



Via Electronic Mail

September 8, 2020

Kim Fusco, Director
Bryce Minor, Deputy Director
Columbiana County Board of Elections
7989 Dickey Drive, Suite 3
Lisbon, Ohio 44432

Re: Tie Vote Regarding Protest Against Referendum

Dear Director Fusco and Deputy Director Minor:

At a hearing held on August 7, 2020, the Columbiana County Board of Elections considered a protest against placing a referendum on the ballot for the November 3, 2020 General Election. The referendum petition concerns an ordinance that Salem City Council passed on January 7, 2020 — Salem City Ordinance #191015-49. The ordinance authorizes the Mayor to enter an agreement for a Regional Council of Governments (“RITA”) to administer and collect the municipal income tax. At the end of the protest hearing, the board voted on a motion to affirm the protest and deny certifying the referendum to the ballot. The board tied on the motion and submitted it to my Office for a decision.

Article II, Section 1f of the Ohio Constitution reserves to the electors of each municipality the initiative and referendum powers on all questions that municipalities may control by legislative action. Of course, not all actions of a municipal authority are legislative and subject to initiative or referendum proceedings. Actions that merely execute or administer existing laws, ordinances, or regulations are administrative in nature. Administrative actions are not subject to referendum.¹

The petitioners argued that the Treasurer had statutory authority over the administration of Salem’s municipal income tax and not the Mayor, and therefore the collection of the city’s tax ought to be under the Treasurer’s control. They cited Division (f) of Section 181.08 of Salem’s Codified Ordinances, which granted the Treasurer the authority to oversee the administration and collection of taxes. In addition, Section 181.08 created the position of the Tax Administrator, who works under the direction of the Treasurer. However, Chapter 181 of the Code only applies to tax year 2015 and prior years.

The Salem City Council enacted a new municipal income tax code in 2016, which amended the definition of “tax administrator” in Division (44) of Section 182.03.² The ordinance enacted in 2016 specifically permits the City of Salem to designate the Regional Income Tax Agency

¹ *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437, 2007-Ohio-5379.

² Available at <https://cityofsalemohio.org/departments/income-tax/>.

(“RITA”) as the city’s tax administrator. This supersedes the definition of “tax administrator” in Section 181.01 and the duties prescribed in Section 181.08(f). Salem City Ordinance #191015-49 simply enables the mayor to enter an agreement with RITA to administer and collect the municipal income tax.

Ohio has long held that the test for determining whether the action of a legislative body is legislative or administrative is “whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence.”³ Stated otherwise, “[a]n act or resolution which merely carries out the policy or purpose already declared by the legislative body is an administrative action that is not subject to initiative.”⁴

Salem City Ordinance #191015-49 did not enact or amend the existing law or ordinance. Rather, it addressed the means of carrying out the policy or purpose of the already existing income tax. It is administrative in nature, not legislative. In passing the Ordinance, the Salem City Council and Salem City Mayor simply exercised an option already in law since 2016. Accordingly, I break the tie in favor of the protest and against placing the referendum on the ballot.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: David W. Johnson, Chair of Columbiana County Board of Elections
Patricia Colian, Member of Columbiana County Board of Elections
Larry Bowersock, Member of Columbiana County Board of Elections
Victor Maroscher, Member of Columbiana County Board of Elections

³ *Donnelly v. Fairview Park*, 13 Ohio St.2d 1, 233 N.E.2d 500 (1968).

⁴ *State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 895 N.E.2d 177, 2008-Ohio-5093, ¶ 24.