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Advisory 2011- 08

November 3, 2011

To: All County Boards of Elections, Directors, and Deputy Directors

Re: **Problems on Election Day, Petitioners at the Polls, and Provisional Ballot Processing Policy**

Summary

The purpose of this Advisory is to:

1. Remind county boards of elections to contact the Secretary of State's office immediately to report any serious issues that arise on Election Day;
2. Advise county boards of elections that persons may be collecting signatures at polling locations on Election Day and to remind boards of the laws governing conduct at the polls; and
3. Remind each board of elections that it must adopt a policy in order to delegate the processing of provisional ballots to its staff.

Election Day Issues

Please remember to contact your county's Regional Liaison or the Secretary of State's Elections Division immediately if any of the following problems occur on Election Day:

- A delay that results in a polling location opening after 6:30 a.m.;
- Voting machine failure that interferes with the conduct of the election in one or more polling locations;
- Weather problems or any other issue that prevents electors from reaching their assigned polling location;
- Complications in obtaining, uploading, or reporting results on Election Night; or
- Injury, illness, emergency, or any other issue that leaves a board of elections with less than 3 board members.

Collecting Signatures at the Polls

Currently, there are several groups that are circulating petitions for statewide issues. One or more of these groups may station petitioners outside of polling locations in your county on Election Day. Please be advised that petitioners may collect signatures outside of a polling location as long as their conduct does not violate Ohio law.

Petitioners may not enter a polling location for the purpose of soliciting signatures.

R.C.3501.35(B) provides that "no person who is not an election official, employee, observer, or police officer shall be allowed to enter the polling place during the election, except for the purpose of voting or assisting another person to vote * * *."

Secondly, petitioners may not collect signatures within the "neutral zone" outside of a polling location. The "neutral zone" is that area between the polling location and the two small United States flags (placed 100 feet from the polling location on the thoroughfares or walkways leading to the polling location) or between the polling location and within 10 feet of any elector waiting in line to vote if the line of electors extends beyond the flags. No one, other than an election official, observer, police officer, or an elector waiting to mark, marking, or casting his/her ballot, may "loiter, congregate, or engage in any kind of election campaigning" within the area marked off by the U.S. flags or within 10 feet of any elector waiting in line to vote if the line extends beyond the flags. R.C. 3501.30(A)(4); R.C.3501.35(A).

Finally, petitioners may not hinder an elector from entering or leaving a polling location or interfere with the conduct of the election. R.C.3501.35(A)(2); R.C.3599.24; R.C.3599.26.

Boards should advise poll workers to contact the board of elections office or the appropriate law enforcement official immediately if they experience a problem with the conduct of any person at a polling location.

Provisional Ballot Policy

Members of a county board of elections are responsible for determining the eligibility of all provisional ballots cast in the county. R.C.3505.183(D). A board is permitted to delegate the processing (and some aspects of the counting) of provisional ballots to its staff as long as it has adopted a policy allowing for such delegation. Secretary of State Directive 2010-96 defines the terms "processing" and "counting" as they relate to provisional ballots.

The policy must set forth the procedures for processing provisional ballots and for making recommendations to the board as to the eligibility of ballots to be counted. Recommendations to the board on the eligibility of ballots to be counted may be made either on an individual basis or

as to groups/categories of similarly situated provisional ballots. Please remember that any processing of provisional ballots by staff must be done in bipartisan teams.

If your board intends to delegate the processing (and some aspects of the counting) of provisional ballots to its staff, your board should make sure that it has voted on a policy allowing for such delegation. If your board does not have a policy in place, the board must vote to adopt one before allowing staff to process provisional ballots. See Secretary of State Directive 2010-96, p. 2.

If you have any questions regarding this Advisory, please contact the elections attorney assigned to your county.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted