

Directive 2008-78

September 4, 2008

TO: ALL COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS

RE: Eligibility of Former Ohio Residents to Vote in Presidential General Election in Ohio

A former Ohio resident, whether or not formerly registered to vote in Ohio, who satisfies all the requirements and conditions contained in R.C. 3504.01 to 3504.06 may vote in Ohio's presidential general election either in person at the precinct polling location for the precinct in which that individual's voting residence was located at the time he or she moved from this state or by absentee ballot, either by appearing at the board of elections office, unless the board has designated another site for voting pursuant to R.C. 3501.10(C) during the absentee voting period, or by receiving and returning the presidential absentee ballot by mail.

A. Eligibility

To be eligible to participate in Ohio's presidential election, the former Ohio resident must, according to R.C. 3504.01 "otherwise possesses the substantive qualifications to vote in this state, except the requirements of residence and registration." That means the individual::

- Must be a United States citizen who will be at least 18 years of age as of the day of the presidential general election;
- Must have resided in Ohio at least 30 consecutive days immediately before moving from Ohio (being previously registered to vote there is not a requirement under the law);
- Must have been otherwise eligible to vote in Ohio before moving from Ohio; i.e., may not be currently incarcerated for a felony conviction or adjudicated incompetent to vote by a court of competent jurisdiction, or been twice convicted of violations of Ohio's election laws;
- Must have moved his or her residence from Ohio not more than 90 days before the day of the presidential general election;
- Must not have registered to vote in the state to which the former resident has moved his or her residence; and
- Must declare under penalty of election falsification that, as a result of having recently moved from Ohio, he or she is not entitled to vote in the presidential election of the state in which the former resident currently resides.

B. Requesting the Presidential Ballot

A former resident who satisfies all the requirements listed above may vote in Ohio for presidential and vice-presidential electors, but for no other offices or issues. A former resident must vote in the Ohio precinct in which the former resident's qualifying residence was located at the time he or she moved from Ohio. To cast this vote, the former resident must meet the following two conditions:

1. Complete in duplicate, and under penalty of election falsification, no later than 4 p.m. on the 30th day before the presidential general election, the Secretary of State's form certifying the former resident's intent to vote in Ohio's presidential election, Form 107-A, "Certificate of Intent to Vote for Presidential and Vice-Presidential Electors." This form allows an eligible former resident to certify the intent to vote in Ohio's presidential election and to either appear in person in Ohio on Election Day to vote or to request an absentee ballot for the presidential election. Certificates of intent must contain the former resident's former qualifying residence address in Ohio and must be filed in person or by mail at the board of elections of the county where the individual was last a qualifying former resident of Ohio.
2. R.C. 3504.02 does not specify when the certificate of intent must be filed or received by the board of elections, only that it must be completed no later than the 30th day before the presidential election. Therefore, if a certificate of intent is received with a timely submitted absentee ballot application and if all other requirements of R.C. 3504.01 to 3504.06 are met, an absentee ballot shall be provided to (if appearing in person) or mailed to the elector with instructions that the elector is entitled to vote only the presidential ballot and that votes on any other ballots are invalid. If a certificate of intent is received by Election Day without an absentee ballot application and no subsequent absentee ballot application is received by the board of elections from the former resident, the poll book and any poll lists shall be appropriately marked with a notation that the elector is entitled to vote only the presidential election ballot, and the elector shall be permitted to vote only the presidential election ballot on Election Day. In the event that such an elector appears at the board of elections and claims to have been denied a presidential ballot by a precinct judge, he or she shall be permitted to vote a provisional presidential ballot at the board of elections. If such an elector votes a provisional ballot, either at the board of elections or at a precinct polling location, the validity of the ballot shall be determined based on the criteria contained in this directive.
3. The former Ohio resident who completes the certificate of intent shall be subject to voter identification requirements as they apply to absentee or in-person voting.
4. Ballots returned with a postmark before presidential Election Day but received within 10 days after the election shall be counted if all else is in order.

Boards of elections shall provide the certificate of intent prescribed by the Secretary of State's office upon request. The currently prescribed certificate (Form 107-A) is provided as an attachment to this directive. The PDF version of the form is available on the BOE Extranet.

C. Board of Elections to Provide List of Former Resident Voters

A board of elections that receives a completed and timely filed certificate of intent shall create a list of former residents who appear from their applications and certifications to be eligible to vote in Ohio's presidential election. On or before Election Day, the board shall deliver to all affected polling places a list of persons who have filed certificates of intent to vote as former resident voters.

D. Voting by the Former Resident of the Presidential Ballot

A former resident who appears for the purpose of voting at the appropriate precinct polling place on Election Day shall sign that voter's name in the poll book or poll list, and a notation shall be made on the list of persons who have filed certificates of intent to vote as former resident voters as well as a notation in the poll book or on the poll list, "Former Resident's Presidential Ballot."

E. Notice to Secretary of State

A board of elections that receives a valid and timely-filed Form 107-A from any former resident must send a copy of that form to the Ohio Secretary of State's Elections Division so that it is received by within seven days of receipt or by Election Day, whichever is earlier.

F. Penalty for Violation of Law

It should be noted that, while the law requires Form 107-A to contain the general notice that the penalty for election falsification is a felony of the fifth degree, the penalty for willfully making a false statement or affidavit under sections R.C. 3504.01 to 3504.06 is a felony of the fourth degree, a more severe penalty.

If you have any questions concerning this advisory, please contact your assigned elections attorney via email or at telephone number (614) 466-2585.

Sincerely,

Jennifer Brunner