



HANDBOOK

Ohio County Commissioners

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CHAPTER 124

ELECTIONS

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124.01 INTRODUCTION

In Ohio, the administration of elections is a responsibility that rests with county governments. Unfortunately, new federal and state election reforms have been enacted in recent years without adequate federal or state funding tied to certain mandates. Subsequently, numerous counties have encountered significant increases in the costs of election administration. The majority of these federal unfunded and under-funded mandates stem from the Help America Vote Act (HAVA), a measure passed by the Congress to address concerns following the extremely close and contentious 2000 election between candidates Bush and Gore.

State legislation, likewise proving burdensome to county coffers, includes H. B. 3 of the 126th General Assembly and other measures. The federal government did not fully fund HAVA, and the Ohio Legislature has established additional unfunded requirements. Furthermore, directives the Secretary of State issued have included direct and indirect costs to counties. Some costs, such as voting machine maintenance contracts now are being thrust upon counties. These costs, particularly when added together, continue to challenge commissioners, who often are forced to deal with the compounding expenses at the end of their county budget cycle.

This Chapter discusses the organization of the board of elections, elections financing, election procedures, precinct officials, and qualifications of candidates. Other closely related chapters in this *Handbook* include Chapter 3, *Election of County Officials and Replacements*; Chapter 125, *Ethics*; and Chapter 126, *Campaign Finance and Campaign Practices*. Further information on elections may be found in Title 35 of the Revised Code.

The board of elections has been granted extraordinary powers by the General Assembly as it relates to its budget. For example, the board may petition the common pleas court for an appropriation if it is not satisfied with the appropriation made by the county commissioners. In addition, the Legislature has limited the amount of discretion the board of county commissioners has as it relates to the transfer of funds that apply to most other county officials and entities for which the commissioners have appropriation authority. These issues are discussed in greater detail later in this Chapter of the *Handbook* and also in Chapter 18.

124.02 DUTIES AND POWERS OF SECRETARY OF STATE

The Secretary of State is the chief election officer of the state (ORC 3501.04). The duties and powers of the Secretary of State include the following (ORC 3501.05):

1. To appoint all members of county boards of election, according to procedures detailed elsewhere in ORC Chapter 3501.
2. To issue instructions by directives and advisories to members of boards of elections as to the proper methods to conduct elections.
3. To prepare rules and instructions for the conduct of elections.
4. To provide to the board of elections, from time to time, copies of all election laws in force.
5. To edit and issue pamphlets concerning proposed laws or amendments to be submitted to the voters.
6. To prescribe to boards the form of registration cards, blanks, and records.
7. To determine and prescribe the form of ballots and other printed materials used by boards, candidates, and committees.
8. To prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the Constitution.
9. To certify to the boards the form of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues.
10. To approve ballot language for any local question or issue.
11. To receive all initiative and referendum petitions on state questions and issues and approve them.
12. To require such reports from the boards of elections as required by law, or as the Secretary of State considers necessary.

13. To require election officers to observe the law.
14. To investigate the administration of election laws, frauds, and irregularities in elections in the county and report violations to the Attorney General or prosecuting attorney.
15. To report a failure to comply with or a violation of selected campaign and election laws in ORC Chapters 3517 and 3599 whenever the Secretary of State has or should have knowledge of such failure or violation, by filing a complaint with the Ohio Elections Commission.
16. To make an annual report to the Governor containing the results of elections, the cost of elections in the various counties, a tabulation of the votes in the several political subdivisions, and other information and recommendations relative to elections.
17. To prescribe and provide to boards instructions to conduct local option elections.
18. To adopt rules for the removal by boards of elections of ineligible voters from the statewide voter registration database, and if applicable, from the poll list or signature list used in each precinct.
19. To prescribe a general program for registering voters or updating voter registration information by boards of elections, designated agencies, offices of deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers.
20. To provide copies, if feasible, of voter registration forms in post offices in the state at no cost and upon request.
21. To establish the position of Americans with Disabilities Act coordinator in the office to assist in such issues.
22. To establish and maintain a computerized statewide database of all legally registered voters that complies with the federal "Help America Vote Act".
23. To ensure that all directives, advisories, instructions, or other decisions resulting from a conference or teleconference call with a board of elections regarding the proper method of conducting elections are posted on a website of the Secretary of State as soon as practicable.
24. To publish a report on the Secretary of State website not later than one month after the completion of the canvass of election returns for each primary and general election detailing the results for that election. The information must then be maintained in an archive format for each subsequent election.

25. To conduct voter education outlining voter identification, absent voter's ballot, provisional ballot, and other voting requirements.
26. To establish a procedure by which a registered elector may update their signature to be used in the poll list or signature pollbook produced by the county in which the elector resides.
27. To disseminate information as directed by the Ohio Ballot Board which may include official explanations and arguments to inform voters of each proposed constitutional amendment, proposed law, or referendum, by means of direct mail or other written publication, broadcast or other means.
28. To remove any member of a board of elections, election officials, or other employees for neglect of duty, malfeasance, misfeasance, or nonfeasance in office, or any violation of election laws or for any other good and sufficient cause (ORC 3501.16).
29. To certify voting machines, marking devices, automatic tabulating equipment, or software for the purpose of casting or tabulating votes or for communications among systems involved in the tabulation, storage, or casting of votes (ORC 3506.05).
30. To appoint a Board of Voting Machine Examiners to examine, approve, and establish guidelines and recommend certification of voting equipment and its related manuals and support arrangements.
31. To perform other duties required by law.

124.03 BOARDS OF ELECTIONS

Each county has a board of elections consisting of four qualified electors of the county, two from each of the two political parties casting the highest number of votes for Governor in the previous election. These board members are appointed by the Secretary of State on March 1 in even numbered years for four year terms or within 15 days after a vacancy occurs. Two members are appointed each even numbered year, one from each party.

The Secretary of State makes the board of election appointments based upon recommendations of the county executive committee of the political party entitled to the appointment. These recommendations are made at a meeting of the executive committee held no more than 60 or less than 15 days before the expiration of the board member's term of office. The Secretary of State must accept the recommendation of the executive committee, unless there is reason to believe that the person would not be a competent board member. Upon written notification of such rejection by the Secretary of State to the chairman of such county executive committee, the committee may either recommend another elector or may apply for a writ of mandamus to the Ohio Supreme

Court. In such action, the burden of proof to show the qualification of the person so recommended shall be on the county executive committee (ORC 3501.07).

124.04 COMPENSATION OF ELECTION BOARD MEMBERS

Board members are compensated for their services based upon the population of the county, as follows:

1. Eighty-five dollars (\$85) for each full 1,000 of the first 100,000 population.
2. Forty dollars and fifty cents (\$40.50) for each full 1,000 of the second 100,000 population.
3. Twenty-two dollars (\$22) for each full 1,000 of the third 100,000 population.
4. Six dollars and seventy-five cents (\$6.75) for each full 1,000 above 300,000 population.

The compensation of any board member shall not be less than \$3,375 or more than \$20,000 (ORC 3501.12).

H. B. 712, enacted in 2000, provided for three consecutive 3% increases for the annual compensation of board members starting in 2001.

For example if a board member were from a county with a population of 42,000, the base salary would be $(42 * \$85) = \$3,570$

In 2001, with a 3% raise the board member would make $(3,750 \times 1.03) = \$3,862.50$

In 2002, with a 3% raise the board member would make $(3,862.5 \times 1.03) = \$3,978.38$

In 2003, and thereafter, with a 3% raise the board member would make $(3,978.38 \times 1.03) = \$4,097.73$

For purposes of board member salary compensation, ORC 3501.12(E) says that members of boards of elections shall be deemed to be appointed and not elected, and therefore not subject to Section 20 of Article II of the Ohio Constitution, which prohibits in-term compensation increases. **Please note** the dichotomy between language in ORC Section 3501.12 (E) and ORC Section 3501.141 (health insurance provisions) as to when BOE members are and are not treated as being appointed and not elected, and therefore not subject to Section 20 of Article II of the Constitution.

124.05 HEALTH INSURANCE

ORC Section 3501.141 authorizes the board of elections to contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that

may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, and that may provide sickness and accident insurance, or group life insurance, or a combination of any of the foregoing types of insurance or coverage for the full time employees and their immediate dependents. It should be noted that the board of elections, unlike other county entities, has the authority to contract for coverage different from that offered to other county employees or for types of coverage not provided to other county employees, but only if the commissioners have, by resolution, denied full time employees of the board of elections the coverage.

The board of elections, with the approval of the board of county commissioners, also has the authority to obtain group health insurance for themselves and their immediate dependents when the members' term begins. In the case of the board of elections, it appears that the eligible types of insurance is limited to group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of these foregoing types of insurance or coverage. Members of a board of elections are also subject to the prohibition against in-term compensation changes for health insurance as required by Article II Section 20 of the Constitution. For additional information, refer to Chapter 67, *Health Insurance*.

It should be noted that ORC Section 3501.141 was changed in 2005 to make the provision of health insurance for members of the board of elections subject to approval by the board of county commissioners. Prior to that time, the board of elections had the authority to make this determination itself.

The statute provides that the insurance must be provided at the beginning of a term of office. Thus, if members of the board of elections are authorized by the commissioners to have health insurance at the beginning of a term of office they are eligible to enroll. If a member of the board of elections chooses not to enroll at the beginning of a term of office, and later determines that they want to enroll, they may not do so because the statute limits the eligibility to at the beginning of a term of office. In this situation, however, it is the statute that limits members of the board of elections from receiving the insurance, not the constitutional in-term compensation prohibition (OAG 97-027).

Thus, if the members of the board of elections had been receiving insurance benefits that were established by the board of elections prior to the time the law was amended to provide authority to the county commissioners, and the commissioners want to eliminate this coverage they can do so, but the benefit cannot be eliminated for any member in the middle of a term of office, but only for new members of the board of elections or for current members if they are reappointed by the Secretary of State and when the new term of office begins. Any county that considers doing this should first review the nature of the coverage provided to other officers, such as members of the Veterans Service Commission, and check with the county prosecutor first.

124.06 ORGANIZATION OF BOARDS OF ELECTIONS

Within five days after the biennial appointments are made by the Secretary of State, the board meets and organizes by selecting one of its members as chair. It also appoints a director and deputy director, who must be qualified voters of the county, not members of the board, and of opposite political parties. They serve for two years at the pleasure of the board. The board may, by the vote of at least three members, decide that the services of a deputy director are unnecessary.

If, after five ballots, no director is chosen, the names of the candidates along with the board members who so nominated them, are certified to the Secretary of State, who designates a director from among the candidates unless the Secretary feels no person nominated is qualified. If the Secretary so notifies the board, the board nominates other persons as required under the original process and selects a director from those persons. If, after five ballots, no director is again selected, the various names are again forwarded to the Secretary of State who shall designate from the nominees a director and a deputy director.

The chair of the board is then selected, and must be of the opposite political party as the director. If no member receives at least three votes on the first ballot, the member of the opposite political party as the director who has the shortest term, serves as chair.

124.07 ELECTION OFFICIALS PROHIBITED FROM BEING CANDIDATES

No person shall serve as a member, director, deputy director, or employee of the board of elections who is a candidate for any office to be filled at an election, except the office of delegate or alternate to a convention, member of the board of directors of a county agricultural society, presidential elector, or a member of a party committee.

No person who is a candidate for an office or position to be voted for by the electors of a precinct, except for a candidate for county central committee who is not opposed by any other candidate in that election and precinct, shall serve as a precinct election officer in said precinct.

124.08 OFFICES OF BOARD OF ELECTIONS

The board of elections shall provide for itself suitable rooms, supplies, and furniture for its offices. The board may lease rooms for a period not to exceed 15 years.

However, 30 days prior to entering into such a lease, the board of elections is required to notify the board of county commissioners in writing of its intent to enter into the lease. The notice must specify the terms and conditions of the lease. The board of county commissioners may reject the proposed lease by a majority vote within 30 days of receiving such notice. If the board of elections receives written notification of the rejection of the lease by the board of county commissioners, the board of elections

cannot enter into the lease that was rejected, but may immediately enter into additional lease negotiations, subject to the same notice to commissioner's requirement.

In addition, the board of elections may, by resolution, request that the board of county commissioners submit to the electors of the county, the question of issuing bonds for the acquisition of real estate and the construction of a suitable building with necessary furniture and equipment for the proper administration of elections.

The board of elections must keep its office, or one or more branch offices, open for the performance of its duties until 9 p.m. on the last day of registration before a general and primary election. The office is otherwise open as the board determines necessary. The board may maintain permanent or temporary branch offices at any place within the county, provided that, if the board of elections permits electors to vote at a branch office, electors shall not be permitted to vote at any other office of the board of elections (ORC 3501.10).

124.09 DUTIES OF BOARD OF ELECTIONS

The board of elections exercises all powers granted it by law. If a majority vote cannot be reached on almost any question before the board, the question is submitted to the Secretary of State, who makes the final decision.

The duties of the board include the following (ORC 3501.11):

1. To establish election precincts and change them as necessary.
2. To provide places for registration and for holding primaries and elections.
3. To purchase, preserve, and maintain supplies, materials, and equipment used in registration, nominations, and elections.
4. To appoint, remove, and employ all election officials and employees.
5. To make and issue rules and instructions consistent with the laws and rules, directives, or advisories established by the Secretary of State, necessary for the guidance of election officers and voters.
6. To advertise and contract for the printing of ballots and other supplies.
7. To provide for the issuance of all election notices, advertisements, and publications, except that the state shall bear the entire cost of advertising in newspapers statewide ballot issues, explanations of those issues, and arguments for or against those issues.
8. To provide for the delivery of ballots and all other required papers to polling places.

9. To provide polling places with the proper allocation of voting equipment, stalls and other required supplies.
10. To investigate irregularities, non-performance of duties, and violations of elections law; and after the investigations, report the facts to the prosecuting attorney or the Secretary of State.
11. To approve the validity of petitions and nomination papers.
12. To receive the returns of elections, canvass the returns, make abstracts, and transmit the abstracts to the proper authorities.
13. To issue certificates of elections.
14. To make an annual report to the Secretary of State.
15. To prepare and submit to the county commissioners an estimated budget for the next year.
16. To investigate and determine the residence qualifications of voters.
17. To administer oaths in election matters.
18. To submit to the Secretary of State a list of all county, municipal, township, and board of education officials.
19. To establish and maintain a voter registration database of all qualified electors in the county.
20. To maintain voter registration records, make reports concerning voter registration as required by the Secretary of State, and remove ineligible electors from voter registration lists in accordance with the law and directives of the Secretary of State.
21. To give approval to ballot language for any local question or issue and transmit the language to the Secretary of State for the Secretary's final approval.
22. To prepare and cause the following notice to be displayed in a prominent location in every voting place:

NOTICE

"Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with the law."

23. To forward to the Secretary of State, in all cases of a tie vote or disagreement on the board (except regarding the salary of a director or deputy director), the matter in controversy, not later than 14 days after the vote or disagreement, for the Secretary's decision.
24. To assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters as prescribed by the Secretary of State (under the National Voter Registration Act.) In addition, the County Department of Job and Family Services must make voter registration applications available to participants in all of the following programs: disability financial assistance, disability medical assistance, Medicaid, Ohio Works First (OWF), and the Prevention, Retention, and Contingency program (PRC) (ORC 329.051)
25. To perform other duties prescribed by law or the rules, directives, or advisories of the Secretary of State.

124.10 BOARD OF ELECTIONS DIRECTOR

The director performs the following duties (ORC 3501.13):

1. To keep a full and true record of the proceedings of the board and of all monies received and expended.
2. To file and preserve all orders and records pertaining to the administration of registrations, primaries, and elections.
3. To receive and have custody of all books, papers, and property belonging to the board.
4. To provide a copy to each member of the board of elections, upon receipt, a written declaration of intent to retire as provided for in ORC 145.38 (This duty was recently added in an elections reform measure, H. B. 3 of the 126th General Assembly, following concerns with elected officials retiring to receive retirement benefits, but running for office and therefore potentially also receiving a salary, commonly known as "double-dipping").
5. To perform other duties in connection with the office and the conduct of elections as the board determines.

The director must take an oath of office, and may administer oaths to persons as required in carrying out the business of the board.

124.11 APPOINTMENT AND STATUS OF EMPLOYEES

Employees of the board of elections are not public officers and serve at the discretion of the board. As such, they are in the unclassified civil service. The board fixes the compensation of the director, deputy director, and other employees by a vote of at least three members of the board (ORC 3501.14). In the case of a tie vote of the board concerning the salary of the director or deputy director it is not submitted to the Secretary of State for final determination.

The board, as the appointing authority, may remove the director or deputy director by a vote of at least three members, and may remove any other employee by a majority vote of its membership.

124.12 APPROPRIATIONS TO THE BOARD OF ELECTIONS

County commissioners have a major obligation in the appropriation of monies to the board of elections. If the commissioners fail to appropriate sufficient monies to the board of elections, the board may apply to the court of common pleas, which shall fix the amount necessary and that amount shall be appropriated.(ORC 3501.17, *In re Appointment of Additional Legal Counsel, 1990 Ohio App. LEXIS 529; State ex rel. Ball v. County Commissioners, 159 Ohio St. 114*).

Expenses are paid upon vouchers of the board of elections certified by its chairman, director, or deputy director upon warrants of the county auditor.

124.13 TRANSFER OF FUNDS BY THE BOARD OF ELECTIONS

The board of elections shall not incur any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefore to meet the obligation. If the board of elections requests a transfer of funds from one of its appropriations items to another, the board of county commissioners shall adopt a resolution to provide for the transfer unless the board of county commissioners determines that the transfer is sought for the purpose of providing employee bonuses or salary increases other than increases necessary to reimburse employees for overtime worked (ORC 5705.40).

124.14 ESTABLISHMENT OF ELECTIONS REVENUE FUND

At the request of a majority of the members of the board of elections, the board of county commissioners may, by resolution, establish an elections revenue fund. The purpose of the fund is to accumulate revenue withheld by or paid to the county from political subdivisions for the payment of any expense related to the duties of the board of elections. The fund cannot be used for the compensation of the members of the board of elections or of the director, deputy director, or other regular employees, but can be used for overtime worked. If a majority of the members of the board of elections votes to rescind the fund, then the board of county commissioners may, by resolution,

rescind the fund. If an elections revenue fund is rescinded, money that has accumulated in the fund is transferred to the county general fund.

124.15 FINANCIAL CONTRIBUTIONS FOR ELECTIONS BY OTHER POLITICAL SUBDIVISIONS

Various other subdivisions within the county also have certain monetary obligations to the board of elections, and such money is withheld by the auditor at the time of the next tax settlement.

The county is responsible for the following expenses:

1. The entire cost of compensation of the board of elections and director, deputy director, and other employees.
2. The expenditures for the renting, furnishing, and equipping of the office and for necessary supplies.
3. The expenditures for the acquisition, repair, care, and custody of the polling places, booths, guardrails, and other equipment for polling places.
4. The cost of pollbooks, tally sheets, maps, flags, ballot boxes, and other records and equipment.
5. The cost of all elections held in and for the state and county.
6. All other expenses of the board which are not chargeable to another political subdivision (e.g. costs relating to registration).

The following expenses of conducting primaries and elections in odd-numbered years are apportioned to the subdivisions for which the primaries or elections are held:

1. The compensation of judges and intermittent employees.
2. The cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes, voting equipment, and other fixtures and equipment.
3. The cost of printing and delivering ballots, cards of instructions, registration lists and other election supplies.
4. The cost of contractors engaged by the board to prepare, program, test and operate voting equipment.
5. All other expenses of conducting primaries and other elections.

The charge for each primary or general election in odd-numbered years for each

subdivision shall be determined in the following manner:

1. The total cost of all chargeable items used in conducting such elections is ascertained;
2. The total charge is divided by the number of precincts participating in such election, in order to fix the cost per precinct;
3. The cost per precinct is prorated by the board of elections to the subdivisions conducting elections for the nomination or election of offices in such precinct; and
4. The total cost for each subdivision is determined by adding the charges prorated to it in each precinct within the subdivision.

In addition, in the following circumstances, the costs of certain elections is borne or shared by other subdivisions:

1. The entire cost of a special election held on a day other than the day of a primary or general election, both in odd-numbered or in even-numbered years, is charged to the subdivision for which the election is held.
2. Where a special election is held on the same day as a primary or general election in an even-numbered year, the subdivision submitting the special election is charged only for the cost of ballots and advertising.
3. Where a special election is held on the same day as a primary or general election in an odd-numbered year, the subdivision submitting the special election is charged for the cost of ballots and advertising for such special election. In addition, the subdivision pays the charges pro-rated for the election or nomination of candidates in each precinct as set forth above.
4. Where a special election is held on the first Tuesday after the first Monday in May for the purpose of submitting constitutional amendments proposed by the General Assembly, the state bears the entire cost of printing ballots and advertising. The state also reimburses counties for all expenses incurred to open precincts which are open solely for the special election.
5. Where a special election is held on the first Tuesday after the first Monday in May for the purpose of submitting constitutional amendments proposed by the General Assembly, and a subdivision conducts a special election on the same day, the entire cost of the special election is divided proportionally between the state and the subdivision based upon a ratio determined by the number of issues placed on the ballot by each. Such proportional division of cost is made only to the extent funds are available and appropriated to the Secretary of State. If a primary election is also being conducted in the subdivision, the costs are apportioned as set forth above (ORC 3501.17).

124.16 PRECINCT OFFICIALS

On or before September 15 of each year the board of elections must appoint four qualified voters, not more than half of whom shall be of the same political party, as precinct officials or judges in each precinct. Their terms are for one year. The board may, when necessary, appoint additional officials, equally divided between the major political parties, to expedite voting or perform the duties of the board (ORC 3501.22).

If the board determines that not enough qualified electors in a precinct are available to serve as precinct officers, it may appoint persons to serve at a primary, special or general election who are at least 17 years of age and are registered to vote. In addition, a board, in conjunction with a school district, may establish a program permitting certain high school students to apply and if so appointed serve as precinct officers at a primary, special or general election. In any precinct with six or more precinct officers, up to two students participating in this program under 18 years of age may serve as precinct officers. However, not more than one precinct officer in any given precinct with fewer than six precinct officers can be under 18.

The board may also appoint, when they determine a need, persons who are fluent in a non-English language to assist voters in certain precincts (ORC 3501.221).

At any special election at which no candidates are to be elected, or at any primary election when only one party primary election is held for the nomination of candidates for municipal office, not more than four judges need be provided, two from each major party (ORC 3501.23).

From among the judges, the board appoints receiving and counting officials. Receiving officials perform the duties required for receiving ballots, opening and closing the polls, and for the casting of ballots. Counting officials count and tally the votes and certify the results of the election. One of the counting officials is designated as the presiding judge (ORC 3501.22).

When the polls are closed, the receiving officials, in the presence of the counting officials, count the number of electors who voted, the unused ballots, the soiled and defaced ballots, and record this information in the poll books. They then count the voted ballots and place the unused, soiled, and defaced ballots in the envelope provided for such purpose. The counting officials then count and tally the vote as cast. For detailed information concerning ballots, voting, and counting procedures, see ORC Chapter 3505.

All precinct election officials must be trained, in a manner prescribed by the Secretary of State, before participating in an election. The Secretary of State reimburses each county for the cost of this training (ORC 3501.27). For 2010, The Secretary of State's office reimbursed a maximum of \$5 per pollworker for attending the training session and also reimbursed the cost of training or instructional materials. The expenses of paid

trainers or rental of training facilities, however, was not reimbursed (Directive 2010-41: *Poll Worker Training Reimbursement*)

It is the duty of the presiding judge to open the polls at 6:30 a.m. and to close the polls at 7:30 p.m., except that voters waiting in line at that time must be allowed to vote (ORC 3501.32).

All judges have the responsibility to enforce the peace and maintain good order at polling places. They must keep the place of access to the polling place open and prevent or stop improper practices. They may call upon any police officer to assist them. The police shall immediately respond and obey any lawful order of the precinct official (ORC 3501.33).

124.161 USE OF PUBLIC EMPLOYEES AS PRECINCT OFFICIALS

Any employee of the state or any political subdivision (excepting election officials and public school teachers, and subject to bargaining agreements) may serve as a precinct official on election day without loss of the employee's regular compensation for that day as follows:

1. For employees of a county, the employee's appointing authority may permit leave with pay in accordance with a resolution passed by the county commissioners
2. For all other employees of a political subdivision of the state, the legislative authority of the applicable subdivision shall set forth terms by a resolution or ordinance.
3. For state employees, subject to the terms set forth by the head of the state agency.

If no such terms or conditions have been set forth by the above authorities, an employee may use personal leave, vacation leave, compensatory time, or unpaid leave to serve as an election official (ORC 3501.28).

124.17 COMPENSATION AND EXPENSES OF PRECINCT OFFICIALS

The compensation of precinct election officials is established by the board of elections, and is very complex and can be confusing. Under ORC Sections 3501.28(C) and (D), beginning in the calendar year 1998, poll workers were to be compensated for their services at no less than the minimum wage as established by the Fair Labor Standards Act (FLSA), provided that the salary could not exceed \$85 per day. This statutory mechanism under Ohio law for paying poll workers by the FLSA minimum wage should not be interpreted as meaning that poll workers fall within the definition of applicable "employee" under the federal guideline itself. Indeed an Ohio Attorney General opinion states that poll workers are not subject to Ohio minimum wage, which uses the federal definition for applicable employees (OAG 2007-33). The opinion concludes that poll

workers more appropriately would be defined as “volunteer” employees not subject to the FLSA. Again, however, state law separately points to the FLSA as the guideline for poll worker compensation.

For calendar year 2004, poll workers were to be compensated for their services at no less than the minimum wage as established by the Fair Labor Standards Act, provided that the salary could not exceed \$95 per day.

However, as the Fair Labor Standards Act is amended to increase the minimum wage, the Secretary of State must determine what percentage the minimum hourly rate has been increased under the Act and establish a new maximum amount of compensation precinct officials may be paid by increasing the maximum per day rate by the same percentage. The current maximum is \$133.72 (Directive 2009-08).

A board of elections may increase the pay of an election official during a calendar year up to, but not exceeding 9% if the official was paid \$85 or less the previous election year. A board of elections may increase the pay of an election official during a calendar year up to, but not exceeding 4.5% if the official was paid more than \$85 but less \$95 the previous election year. However, the salaries of election officials shall not be raised during a calendar year unless the board of elections gives notice of such raise to the county commissioners not later than October 1 of the preceding year.

Commissioners may enter into a written agreement with a board of elections to permit an increase in the compensation paid to precinct officials during a calendar year that is greater than the applicable percentages described above (ORC 3501.28). This may prove necessary should the minimum wage law require an increase greater than the maximum permitted by statute. Directive 2009-08 lists the current minimum and maximum rate based on the Fair Labor Standards Act. As noted above, the current maximum is \$133.72, while the minimum per day rate is \$101.50. If federal legislation requires changes, the Secretary of State’s office will notify boards of elections as required by ORC 3501.28(D).

The presiding judge who delivers voting material to the polling place and returns the ballots and other supplies to the board of elections receives an additional \$5 per trip plus mileage (ORC 3501.36). No election official who works less than the full Election Day shall be paid the maximum rate. Elections officials may withhold a precinct official’s pay for failure to obey the instructions of the board or comply with the law related to their duties.

Election workers are exempt from PERS, but both the worker and the county must pay social security. Currently employees are exempt from federal income tax withholding if the one year aggregate compensation is less than \$600 and also exempt from social security and Medicare taxes if such compensation is less than \$1500 (IRC Section 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V)).

124.18 CONTRACT FOR ELECTION SUPPLIES

The county board of elections does not have to comply with the county competitive bidding law (ORC 306.86 - .92) when it purchases election supplies and printing. In this regard, the board of elections is its own contracting authority, and must comply with procedures detailed in election law (ORC 3501.301).

When purchasing printing and supplies except for the official ballots, competitive bidding is not required if the cost is less than \$10,000. When competitive bidding is required, there are two options for the form of the notice:

1. Publication in a newspaper one time.
2. Mailing a notice to responsible suppliers in the state.

The following requirements may also apply to such purchases:

1. The bond must be in an amount two times the bid.
2. The bond must be from two individual sureties or from a company acceptable to the board of elections.
3. The bond is not only for performance of the contract, but must also agree to pay damages and excess cost resulting from failure to complete the contract.
4. The bid must be let to the lowest responsible bidder.

124.19 CONTRACTS FOR OFFICIAL BALLOT PRINTING

Other procedures apply to the purchase of printing for official ballots by the board of elections (ORC 3505.13). A contract for the printing of ballots in excess of \$10,000 must comply with one of the following notice options:

1. Notice in the leading newspaper published in the county at least five days before a contract is let.
2. A mailed notice sent by the board of elections to responsible printing offices in the state.

The following requirements may also apply to such purchases:

1. Bids for the printing of ballots must be accompanied by a bond from at least two sureties or a surety company acceptable to the board of elections.
2. The bond must be for two times the amount of the bid and be conditioned upon faithful performance of the contract.

3. In addition, the bond must provide for damages by the bidder for any excess cost over the bid for failure to perform.
4. The bid must be let to the lowest responsible bidder.
5. Ballots must be printed within the state.

124.20 USE OF VOTING MACHINES, MARKING DEVICES AND TABULATING EQUIPMENT

The Secretary of State must certify all voting machines, marking devices, and tabulating equipment used in the state.

When a company desires approval of new equipment it must first be approved by the Board of Voting Machine Examiners, appointed by the Secretary of State who shall make a recommendation to the Secretary. The Board of Voting Machine Examiners consists of two members appointed by the Secretary of State, one member appointed by the Speaker or Minority Leader of the House, whichever is a member of the opposite political party of the Secretary and one member appointed by the President or Minority Leader of the Senate, again, whichever is a member of the political party opposite the Secretary.

Neither the Secretary of State nor the board, nor any public officer who participates in the authorization, examination, testing, or purchase of equipment can have any pecuniary interest in the equipment or any affiliation with the vendor.

A county can change the method by which citizens vote in the following ways (ORC 3506.02):

1. The board of elections may make the decision.
2. County commissioners may adopt the use of new voting machines after a recommendation from the board of elections.
3. Electors of the county may place the question on the ballot at a general election. The petition must be signed by 2% of those voting in the last general election.

While in most instances the decision is made by the county commissioners, in conjunction with the board of elections, if a petition is filed:

1. The county commissioners must be notified of the filing of the petition.
2. The commissioners can then determine whether they want to proceed with the new purchase or lease and whether to issue bonds to pay for the new equipment.

3. If bonds are to be issued the question of issuing bonds must then be submitted to the electors at the same time as the question of adopting the new equipment.
4. The question of issuing bonds must be separate from the question of adopting the new voting equipment.

124.21 PURCHASE OF NEW VOTING EQUIPMENT

Once a decision to acquire new election equipment is made, the equipment may be acquired by the following methods (ORC 3506.03):

1. Purchase by cash.
2. Purchase from the proceeds of bonds, if approved by the electors.
3. Purchase by equal annual installment payments. The number of installments may not exceed the useful life of the equipment. A promissory note is issued to the seller that includes interest. These notes are not subject to the uniform bond law.
4. Lease or rent the equipment.
5. Lease the equipment with an option to purchase.

The law also allows for a gradual change in the use of equipment over a period of time as long as all precincts have the newly adopted equipment as soon as practicable after its use is adopted (ORC 3506.04).

124.22 PRECINCTS

The board of elections may divide a political subdivision within its jurisdiction into precincts, establish, define, divide, rearrange, and combine the precincts within its jurisdiction, and change the location of the polling place for each precinct when it is necessary to maintain the requirements as to the number of voters in a precinct and to provide for the convenience of the voters and the proper conduct of elections.

However, changes in the number of precincts or in precinct boundaries cannot be made:

1. During the 25 days immediately preceding a primary or general election.
2. Between January 1st and the day on which the members of county central committees are elected in the years in which those committees are elected.

In drawing the boundaries of precincts, boards of election use the following criteria, unless granted a waiver by the Secretary of State:

1. A precinct cannot exceed 1,400 voters.
2. All precincts must contain a number of voters that the board of elections determines to be a reasonable number after taking into consideration the type and amount of available equipment, prior voter turnout, the size and location of each selected polling place, available parking, availability of an adequate number of poll workers, and handicap accessibility and other accessibility to the polling place.
3. All precinct boundaries must use geographical units used by the United States Department of Commerce, Bureau of the Census, in reporting the decennial census of Ohio.

A board of elections can only apply for a waiver regarding the number of voters in a precinct when it is not feasible because of unusual physical boundaries or residential development practices that would cause unusual hardship for voters. A board can likewise request a waiver from the census geographical unit requirements when following such requirement will cause a precinct to contain more than 1,400 electors.

If the board changes the boundaries of a precinct after the filing of a local option election in that precinct, the local option election shall be held in the area that constituted the precinct at the time the local option petition was filed, regardless of the change in the boundaries.

If the board changes the boundaries of a precinct in a manner that causes a member of a county central committee to no longer qualify as a representative of an election precinct in the county, of a ward of a city in the county, or of a township in the county, the member shall continue to represent the precinct, ward, or township for the remainder of the member's term, regardless of the change in boundaries.

In an emergency, the board may provide more than one polling place in a precinct. In order to provide for the convenience of the voters, the board may locate polling places for voting or registration outside the boundaries of precincts, provided that the nearest public school or public building is used if the board determines it to be available and suitable for use as a polling place. Except in an emergency, no change in the number or location of the polling places in a precinct shall be made during the 25 days immediately preceding a primary or general election.

Electors who have failed to respond within 30 days to any confirmation notice shall not be counted in determining the size of any precinct.

When the board of elections considers it necessary to change, divide, or combine any precinct or to relocate a polling place, it must notify, prior to the next election, each of the registrants in the precinct of the change by mail. Further, when the board changes the boundaries of any precinct, it must also notify the Secretary of State of the change not later than 45 days after making the change.

124.23 ACCESSIBILITY OF POLLING PLACES

Under Ohio law, the board of elections is charged with providing for each precinct a polling place and to provide “adequate facilities at each polling place for conducting elections.” Effective November 1, 1982, all polling places in Ohio were to be accessible to handicapped individuals, unless an exemption is granted by the Secretary of State. While most polling places are now accessible in Ohio, some counties still have problems with accessibility.

With the enactment of The Americans with Disabilities Act of 1990 (ADA), the need to make all polling places accessible is even more important. Under Ohio law the following standards exist for accessibility (ORC 3501.29):

1. The polling place is free of barriers that would impede ingress and egress by handicapped persons.
2. The minimum number of special parking locations (handicapped parking spaces or disability parking spaces) are designated at each place in accordance with state and federal law.
3. Entrances to polling places are level or have a non-skid ramp with not more than an 8% gradient.
4. Doors to polling places are at least 32 inches wide.

In order to be exempted by the Secretary of State, the board of elections must certify that good faith efforts were made to modify or change the location of the polling place. In addition, if a polling place is exempted from the accessibility requirements by the Secretary of State, a handicapped person must be permitted to vote either from a car or at the door of the polling place. Assistance must be provided to a handicapped person by two precinct officials of different political parties (ORC 3501.29(B)).

124.24 PROVISIONAL VOTING

A provisional ballot is used to record a vote if a voter’s eligibility is in question and the voter would otherwise not be permitted to vote at his or her polling place. The content of a provisional ballot is no different from a regular ballot, but it is cast “provisionally” until election officials can verify the voter’s eligibility to vote in the particular precinct at that election (R.C. 3505.181).

There are several scenarios in which a voter may cast a provisional ballot. A provisional ballot may be used on Election Day if a voter’s eligibility is in question, or before (or on) Election Day if a voter has recently changed his or her address or name, and did not update his or her voter registration.

If a voter casts a provisional ballot and did not provide acceptable proof of identity at the time of voting, the voter must appear in person at the board of elections to provide such proof within the 10 days immediately following Election Day.

124.25 ABSENTEE VOTING

Absentee voting begins 35 days before the primary or general election, with the exception of presidential primary elections. In the case of presidential primaries, absentee voting begins 25 days before Election Day.

Some elections do not involve the nomination or election of candidates. These elections are called special elections. Absentee voting for special elections begins as many days before the day of the election as reasonably possible. This may thus vary from county to county and is determined by each board of elections. Except for voters hospitalized due to emergencies, absentee voting ends the day before the election.

Once absentee ballots are available for voting, any eligible voter may receive and return an absentee ballot:

1. In person at the county board of elections office or,
2. If a board of elections has designated another location as its absentee voting site, commonly referred to as an “early in-person absentee location”, in person at that designated location, or
3. By U.S. Mail.

“Early in-person absentee vote locations” have become increasingly popular with voters. In the most recent election, five counties (Hardin, Franklin, Knox, Lucas, and Summit) chose alternative sites to support increased early voting. Recent legislative attempts at election reform have increased the number of locations a board of elections may choose to use. Because of the cost implications of such proposals, CCAO prefers a requirement that a super-majority or 3 out of the 4 board members affirmative vote is required before such sites could be used.

Ohio law provides separate application processes for different classifications of absentee voters (i.e., state militia, armed services, uniformed service members, out-of-country, and regular citizens). In all cases, absentee ballots must be applied for in writing. A person, who is properly registered to vote, must submit a written request to the board of elections, and to avoid potential problems, an application form prescribed by the Ohio Secretary of State should be used.

124.26 RECOUNTS

Under Ohio law, a recount can commence one of two ways: by application or, when the margin of victory is very small, automatically.

Any losing nominee or candidate in a primary, general, or special election can request a recount. Also, a group of five or more voters can request a recount on a question or issue. The recount process begins by filing a written application with the board of elections of each county in which votes are to be recounted (ORC 3515.01). The application must be filed within five days after the results were declared (ORC 3515.02). The application must also list each precinct within the county where votes are to be recounted, and for each precinct a \$10 deposit must be paid (ORC 3515.03).

If the margin of victory of the nominee, candidate, or issue is less than ½% of the vote, ORC Section 3515.011 triggers an automatic recount in all county, municipal, and district elections. An even slimmer margin, ¼%, triggers an automatic recount in a statewide election.

124.27 ACKNOWLEDGEMENT

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