



Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

October 25, 2011

Steven P. Harsman, Director
Betty J. Smith, Deputy Director
Montgomery County Board of Elections
451 W. Third Street
P.O. Box 8705
Dayton, Ohio 45481

Re: Tie Votes regarding extending regular business hours and allowing non-UOCAVA in-person absentee voting on November 5th through November 7th

Dear Director Harsman and Deputy Director Smith:

As you know, on October 18, 2011, the Montgomery County Board of Elections reached a tie vote regarding whether to extend its regular business hours during the period of time leading up to the November 2011 general election. At the same meeting, the Board also reached a tie vote on whether to permit non-UOCAVA in-person absentee voting on Saturday, November 5, 2011 through Monday, November 7, 2011.

In accordance with R.C. 3501.11(X) and the procedures outlined in the Ohio Elections Officials Manual, on October 24, 2011 your board submitted a packet of materials relevant to the tie vote, including position statements of the board members and transcripts of the board member's October 18, 2011 meeting. I break both ties against the motions as presented. My analysis of the issues and conclusions are detailed below.

First Tie Vote: *Whether to extend regular voting hours leading up to the November 8, 2011 general election.*

The current voting hours for the Montgomery County Board of Elections are 8:00 a.m. through 4:30 p.m., Monday through Friday. Board member Lieberman moved to extend the board's hours to 7:00 a.m. through 6:00 p.m., Monday through Friday, 8:00 a.m. through 4:00 p.m. on Saturdays, and 12:00 p.m. through 5:00 p.m. on Sundays. Board Members Lieberman and Ritchie voted in favor of the motion while Chairperson Gantt and Board Member Wick voted against it.

I have reviewed the materials submitted relative to the tie vote and considered the arguments presented by both sides. My analysis considered the financial constraints of the board and the time already allocated to early voting. I have also considered the fact that R.C. 3509.03¹

¹ Throughout this tie vote decision, I refer to the version of R.C. 3509.03 as amended by H.B. 224, which has an effective date of October 27, 2011.

establishes the statutory deadline of 6:00 p.m. on Friday, November 4, 2011 for in-person absentee voting.

I am persuaded that the Montgomery County Board of Elections offers ample time for voters to vote prior to Election Day. The Montgomery County Board of Elections is currently available 42.5 hours per week for those who wish to complete in-person absentee ballots. Additionally, all voters have the option to vote from home by requesting a no-fault absentee ballot. Before 2005, this option did not exist. Instead, Ohio voters could only request an absentee ballot for limited reasons, including their own illness or physical disability.

Due to the current stress on the budgets of local government and the sufficient time already available for the casting of in person absent voter's ballots, I break the tie against the motion to extend the regular business hours for all days leading up to the election, except for Friday, November 4. However, the board must be open until 6:00 p.m. on Friday, November 4, 2011, in order to comply with the deadline set forth in R.C. 3509.03.

Second Tie Vote: *Whether to permit in-person absentee voting Saturday, November 5th, 2011 through Monday, November 7th.*

During the same meeting, Board Member Lieberman moved to extend in-person absentee voting from Saturday, November 5, 2011 through Monday, November 7, 2011. Board Members Lieberman and Ritchie voted in favor of the motion, while Chairperson Gantt and Board Member Wick voted against it.

In relevant part, R.C. 3509.03 states that in-person absentee voting cannot occur "later than six p.m. on the last Friday before the day of the election at which the ballots are to be voted." The current law expressly prohibits boards of elections from allowing in-person absentee voting for non-UOCAVA voters after 6:00 p.m. on Friday, November 4, 2011. As Chief Elections officer for the State of Ohio, I cannot authorize a board of elections to act in violation of an express statutory deadline as articulated in Advisory 2011-07, which was based upon Attorney General Opinion 2011-035. For the reasons stated above, I break the tie against the motion to permit in-person absentee voting for non-UOCAVA voters on Saturday, November 5, 2011 through Monday, November 7, 2011. Accordingly, the motion fails.

Sincerely,



Jon Husted