

ADVISORY 2019-05

June 6, 2019

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

Re: Improper Methods of Voting Equipment Disposal

SUMMARY

This Advisory alerts boards of elections to ongoing restrictions and requirements surrounding the sale, transfer, and disposal of voting equipment. This is not a change in policy, but rather a reminder to boards of elections of the proper methods for sale, transfer, and disposal of voting equipment pursuant to Ohio law and the Election Official Manual.

BACKGROUND

Chapter 10 of the Election Official Manual outlines the Secretary of State's policy on transfer or disposal of voting equipment purchased with Help America Vote Act ("HAVA") funds. Under this policy, voting equipment purchased in whole or in part with HAVA funds must not be transferred via sale or donation to private individuals or non-governmental entities.

The Secretary's policy is based on a criminal prohibition in section 3599.27 of the Ohio Revised Code. State law prohibits any unauthorized person from possessing a voting machine that may be owned or leased by any county or any of the parts or keys thereof. The law also prohibits any unauthorized person from possessing "any marking device, automatic tabulating equipment, or any of the parts, appurtenances, or accessories thereof." A violation of this law is a fifth degree felony.¹ To ensure compliance with this law, the Secretary prohibits the boards from selling or donating voting equipment to any private individual or non-governmental entity.

A board of elections **must** receive authorization from the Secretary of State's Office **prior** to the sale, donation, or disposal of any voting equipment purchased with HAVA funds. The prescribed forms must be kept on record in the event of relevant audits, claims, litigation, negotiations, or other proceedings regarding permanently transferred equipment purchased with HAVA funding. The specific forms are detailed in the Instructions below.

¹ R.C. 3599.27.

INSTRUCTIONS

Boards should always consult with both their county prosecuting attorney and the board of county commissioners before engaging in any sale of county-owned voting equipment. In addition, a board must receive authorization from the Secretary of State's Office prior to the sale, donation, or disposal of voting equipment purchased with HAVA funds.

If a board intends to permanently transfer voting equipment via sale, the board must submit [Form 426](#) to the Secretary of State's Office and await approval prior to sale. The board must list the quantity of equipment, a brief description, accepting entity and the estimated value, along with a statement of the intended use of the proceeds of the sale. To transfer voting equipment via donation, the board must submit [Form 427](#) to the Secretary of State's Office and await approval. The receiving entities benefiting from the sale or donation also must sign the form prior to sale.

A board may also temporarily transfer voting equipment by loan to another county board of elections within Ohio. Prior to transfer, the transferring and accepting board must submit [Form 428](#) and receive the Secretary's approval prior to transfer.

If a board intends to dispose of voting equipment, the board must submit [Form 429](#) and receive approval prior to disposal. The form requires the board to list the quantity of equipment, a brief description, and the estimated value. In addition, the form now requires the board to describe the intended method of disposal. If the method of disposal changes, the board must communicate that change to the Secretary's Office.

In summary, voting equipment may be transferred via sale or donation **only** to another county board of elections within the State of Ohio. Boards must not sell voting equipment purchased with HAVA funds to private individuals or non-governmental entities. Voting equipment must never be marketed for auction on websites such as www.govdeals.com.

For more detail on the proper procedure, pricing, and use of proceeds, please consult Chapter 10 of the Election Official Manual. If you have any questions concerning this Advisory, please contact the Secretary of State's elections attorneys at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State