

Directive 2010-90 (Reissue of SOS Directive 2010-86)

December 29, 2010

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

Re: Cancellation of a Voter's Registration Due to the Death of the Voter

The *National Voter Registration Act of 1993* (NVRA), commonly referred to as the "motor voter law" (see 107 Stat. 77, 42 U.S.C. 1973gg), was signed into law on May 20, 1993. Section 8 of the NVRA, 42 USC 1973gg-6(a)(4)(A), requires States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of the death of the registrant." Following passage of the NVRA, the Ohio General Assembly enacted R.C. 3503.21 to incorporate the requirements of the federal law into Ohio law. As enacted, R.C. 3503.21(A)(2) authorized Boards of Elections to cancel a voter's registration upon the filing of a notice of death from either the chief health officer of a political subdivision or the director of the Ohio Department of Health.

In July of 2009, the Ohio General Assembly enacted Am. Sub. House Bill 1, which amended R.C. 3503.21 by striking subsection (A)(2) regarding the Boards' statutory authority to cancel a voter's registration due to the notice of the death of the voter from the chief health officer of a political subdivision or the director of the Ohio Department of Health.¹ While federal law requires boards of elections to make reasonable efforts to cancel the voter registrations of deceased voters, the Ohio General Assembly has not yet enacted a new statutory procedure to allow boards of elections to cancel a voter's registration due to death under state law. Accordingly, the purpose of this directive is to provide Boards of Elections with a uniform and nondiscriminatory method for cancelling a deceased voter's voter registration as required by NVRA.

Therefore, I hereby direct boards of elections to take all appropriate steps necessary to receive, or access, reports of deaths from the chief health officer of a political subdivision in their county and the Ohio Department of Health on at least a monthly basis. Boards may also use the Ohio Department of Health's web site for assistance in finding potential deceased voters in their county, which is currently located at: <http://vitalsupport.odh.ohio.gov>. County boards of elections shall use the information provided (names, date of birth, date of death, etc.) contained in the state or local government health agency report to confirm whether a voter in its county is deceased. If the Board is able to confirm the voter is deceased using information (i.e. name, date of birth, date of death, and the voting residence) from either the chief health officer of a political subdivision or the Ohio Department of Health, the Board shall cancel the voter's registration.

Occasionally, the board of elections may be contacted by a person (spouse, relative, friend, concerned citizen, etc.) who purports to have knowledge of a voter who is deceased. In this

¹ Am. Sub. H.B. 1 also amended R.C. 3503.18 to eliminate the requirement that the chief health officer of a political subdivision and the director of the Ohio Department of Health file with the boards of elections at least once a month information regarding the persons over eighteen years of age who died within the subdivision, Ohio, or another state within that month.

instance, a board of elections may only cancel a voter's registration due to death if the Board can verify with the chief health officer of a political subdivision or the director of the Ohio Department of Health that the voter is deceased by using the information (i.e., name, date of birth, date of death, and the residence) provided by one of these government health agencies. If the Board is unable to confirm the voter is deceased using information (i.e. name, date of birth, date of death, and the voting residence) from either the chief health officer of a political subdivision or the Ohio Department of Health, the Board may NOT cancel the voter's registration. Instead, the Board should mail the individual a confirmation notice to the individual's address in the voter registration system. If the individual fails to respond to the confirmation notice for a period of four years, including two general federal elections, or to update the voter's registration and vote at least once for a period of four years, including two general federal elections, then the voter's registration may be cancelled pursuant to R.C. 3503.21(A)(6).

When a Board cancels a voter's registration, the Board is not required to send an "Ohio Voter Registration Cancellation Notice" (SOS Form 10-B) to a voter whose registration is cancelled due to confirmation of the death with a government health agency report as described above.

Please note that this directive does not alter the specific procedures for confirming whether a voter may be deceased as outlined in Directive 2010-56 (Revisions to BMV and SSA Voter Records Information Verification Program; Grounds for Registration Cancellation). Additionally, this directive serves as a reminder that the Board will also receive automatically generated messages from the SWVRD, in the form of XML packets, when either the Ohio Bureau of Motor Vehicles or the U.S. Social Security Administration indicates that an Ohio elector may be deceased. Your office must continue to investigate whether those voters are in fact deceased by following the procedures outlined in Directive 2010-56.

If you have questions about the cancellation of a voter registration for reason of death, please contact the election attorney assigned to your county.

Sincerely,

Jennifer Brunner