application with the rejection notice. (R.C.3509.04(A) and Directive 2008-82).

When a voter whose 60-day notice has been returned applies for an absentee ballot, if the voter's name and voting residence conform to the records of the board of elections and the required statement of R.C. 3509.03(G) that he or she is an eligible elector is supplied, the application is sufficient to overcome issues presented with regard to the returned notice, as long as one form of required identification has been supplied with the application. When the voter receives and returns his or her absentee ballot, and the board verifies that the statement accompanying the ballot has been completed properly, including that the voter has provided one of the following forms of required identification, the ballot should be counted. For ease of reference, the following forms of identification may be accepted:

1. His or her current and valid Ohio driver's license number or a photocopy of the license;
2. His or her current and valid photo identification card number issued by the State of Ohio or the United States government or a photocopy of the card;
3. His or her military identification card photocopy (Please note that a military identification does not need to contain the name or address of the voter offering the military identification. However, the board must be able to ascertain that the person offering the identification is the person that he or she purports to be and has the qualifications to vote in the election in question. (Directive 2008-80).);

4. An original or copy of a current (within 12 months of the election) utility bill;
5. An original or copy of a current (within 12 months of the election) bank statement;
6. An original or copy of a current (within 12 months of the election) paycheck;
7. An original or copy of a government check (issued within 12 months of the election);
8. An original or copy of current other government document (issued within 12 months of the election). (See Directives 2008-80 and 2008-82).

Please note that the recent Ohio Supreme Court decision of *State ex rel. Myles v. Brunner*, Slip Opinion No. 2008-Ohio-5097, at ¶22, cites the proposition in that, “we must avoid unduly technical interpretations that impede the public policy favoring free, competitive elections.” Therefore, a returned 60-day notice sent under the provisions of R.C. 3501.19, does not preclude the mailing of an absentee ballot to a voter, so long as the voter has otherwise complied with the requirements of R.C. 3509.03, regarding the requirements for absentee ballot requests.

Please note that any mark that would otherwise be placed in the poll list or signature poll book because of the returned 60-day notice should be replaced with a notation that the voter has been sent an absentee ballot. If the voter who has been mailed an absentee ballot appears at the polling place on Election Day to vote, he or she may vote only a provisional ballot.

If you have any questions about this advisory, you may contact the elections attorney assigned to your board.

Sincerely,

Jennifer Brunner

## Directive/Advisory Acknowledgment

(Please

initial

and

date)

## Routing/Review Form

<i>Draft</i>	<b>Routing</b>	<b>Initials</b>	<b>Date</b>	<b>Comments</b>
<i>Initial Draft</i>	Primary Attorney	BLS	9/22/08	w/ approval from BG and BS
<b>Primary Attorney Sends to Director of Elections</b>				
<i>Initial Draft</i>	Director of Elections Reviews/Makes Comment	DMF	9/22/08	
<b>Director of Elections Sends Back To Primary Attorney</b>				
<i>Initial Draft</i>	Primary Attorney Incorporates/Rejects Changes	BLS	9/22/08	
<b>Primary Attorney Sends To Copy Editor</b>				
<i>Interim Draft</i>	Copy Editor Reviews/Makes Comments	BMC	09/22/08	
<b>Copy Editor Returns To Primary Attorney</b>				
<i>Interim Draft</i>	Primary Attorney Incorporates/Rejects Changes	BLS	9/22/08	
<b>Primary Attorney Sends Copy-edited draft to Taylor (copies Dir of Elections)</b>				
<i>Formatted Draft</i>	Taylor Jacklin Formats Document			
<b>Taylor Sends Chandra Formatted Draft/Chandra Forwards to Secretary</b>				
<i>Formatted Draft</i>	Secretary Reviews/Makes Comments			
<b>Secretary Sends Her Draft Back To Primary Attorney (copies Dir of Elections and Copy Editor)</b>				
<i>Secretary's Draft</i>	Final Review made by Primary Attorney	BLS	10/6/08	
- If no legal concerns, Primary Attorney sends to Taylor (copies Dir of Elections) for publishing - If there are legal concerns, Primary Attorney sends back to Secretary or discusses at L&L, then sends to Taylor (copies Dir of Elections) for publishing				
<i>Final Draft</i>	Taylor obtains Secretary's signature or confirms permission to autopen			
<b>Once document has the Secretary's signature, Taylor issues document</b>				