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DIRECTIVE 2004-43

October 25, 2004

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

To ensure that all votes cast in the November 2 general election are counted accurately and uniformly, I am issuing this directive, which provides instructions for:

- Pretesting codes and tabulating equipment used in the official and unofficial canvasses.
- Canvassing unofficial election results on election night and official results thereafter.
- Conducting mandatory and permissive recounts after the official results are certified.

PRETESTS

R.C. 3506.14 requires the board, before an election, to publicly test and audit the variable codes applicable to that election to verify the accuracy of any computer program that will be used for tallying ballots cast at the election. In order to satisfy this statutory mandate, boards are strongly advised to conduct the public test before election day.

Public notice of the date, time and place of the test must be given by either proclamation or posting of the notice, as in the case of notice of elections.

The test must be conducted by using a pre-audited group of ballots with a predetermined number of votes cast for each candidate, issue and question. The automatic tabulating equipment must be tested for the ability to detect overvotes. If any error is detected, the cause for the error must be determined and corrected. An errorless test then must be conducted and certified by the board.

This test must be run again prior to counting ballots on election night and after the count is completed. The test also must be completed prior to and after the official count, before the board can approve the results as official.

UNOFFICIAL CANVASS

Reminder: You must send the results of your unofficial canvass to the Secretary of State's Elections Division by **noon on Wednesday, November 3, 2004.**

The unofficial canvass shall include all the ballots that the board determines are eligible to be counted on election night. (An example of a ballot that cannot be counted on election night is a provisional ballot.) The unofficial canvass shall be conducted in full view of the board members and any witnesses designated under R.C. 3505.21.

The board of elections must designate teams having an equal number of people from each major political party to inspect and count the ballots. Depending on the type of voting system used in the county, the teams either inspect or count the ballots as follows:

- Paper ballots *Count* and record votes cast; or sort into stacks, count the ballots and record the votes cast.
- Punchcards *Inspect* ballot cards for hanging chad by fanning a deck of voted ballot cards consisting of no fewer than 50 cards and remove any chad attached to the ballot card by one or two corners.

Remake any ballot card that is punched contrary to instructions, if voter's intent is clear, A ballot voted backwards shall be remade to count only holes that are clearly punched through the ballot card; if the pattern of holes indicate the ballot was initially voted backwards, then inserted correctly, only those holes punched properly shall be counted.

- Optical Scan *Inspect* any ballot rejected by the tabulator as a blank ballot. Voter intent is determined by examining the ballot for a consistently made mark that is contrary to voting instructions. For example, rather than fill in the oval or arrow, the voter underlined choice, circled choice, circled oval or arrow by choice, made an "X", checkmark or other recognizable mark beside the choice, or the voter marked the ballot with a writing instrument not recognized by tabulator.

Remake any inspected ballot in which the intent of the voter has been determined.

- DRE *Verify* that a cartridge and corresponding report is received from each precinct.
- *Write-ins: All Voting Systems*

If there are candidates on the ballot and write-in candidate(s) for the same office, the ballots must be checked for the possibility of an overvote and whether the name written on the ballot is a qualified write-in candidate.

A voter may write in only the last name of the candidate, if there is only one candidate with that last name as a candidate.

If there are two or more write-in candidates with the same last name, the voter must provide sufficient information for election officials to determine the voter's intent. For example, the voter must write the first and last name or office and last name on the ballot.

OFFICIAL CANVASS

The official canvass may begin no earlier than 11 days after the election (Nov. 13) and must begin no

later than 15 days after the election (Nov. 17). **Each board's official canvass must be completed no later than December 1.** See the section "*Required Reports for the November 2 General Election*" of this Directive for reporting requirements.

Before the 11th day after the election, boards may examine pollbooks, poll lists, signature pollbooks and tally sheets and compare them to the summary sheets. Any errors, defects or omissions shall be noted and corrected. The examination, however, must be completed before official results can be certified.

- *All Voting Systems* In order for a board to declare official results, **all** valid ballots cast -- including eligible ballots cast at the polls, provisional ballots and absentee ballots -- must be counted at the official canvass.
- *Paper ballots* Count the ballots as counted on election night; or sort the ballots using the stack method, then count each stack. The stack method means sorting by candidate, yes or no vote, for or against vote, and overvote or no vote.
- *Punchcard* Each board must establish one or more counting stations at the board of elections where all ballots will be counted.
- *Optical scan* Each board must set the tabulators to reject blank ballots *and* overvoted ballots. The boards must designate inspection teams consisting of an equal number of employees from each major political party to efficiently inspect the rejected ballots to determine voter intent.
- *DRE* Each board must rerun the precinct cartridge and verify the count matches the unofficial. If it does not, the board must compare the paper audit trail or the internal program on the voting machine to the cartridge results and determine the cause of the difference.

Request: For the Official Canvass **only**, please program your tabulating equipment to report separately the number of overvoted and undervoted ballots cast and include those numbers on your abstract.

REQUIRED REPORTS FOR THE NOVEMBER 2 GENERAL ELECTION

The election night reporting forms, unofficial report forms and official report forms will be sent under separate directives. As noted above, a board's Unofficial Canvass reports must be sent to our office by noon on the day after the election, November 3.

Additionally, each board must complete the official canvass by December 1, and all official report forms must be received by this office no later than December 3.

ELECTION RECOUNT REQUIREMENTS & PROCEDURES

To assist you in complying with statutory requirements for recounts, this office prepared a reference guide showing requirements for declaring automatic or requested recounts of county, municipal, township, and school district races and questions and issues. Please refer to the *Outline of Recount Procedures* that was sent with Directive 2001-10 on October 31, 2001.

Please remember that a recount is based on official results, and no recount may be held prior to the official canvass and certification of results. Also, it is not permissible for a board to count ballots for official results and immediately conduct an automatic recount without providing proper notification to candidates or issue chairpersons. Each candidate whose votes are to be recounted must be notified of the recount. A declared losing candidate may request that a recount not be held. (R.C. 3515.03)

Each candidate race must have a declared winner, and each question and issue contest must have a declared winning position, before the board can certify the results of that election.

- If the official canvass of votes for an *office* results in a tie (that is, two or more candidates receive the same, equally high number of votes), **the tie must be resolved by lot at the board's certification meeting**. The board members determine the method to be used, such as tossing a coin, cutting cards, drawing straws, pulling a name out of a hat, and the like. The board chairman, in the presence of a majority of the other board members, uses the selected method to break the tie and a winner declared. Then, and only then, may the results of that candidate race be certified. The declared winner remains the winner in the race if the recount mandated by R.C. 3515.011 confirms the tie vote. (R.C. 3505.33)
- By contrast, a tie vote on a *ballot question* or *issue* is **not** broken by lot, because the issue automatically loses if it has not been passed by a majority vote. However, a mandatory recount still must be conducted in accordance with R.C. 3515.011. The board must notify the appropriate political subdivision or issue committee of the recount.

BALLOT SECURITY

Ballot security is important at all times. As soon as any ballot tabulation is completed, all ballots must be stored in a safe, dry place secured with two locks: one lock that can be opened by the director, and the other lock by the deputy director or other designated employee of the opposite of party of the director. All used and unused ballots must be retained for at least 22 months.

QUESTIONS?

If you have any questions regarding these instructions, please contact the Elections Division at (614) 466-2585.

Sincerely,



J. Kenneth Blackwell