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September 1, 2006

Directive 2006-59

TO: County Boards for Elections

CC: County Prosecutors
Betty Montgomery, State Auditor

RE: Record Retention Policies Governing Ballots and Pollbooks

I have received several inquiries from Boards of Elections regarding access to and retention of ballots and pollbooks from the 2004 general election. This Directive is issued pursuant to R.C. §3501.05 as a means of providing guidance to the Boards regarding retention and disposal of ballots and pollbooks.

In December 2004, opinion 2004-50 was issued by the Attorney General on the Right of Access to Public Records under R.C. 149.43. The opinion answered the following question: Are ballots that have been cast in a public election, as well as pollbooks, that are held by a county board of election public records that must be made available to the public for inspection under R.C. 149.43.

The Attorney General's opinion on this question provides important direction for the Boards of Election to follow, in consultation with their county prosecuting attorney, on general issues regarding public access to ballots and pollbooks. The opinion concluded that "a board of elections remains under a duty to 'carefully preserve' ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31."

In addition to the Attorney General Opinion 2004-50, further guidance regarding the retention and disposal of county records, including ballots and pollbooks, is provided in R.C. §149.38 which states:

(B) The functions of the county records commission shall be to provide rules for retention and disposal of records of the county and to review applications for one-time records disposal and schedules of records retention and disposal submitted by county offices. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule, subject to division (D) of this section. (Emphasis added)

(C) When the county records commission has approved county records for disposal, a copy of a list of those records shall be sent to the auditor of state. If the auditor of state disapproves the action by the commission in whole or in part, the auditor of state shall so inform the commission within a period of sixty days, and those records shall not be destroyed. Before public records are to be disposed of, the commission shall inform the Ohio historical society and give the society the opportunity for a period of sixty days to select for its custody such records as it considers to be of continuing historical value. When the Ohio historical society is so informed that public records are to be disposed of, the county records commission also shall notify the county historical society, and any public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the Ohio historical society has been so informed and may select records of continuing historical value, including records that may be distributed to any of the notified entities under section 149.31 of the Revised Code. (Emphasis added)

I am instructing all county Boards of Elections:

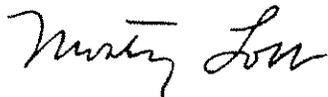
1. to comply with the public record laws of Ohio under §149.38,
2. to report on its (or the County's) website the "rules for retention and disposal of records of the county" adopted by its County Records Commission that are applicable to access, retention, and disposal of ballots and pollbooks that are subject to R.C. §149.38; and
3. to provide a copy of the rules adopted by the County Records Commission regarding access, retention, disposal of ballots and pollbooks subject to R.C. §149.38 to the Secretary of State and to the Auditor of State at least ten days before their effective date.

I am providing a copy of this directive to the Prosecuting Attorney of your respective counties for consultation as necessary with you on measures necessary to comply with this directive and the applicable laws.

If you are notified that the Auditor of State has disapproved the disposal of the records under your custody and control related to an election, you are also directed to comply with that notification. Since it is the County Records Commission that is ultimately responsible for formulating and enforcing a records retention and access policy, be advised that no records can be destroyed without the consent of the County Records Commission.

If you have any questions regarding this directive, please call the Elections Division at (614) 466-2585.

Sincerely,



Monty Lobb
Assistance Secretary of State