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DIRECTIVE 2011-18

May 10, 2011

TO: COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, DEPUTY DIRECTORS

RE: Petition Pre-check Practices

SUMMARY

This Directive prohibits boards of elections from pre-checking petitions for prospective candidates or petitioners who seek review of their petitions' validity and sufficiency before the candidates or petitioners file their original petitions.

DISCUSSION

I recently broke a tie vote concerning a board of elections' practice of pre-checking petitions for prospective candidates. I concluded that the practice of pre-checking candidate petitions was inadvisable, and I broke the tie in favor of the motion to cease the practice of having board employees' pre-check candidate petitions.

While pre-checks may appear to be a public service that potential candidates could rely on to improve their chances of being certified to the ballot, in reality, pre-checks provide a false sense of security for candidates. It is a well-established principle of Ohio election law that the candidate is solely responsible for ensuring that his or her own petition satisfies the requirements of law.¹ The candidate is obligated to investigate, learn, and know the law governing the election process.²

To assist candidates, the Secretary of State's office provides uniform guidance to prospective candidates and issue petitioners through several free publications, including the *Ohio Candidate*

¹ *State ex rel. McMillan v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 186, 1992 -Ohio- 85 (candidate's reliance on the misinformation of the board employee does not estop the board from removing a candidate's name from the ballot); *State ex rel. Shaw v. Lynch* (1991), 62 Ohio St.3d 174, 176-177 (estoppel does not apply against election officials in the exercise of governmental functions); *State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections* (1977), 51 Ohio St.2d 173 (candidate could not file necessary part petition after having filed other petition papers); *State ex rel. Svete v. Bd. of Elections* (1965) 4 Ohio St.2d 16 (advice by board of elections deputy clerk that nominating petition appeared to be in order does not estop the board of elections from declaring such petitions to be invalid).

² *State ex rel. Chevalier v. Brown* (1985), 17 Ohio St.3d 61, 63; *State ex rel. Sturgill v. Lorain Cty. Bd. of Elections* (Ohio App. 9 Dist., 2005), 164 Ohio App.3d 272, 2005 -Ohio- 5660; *State ex rel. Donegan v. Cuyahoga Cty. Bd. of Elections* (2000), 136 Ohio App.3d 589, 595.

Requirement Guide, the Guide to Local Liquor Option Elections, the Ohio Presidential Guide, the Constitution of Ohio, and the Campaign Finance Handbook. This office also prescribes many of the forms used by candidate and issue petitioners. Boards can, and should, be helpful to potential candidates and issue petitioners by providing them with copies of these guides as well as information about the process of filing and the process elections officials will follow once the filing deadline has expired. With this information, and the public access terminals provided by many boards of elections, candidates have the tools to check their own petitions.

However, it is imprudent for a board of elections to engage in a practice that allows any candidate or petitioner to believe that his or her petition is valid and sufficient before the petition is filed, because, if the board subsequently determines that the petition is invalid, then the board must reject it regardless of whether the board staff previously pre-checked the identical petition. The practice of pre-checking petitions has resulted in some boards of elections being accused of incompetence, political favoritism, and misconduct.

Consequently, I direct that no board of elections shall pre-check any petition to determine the petition's validity and sufficiency before such time as the original petition has been filed, along with the appropriate filing fee, with a board of elections, the secretary of state's office, or other public office as provided by law.

If you have any questions concerning the examination of the part-petitions, please contact the Elections Attorney assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted