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MEMO

Re: DIRECTIVE 2008-63
September 05, 2008

Ohio Secretary of State Jennifer Brunner issued Directive 2008-63 on August 13, 2008, which discussed processing voter registration application. The bulk of the directive urges the Board of Elections to expedite the voter registration process. However the directive also discusses newly registered voters applying for an absentee ballot at the time of registration. The directive states:

> If a newly registered elector submitted an absentee ballot application with his or her voter registration application, the board shall issue the appropriate absentee ballot to that elector as soon as practicable, but not more than five business days after mailing the acknowledgement notice to that elector.
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> Additionally, there are several days before the 2008 general election during which a person may appear at the board of elections office and simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot. As discussed above, a board of elections must first obtain from the person who presents himself or herself to vote during this period a completed voter registration or change of address form.
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> Boards of elections are required to develop procedures to immediately register the applicant and issue an absentee ballot to the newly registered elector of the county at the time of registration, reserving the right to delay registration and immediate absentee voting if a board is not satisfied as to validity of the application and the applicant's qualifications.

This appears to be in contravention of the Ohio Revised Code and the Ohio Constitution. To understand the ramification of this directive an examination of pertinent law is necessary.

O.R.C. 3501.01(N) defines elector. It states: "elector or qualified elector means a person having the qualifications provided by law to be entitled to vote." O.R.C. 3503.01 and the Ohio Constitution define the qualification of an elector. O.R.C. 3503.01 states: " Every citizen of the United States who is of the age of eighteen years or over

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and who has been a resident of the state thirty days immediately preceding the election at which the citizen offers to vote, is a resident of the county and precinct in which the citizen offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and may vote at all elections in the precinct in which the citizen resides." Ohio O Const V § 1 states: "Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote."

From these definitions we find than an elector is someone who is:

(1) A citizen of the United States
(2) 18 years of age or older
(3) Resident of the state 30 days immediately preceding the election
(4) A resident of the county and precinct in which the citizen offers to vote
(5) And has been registered to vote for 30 days.

O.R.C. 3503.19 details the methods of registering to vote. For our purposes O.R.C. § (C) (1) is the law concerning registering a voter. It states: " A board of elections that receives a voter registration application and is satisfied as to the truth of the statements made in the registration form shall register the applicant not later than twenty business days after receiving the application, unless that application is received during the thirty days immediately preceding the day of an election." The board shall promptly notify the applicant in writing of each of the following:

(a) The applicant's registration;
(b) The precinct in which the applicant is to vote;
(c) In bold type as follows:

"Voters must bring identification to the polls in order to verify identity. Identification may include a current and valid photo identification, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than this notification or a notification of an election mailed by a board of elections, that shows the voter's name and current address. Voters who do not provide one of these documents will still be able to vote by providing the last four digits of the voter's social security number and by casting a provisional ballot. Voters who do not have any of the above forms of identification, including a social security number, will still be able to vote by signing an affirmation swearing to the voter's identity under penalty of election falsification and by casting falsification and by casting a provisional ballot."

Finally, O.R.C. 3509.03 details the steps necessary to apply and receive an absentee ballot. It states that any qualified elector may apply for an absent voters ballot. The section details various requirements, specifically section (G) states: "A statement that the person requesting the ballots is a qualified elector." "O.R.C. 3509.04 directs the director issue a ballot "if the director finds that the applicant is a qualified elector: Per the O.R.C. to apply for and receive an absentee ballot, the voter must be a qualified elector. Again, per the O.R.C. and the Ohio Constitution, one of the requirements to be considered a qualified elector is that the voter be registered to vote for 30 days.

The Madison County Board of Elections is to follow the law of Ohio. According to Ohio law an absentee ballot cannot be issued to a person who is not a qualified elector. One of the requirements to be a qualified elector is to be a registered voter for 30 days. Therefore, according to the law you cannot issue an absentee ballot until the voter has been registered for 30 days. I am unclear of the Secretary of State's reasoning. I urge the Board of Elections to follow the law as statue in the Ohio Revised Code.