



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 EAST BROAD STREET, 16TH FLOOR
COLUMBUS, OHIO 43215 USA
TEL: 1-877-767-6446 FAX: 1-614-644-0649
WWW.SOS.STATE.OH.US

MEMORANDUM

To: All Counties; BOE Contacts
CC: Field Staff; Elections Attorneys; Elections
From: Jennifer Brunner, Secretary of State *JB*
Date: September 5, 2008
Re: Deficient Absentee Ballot Applications

Many of Ohio's boards of elections have posed questions to this office regarding the sufficiency of various absentee ballot applications they have received. This memorandum is intended to provide some clarification on this issue.

While applications for absentee ballots "need not be in any particular form" they are required to contain all requirements or statements set forth in R.C. 3509.03. That section specifically requires in division (G) that every absentee ballot application contain a statement made by the person submitting it ("the applicant") that the person is in fact a qualified elector. An "elector" or "qualified elector" is a person having the qualifications provided by law to be entitled to vote. R.C. 3501.01(N) A "voter" is an "elector." R.C. 3501.01(O) The term "voter" may be substituted for "elector" or "qualified elector" to simplify technical election terms for the public.

When an application has on it a check box, signature line, or some other requirement for the voter to affirmatively indicate or make the statement required by R.C. 3509.03(G), such affirmative indication must be made. For example, on the Secretary of State prescribed Application for Absent Voter's Ballot (Form 11-A), the statement required by R.C. 3509.03(G) is made under penalty of election falsification and appears immediately above the signature and date lines. By signing the form, the voter applying for an absentee ballot affirms that he or she is, in fact, a qualified voter or elector seeking to vote an absentee ballot at the election in indicated on the form. If the applicant does not sign the form, he or she has not made the statement required by R.C. 3509.03(G) that he or she is a qualified elector or voter.

Likewise, if an application has on it a check box related directly to the statement that the applicant is a qualified elector or voter, the applicant must take the affirmative action of checking the box to incorporate the statement into the form that the applicant signs. This is especially important if the statement and check box are not located on the form near the signature of the applicant.

By way of example, the Secretary of State prescribed voter registration form has check boxes related to questions on whether the applicant is a U.S. citizen and whether the applicant will be 18 on or before the next election. However, those questions have also been incorporated into the statement related directly to the signature of the applicant. As a result, if an applicant does not check the boxes at the top of the form, he or she still affirms the statements simply by signing the form.

In the case of an absentee ballot application that contains only a check box to affirm the statement required under R.C. 3509.03(G), this box must be checked. Many boards have received such forms where some voters check the box and other voters do not. Because it is possible for a voter to have moved from his or her residence address appearing in the board of elections' records but still request an absentee ballot, the failure to check the box could indicate that the voter is no longer a "qualified elector." As that is defined in R.C. 3503.01, a qualified elector is a resident of the county and precinct in which the citizen offers to vote. Ballots are prepared according to election precincts, and electors are entitled to vote at all elections "in the precinct in which the citizen resides." R.C. 3503.01 Failure to check the box, leaves both the applicant and the board of elections without verification that the applicant is a "qualified elector."

If your board of election receives an absentee ballot application with a check box related directly to a required statement, and the statement is not directly related to a signature line such as appears on the Secretary of State prescribed voter registration Form 11-A, the check box must be marked in some manner by the applicant in order to affirm the required statement. If the box is not checked, the applicant has not affirmatively made the statement required under R.C. 3509.03, and the application must be rejected unless the applicant has affirmed the statement in some other way.

As noted in Directive 2008-82 (Guidelines for Absentee Voting), R.C. 3509.04(A) requires the following when a board of elections receives a deficient absentee ballot application: the board **must** promptly contact the applicant and **must** notify him or her of the additional information that must be provided to complete the application. Boards must contact such applicants pursuant to an established board policy. Boards may contact such applicants in any manner provided for in board policy (*e.g.*, by telephone, email or letter).

As instructed in Directive 2008-82, **boards cannot, under any circumstances, complete a deficient application for an applicant.** For this reason, the Secretary of State's office strongly recommends that boards of elections send such applicants a letter describing the deficiency, along with a new Secretary of State prescribed Application for Absent Voter's Ballot (Form 11-A) for the applicant to complete if he or she still wishes to vote by absentee ballot. You may also wish to inform the applicant that he or she may vote by absentee ballot in person, providing relevant information related to in person absentee voting in your county. The prescribed Form 11-A¹ is attached to this memorandum for your reference and is available on the BOE Extranet.

Please feel free to contact your assigned elections counsel at 614-466-2585 if you have further questions.

¹ R.C. 3501.05(G) provides that the Secretary of State shall: " (G) Determine and prescribe . . . forms and blanks required by law for use by . . . boards;"

APPLICATION FOR ABSENT VOTER'S BALLOT

PLEASE PRINT OR TYPE (See Instructions at Bottom of Page)

Send Ballot to:

(if different from home address)

Voter's Name _____ Name _____

Home Address _____ care of/PO Box _____

City, Village, Office _____ Address _____

County _____ **Zip Code** _____ **City** _____ **State** _____ **Zip Code** _____

You must provide your birthdate: _____ / _____ / _____ **and one of the following:**
(month) (day) (year)

- Your Ohio driver's license number _____, or
- The last four digits of your social security number _____, or
- Copy of a current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, government check, paycheck or other government document (other than a voter registration notification mailed by a board of elections) that shows your name and current address.

I wish to vote in the following election to be held on _____ .
(month-date-year of election)

Check ONLY one (A separate application must be completed for each election):

1. Primary Election:

- Democratic
- Republican
- Nonpartisan or issues only

2. General Election

3. Special Election

I wish to have a ballot mailed to me at the address listed above. I understand that if a ballot is mailed to me and I change my mind and appear at my polling place to vote on Election Day, I will be required to vote a provisional ballot that can not be counted until at least 10 days after the election.

I hereby declare, under penalty of election falsification, I am a qualified voter and the statements above are true to the best of my knowledge and belief. I understand that if I do not provide the requested information, my application cannot be processed.

X _____

Signature of Voter

Date Signed

Voluntary: To assist the board of elections in contacting you in a timely manner if your application is incomplete:

Your daytime telephone number (____) _____ Your e-mail address _____

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

INSTRUCTIONS

Chapter 3509. of the Revised Code of Ohio

1. Use of this form is optional. To be valid, your application must include your name, voting residence address, date of birth, and signature; the election for which the ballot is requested and, if a partisan primary election, your political party affiliation; statement you are a qualified elector in the county; and one of the following: your Ohio drivers license number, the last four digits of your social security number, or a copy of your current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, government check, paycheck or other government document (other than a voter registration notification mailed by a board of elections) that shows your name and address.
2. An application by mail must be received by your county board of elections by noon on the third day before the election. An application by you in person must be received by the close of regular board office hours the day before the election. Applications for persons who are hospitalized or for persons whose minor child is hospitalized due to an accident or unforeseeable medical emergency will be accepted until 3 p.m. on Election Day.
3. When you receive your ballot: If you return your ballot by mail, it must be postmarked* no later than the **day before** Election Day and received by your county board of elections no later than 10 days after the election. If you return your ballot in person or if a near relative delivers it to the board for you, it must be delivered to your county board of elections no later than the close of polls on Election Day. If you are a voter outside of the United States on Election Day, the ballot envelope must be signed or postmarked before the close of polls and received by the board no later than 10 days after Election Day or 20 days after a presidential primary election.

*Postmarked does not include a date marked by a postage evidence system such as a postage meter.