

ADVISORY 2009-07

July 9, 2009

TO: All County Boards of Elections

RE: Clarification of Instructions in Directive 2009-10 re: Verification of a State Issue Petition; Invalidation of Entire Part-petitions versus Invalidation of Particular Signatures on Part-petitions

The purpose of this Advisory is to clarify the instructions contained in Directive 2009-10 for verifying the parts of a state issue petition and the individual signatures contained thereon. In determining the validity and sufficiency of these signatures and part-petitions, a board of elections applies the general provisions of R.C. 3501.38, in addition to the specific provisions for state issue petitions forth in Revised Code Chapter 3519.

R.C. 3501.38(D) provides in pertinent part that, except as authorized by R.C. 3501.382 (the attorney in fact statute), no person shall write any name other than the person's own on any petition, nor authorize another to sign for the person.

RC 3501.38(F) provides that, except as authorized by R.C. 3501.382, "*if a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures on the paper.*"

Thus, a board of elections will reject an *entire* part-petition if the circulator either *knowingly* permitted an unqualified person to sign or *knowingly* permitted a person to sign a name other than the person's own, except as permitted by law.

Examples:

- A circulator allows a woman to sign both the woman's own name and her husband's name to the petition paper. The woman does not have attorney in fact authority to sign for her husband. Because the circulator knowingly allowed one person to sign the names of two people to the part-petition, the board must invalidate the *entire* part-petition.
- A circulator allows a woman to sign the woman's own name to one petition paper and then to sign her husband's name to a different petition paper. The woman does not have attorney in fact authority to sign for her husband. Because the circulator knowingly allowed the woman to sign a name not her own to the second part-petition, the board must invalidate the *entire* second part-petition.

- A circulator is witnessing a man sign the petition paper. A friend of the man signing the petition tells the man to sign the friend's name to the petition, too, and the man does so. The man does not have attorney in fact authority to sign for his friend. Again, the board must invalidate the entire part-petition because the circulator knowingly allowed one person to sign the names of two people to the petition paper.

It is possible, however, that a person may improperly sign only one name – another person's name – in violation of R.C. 3501.38(D), without the circulator knowing that the name signed to the petition was not the name of the person who signed it. A violation of this nature may not be discovered until a board of elections determines that the signature on the petition paper does not comport with the signature the board has on file for the elector. The circulator may therefore have signed in good faith the circulator statement declaring that the signatures on the part-petition "are the signatures of the persons whose names they purport to be." In the situation where a circulator did not have knowledge of the improper signing by another, R.C. 35081.38(F) instructs the board of elections to reject the non-genuine signature, *but not to reject the entire part-petition.*

Example:

- A circulator witnesses a man signing one name to the petition paper. Unknown to the circulator, the man is signing the name of a friend, instead of his own name, to the petition paper. The man does not have attorney in fact authority to sign for his friend. The circulator does not know either the man who signed the petition paper or the man's friend. If a board of elections examining that petition paper determines that the signature is not genuine, the board rejects only the invalid signature in the absence of additional evidence that the circulator *knowingly* allowed the man to sign someone else's name to the petition paper.

Further, the fact that there is some difference in handwriting between an elector's signature on the petition and the signature on file with the board does not necessarily prove that someone other than the elector signed the elector's name, let alone that the circulator knew it. **A board must have evidence that indicates the circulator *knowingly* permitted a person to sign the name of another person in violation of R.C. 3501.38(F) before it invalidates the entire part-petition under that section of law.**

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

Sincerely,

Jennifer Brunner