



ADVISORY 2022-01

January 7, 2022

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

Re: Ohio Attorney General Opinion No. 2022-001

BACKGROUND

This Advisory informs county boards of elections that Attorney General Yost issued a formal opinion that attempts to address ambiguity in a statute enacted last year.¹ [R.C. 3501.054](#) generally prohibits a public official responsible for administering or conducting an election from collaborating with, or accepting or expending any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose.

As this Office noted in [Advisory 2021-03](#), the law did not define several key terms—for example, “collaborating,” “nongovernmental person or entity,” or “election-related purpose.” This ambiguity led to several county prosecutors requesting the formal Attorney General’s Opinion issued on January 4, 2022.

OVERVIEW

The Opinion, among other things: (1) clarifies the meaning of “nongovernmental entity;” (2) distinguishes what a public official subject to the prohibitions may do in their official capacity versus their private capacity; (3) determines that other statutory duties and responsibilities for election officials are not repealed by the new law; and (4) sets forth the relevant penalty for violations.²

A. R.C. 3501.054

On June 30, 2021, Governor Mike DeWine signed [House Bill \(“H.B.”\) 110](#), the State Operating Budget for fiscal years 2022-2023. Our Office issued [Advisory 2021-03](#) regarding this law. The enacted law, R.C. 3501.054, prohibits a “public official responsible for administering or conducting an election from collaborating with, or accepting or expending any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the vote, absent voting, election official recruitment or training, or any other election-related purpose, other than the following:

- (1) The collection of any fee that is authorized by law;
- (2) The use of any building to conduct an election, including as a polling place; or

¹ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#).

² [R.C. 3599.32](#) and [3599.39](#). The penalty for violating R.C. 3599.32 the first time is a misdemeanor of the first degree; if the person has previously been convicted of a violation of Title 35, it is a felony of the fourth degree.

(3) The donation of food for precinct election officials at a polling place on Election Day.”³

B. Nongovernmental Entity Defined

The Opinion states that “a ‘nongovernmental’ person or entity is one who is neither a government official (in the case of a person) or a governing entity.”⁴ The Opinion further explains that a ‘nongovernmental person’ is a person who is not (or is not acting in the capacity of) a public official” and “is not a public body established by law.” Notably, the Opinion specifically determines that a political party is a nongovernmental entity.⁵

C. Clarification Regarding Prohibitions

The Opinion explains that the law’s prohibition against a public official collaborating with nongovernmental persons or entities only applies while the public official is acting in their official capacity. Moreover, “nothing in R.C. 3501.054 explicitly limits a public official’s ability to collaborate with nongovernmental persons or entities when acting in his or her private capacity.” (Emphasis in original).⁶ The Opinion states explicitly that the law does not prohibit a board of elections member from serving on a political party central or executive committee.⁷

D. Meaning of “Collaborate”

The Opinion notes that neither the law nor any other part of the Ohio Revised Code defines the term “collaborate.” However, the Opinion states that “two or more parties ‘collaborate’ when they combine their efforts to work toward a common goal” or rather, “collaboration entails ‘jointly administering a project.’”⁸

1. What is prohibited “collaboration”

The Opinion unfortunately does not explicitly provide examples of prohibited collaboration with nongovernmental persons or entities, except to state that “R.C. 3501.054 prohibits public officials from collaborating with nongovernmental persons or entities only when the public official is acting in his or her official capacity.”⁹

2. What is not prohibited “collaboration”

The Opinion notes that the following are examples of permissible activities:

- Answering a non-profit organization’s questions about registration requirements
- Setting up a booth to register voters or recruit poll workers at an event hosted by another entity
- Publicizing information relative to registration or elections
- Conducting voter education outlining voter identification, absent voters ballots, provisional ballots, and other voting requirements
- Youth mock voting programs run by volunteers
- Advertising voter registration information in newspapers

³ [R.C. 3501.054](#).

⁴ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at page 5.

⁵ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at pages 3 to 4.

⁶ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at page 4.

⁷ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at page 7.

⁸ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at page 7.

⁹ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at page 1.

- Recruiting high school poll workers at non-public schools
- Purchasing elections supplies
- Providing election information to a nongovernmental person or entity, whether orally or in writing
- Speaking at, providing election information at, or conducting election activities (such as registering voters or recruiting poll-workers) at an event hosted by a governmental person or entity
- Publishing election information on a medium owned or hosted by a nongovernmental person or entity (such as a newspaper, radio or television broadcast, website or bulletin board), whether for free or as paid advertising
- ***Any other actions that election officials are authorized to perform by a section of Ohio law other than R.C. 3501.054.***

E. Penalties

The Opinion notes that criminal statutes and penalties apply to violations of R.C. 3501.054, such as illegally collaborating with a nongovernmental entity for an election-related purpose. [R.C. 3599.32](#) states, “No official upon whom a duty is imposed by an election law for the violation of which no penalty is otherwise provided shall knowingly disobey such election law.” The penalty is a first degree misdemeanor (the most severe misdemeanor). If the person has previously been convicted of a violation of election law, the violation is a fourth degree felony under [R.C. 3599.39](#).¹⁰

Every election official is potentially liable if they violate R.C. 3501.054’s prohibition in their official capacity. Every board member, director, and deputy director therefore must review the attached Opinion. Additionally, each board of elections director must share this Advisory and the Opinion with its legal counsel, the county prosecuting attorney. If you have any questions regarding this Advisory, please contact the Secretary of State’s elections counsel at (614) 728-8789.

Sincerely,



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Director of Elections and Deputy Assistant Secretary of State

¹⁰ [2022 Ohio Atty.Gen.Ops. No. 2022-001](#) at page 1; [R.C. 3599.32](#) and [R.C. 3599.39](#).