

DIRECTIVE 2008-47

June 20, 2008

TO: All County Boards of Elections

RE: Prohibiting the Outsourcing of Mailing of Absentee Ballots

The secretary of state's office has received several inquiries regarding whether a board of elections may contract with a vendor to outsource the mailing of absentee ballots to electors. This is not permitted under Ohio law, and boards of elections are hereby directed to perform the tasks relating to the handling of absentee ballots as is further described below.

Background

The board's duties regarding the delivery of an absentee ballot to an elector are described in R.C. 3509.04(B):

Upon receipt by the director of elections of an application for absent voter's ballots that contains all of the required information, as provided by sections 3509.03 and 3509.031 and division (G) of section 3503.16 of the Revised Code, the director, if the director finds that the applicant is a qualified elector, shall deliver to the applicant in person or mail directly to the applicant by special delivery mail, air mail, or regular mail, postage prepaid, proper absent voter's ballots. ["Ballots" refers to the presidential ballot, the office type ballot, the nonpartisan ballot and the issue ballot, which are generally contained within one ballot form.]

The statute clearly provides that the *director* must deliver an absentee ballot either to the elector *in person* or mail it *directly to the applicant*. R.C. 3509.04(B) also specifically provides that the director must deliver or mail with the absentee ballot an unsealed identification envelope and an unsealed return envelope.

The only exception in Title 35 of the Revised Code to a director delivering an absentee ballot personally to an elector or directly by mail to an elector is for electors who cannot appear at their polling place on election day due to an accident or an unforeseeable medical emergency of the elector, or of his or her minor child, as provided in R.C. 3509.08(B). Even under R.C. 3509.08(B), the director may only deliver an absentee ballot to such an elector through a family member designated by the elector or by two employees of the board of elections.

Other sections in Title 35 of the Revised Code also make clear that the delivery of absentee ballots to electors cannot be outsourced to a vendor or other third party. While R.C. 3505.13 provides for the printing of ballots by a vendor, R.C. 3505.15 requires that the printed ballots be

returned to the board of elections in sealed packages and for the board to account for the ballots received from the printer.

While some boards of elections may consider it more efficient or convenient for a vendor to mail absentee ballots to electors, the Ohio Revised Code has placed the responsibility for the mailing of absentee ballots solely on the board of elections. Moreover, policy considerations favor leaving the responsibility of handling and accounting for ballots, the most sensitive of all election materials, with election officials.

Conclusion

Based upon the clear language of R.C. 3509.04(B) and R.C. 3505.15, boards of elections are instructed that no Ohio board of elections may contract with a vendor or any other third party to mail absentee ballots to electors. While boards may not outsource the mailing of absentee ballots to vendors or any other third party, nothing in the Ohio Revised Code prohibits a director of a board of elections from delegating the responsibility of processing and mailing absentee ballots to board of elections employees (all of whom are election officials under R.C. 3501.01(U)(6)) under the director's supervision.

If you have any questions about this directive, you may contact the elections attorney assigned to your board.

Sincerely,

Jennifer Brunner