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October 21, 2010

Debra Quivey, Director
Athens County Board of Elections
15 South Court Street, Rm. 130
Athens, Ohio 45701

Re: Tie vote occurring October 6, 2010, on motion to provide extended office hours for in-person absentee (early) voting for the November 2, 2010 general election

Dear Director Quivey:

You have submitted to me materials relating to a tie vote on a motion concerning extended hours for in-person absentee voting that occurred at your board's October 6, 2010 meeting. In accordance with R.C. 3501.11(X) and the procedures outlined in the Ohio Election Official Manual, the Athens County Board of Elections submitted the tie vote, including position statements of the board members and minutes of the October 6, 2010 board meeting. The materials were received in my office on October 20, 2010. My analysis and decision is outlined below.

Background

The Athens County Board of Elections office is presently open from 8:00 a.m. to 4:00 p.m. each weekday. In-person absentee voting for the November 2, 2010 general election is being conducted at the Board office; therefore, Athens County electors currently may cast an in-person absent voter's ballot on weekdays between 8:00 a.m. and 4:00 p.m.

At its October 6, 2010 meeting the Board discussed adopting extended hours for in-person absentee voting. Following this discussion, Board Member Lavelle moved that the Board office be open on Saturdays from 8:00 a.m. to 4:00 p.m. for in-person absentee voting. The motion was seconded by Board Chair Biddlestone. Board Chair Biddlestone and Board Member Lavelle voted in favor of the motion; Board Members Carpenter-Colvin and Stevens voted against it.

Discussion

The normal operating hours of a board of elections office are generally within the discretion of the board of elections under R.C. 3501.10(B). This statute provides: "At all other times during the week, the board shall keep its offices and rooms open for a period of time that the board considers necessary for the performance of its duties." Only a few limited statutes require boards of elections to be open on specific days or at specific times. Boards of elections must remain open until 9:00 p.m. on the last day of registration before a general or primary election. R.C. 3501.10(B). The only weekend date that a board of elections is required by statute to be open to the public is the third day before an election until noon (which is always a Saturday), since the board must be open to receive and process requests for absentee ballots to be mailed to an elector under R.C. 3509.03, 3509.031(C), 3509.08(A), and 3511.02(C).

In the absence of specific statutory requirements or any statutory prohibition, the Athens County Board of Elections may be open for additional hours for in-person absentee voting under R.C. 3501.01(B), at its discretion. Board Chair Biddlestone and Board Member Lavelle favor providing extended hours on Saturdays for in-person absentee voting for what will be the last two Saturdays before the November 2, 2010 election. They argue that extended hours will allow more convenient access for voters to cast ballots. Further, they note that if in-person absentee voting is only available during the Board's standard hours of 8:00 a.m. to 4:00 p.m. on weekdays, some voters may have to miss work to cast an in-person absentee ballot. This would hold true for Election Day voting as well. Establishing Saturday hours for in-person absentee voting would assist with this problem. Board Chair Biddlestone and Board Member Lavelle state that extended hours on Saturdays would not involve a significant increase in the Board's costs, because the Board staff routinely works on Saturdays, performing pre-election processing.

Board Members Carpenter-Colvin and Stevens oppose providing extended hours for the November 2, 2010 general election. They argue that the demand for in-person absentee voting is significantly lower in 2010 than it was in 2008. They also note that electors who wish to cast an absent voter's ballot may do so by mail and are not dependent on the Board of Elections office being open to cast their ballot. Moreover, Board Members Carpenter-Colvin and Stevens claim that the Board office is not routinely open to the public on Saturdays, and that if the Board staff is required to work on Saturdays to complete pre-election processing, the additional burdens created by having the Board office open to the public during those times would reduce the staff's ability to complete those pre-election tasks. Finally, they suggest that holding extended hours would place an additional burden on the Board's budget, but no evidence is provided as to the extent of any additional financial burden.

Although Board Members Carpenter-Colvin and Stevens appear to be correct that the number of in-person absentee ballots cast in Athens County thus far is lower in 2010 than 2008, this is not unexpected, because voter turnout is traditionally higher in presidential elections than in other years. The fact that overall voter turnout may be lower than two years ago does not change the circumstances of an elector who wishes to cast an absent voter's ballot but cannot go to the Board office during normal weekday hours. It is true that electors may cast their absent voter's ballots by mail, but that requires four distinct steps. The elector must (1) request an absent voter's ballot application from the Board, (2) complete and return the absent voter's ballot application to the Board, (3) receive the absent voter's ballot from the Board, and (4) complete and return the absent voter's ballot to the Board. When accomplished by mail, these four steps inevitably create some delay while materials are sent between the elector and the Board office. Moreover, some voters feel more secure personally handing their ballot to Board staff than placing it in the mail, especially as Election Day draws nearer. Casting an in-person absent voter's ballot at the Board office allows the elector to complete all four steps at once and be confident that his or her ballot has been timely received by the Board.

It is appropriate for the Board members to consider and evaluate any additional costs imposed by holding extended in-person absentee voting hours. However, in the absence of evidence of a substantial fiscal impact, this concern is outweighed by the increased voter convenience created through providing extended hours. Besides, in light of the lighter use of absentee voting in 2010 than in 2008, the impact of this additional task for Board employees may be minimal.

Given the trend showing voters' increased use of both in-person absentee voting and absentee voting by mail in elections held since 2006, when the law took effect allowing any elector to vote absentee without stating a reason, I believe it is reasonable to anticipate continued significant use of in-person absentee voting for the November 2, 2010 general election. Many organizations, candidates, and political groups are encouraging voters to vote absentee in-person to avoid any polling place lines on Election Day and for greater convenience. I believe the Athens County Board of Elections would best serve its public by offering extended voting

hours on Saturdays as reasoned herein and as provided in the motion made by Board Member Lavelle.

Decision

For the foregoing reasons, I vote with Board Chair Biddlestone and Board Member Lavelle in favor of the motion to provide extended in-person absentee voting at the Athens County Board of Elections office from 8:00 a.m. to 4:00 p.m. on Saturdays during the in-person absentee voting period. Accordingly, the motion carries.

The Athens County Board of Elections is hereby instructed to provide in-person absentee voting at the Board office from 8:00 a.m. to 4:00 p.m. on Saturdays from this date forward during the in-person absentee voting period in accordance with this tie vote decision.

Sincerely,



Jennifer Brunner