

ADVISORY 2009-10

July 31, 2009

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Supreme Court of Ohio Decision in *State ex rel. Scioto Downs, Inc. v. Brunner*

On July 31, 2009, the Supreme Court of Ohio issued its decision in *State ex rel. Scioto Downs, Inc. v. Brunner*. This lawsuit was filed in connection with a statewide initiative petition to amend the Ohio Constitution to allow casino gambling at four Ohio locations. A copy of the court's opinion is attached to this advisory.

As a result of the court's decision, and in the absence of any unforeseen and unanticipated events, the Secretary of State's certification of the casino issue to the November ballot stands. The casino initiative committee has no reason to file supplemental part-petitions and county boards will therefore not be required to verify any additional part-petitions or signatures.

I commend the boards for their admirable and timely performance in verifying the casino issue part-petitions and signatures using the instructions and advice provided by this office in Directive 2009-10, Advisory 2009-06, and Advisory 2009-07. I am pleased to advise you that the Supreme Court concluded in its unanimous decision that "The secretary of state and the boards have now completed their review of the sufficiency of the petitions and have timely certified their results in accordance with their constitutional and statutory duties. They have no additional duty or authority to further investigate and invalidate additional part-petitions and signatures following the expiration of the constitutional deadline."

As you were advised in Advisory 2009-08, the Secretary of State has directed an investigation into alleged election law violations in the circulation of the casino-initiative petition. The purpose of that investigation is to determine whether possible election law violations exist and, if so, to refer those possible violations to the Ohio Attorney General or county prosecutors. That investigation by this office is ongoing.

The court acknowledged, however, that an investigation of this nature, initiated pursuant to R.C. 3501.05(N)(1), does not authorize the Secretary of State to use the investigation results to invalidate part-petitions after the constitutional deadline for the sufficiency determination has passed. Therefore, if fraud or other election law violations are discovered as the result of further investigation, those violations may be criminally prosecuted, but will not cause the casino issue to be removed from the November ballot.

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

Sincerely,

Jennifer Brunner