

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> SENSIBLE NORWOOD, <i>et al.</i>	:	Case No. 2016-1277
	:	
	:	
Relators,	:	
	:	
v.	:	MERIT BRIEF OF RESPONDENT
	:	HAMILTON COUNTY BOARD OF
HAMILTON COUNTY BOARD OF ELECTIONS	:	ELECTIONS
	:	
	:	
Respondent.	:	
	:	
	:	

MERIT BRIEF OF RESPONDENT HAMILTON COUNTY BOARD OF ELECTIONS

Edward J. Stechschulte (0085129) Kalinz, Iorio & Reardon Co., LPA 5550 W. Central Avenue Toledo, Ohio 43615 Tel: (419) 537-4821 Fax: (419) 535-7732 Email: estechschulte@kiflaw.com Counsel for Relators	JOSEPH T. DETERS (0012084) PROSECUTING ATTORNEY HAMILTON COUNTY, OHIO David T. Stevenson (0030014) Cooper D. Bowen (0093054) Assistant Prosecuting Attorneys 4000 Taft Law Center 230 East Ninth Street Cincinnati, Ohio 45202 Tel: (513) 946-3120 (Stevenson) Tel: (513) 946-3195 (Bowen) Fax: (513) 946-3018 Email: dave.stevenson@hcpros.org cooper.bowen@hcpros.org Counsel for Respondent Hamilton County Board of Elections
---	--

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

BACKGROUND..... 1

 a. PROCEDURAL POSTURE..... 1

 b. STATEMENT OF FACTS 1

ARGUMENT5

 a. FIRST PROPOSITION OF LAW 8

**A Municipal Corporation Has No Power to Enact and Punish Felony Crimes,
 And An Initiative Petition Proposing An Ordinance That Seeks To Enact
 Felonies Is Invalid And May Not Be Submitted To the Electorate**

 SECOND PROPOSITION OF LAW 8

**A Municipal Corporation Has No Power To Suspend The Operation Of State
 Criminals Statutes Within Its City Limits And An Initiative Petition Proposing
 An Ordinance That Attempts To Do So Is Invalid And May Not Be Submitted
 To The Electorate.**

 b. THIRD PROPOSITION OF LAW..... 11

**An Initiative Petition Proposing An Ordinance That Directs To Whom
 City Law Enforcement And Prosecutorial Officials Shall Report
 Violations Of Local, State, And Federal Drug Laws, And Prohibits Such
 Officials From Referring Violations Of State And Federal Drug Laws To
 The Appropriate Authorities For Investigation And Prosecution Is An
 Invalid Exercise Of The Initiative Power And May Not Be Placed On The
 Ballot.**

 c. FOURTH PROPOSITION OF LAW 14

**A Severability Clause Will Not Save A Municipal Initiative Petition That
 Proposes To Enact Felony Criminal Laws And Directs That City State-
 Certified Police Officers And Prosecutors Shall Not Enforce State Law
 Within The City Limits.**

 d. FIFTH PROPOSTION OF LAW 15

**Laches Will Bar A Claim In An Expedited Election Matter Where
 Relator Delayed Filing His Complaint Until Six Days Following The**

**Board Of Elections Decision And Did Not Assure That The Matter Was
Timely Served.**

CONCLUSION 16
CERTIFICATE OF SERVICE 17

APPENDIX

Appendix 1 – Appendix of Constitutional and Statutory Sections and Unreported Case

Appendix 2 – Appendix of Evidence

Exhibit 1 – Minutes of Hamilton County Board of Elections Meeting held August 16,
2016

Exhibit 2 – Minutes of Hamilton County Board of Elections Meeting held August 22,
2016

Exhibit 3 – Affidavit of Sherry Poland

TABLE OF AUTHORITIES

Akron v. Smith, 82 Ohio App.3d 57, 611 N.E.2d 435 9

Blankenship v. Blackwell (2004), 103 Ohio St.3d 567, 571 16

Buckeye Community Hope Foundation v. City of Cuyahoga Falls (1998), 82 Ohio St.3d 539, 544, 697 N.E.2d 181, 185 11

Carver v. Stankiewicz (2004), 101 Ohio St.3d 256, 2004 Ohio 812 16

Cincinnati v. Hoffman, 31 Ohio St.2d 163, 181, 285 N.E.2d 714 (1972)(in dissent) 9

Donnelly v. Fairview Park (1968), 13 Ohio St.2d 1, 233 N.E.2d 500, paragraph 2 of the syllabus.. 11

Myers v. Schiering, 27 Ohio St.2d 11, 271 N.E.2d 864 (1971), paragraph one of the syllabus..... 6

Schroer v. Board of Elections of Franklin County (June 22, 1976), 10th Dist. No. 75AP-638, at 5, 1976 WL 189880, quoting 42 American Jurisprudence 2d Initiative and Referendum, sections 12, at page 660..... 11

State v. O'Mara, 105 Ohio St. 94, 136 N.E. 885 (1922) paragraph one of the syllabus 8

State ex rel Cooker Restaurant Corporation v. Montgomery County Board of Elections (1997), 80 Ohio St.3d 302, 1997 Ohio 315, 686 N.E.2d 238..... 15

State ex rel. Coover v. Husted, Slip Opinion No. 2016-Ohio-5794 ¶11 7,14

State ex rel. Corrigan v. Barnes, 3 Ohio App.3d 40, 45, 443 N.E.2d 1034, 1039 (8th Dist.1982).9

State ex rel. Ebersole v. Delaware Cty. Bd. of Elections, 140 Ohio St.3d 487, 491, 2014-Ohio-4077, 20 N.E.3d 678, 684, ¶ 29 (2014) 6

State ex rel. Flynn v. Board of Elections of Cuyahoga County 164 Ohio St. 193, 199, 129 N.E.2d 623, 627 (1955)..... 7

State ex rel. Fuller v. Medina Cty. Bd. of Elections (2002), 97 Ohio St.3d 221, 2002 Ohio 5922, ¶¶ 7..... 15

State ex rel. Hanna v. Milburn 170 Ohio St. 9, 11, 161 N.E.2d 891, 893 (1959)(same) 7

State ex rel. Hazel v. Cuyahoga Cty. Bd. of Elections, 80 Ohio St.3d 165, 168–69, 1997-Ohio-129, 685 N.E.2d 224, 227 (1997) 6

<i>State ex rel. Landis v. Morrow Cty. Bd. of Elections</i> (2000), 88 Ohio St.3d 187, 189, 2000 Ohio 295	16
<i>State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections</i> (2001), 93 Ohio St.3d 592, 595, 2001 Ohio 1806	15
<i>State ex rel. O'Beirne v. Geauga Cty. Bd. of Elections</i> , 80 Ohio St.3d 176, 182, 1997-Ohio-348, 685 N.E.2d 502, 506 (1997)	7
<i>State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico</i> , 106 Ohio St.3d 481, 485, 2005-Ohio-5061, 836 N.E.2d 529.....	6, 11
<i>State ex rel. Rhodes v. Lake Cty. Bd. of Elections</i> , 12 Ohio St.2d 4, 41 O.O.2d 2, 230 N.E.2d 347(1967).....	6
<i>State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections</i> , 119 Ohio St.3d 478, 482, 2008-Ohio-5093, 895 N.E.2d 177, 181, ¶¶ 20-21 (2008).....	6
<i>State ex rel. Walker v. Husted</i> , 144 Ohio St.3d 361, 363, 2015-Ohio-3749, 43 N.E.3d 419, 423, ¶ 13 (2015).....	7
<i>State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections</i> , 144 Ohio St.3d 239, 241, 2015-Ohio-3761, 41 N.E.3d 1229.....	6, 7, 14
<i>Sullivan v. State ex rel. O'Connor</i> 125 Ohio St. 387, 388, 181 N.E. 805 (1932).....	7
<i>Whitman v. Hamilton Cty. Bd. of Elections</i> , 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11 (same).....	7

STATUTES AND CONSTITUTIONAL PROVISIONS

R.C. §3.23.....	12
R.C. §109.71.....	12
R.C. §109.77.....	12
R.C. §715.67.....	9
R.C. §733.01.....	12
R.C. §733.50.....	12
R.C. §733.51.....	12
R.C. §733.52.....	12
R.C. §733.53.....	12
R.C. §733.68.....	12
R.C. §737.01.....	12
R.C. §737.11.....	12
R.C. §2925.03.....	3, 9
R.C. §2925.11.....	3, 9, 10
R.C. §3505.01.....	5
R.C. §3501.11.....	6
R.C. §3501.39.....	7
R.C. §3509.01.....	5
R.C. §3511.04.....	5, 16
OAC 109:2-1-03.....	12
OAC 109:2-1-12.....	12
OH Const. Art. I, §10.....	8
OH Const. Art. I, §18.....	9
OH Const. Art. II §1f.....	6, 11
OH Const. Art. II §26.....	8
OH Const. Art. IV §20.....	8
OH Const. Art. XVIII §3.....	9

I. BACKGROUND

a. Procedural Posture

On August 22, 2016, the Respondent Board of Elections of Hamilton County, Ohio (herein “Board”), unanimously rejected an initiative petition submitted by the City of Norwood on behalf of Relators for placement on the ballot in the 2016 General Election. Relators filed this action on August 29, 2016 as an expedited election action under Rule 12.08 of the Rules of Practice of the Supreme Court of Ohio. Relators requested service of their complaint by certified mail. This Court’s summons was issued on September 2, 2016, and received by the Board on September 6, 2016.

b. Statement of Facts

Relators submitted an initiative petition for an ordinance to the City of Norwood which in turn submitted it to the Board for placement on the ballot in the 2016 General Election.¹

Relators have never made a secret of the purpose of their initiative – to fully decriminalize marihuana and hashish in the City of Norwood. *See Brief for Relator* at 2, 8–9. The proposed ordinance repeals a number of existing sections of the Norwood General Offenses Code describing misdemeanor crimes dealing with (1) the possession, use, gifting, trafficking, and cultivation of marihuana and hashish; (2) the use and possession of drug paraphernalia; (3) the use of vehicles, conveyances and real estate for the commission of felony drug abuse offenses; and (4) the furnishing of sample drugs to another. *Relators’ Exhibit 1, Initiative Petition*, at 1²

The proposed ordinance also repeals the existing misdemeanor section of the Norwood Traffic

¹ The procedural predicates of Norwood’s submission are not at issue in this matter. The initiative petition was timely submitted with sufficient signatures.

² Respondent stipulates that the documents offered in evidence by Relators are what they purport to be. Respondent will provide approved copies of the minutes for August 16 and 22 meetings as part of its evidence.

Code prohibiting the operation of a vehicle while under the influence of alcohol and/or drugs.

Id.

In place of the repealed sections, the proposed ordinance enacts new felony and misdemeanor crimes that prohibit the possession, use, gifting, trafficking, and cultivation of marihuana and hashish, and prohibiting the use and possession of drug paraphernalia.³ These new felony and misdemeanor crimes are found in proposed section 513.15 of the Norwood General Offenses Code entitled: Marihuana Laws and Penalties. *Id.* at 10-13 The felony provisions of proposed section 513.15 are found in divisions: (b)(3)(defining possession of marihuana in excess of 200 grams as a fifth degree felony); (c)(3)(defining possession of over ten grams of solid hashish or over 2 grams of liquid hashish as a fifth degree felony); (f)(3)(defining cultivation of marihuana equal to or exceeding 200 grams as a fifth degree felony)⁴; and (j)(defining trafficking in marihuana as a fifth degree felony).

Under the terms of the proposed section 513.15 persons convicted of felonies and misdemeanors involving the possession, use, gifting, trafficking, and cultivation of marihuana and hashish, “shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.” *Id.* Proposed section 513.15 also suspends court costs for minor misdemeanor violations. *Id.*⁵

³ The sections prohibiting the operation of vehicles while under the influence of alcohol and/or drugs, giving a sample drug to another, and permitting the use of a vehicle, conveyance, or real estate for the commission of a felony drug abuse offense are not re-enacted under the terms of the proposed ordinance.

⁴ The ordinance as proposed is inconsistent in its lettering and numeration and resultantly confusing. See eg.: There are two sections titled 513.15 (f). The first refers to cultivation but references violations of “section (a). The second relates to fits of 20 grams or less of marihuana. Section 513.15(h) prohibits trafficking in marijuana, Section 513.15(j) makes trafficking in marihuana a fifth degree felony. Section 513.15(l) makes a violation of section 513.15 (h) a minor misdemeanor. Section 513.15(i) defines violations of section (e) (cultivation) as trafficking in marihuana.

⁵ Court costs are reinstated for other provisions of the Norwood General Offenses Code under new proposed section 501.99(a). It is unclear whether court costs may be imposed for other felony and misdemeanor marihuana and hashish related offenses given that proposed section 501.99 specifically excludes them, See: 501.99(d), and

Proposed section 513.15(m) specifically prohibits Norwood police officers and their agents from reporting any matter involving the possession, use, gifting, trafficking, and cultivation of marihuana and hashish, and the use and possession of drug paraphernalia to any entity other than the City Attorney.⁶ Division (m) further prohibits the City Attorney from referring any report involving the possession, use, gifting, trafficking, and cultivation of marihuana and hashish, and the use and possession of drug paraphernalia “to any other authority for prosecution or for any other reason.” The prohibitions in division (m) are not limited to reports governed by proposed section 513.15. By the very terms of the division it governs *any* incident involving marihuana or hashish, including, without limitation, the super bulk provisions of R.C. §§2925.03(C)(3) and 2925.11(C)(3). The use of state and federal laws to effect criminal and civil asset forfeiture of money, property, weapons, and contraband for violations of proposed section 513.15 is also prohibited.

The Board initially received the petition from the City of Norwood for the purpose of verifying signatures. Once the verification process was complete, the Auditor of the City of Norwood transmitted the petition with a request to place same on the ballot for submission to the electors of the city at the November 8, 2016 General Election. *Realtors’ Exhibits 4 and 5, Letters from Norwood City Auditor to the Board.* The petition and requested ballot language were submitted to the Secretary of State for approval. *Relators’ Exhibit 7, Trans. Special Meeting August 16, 2016 at 7.* The Secretary withheld approval of the ballot language and instructed the Board to seek the advice of the Prosecuting Attorney. *Id.* The opinion proffered by the prosecuting attorney’s office dealt with both the argumentative nature of the proposed ballot

proposed section 513.15 is silent regarding the imposition of court costs other than imposing a blanket prohibition on imposing punitive sanctions and mandated treatment.

⁶ Legal Counsel for the City of Norwood consists of the elected Law Director and his assistants. There is no “City Attorney.” For purposes of this matter, it is assumed that the City Attorney refers to the Law Director and any assistants in his office.

language and noted deficiencies in the proposed ordinance. *Id.* The opinion specifically noted that the power to enact and punish felonies is outside the authority of Ohio municipalities and that the provisions controlling the discretion of the police and city attorney in the performance of their duties were administrative and not legislative. *Id.* The opinion was given to the Board and Relators at the Board's August 16, Special Meeting. *Id. at 8-10.* The Board deferred consideration on Relators' petition until its Special Meeting of August 22, 2016, called specifically for the purpose of considering the petition. *Id. at 13-17.*

At the Board's August 22nd Special Meeting, the Board received and reviewed written and oral statements offered by counsel M. Brice Keller on behalf of Realtors and Timothy A. Garry, Jr. on behalf the City of Norwood. *See: Relators' Exhibit 8, Minutes of Special Meeting August 22, 2016; Relators' Exhibit 9, Trans. Special Meeting Aug. 22, 2016 at 2-25 and 39-46.* The Board also heard oral statements in support of placing the matter on the ballot. *Relators' Exhibit 9, Trans. Special Meeting Aug. 22, 2016, at 26-38.* The hearing centered on the two questions: 1) whether the City of Norwood has the power to enact and prescribe punishment for felony offenses; and 2) whether the provisions controlling the discretion of the police and city attorney were administrative rather than legislative. *See discussions: Relators' Exhibit 9, Trans. Special Meeting Aug. 22, 2016, pp 12-13, 15-16, 19-21, 25-26, 39-42, 46-51, 52-53.* Counsel for Relators conceded that the City of Norwood does not have the ability to create a felony. *Id. at 13.*

Upon the conclusion of the hearing, the Board voted unanimously to refrain from placing the matter on the ballot for the November General Election. *Relators' Exhibit 8, Minutes of Special Meeting August 22, 1016.* The reasons for the Board's denial are best stated in Chairman Burke's observations appearing at pages 52-53 of the transcript of the August 22nd meeting:

I am aware though of our responsibility to ensure that we are following the directives from the Ohio Supreme Court. And I think the Court has been very clear – if this were just a matter of the constitutionality of the ordinance, that’s not for us to decide, it would go to the ballot and the Court later on would make a determination.

But I think the law is clear that citizens only have the authority to propose what their – as a city ordinance, what their city council can legally do. And the Norwood City Council, as powerful as it may be, doesn’t have the authority to establish a felony. And on that grounds alone, I think the ordinance doesn’t make it to the ballot.

I think the administrative argument is also a substantial one. I understand – I thought you did a very good job with the argument, but where I thought the argument failed is state law exists. You’re not changing state law, you cannot change state law, but you have directed in this ordinance how both your police, the Norwood Police, and the Norwood Law Director is to respond, and that is giving administrative instructions on how to enforce an existing law, the state law, and that I don’t think you can do.

Finally, the Board has duties with hard deadlines for the November 8th General Election. The Secretary of State certified the form of the official ballot on August 30, 2016 as required by R.C. §3505.01. Printing and delivery of absentee ballots for voting by uniformed military services and overseas absentee voters begins not later than September 24, 2016. R.C. §3511.04. Regular absentee voting begins on October 12, 2016. R.C. §3509.01. As of September 14th the Board was in possession of 1,049 requests for ballots from uniformed military services and overseas absentee voters. *Respondent’s Exhibit 3, Affidavit of Sherry Poland* at ¶ 4. Other absentee requests total approximately 22,000, as of the same date. *Id.* at ¶ 6. To meet these deadlines, the Board must have its database finalized no later than September 16, 2016. *Id.* at ¶ 2. Printing of approximately 625,000 regular precinct ballots for use on Election Day begins on Monday September 19, 2016. *Id.* at ¶ 7.

II. ARGUMENT

The Ohio Constitution authorizes initiative and referendum power only on those questions that municipalities “may now or hereafter be authorized by law to control by

legislative action.” Constitution, Article II, Section 1f; *State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 485, 2005-Ohio-5061, 836 N.E.2d 529, 533, ¶ 22 (2005); *see also: Myers v. Schiering*, 27 Ohio St.2d 11, 271 N.E.2d 864 (1971), paragraph one of the syllabus; *State ex rel. Ebersole v. Delaware Cty. Bd. of Elections*, 140 Ohio St.3d 487, 491, 2014-Ohio-4077, 20 N.E.3d 678, 684, ¶ 29 (2014), reconsideration denied, 140 Ohio St.3d 1446, 2014-Ohio-4284, 17 N.E.3d 593, ¶ 29 (2014). A right of initiative does not exist with respect to a measure proposing administrative as opposed to legislative action. *Id.*; *State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 482, 2008-Ohio-5093, 895 N.E.2d 177, 181, ¶¶ 20-21 (2008). An initiative petition proposing administrative action is a legal nullity. *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 144 Ohio St.3d 239, 241, 2015-Ohio-3761, 41 N.E.3d 1229, 1232, ¶ 9 (2015).

Mandamus will not lie to compel a board of elections to submit an ordinance proposed by initiative petition to the electorate if the ordinance does not involve a subject which a municipality is authorized by law to control by legislative action. *State ex rel. Rhodes v. Lake Cty. Bd. of Elections*, 12 Ohio St.2d 4, 41 O.O.2d 2, 230 N.E.2d 347(1967); *State ex rel. Hazel v. Cuyahoga Cty. Bd. of Elections*, 80 Ohio St.3d 165, 168–69, 1997-Ohio-129, 685 N.E.2d 224, 227 (1997).

A board of elections has the duty to review, examine, and certify the sufficiency and validity of petitions on local ballot measures. R.C. 3501.11(K). In performing this duty, a board of elections has the power to determine whether a proposed ballot measure falls within the scope of the constitutional power of referendum or initiative. *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 144 Ohio St.3d 239, 241, 2015-Ohio-3761, 41 N.E.3d 1229, 1231–32, ¶¶ 9-10 (2015). A board of elections has the power to reject a petition which violates Chapter 3501

of the Revised Code, Chapter 3513 of the Revised Code, or any other requirements established by law. R.C. 3501.39; *State ex rel. O'Beirne v. Geauga Cty. Bd. of Elections*, 80 Ohio St.3d 176, 182, 1997-Ohio-348, 685 N.E.2d 502, 506 (1997). Election officials serve as gatekeepers, to ensure that only those measures that actually constitute initiatives or referenda are placed on the ballot. *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 363, 2015-Ohio-3749, 43 N.E.3d 419, 423, ¶ 13 (2015). Elections officials are tasked with the authority to determine whether an initiative meets the threshold for inclusion on the ballot. *State ex rel. Coover v. Husted*, Slip Opinion No. 2016-Ohio-5794 ¶11 (interpreting and following *Walker*). In performing this gatekeeping function, a board of elections has not only the discretion, but an affirmative duty to keep measures in excess of the constitutional power of initiative and referendum off the ballot. *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 2015-Ohio-3761 at ¶9.

The decisions of boards of elections on the matters conferred by law upon them are generally final. *State ex rel. Flynn v. Board of Elections of Cuyahoga County* 164 Ohio St. 193, 199, 129 N.E.2d 623, 627 (1955); *Sullivan v. State ex rel. O'Connor* 125 Ohio St. 387, 388, 181 N.E. 805 (1932). Notwithstanding the finality of a decision of the board it may nevertheless be reviewed if procured by fraud or corruption, or where there has been a flagrant misinterpretation of a statute, or a clear disregard of legal provisions applicable thereto. *Id.*; *Sullivan, supra* (paragraph 2 of the syllabus); see also: *State ex rel. Hanna v. Milburn* 170 Ohio St. 9, 11, 161 N.E.2d 891, 893 (1959)(same); *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11 (same).

The present matter is not about whether citizens in Norwood may propose legislation through the initiative process or whether the legal prerequisites for filing the petition subject to this action were met by Relators. The pertinent issue here is the same as that decided by the

Board: does the question posed in Relators' initiative exceed the grant of authority under Article II, Section 1f of the Ohio Constitution that reserves the power of initiative on questions which municipalities may control by legislative action. Municipalities may not, through legislation, intrude upon the exclusive powers of the General Assembly whether such legislation emanates from a city council or citizen initiative. Nor may municipalities direct, through legislation, how their police officers and administrative officers shall administer and enforce (or refrain from enforcing) state and federal law. As described in further detail below, Relators' initiative is not a matter which a municipality may control by legislative action and the Board properly exercised its discretion in performing its gatekeeping role.

a. First Proposition of Law

A Municipal Corporation Has No Power To Enact And Punish Felony Crimes, And An Initiative Petition Proposing An Ordinance That Seeks To Enact Felonies Is Invalid And May Not Be Submitted To The Electorate

Second Proposition of Law

A Municipal Corporation Has No Power To Suspend The Operation Of State Criminal Statutes Within Its City Limits And An Initiative Petition Proposing An Ordinance That Attempts To Do So Is Invalid And May Not Be Submitted To The Electorate

In Ohio, all prosecutions are carried, in the name, and by the authority, of the State of Ohio. Ohio Constitution, Article IV, Section 20. Prosecution for felony offenses may only occur unless on presentment or indictment of a grand jury. Ohio Constitution, Article I, Section 10. The power to define and classify and prescribe punishment for felonies committed within the state is lodged in the General Assembly of the state, and, when so defined, classified, and prescribed, such laws must have uniform operation throughout the state. *State v. O'Mara*, 105 Ohio St. 94, 136 N.E. 885 (1922) paragraph one of the syllabus; see also: Ohio Constitution

Article II, Section 26 (Laws of general nature, shall have a uniform operation throughout the State). While municipal corporations are possessed of home rule powers to “enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws,” Ohio Constitution, Article XVIII, Section 3, municipalities have no authority under their home-rule powers to enact or punish felonies as that power exclusively belongs to the General Assembly. *State ex rel. Corrigan v. Barnes*, 3 Ohio App.3d 40, 45, 443 N.E.2d 1034, 1039 (8th Dist.1982); *see also: Akron v. Smith*, 82 Ohio App.3d 57, 611 N.E.2d 435; *Cincinnati v. Hoffman*, 31 Ohio St.2d 163, 181, 285 N.E.2d 714 (1972)(in dissent); R.C. 715.67 (permitting municipalities to make violations of their ordinances misdemeanors). Nor may municipalities suspend the operation of state criminal laws within their borders. Ohio Constitution, Article I, Section 18 (“No power of suspending laws shall ever be exercised, except by the general assembly.”).

Relators’ proposed ordinance defines four separate fifth degree felonies. All of the newly defined felonies are within proposed section 513.15, the sole section of the proposed ordinance which purports to establish criminal offenses. All of the described felony offenses correspond to existing provisions of Chapter 2925 of the Revised Code:

Violations of proposed 513.15(b)(3), possession of marihuana in excess of 200 grams, also violate R.C. §2925.11(C)(3)(c);

Violations of proposed 513.15(c)(3), possession of over 10 grams of solid hashish or over 2 grams of liquid hashish, also violate R.C. §2925.11(C)(7)(c);

Violations of proposed 513.15(f)(3), cultivation of marijuana, also violate R.C. §2925.03(C)(5)(c);

Violations of proposed 513.15, trafficking in marihuana, also violate R.C. § 2925.03(C)(3).

The felony provisions of proposed 513.15 also are phrased in a manner so that they necessarily include more serious violations of Chapter 2925. By way of example, proposed 513.15(b)(3) covers the possession of any amount of marihuana in excess of 200 grams. Under R.C. 2925.11, possession of marihuana from 200 to 1,000 grams is a felony of the fifth degree, with the degree of offense and punishment escalating on a sliding scale up to 40,000 grams. See: R.C. 292511(C)(3)(d, e, f, and g). The other felony violations under proposed 513.15 are phrased in a similar manner.

As noted above in Respondent's statement of facts, each of the proposed felonies provides that persons convicted of such crimes shall not be fined or subjected to incarceration, probation, or any other punitive or rehabilitative measure. By encompassing all marihuana and hashish possession, cultivation and trafficking, such sections of proposed 513.15 if enacted would suspend the operation of the felony criminal provisions of Chapter 2925 of the Revised Code that deal with marihuana and hashish.

The inclusion of these felony offenses in the initiative is not mere surplusage. Rather, it is the entire point of the exercise. Relators cannot achieve their desired goal – the full decriminalization of marihuana and hashish and the suspension of corresponding state law – without including them. Absent these felonies and their suspension of punishment and rehabilitative measures, law enforcement could avoid the ordinance in its entirety by simply citing marihuana and hashish offenses under the state statutes for prosecution in the county municipal and common pleas courts.

Relators' initiative proposes to enact felony offenses that would only apply in Norwood, Ohio and it further proposes to suspend the operation of state drug offenses within the city limits. The initiative – on its face – exceeds the power municipalities are authorized by law to control

by legislative action and intrudes upon matters that lie within the exclusive authority of the General Assembly. The Board's decision not to certify the question to the ballot was entirely proper.

b. Third Proposition of Law

An Initiative Petition Proposing An Ordinance That Directs To Whom City Law Enforcement And Prosecutorial Officials Shall Report Violations Of Local, State, And Federal Drug Laws, And Prohibits Such Officials From Referring Violations Of State And Federal Drug Laws To The Appropriate Authorities For Investigation And Prosecution Is An Invalid Exercise Of The Initiative Power And May Not Be Placed On The Ballot

The reserved power of initiative and referendum is limited to those matters which a municipality may control through legislative action. Section 1f, Article II, Ohio Constitution. Administrative acts, whether accomplished by ordinance, resolution or otherwise, are not subject to initiative proceedings. *State ex rel. Oberlin Citizens for Responsible Development v. Talarico* (2005), 106 Ohio St.3d 481, 485, 836 N.E.2d 529 ¶ 21. The test for determining whether a particular act is or is not legislative is whether the action taken is one enacting a law, ordinance or regulation or executing or administering a law, ordinance, or regulation already in existence. *Donnelly v. Fairview Park* (1968), 13 Ohio St.2d 1, 233 N.E.2d 500, paragraph 2 of the syllabus. If the proposed action consists of executing an existing law, the action is administrative. *Id.* at 4, 233 N.E.2d at 502. In determining whether a matter is legislative and subject to the municipal initiative power or administrative and not subject to it, *Donnelly* requires an examination of the nature of the matter as opposed to its mere form. See, *Buckeye Community Hope Foundation v. City of Cuyahoga Falls* (1998), 82 Ohio St.3d 539, 544, 697 N.E.2d 181, 185. An act which puts into execution previously declared policies or previously enacted laws is administrative or executive in character. *Schroer v. Board of Elections of Franklin County* (June 22, 1976), 10th

Dist. No. 75AP-638, at 5, 1976 WL 189880, quoting 42 American Jurisprudence 2d Initiative and Referendum, sections 12, at page 660. If an act carries out an existing policy of a legislative body, it is administrative whether the policy came into existence in an enactment of the body itself, in the organic law creating the body or in an enactment of a superior legislative body. *Id.*

Peace officers, including municipal police officers, in Ohio are trained in accordance with state law and are certified by the State to perform their duties. *See generally*: R.C. §109.71, *et seq.* (Peace Officer Training Commission established); R.C. §109.77 (Certification required prior to original appointment); OAC 109:2-1-03 (Ohio peace officer basic training course); OAC 109-2-1-12 (Certification of peace officers before service and re-entry). Municipal police officers among other duties are required by law to preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state, and the United States. R.C. § 737.11; *see also*: R.C. §109.71(A). Municipal police officers are sworn to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of their office. R.C. § 3.23; R.C. § 733.68. City police officers are members of the department of public safety which is administered by the director of public safety. R.C. §737.01.

City law directors are executive officers. § R.C. 733.01. Law directors are required to be practicing attorneys, § R.C. 733.50, and they serve as prosecutors for the city's mayor's court. R.C. § 733.51 and R.C. § 733.52. Like police officers, law directors are sworn to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of their office. R.C. § 3.23; R.C. § 733.68. Under Ohio law, city law directors have broad discretion as to what matters will be prosecuted in Mayor's Court, or referred for prosecution in other state courts. R.C. §733.53.

Relators claim that the board refused to place their initiative on the ballot because “it includes administrative directives instructing the Norwood police and city attorney how to enforce existing law.” *Relators’ Brief* at 10. The immediate preceding sentence reflects the quoted language as it appears in Relators’ Brief. *Id.* It is not, however, as it appears in the draft minutes of the August 22, 2016 meeting. Relator has omitted one very important word. The quote as it actually appears in the draft minutes is “it includes administrative directives instructing the Norwood police and city attorney how to enforce existing Ohio law.” See *Relators’ Exhibit 8, Draft Minutes of August 22, 2016 Board Meeting* at 2.

This difference between Relators’ misquote and the statement in the draft minutes is significant. Proposed section 513.15(m) is not a mere housekeeping measure. Relator admits proposed section 513.15 (m) is “part and parcel of the proposed newly enacted law” and that it “is clearly intended to (1) further the purpose of the newly enacted legislation decriminalizing marihuana and (2) repudiate prior legislation.” *Brief for Relator* at 10. Of course it is. It is also clearly intended to suppress and control the administrative actions of the City’s law enforcement officers and the city attorney in the performance of their sworn executive duties in accordance with existing state and federal criminal laws. Indeed, the initiative expressly prohibits Norwood police officers and the city law director from reporting and referring violations of state and federal criminal statutes to the appropriate authorities for investigation and prosecution. See proposed 513.15(m). As with the previously described felony provisions, Relators cannot achieve their stated desired goal – the full decriminalization of marihuana and hashish and the suspension of corresponding state law – without restricting the city police and law director in the performance of their duties.

The initiative – on its face – instructs these city officers on how existing Ohio drug laws pertaining to marihuana and hashish shall be administered or enforced – by instructing that such laws should not be administered or enforced at all. The basis of the Board’s decision to keep the initiative from the ballot reflects that reality, and its decision to keep the measure from the ballot is not an abuse of discretion.

c. Fourth Proposition of Law

A Severability Clause Will Not Save A Municipal Initiative Petition That Proposes To Enact Felony Criminal Laws And Directs That City State-Certified Police Officers And Prosecutors Shall Not Enforce State Law Within The City Limits.

In reviewing an initiative petition, a board of elections deals solely with the sufficiency of the of a proposed ballot measure by deciding the threshold questions of whether a proposed ballot measure falls within the scope of the constitutional power of referendum or initiative and whether a proposed ballot measure satisfies statutory prerequisites to be a ballot measure. *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 144 Ohio St.3d 239, 241, 2015-Ohio-3761, 41 N.E.3d 1229, 1231–32, ¶¶ 9-10 (2015); *see also: State ex rel. Coover v. Husted*, Slip Op. 2016–Ohio–5794 ¶ 11(elections officials authorized to determine whether a proposal exceeds the authority under which it is placed on the ballot). A board does not have authority to review a ballot measure to determine if some parts are legal and others are not. *Youngstown, supra*, at ¶ 11. If any part of a ballot measure does not fall within the constitutional power of referendum or initiative, the board has an affirmative duty to keep such items of the ballot. *Id.* at ¶ 9; *see also: Coover* at ¶¶ 15–18(denying writ as language in portions of proposed county charter was legally insufficient).

Realtors fault the Board for “parsing out subsections to attack.” *Relators’ Brief* at 16. Yet these same subsections are described by Relators as “part and parcel” of their proposal to

fully decriminalize marihuana in the City of Norwood. *Id.* at 10. In this case the question of whether Relators will have their cake or eat it is academic. Even a cursory reading of the proposed ballot measure demonstrates the sections referenced by the Board in its discussions are primary to the stated purpose of the proposal. They are in fact the proposal's very essence for without them full decriminalization is impossible. Whether such provisions are severable from the whole is not for the board to decide.

Any fair reading of the Board's actions with respect to Relators' petition reveals that it merely examined the initiative to determine whether it met the threshold requirements for inclusion on the ballot. *See discussions: Relators' Exhibit 9, Trans. Special Meeting Aug. 22, 2016*, pp 12-13, 15-16, 19-21, 25-26, 39-42, 46-51, 52-53. That is the Board's duty and responsibility under the law. *See Coover supra* at ¶ 13.

d. Fifth Proposition of Law

Laches Will Bar A Claim In An Expedited Election Matter Where Relator Delayed Filing His Complaint Until Six Days Following The Board Of Elections Decision And Did Not Assure That The Matter Was Timely Served

"Relators in election cases must exercise the utmost diligence." *State ex rel. Fuller v. Medina Cty. Bd. of Elections* (2002), 97 Ohio St.3d 221, 2002 Ohio 5922, ¶¶ 7. "Therefore, relators requesting extraordinary relief in an election-related matter are required to act with the required promptness, and if they fail to do so, laches may bar the action." *Id. citing State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections* (2001), 93 Ohio St.3d 592, 595, 2001 Ohio 1806. The Ohio Supreme Court has always required election cases to be filed promptly. *See, e.g., State ex rel Cooker Restaurant Corporation v. Montgomery County Board of Elections* (1997), 80 Ohio St.3d 302, 1997 Ohio 315, 686 N.E.2d 238 (Delay in filing expedited elections matter of six days following denial of protest bars claim as briefing schedule extended past deadline to

have absentee ballots printed and ready for use); *State ex rel. Landis v. Morrow Cty. Bd. of Elections* (2000), 88 Ohio St.3d 187, 189, 2000 Ohio 295 (““We have held that a delay as brief as nine days can preclude our consideration of the merits of an expedited election case.””); *Carver v. Stankiewicz* (2004), 101 Ohio St.3d 256, 2004 Ohio 812 (denying an extraordinary writ because the Relators waited 19 days before filing their claim).

In *Blankenship v. Blackwell* (2004), 103 Ohio St.3d 567, 571, the Ohio Supreme Court reaffirmed that laches will bar a claim when there has been an unreasonable delay or lapse in time in asserting a right; the absence of an excuse for the delay; knowledge, actual or constructive, of the injury or wrong; and prejudice to the other party.

All of the elements are present in this case. Relators waited until August 29, 2016 to file this action, seven days after the Board hearing held on August 22, 2016. The process was further delayed by Relators who requested service by certified mail, which was not sent until four days after filing on September 2, 2016, and not received until September 6, 2016. Despite being aware that the Board was represented by counsel, and knowing the email and fax number of said counsel as indicated by the caption of the Complaint, Relators made no efforts provide a more efficient and timely means of service. *See Complaint* at 1. In total, this resulted in a delay of eight days until the complaint was received from the time of filing, and fifteen days from the date of the hearing. Relators actions have been neither diligent nor prompt and have prejudiced Respondents, who are required to send out absentee ballots no later than September 24, 2016 as required by R.C. § 3511.04. *See Fuller* at ¶ 7. Therefore, Relators action is barred by laches.

III. CONCLUSION

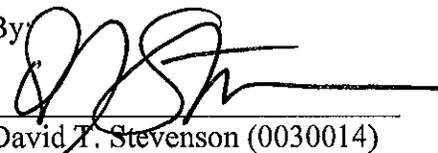
For all of the foregoing reasons, it is apparent that the Board of Elections of Hamilton County neither abused its discretion nor disregarded applicable law in denying to certify

Relators' initiative petition to the ballot. The Board has no legal duty to perform the acts requested by Relators and their request for mandamus relief must be denied.

Respectfully submitted,

JOSEPH T. DETERS (0012084)
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

By

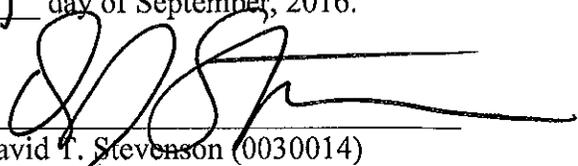


David T. Stevenson (0030014)
Cooper D. Bowen (0093054)
Assistant Prosecuting Attorneys
4000 Taft Law Center
230 East Ninth Street
Cincinnati, Ohio 45202
Tel: (513) 946-3120 (Stevenson)
Tel: (513) 946-3195 (Bowen)
Fax: (513) 946-3018
Email: dave.stevenson@hcpros.org
cooper.bowen@hcpros.org

Counsel for Respondent Hamilton County Board
of Elections

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer was served upon counsel for Relators by facsimile transmission and email on this 15 day of September, 2016.



David T. Stevenson (0030014)

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article I. Bill of Rights (Refs & Annos)

OH Const. Art. I, § 10

O Const I Sec. 10 Rights of criminal defendants

Currentness

<Notes of Decisions for O Const I Sec. 10 are displayed in two separate documents. Notes of Decisions for Subdivisions I to V are contained in this document. For Notes of Decisions for Subdivisions VI to end see second document.>

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

CREDIT(S)

(1912 constitutional convention, am. eff. 1-1-13; 1851 constitutional convention, adopted eff. 9-1-1851)

Const. Art. I, § 10, OH CONST Art. I, § 10

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article I. Bill of Rights (Refs & Annos)

OH Const. Art. I, § 18

O Const I Sec. 18 Only general assembly may suspend laws

Currentness

No power of suspending laws shall ever be exercised, except by the general assembly.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Const. Art. I, § 18, OH CONST Art. I, § 18

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Constitution of the State of Ohio

Article II. Legislative (Refs & Annos)

OH Const. Art. II, § 1f

O Const II Sec. 1f Initiative and referendum in municipalities

Currentness

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

CREDIT(S)

(1912 constitutional convention, adopted eff. 10-1-1912)

Notes of Decisions (99)

Const. Art. II, § 1f, OH CONST Art. II, § 1f

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Constitution of the State of Ohio

Article II. Legislative (Refs & Annos)

OH Const. Art. II, § 26

O Const II Sec. 26 General laws to have uniform operation; laws other than school laws to take effect only on legislature's authority

Currentness

All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Notes of Decisions (176)

Const. Art. II, § 26, OH CONST Art. II, § 26

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article IV. Judicial (Refs & Annos)

OH Const. Art. IV, § 20

O Const IV Sec. 20 Style of process, prosecution, and indictment

Currentness

The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Const. Art. IV, § 20, OH CONST Art. IV, § 20

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Constitution of the State of Ohio

Article XVIII. Municipal Corporations (Refs & Annos)

OH Const. Art. XVIII, § 3

O Const XVIII Sec. 3 Municipal powers of local self-government

Currentness

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

CREDIT(S)

(1912 constitutional convention, adopted eff. 11-15-12)

Notes of Decisions (1421)

Const. Art. XVIII, § 3, OH CONST Art. XVIII, § 3

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
General Provisions
Chapter 3. Officers; Oaths; Bonds
Oaths

R.C. § 3.23

3.23 Oath of office of judges and other officers

Effective: March 29, 2007
Currentness

The oath of office of each judge of a court of record shall be to support the constitution of the United States and the constitution of this state, to administer justice without respect to persons, and faithfully and impartially to discharge and perform all the duties incumbent on the person as such judge, according to the best of the person's ability and understanding. The oath of office of every other officer, deputy, or clerk shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of the office.

Except for justices of the supreme court as provided in section 2701.05 of the Revised Code, each judge of a court of record shall take the oath of office on or before the first day of the judge's official term. The judge shall transmit a certificate of oath, signed by the person administering the oath, to the clerk of the respective court and shall transmit a copy of the certificate of oath to the supreme court. The certificate of oath shall state the term of office for that judge, including the beginning and ending dates of that term. If the certificate of oath is not transmitted to the clerk of the court within twenty days from the first day of the judge's official term, the judge is deemed to have refused to accept the office, and that office shall be considered vacant. The clerk of the court forthwith shall certify that fact to the governor and the governor shall fill the vacancy.

The oath of office of a judge under this section shall be taken in a form that is substantially similar to the following:

"I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of Ohio, will administer justice without respect to persons, and will faithfully and impartially discharge and perform all of the duties incumbent upon me as (name of office) according to the best of my ability and understanding. [This I do as I shall answer unto God.]"

CREDIT(S)

(2006 H 699, eff. 3-29-07; 1953 H 1, eff. 10-1-53; GC 3)

R.C. § 3.23, OH ST § 3.23

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated

Title I. State Government

Chapter 109. Attorney General (Refs & Annos)

Ohio Peace Officer Training Commission

R.C. § 109.71

109.71 Peace officer training commission

Effective: September 14, 2016

Currentness

<This section effective 9-14-16. See, also, section 109.71 effective until 9-14-16.>

There is hereby created in the office of the attorney general the Ohio peace officer training commission. The commission shall consist of nine members appointed by the governor with the advice and consent of the senate and selected as follows: one member representing the public; two members who are incumbent sheriffs; two members who are incumbent chiefs of police; one member from the bureau of criminal identification and investigation; one member from the state highway patrol; one member who is the special agent in charge of a field office of the federal bureau of investigation in this state; and one member from the department of education, trade and industrial education services, law enforcement training.

This section does not confer any arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative, as granted under Chapter 2935. of the Revised Code.

As used in sections 109.71 to 109.801 of the Revised Code:

(A) "Peace officer" means:

(1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint police district police force, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;

(2) A police officer who is employed by a railroad company and appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code;

- (3) Employees of the department of taxation engaged in the enforcement of Chapter 5743. of the Revised Code and designated by the tax commissioner for peace officer training for purposes of the delegation of investigation powers under section 5743.45 of the Revised Code;
- (4) An undercover drug agent;
- (5) Enforcement agents of the department of public safety whom the director of public safety designates under section 5502.14 of the Revised Code;
- (6) An employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013, a natural resources officer appointed pursuant to section 1501.24, a forest-fire investigator appointed pursuant to section 1503.09, or a wildlife officer designated pursuant to section 1531.13 of the Revised Code;
- (7) An employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code;
- (8) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;
- (9) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code;
- (10) Veterans' homes police officers designated under section 5907.02 of the Revised Code;
- (11) A police officer who is employed by a qualified nonprofit corporation police department pursuant to section 1702.80 of the Revised Code;
- (12) A state university law enforcement officer appointed under section 3345.04 of the Revised Code or a person serving as a state university law enforcement officer on a permanent basis on June 19, 1978, who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;
- (13) A special police officer employed by the department of mental health and addiction services pursuant to section 5119.08 of the Revised Code or the department of developmental disabilities pursuant to section 5123.13 of the Revised Code;

- (14) A member of a campus police department appointed under section 1713.50 of the Revised Code;
- (15) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;
- (16) Investigators appointed by the auditor of state pursuant to section 117.091 of the Revised Code and engaged in the enforcement of Chapter 117. of the Revised Code;
- (17) A special police officer designated by the superintendent of the state highway patrol pursuant to section 5503.09 of the Revised Code or a person who was serving as a special police officer pursuant to that section on a permanent basis on October 21, 1997, and who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;
- (18) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code or a person serving as a special police officer employed by a port authority on a permanent basis on May 17, 2000, who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;
- (19) A special police officer employed by a municipal corporation who has been awarded a certificate by the executive director of the Ohio peace officer training commission for satisfactory completion of an approved peace officer basic training program and who is employed on a permanent basis on or after March 19, 2003, at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended;
- (20) A police officer who is employed by an owner or operator of an amusement park that has an average yearly attendance in excess of six hundred thousand guests and that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by a judge of the appropriate municipal court or county court pursuant to section 4973.17 of the Revised Code;
- (21) A police officer who is employed by a bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions, who has been appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code, and who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of a state, county, municipal, or department of natural resources peace officer basic training program;

(22) An investigator, as defined in section 109.541 of the Revised Code, of the bureau of criminal identification and investigation who is commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under that section;

(23) A state fire marshal law enforcement officer appointed under section 3737.22 of the Revised Code or a person serving as a state fire marshal law enforcement officer on a permanent basis on or after July 1, 1982, who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(24) A gaming agent employed under section 3772.03 of the Revised Code.

(B) "Undercover drug agent" has the same meaning as in division (B)(2) of section 109.79 of the Revised Code.

(C) "Crisis intervention training" means training in the use of interpersonal and communication skills to most effectively and sensitively interview victims of rape.

(D) "Missing children" has the same meaning as in section 2901.30 of the Revised Code.

CREDIT(S)

(2016 S 293, eff. 9-14-16; 2013 H 59, eff. 9-29-13; 2011 H 153, eff. 9-29-11; 2010 H 519, eff. 9-10-10; 2009 S 79, eff. 10-6-09; 2008 H 562, eff. 9-23-08; 2006 H 454, eff. 4-6-07; 2006 H 347, eff. 3-14-07; 2005 H 81, eff. 4-14-06; 2005 H 58, eff. 5-3-05; 2002 H 675, eff. 3-14-03; 2002 H 545, eff. 3-19-03; 2000 S 137, eff. 5-17-00; 1999 H 163, eff. 6-30-99; 1998 S 187, eff. 3-18-99; 1998 S 213, eff. 7-29-98; 1997 S 60, eff. 10-21-97; 1996 S 285, eff. 3-13-97; 1996 H 670, eff. 12-2-96; 1996 H 351, eff. 1-14-97; 1996 H 445, eff. 9-3-96; 1995 S 2, eff. 7-1-96; 1995 S 162, eff. 10-29-95; 1994 S 182, eff. 10-20-94; 1992 H 758, eff. 1-15-93; 1992 S 49; 1991 H 77; 1990 H 669, H 271, H 110; 1988 H 708, § 1)

Notes of Decisions (17)

R.C. § 109.71, OH ST § 109.71

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title I, State Government
Chapter 109. Attorney General (Refs & Annos)
Ohio Peace Officer Training Commission

R.C. § 109.77

109.77 Certificate of training for specified persons; applicability

Effective: September 29, 2015 to September 13, 2016
Currentness

<This section effective until 9-14-16. See, also, section 109.77 effective 9-14-16.>

(A) As used in this section:

(1) "Felony" has the same meaning as in section 109.511 of the Revised Code.

(2) "Companion animal" has the same meaning as in section 959.131 of the Revised Code.

(B)(1) Notwithstanding any general, special, or local law or charter to the contrary, and except as otherwise provided in this section, no person shall receive an original appointment on a permanent basis as any of the following unless the person previously has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program:

(a) A peace officer of any county, township, municipal corporation, regional transit authority, or metropolitan housing authority;

(b) A natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources;

(c) An employee of a park district under section 511.232 or 1545.13 of the Revised Code;

(d) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;

(e) A state university law enforcement officer;

(f) A special police officer employed by the department of mental health and addiction services pursuant to section 5119.08 of the Revised Code or the department of developmental disabilities pursuant to section 5123.13 of the Revised Code;

(g) An enforcement agent of the department of public safety whom the director of public safety designates under section 5502.14 of the Revised Code;

(h) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(i) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended;

(j) A gaming agent employed under section 3772.03 of the Revised Code.

(2) Every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as any of the following shall forfeit the appointed position unless the person previously has completed satisfactorily or, within the time prescribed by rules adopted by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, municipal, or department of natural resources peace officer basic training program for temporary or probationary officers and is awarded a certificate by the director attesting to the satisfactory completion of the program:

(a) A peace officer of any county, township, municipal corporation, regional transit authority, or metropolitan housing authority;

(b) A natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources;

(c) An employee of a park district under section 511.232 or 1545.13 of the Revised Code;

(d) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;

(e) A special police officer employed by the department of mental health and addiction services pursuant to section 5119.08 of the Revised Code or the department of developmental disabilities pursuant to section 5123.13 of the Revised Code;

(f) An enforcement agent of the department of public safety whom the director of public safety designates under section 5502.14 of the Revised Code;

(g) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(h) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(3) For purposes of division (B) of this section, a state, county, municipal, or department of natural resources peace officer basic training program, regardless of whether the program is to be completed by peace officers appointed on a permanent or temporary, probationary, or other nonpermanent basis, shall include training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, protection orders and consent agreements issued or approved under section 2919.26 or 3113.31 of the Revised Code, crisis intervention training, and training on companion animal encounters and companion animal behavior. The requirement to complete training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under section 2919.26 or 3113.31 of the Revised Code does not apply to any person serving as a peace officer on March 27, 1979, and the requirement to complete training in crisis intervention does not apply to any person serving as a peace officer on April 4, 1985. Any person who is serving as a peace officer on April 4, 1985, who terminates that employment after that date, and who subsequently is hired as a peace officer by the same or another law enforcement agency shall complete training in crisis intervention as prescribed by rules adopted by the attorney general pursuant to section 109.742 of the Revised Code. No peace officer shall have employment as a peace officer terminated and then be reinstated with intent to circumvent this section.

(4) Division (B) of this section does not apply to any person serving on a permanent basis on March 28, 1985, as a park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources or as an employee of a park district under section 511.232 or 1545.13 of the Revised Code, to any person serving on a permanent basis on March 6, 1986, as an employee of a conservancy district designated pursuant to section 6101.75 of the Revised Code, to any person serving on a permanent basis on January 10, 1991, as a preserve officer of the department of natural resources, to any person employed on a permanent basis on July 2, 1992, as a special police officer by the department of mental health and addiction services pursuant to section 5119.08 of the Revised Code or by the department of developmental disabilities pursuant to section 5123.13 of the Revised Code, to any person serving on a permanent basis on May 17, 2000, as a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, to any person serving on a permanent basis on March 19, 2003, as a special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A)(19) of section 109.71 of the Revised Code, to any person serving on a permanent basis on June 19, 1978, as a state university law enforcement officer pursuant to section 3345.04 of the Revised Code and who, immediately prior to June 19, 1978, was serving as a special police officer designated under authority of that section, or to any person serving on a permanent basis on September 20, 1984, as a liquor control investigator, known after June 30, 1999, as an enforcement agent of the department of public safety, engaged in the enforcement of Chapters 4301. and 4303. of the Revised Code.

(5) Division (B) of this section does not apply to any person who is appointed as a regional transit authority police officer pursuant to division (Y) of section 306.35 of the Revised Code if, on or before July 1, 1996, the person has completed satisfactorily an approved state, county, municipal, or department of natural resources peace officer basic training program and has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of such an approved program and if, on July 1, 1996, the person is performing peace officer functions for a regional transit authority.

(C) No person, after September 20, 1984, shall receive an original appointment on a permanent basis as a veterans' home police officer designated under section 5907.02 of the Revised Code unless the person previously has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved police officer basic training program. Every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a veterans' home police officer designated under section 5907.02 of the Revised Code shall forfeit that position unless the person previously has completed satisfactorily or, within one year from the time of appointment, satisfactorily completes an approved police officer basic training program.

(D) No bailiff or deputy bailiff of a court of record of this state and no criminal investigator who is employed by the state public defender shall carry a firearm, as defined in section 2923.11 of the Revised Code, while on duty unless the bailiff, deputy bailiff, or criminal investigator has done or received one of the following:

(1) Has been awarded a certificate by the executive director of the Ohio peace officer training commission, which certificate attests to satisfactory completion of an approved state, county, or municipal basic training program for bailiffs and deputy bailiffs of courts of record and for criminal investigators employed by the state public defender that has been recommended by the Ohio peace officer training commission;

(2) Has successfully completed a firearms training program approved by the Ohio peace officer training commission prior to employment as a bailiff, deputy bailiff, or criminal investigator;

(3) Prior to June 6, 1986, was authorized to carry a firearm by the court that employed the bailiff or deputy bailiff or, in the case of a criminal investigator, by the state public defender and has received training in the use of firearms that the Ohio peace officer training commission determines is equivalent to the training that otherwise is required by division (D) of this section.

(E)(1) Before a person seeking a certificate completes an approved peace officer basic training program, the executive director of the Ohio peace officer training commission shall request the person to disclose, and the person shall disclose, any previous criminal conviction of or plea of guilty of that person to a felony.

(2) Before a person seeking a certificate completes an approved peace officer basic training program, the executive director shall request a criminal history records check on the person. The executive director shall submit the person's fingerprints to the bureau of criminal identification and investigation, which shall submit the fingerprints to the federal bureau of investigation for a national criminal history records check.

Upon receipt of the executive director's request, the bureau of criminal identification and investigation and the federal bureau of investigation shall conduct a criminal history records check on the person and, upon completion of the check, shall provide a copy of the criminal history records check to the executive director. The executive director shall not award any certificate prescribed in this section unless the executive director has received a copy of the criminal history records check on the person to whom the certificate is to be awarded.

(3) The executive director of the commission shall not award a certificate prescribed in this section to a person who has been convicted of or has pleaded guilty to a felony or who fails to disclose any previous criminal conviction of or plea of guilty to a felony as required under division (E)(1) of this section.

(4) The executive director of the commission shall revoke the certificate awarded to a person as prescribed in this section, and that person shall forfeit all of the benefits derived from being certified as a peace officer under this section, if the person, before completion of an approved peace officer basic training program, failed to disclose any previous criminal conviction of or plea of guilty to a felony as required under division (E)(1) of this section.

(F)(1) Regardless of whether the person has been awarded the certificate or has been classified as a peace officer prior to, on, or after October 16, 1996, the executive director of the Ohio peace officer training commission shall revoke any certificate that has been awarded to a person as prescribed in this section if the person does either of the following:

(a) Pleads guilty to a felony committed on or after January 1, 1997;

(b) Pleads guilty to a misdemeanor committed on or after January 1, 1997, pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the person agrees to surrender the certificate awarded to the person under this section.

(2) The executive director of the commission shall suspend any certificate that has been awarded to a person as prescribed in this section if the person is convicted, after trial, of a felony committed on or after January 1, 1997. The executive director shall suspend the certificate pursuant to division (F)(2) of this section pending the outcome of an appeal by the person from that conviction to the highest court to which the appeal is taken or until the expiration of the period in which an appeal is required to be filed. If the person files an appeal that results in that person's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against that person, the executive director shall reinstate the certificate awarded to the person under this section. If the person files an appeal from that person's conviction of the felony and the conviction is upheld by the highest court to which the appeal is taken or if the person does not file a timely appeal, the executive director shall revoke the certificate awarded to the person under this section.

(G)(1) If a person is awarded a certificate under this section and the certificate is revoked pursuant to division (E)(4) or (F) of this section, the person shall not be eligible to receive, at any time, a certificate attesting to the person's satisfactory completion of a peace officer basic training program.

(2) The revocation or suspension of a certificate under division (E)(4) or (F) of this section shall be in accordance with Chapter 119. of the Revised Code.

(H)(1) A person who was employed as a peace officer of a county, township, or municipal corporation of the state on January 1, 1966, and who has completed at least sixteen years of full-time active service as such a peace officer, or equivalent service as determined by the executive director of the Ohio peace officer training commission, may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer, without complying with the requirements of division (B) of this section.

(2) Any person who held an appointment as a state highway trooper on January 1, 1966, may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer, without complying with the requirements of division (B) of this section.

(I) No person who is appointed as a peace officer of a county, township, or municipal corporation on or after April 9, 1985, shall serve as a peace officer of that county, township, or municipal corporation unless the person has received training in the handling of missing children and child abuse and neglect cases from an approved state, county, township, or municipal police officer basic training program or receives the training within the time prescribed by rules adopted by the attorney general pursuant to section 109.741 of the Revised Code.

(J) No part of any approved state, county, or municipal basic training program for bailiffs and deputy bailiffs of courts of record and no part of any approved state, county, or municipal basic training program for criminal investigators employed by the state public defender shall be used as credit toward the completion by a peace officer of any part of the approved state, county, or municipal peace officer basic training program that the peace officer is required by this section to complete satisfactorily.

(K) This section does not apply to any member of the police department of a municipal corporation in an adjoining state serving in this state under a contract pursuant to section 737.04 of the Revised Code.

CREDIT(S)

(2015 H 64, eff. 9-29-15; 2013 H 59, eff. 9-29-13; 2010 H 519, eff. 9-10-10; 2009 H 1, eff. 10-16-09; 2009 S 79, eff. 10-6-09; 2002 H 490, eff. 1-1-04; 2002 H 545, eff. 3-19-03; 2002 H 675, eff. 3-14-03; 2000 S 137, eff. 5-17-00; 1999 H 148, eff. 7-15-99; 1999 H 163, eff. 6-30-99; 1998 S 187, eff. 3-18-99; 1996 S 285, eff. 3-13-97; 1996 H 670, eff. 12-2-96; 1996 H 566, eff. 10-16-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1995 S 162, eff. 10-29-95; 1994 S 182, eff. 10-20-94; 1992 S 49, eff. 7-21-92; 1990 H 669, S 3, H 271; 1988 H 708, § 1)

R.C. § 109.77, OH ST § 109.77

Current through File 123 of the 131st General Assembly (2015-2016).

Baldwin's Ohio Revised Code Annotated

Title VII. Municipal Corporations

Chapter 715. General Powers (Refs & Annos)

Miscellaneous Provisions

R.C. § 715.67

715.67 Misdemeanor

Currentness

Any municipal corporation may make the violation of any of its ordinances a misdemeanor, and provide for the punishment thereof by fine or imprisonment, or both. The fine, imposed under authority of this section, shall not exceed five hundred dollars and imprisonment shall not exceed six months.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 3628)

Notes of Decisions (22)

R.C. § 715.67, OH ST § 715.67

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title VII. Municipal Corporations
Chapter 733. Officers (Refs & Annos)
Preliminary Provisions

R.C. § 733.01

733.01 Executive power in cities

Currentness

The executive power of cities shall be vested in a mayor, president of council, auditor, treasurer, director of law, director of public service, director of public safety, and such other officers and departments as are provided by Title VII of the Revised Code.

Such executive officers shall have exclusive right to appoint all officers, clerks, and employees in their respective departments or offices and remove or suspend any of such officers, clerks, or employees, subject to the civil service laws.

CREDIT(S)

(1977 H 219, eff. 11-1-77; 1953 H 1; GC 4246, 4247)

R.C. § 733.01, OH ST § 733.01

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title VII. Municipal Corporations
Chapter 733. Officers (Refs & Annos)
City Director of Law; Village Solicitor; Taxpayer Suits

R.C. § 733-50

733.50 Qualifications of city director of law

Currentness

No person shall be eligible to the office of city director of law who is not an attorney at law, admitted to practice in this state.

CREDIT(S)

(1977 H 219, eff. 11-1-77; 1953 H 1; GC 4304)

R.C. § 733.50, OH ST § 733.50

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title VII. Municipal Corporations
Chapter 733. Officers (Refs & Annos)
City Director of Law; Village Solicitor; Taxpayer Suits

R.C. § 733.51

733.51 Powers and duties

Currentness

The city director of law shall prepare all contracts, bonds, and other instruments in writing in which the city is concerned, and shall serve the several directors and officers provided in Title VII of the Revised Code as legal counsel and attorney.

The director of law shall be prosecuting attorney of the mayor's court. When the legislative authority of the city allows assistants to the director of law, he may designate the assistants to act as prosecuting attorneys of the mayor's court. The person designated shall be subject to the approval of the legislative authority.

CREDIT(S)

(1977 H 219, eff. 11-1-77; 1975 H 205; 1953 H 1; GC 4305, 4306)

R.C. § 733.51, OH ST § 733.51

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title VII. Municipal Corporations
Chapter 733. Officers (Refs & Annos)
City Director of Law; Village Solicitor; Taxpayer Suits

R.C. § 733.52

733.52 Prosecuting attorney of mayor's court

Currentness

The city director of law as prosecuting attorney of the mayor's court shall prosecute all cases brought before the court, and perform the same duties, as far as they are applicable thereto, as required of the prosecuting attorney of the county.

The director of law or the assistants whom he designates to act as prosecuting attorneys of the mayor's court shall receive such compensation for the service provided by this section as the legislative authority of the city prescribes, and such additional compensation as the board of county commissioners allows.

CREDIT(S)

(1977 H 219, eff. 11-1-77; 1975 H 205; 1953 H 1; GC 4307)

R.C. § 733.52, OH ST § 733.52

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title VII. Municipal Corporations
Chapter 733. Officers (Refs & Annos)
City Director of Law; Village Solicitor; Taxpayer Suits

R.C. § 733-53

733-53 Duties as to suits

Currentness

The city director of law, when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of the city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters, and controversies as he is, by resolution or ordinance, directed to prosecute. He shall not be required to prosecute any action before the mayor of the city for the violation of an ordinance without first advising such action.

CREDIT(S)

(1977 H 219, eff. 11-1-77; 1953 H 1; GC 4308)

R.C. § 733.53, OH ST § 733.53

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Title VII. Municipal Corporations

Chapter 733. Officers (Refs & Annos)

Qualifications; Oaths; Bonds

R.C. § 733.68

733.68 Qualifications of municipal officers; oaths

Currentness

(A) Except as otherwise provided in division (B) of this section or in another section of the Revised Code, each officer of a municipal corporation, or of any department or board of a municipal corporation, whether elected or appointed as a substitute for a regular officer, shall be an elector of the municipal corporation and, before entering upon official duties, shall take an oath to support the constitution of the United States and the constitution of this state and an oath that the officer will faithfully, honestly, and impartially discharge the duties of the office to which elected or appointed. These provisions as to official oaths shall extend to deputies, but they need not be electors.

(B) Neither this section nor any other section of the Revised Code requires, or shall be construed to require, that a city fire chief be an elector of the city or that a village fire chief be an elector of the village.

CREDIT(S)

(2001 H 143, eff. 1-25-02; 131 v H 358, eff. 9-6-65; 1953 H 1; GC 4666)

Notes of Decisions (16)

R.C. § 733.68, OH ST § 733.68

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Title VII. Municipal Corporations

Chapter 737. Public Safety (Refs & Annos)

Department of Public Safety--Cities

R.C. § 737.01

737.01 Director of public safety

Currentness

In each city there shall be a department of public safety, which shall be administered by a director of public safety. The director shall be appointed by the mayor and need not be a resident of the city at the time of his appointment but shall become a resident thereof within six months after his appointment unless such residence requirement is waived by ordinance.

CREDIT(S)

(1969 H 279, eff. 10-2-69; 1953 H 1; GC 4367)

Notes of Decisions (6)

R.C. § 737.01, OH ST § 737.01

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Title VII. Municipal Corporations

Chapter 737. Public Safety (Refs & Annos)

Cities--Police and Fire Departments

R.C. § 737.11

737.11 General duties of police and fire departments; organized crime task force membership

Currentness

The police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States, all court orders issued and consent agreements approved pursuant to sections 2919.26 and 3113.31 of the Revised Code, all protection orders issued pursuant to section 2903.213 or 2903.214 of the Revised Code, and protection orders issued by courts of another state, as defined in section 2919.27 of the Revised Code. The fire department shall protect the lives and property of the people in case of fire. Both the police and fire departments shall perform any other duties that are provided by ordinance. The police and fire departments in every city shall be maintained under the civil service system.

A chief or officer of a police force of a municipal corporation may participate, as the director of an organized crime task force established under section 177.02 of the Revised Code or as a member of the investigatory staff of such a task force, in an investigation of organized criminal activity in any county or counties in this state under sections 177.01 to 177.03 of the Revised Code.

CREDIT(S)

(1998 H 302, eff. 7-29-98; 1997 S 1, eff. 10-21-97; 1992 H 536, eff. 11-5-92; 1986 S 74; 1978 H 835; 1953 H 1; GC 4378)

Notes of Decisions (74)

R.C. § 737.11, OH ST § 737.11

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Held Unconstitutional by State v. Moore, Ohio App. 8 Dist., Jan. 26, 2006

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Baldwin's Ohio Revised Code Annotated

Title XXIX. Crimes--Procedure (Refs & Annos)

Chapter 2925. Drug Offenses (Refs & Annos)

Drug Offenses

R.C. § 2925.03

2925.03 Trafficking offenses

Effective: September 14, 2016

Currentness

<This section effective 9-14-16. See, also, earlier version(s) of section 2925.03.>

(A) No person shall knowingly do any of the following:

- (1) Sell or offer to sell a controlled substance or a controlled substance analog;
- (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

- (1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;
- (2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;
- (3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and

approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If aggravated trafficking in drugs is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the

offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), (g), or (h) of this section, trafficking in marihuana is a

felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), (g), or (h) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty thousand grams but is less than forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds forty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(h) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, trafficking in cocaine is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams of cocaine, trafficking in cocaine is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in cocaine is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than twenty-seven grams of cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds twenty-seven grams but is less than one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in

cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in L.S.D. is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a

felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than one thousand unit doses or equals or exceeds fifty grams but is less than one hundred grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one thousand unit doses or equals or exceeds one hundred grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), (f), or (g) of this section, trafficking in hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish

in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in a solid form or equals or exceeds two hundred grams but is less than four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(8) If the drug involved in the violation is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog, whoever violates division (A) of this section is guilty of trafficking in a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(8)(b), (c), (d), (e), (f), or (g) of this section, trafficking in a controlled substance analog is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(8)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams, trafficking in a controlled substance analog is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than thirty grams, trafficking in a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, trafficking in a controlled substance analog is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds forty grams but is less than fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section. However, if the offender pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of this section. If applicable, the court also shall do the following:

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon

the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) If the offender is a professionally licensed person, the court immediately shall comply with section 2925.38 of the Revised Code.

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F)(1) Notwithstanding any contrary provision of section 3719.21 of the Revised Code and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of section 2929.18 of the Revised Code to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(G)(1) If the sentencing court suspends the offender's driver's or commercial driver's license or permit under division (D) of this section or any other provision of this chapter, the court shall suspend the license, by order, for not more than five years. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.

(2) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to the effective date of this amendment may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division (G)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

(H)(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible community addiction services providers in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section shall specify in the judgment that imposes the fine one or more eligible community addiction services providers for the support of which the fine money is to be used. No community addiction services provider shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the services provider is specified in the judgment that imposes the fine. No community addiction services provider shall be specified in the judgment unless the services provider is an eligible community addiction services provider and, except as otherwise provided in division (H)(2) of this section, unless the services provider is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible community addiction services provider is located in any of those counties, the judgment may specify an eligible community addiction services provider that is located anywhere within this state.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the eligible community addiction services provider specified pursuant to division (H)(2) of this section in the judgment. The eligible community addiction services provider that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification of services under section 5119.36 of the Revised Code or in the application for a license under section 5119.391 of the Revised Code¹ filed with the department of mental health and addiction services by the community addiction services provider specified in the judgment.

(4) Each community addiction services provider that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the services provider is located, with the court of common pleas and the board of county commissioners of each county from which the services provider received the moneys if that county is different from the county in which the services provider is located, and with the attorney general. The community addiction services provider shall file the report no later than the first day of March in the calendar year following the calendar year in which the services provider received the fine moneys. The report shall include statistics on the number of persons served by the community addiction services provider, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the community addiction services provider. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Community addiction services provider" and "alcohol and drug addiction services" have the same meanings as in section 5119.01 of the Revised Code.

(b) "Eligible community addiction services provider" means a community addiction services provider, as defined in section 5119.01 of the Revised Code, or a community addiction services provider that maintains a methadone treatment program licensed under section 5119.391 of the Revised Code.

(I) As used in this section, "drug" includes any substance that is represented to be a drug.

(J) It is an affirmative defense to a charge of trafficking in a controlled substance analog under division (C)(8) of this section that the person charged with violating that offense sold or offered to sell, or prepared for shipment, shipped, transported, delivered, prepared for distribution, or distributed an item described in division (HH)(2)(a), (b), or (c) of section 3719.01 of the Revised Code.

CREDIT(S)

(2016 H 171, eff. 9-14-16; 2016 S 204, eff. 9-13-16; 2015 H 64, eff. 9-29-15; 2013 H 59, eff. 9-29-13; 2012 H 334, eff. 12-20-12; 2012 S 337, eff. 9-28-12; 2011 H 64, eff. 10-17-11; 2011 H 86, eff. 9-30-11; 2008 H 195, eff. 9-30-08; 2006 H 241, eff. 7-1-07; 2006 S 154, eff. 5-17-06; 2002 S 123, eff. 1-1-04; 2000 H 528, eff. 2-13-01; 2000 H 241, eff. 5-17-00; 1999

2925.03 Trafficking offenses, OH ST § 2925.03

S 107, eff. 3-23-00; 1998 S 66, eff. 7-22-98; 1998 S 164, eff. 1-15-98; 1996 S 166, eff. 10-17-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1994 H 391, eff. 7-21-94; 1993 H 377, eff. 9-30-93; 1992 H 591, S 174; 1991 H 62; 1990 S 258, H 266, H 261, H 215; 1986 S 67; 1975 H 300)

Notes of Decisions (1020)

Footnotes

1
This language as amended by 2013 H 59 appeared as “under section 5119.39 of the Revised Code”, but was subsequently changed to “under section 5119.391 of the Revised Code” by the Legislative Service Commission.

R.C. § 2925.03, OH ST § 2925.03

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated

Title XXIX. Crimes--Procedure (Refs & Annos)

Chapter 2925. Drug Offenses (Refs & Annos)

Drug Offenses

R.C. § 2925.11

2925.11 Drug possession offenses

Effective: September 14, 2016

Currentness

<This section effective 9-14-16. See, also, earlier version(s) of section 2925.11.>

(A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.

(B)(1) This section does not apply to any of the following:

(a) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(b) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(c) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(d) Any person who obtained the controlled substance pursuant to a lawful prescription issued by a licensed health professional authorized to prescribe drugs.

(2)(a) As used in division (B)(2) of this section:

(i) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.

(ii) "Community control sanction" and "drug treatment program" have the same meanings as in section 2929.01 of the Revised Code.

(iii) "Health care facility" has the same meaning as in section 2919.16 of the Revised Code.

(iv) "Minor drug possession offense" means a violation of this section that is a misdemeanor or a felony of the fifth degree.

(v) "Post-release control sanction" has the same meaning as in section 2967.28 of the Revised Code.

(vi) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(vii) "Public agency" has the same meaning as in section 2930.01 of the Revised Code.

(viii) "Qualified individual" means a person who is not on community control or post-release control and is a person acting in good faith who seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and who seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(b) of this section.

(ix) "Seek or obtain medical assistance" includes, but is not limited to making a 9-1-1 call, contacting in person or by telephone call an on-duty peace officer, or transporting or presenting a person to a health care facility.

(b) Subject to division (B)(2)(f) of this section, a qualified individual shall not be arrested, charged, prosecuted, convicted, or penalized pursuant to this chapter for a minor drug possession offense if all of the following apply:

(i) The evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog that would be the basis of the offense was obtained as a result of the qualified individual seeking the medical assistance or experiencing an overdose and needing medical assistance.

(ii) Subject to division (B)(2)(g) of this section, within thirty days after seeking or obtaining the medical assistance, the qualified individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.

(iii) Subject to division (B)(2)(g) of this section, the qualified individual who obtains a screening and receives a referral for treatment under division (B)(2)(b)(ii) of this section, upon the request of any prosecuting attorney, submits documentation to the prosecuting attorney that verifies that the qualified individual satisfied the requirements of that division. The documentation shall be limited to the date and time of the screening obtained and referral received.

(c) If a person is found to be in violation of any community control sanction and if the violation is a result of either of the following, the court shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in section 2929.13, 2929.15, or 2929.25 of the Revised Code, whichever is applicable, after which the court has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in any of those applicable sections:

(i) Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;

(ii) Experiencing a drug overdose and seeking medical assistance for that overdose or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(b) of this section.

(d) If a person is found to be in violation of any post-release control sanction and if the violation is a result of either of the following, the court or the parole board shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in section 2929.141 or 2967.28 of the Revised Code, whichever is applicable, after which the court or the parole board has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in either of those applicable sections:

(i) Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;

(ii) Experiencing a drug overdose and seeking medical assistance for that emergency or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(b) of this section.

(e) Nothing in division (B)(2)(b) of this section shall be construed to do any of the following:

(i) Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who does not qualify for the protections of division (B)(2)(b) of this section or with regards to any crime other than a minor drug possession offense committed by a person who qualifies for protection pursuant to division (B)(2)(b) of this section for a minor drug possession offense;

(ii) Limit any seizure of evidence or contraband otherwise permitted by law;

(iii) Limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in that division;

(iv) Limit, modify, or remove any immunity from liability available pursuant to law in effect prior to the effective date of this amendment to any public agency or to an employee of any public agency.

(f) Division (B)(2)(b) of this section does not apply to any person who twice previously has been granted an immunity under division (B)(2)(b) of this section. No person shall be granted an immunity under division (B)(2)(b) of this section more than two times.

(g) Nothing in this section shall compel any qualified individual to disclose protected health information in a way that conflicts with the requirements of the "Health Insurance Portability and Accountability Act of 1996," 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. 1320d et seq., as amended, and regulations promulgated by the United States department of health and human services to implement the act or the requirements of 42 C.F.R. Part 2.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(2) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, a felony of the fifth degree.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds twenty thousand grams but is less than forty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years.

(g) If the amount of the drug involved equals or exceeds forty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, possession of cocaine is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds ten grams but is less than twenty grams of cocaine, possession of cocaine is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If possession of cocaine is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(d) If the amount of the drug involved equals or exceeds twenty grams but is less than twenty-seven grams of cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds twenty-seven grams but is less than one hundred grams of cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred grams of cocaine, possession of cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, possession of L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of L.S.D. involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of L.S.D. involved equals or exceeds fifty unit doses, but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of L.S.D. involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of L.S.D. involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of L.S.D. involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of possession of heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), or (f) of this section, possession of heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, possession of heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than one thousand unit doses or equals or exceeds fifty grams but is less than one hundred grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses or equals or exceeds one hundred grams, possession of heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), (f), or (g) of this section, possession of hashish is a minor

misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in a solid form or equals or exceeds two hundred grams but is less than four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years.

(g) If the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(8) If the drug involved is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog, whoever violates division (A) of this section is guilty of possession of a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(8)(b), (c), (d), (e), or (f) of this section, possession of a controlled substance analog is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds ten grams but is less than twenty grams, possession of a controlled substance analog is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds twenty grams but is less than thirty grams, possession of a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, possession of a controlled substance analog is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds forty grams but is less than fifty grams, possession of a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds fifty grams, possession of a controlled substance analog is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and sections 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section, sections 2929.11 to 2929.18, or sections 2929.21 to 2929.28 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may suspend the offender's driver's or commercial driver's license or permit for not more than five years. However, if the offender pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If applicable, the court also shall do the following:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised

Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a) of this section.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge of a fourth degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with section 2901.05 of the Revised Code, an accused who is charged with a fourth degree felony violation of division (C)(2), (4), (5), or (6) of this section sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation of division (C)(2) of this section or a fifth degree felony violation of division (C)(4), (5), or (6) of this section respectively.

(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, division (E) of section 2925.03 of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

(H) It is an affirmative defense to a charge of possession of a controlled substance analog under division (C)(8) of this section that the person charged with violating that offense obtained, possessed, or used an item described in division (HH)(2)(a), (b), or (c) of section 3719.01 of the Revised Code.

(I) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to the effective date of this amendment may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division (I) of this section, the sentencing court, in its discretion, may terminate the suspension.

CREDIT(S)

(2016 H 171, eff. 9-14-16; 2016 S 204, eff. 9-13-16; 2016 H 110, eff. 9-13-16; 2012 H 334, eff. 12-20-12; 2011 H 64, eff.

2925.11 Drug possession offenses, OH ST § 2925.11

10-17-11; 2011 H 86, eff. 9-30-11; 2008 H 195, eff. 9-30-08; 2006 S 154, eff. 5-17-06; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 H 241, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1998 S 66, eff. 7-22-98; 1997 S 2, eff. 6-20-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1995 H 249, eff. 7-17-95; 1994 H 391, eff. 7-21-94; 1993 H 377, eff. 9-30-93; 1991 H 298, H 62; 1990 S 258; 1980 S 184, § 5)

Notes of Decisions (876)

R.C. § 2925.11, OH ST § 2925.11

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Title XXXV. Elections (Refs & Annos)

Chapter 3505. General and Special Elections--Ballots; Voting (Refs & Annos)

Ballots

R.C. § 3505.01

3505.01 Form of official ballots; certification of names of candidates; supplemental certification

Effective: July 2, 2010

Currentness

(A)(1) Except as otherwise provided in section 3519.08 of the Revised Code, on the seventieth day before the day of the next general election, the secretary of state shall certify to the board of elections of each county the forms of the official ballots to be used at that general election, together with the names of the candidates to be printed on those ballots whose candidacy is to be submitted to the electors of the entire state. On the seventieth day before a special election to be held on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election, designated by the general assembly for the purpose of submitting to the voters of the state constitutional amendments proposed by the general assembly, the secretary of state shall certify to the board of elections of each county the forms of the official ballots to be used at that election.

(2) The board of the most populous county in each district comprised of more than one county but less than all of the counties of the state, in which there are candidates whose candidacies are to be submitted to the electors of that district, shall, on the seventieth day before the day of the next general election, certify to the board of each county in the district the names of those candidates to be printed on such ballots.

(3) The board of a county in which the major portion of a subdivision, located in more than one county, is located shall, on the seventieth day before the day of the next general election, certify to the board of each county in which other portions of that subdivision are located the names of candidates whose candidacies are to be submitted to the electors of that subdivision, to be printed on such ballots.

(B) If, subsequently to the seventieth day before and prior to the tenth day before the day of a general election, a certificate is filed with the secretary of state to fill a vacancy caused by the death of a candidate, the secretary of state shall forthwith make a supplemental certification to the board of each county amending and correcting the secretary of state's original certification provided for in the first paragraph of this section. If, within that time, such a certificate is filed with the board of the most populous county in a district comprised of more than one county but less than all of the counties of the state, or with the board of a county in which the major portion of the population of a subdivision, located in more than one county, is located, the board with which the certificate is filed shall forthwith make a supplemental certification to the board of each county in the district or to the board of each county in which other portions of the subdivision are located, amending and correcting its original certification provided for in division (A)(2) or (3) of this section. If, at the time such supplemental certification is received by a board, ballots carrying the name of the deceased candidate have been printed, the board shall cause strips of paper bearing the name of the candidate certified to fill the vacancy to be printed and pasted on those ballots so as to cover

the name of the deceased candidate, except that in voting places using marking devices, the board shall cause strips of paper bearing the revised list of candidates for the office, after certification of a candidate to fill the vacancy, to be printed and pasted on the ballot cards so as to cover the names of candidates shown prior to the new certification, before such ballots are delivered to electors.

CREDIT(S)

(2010 H 48, eff. 7-2-10; 2006 H 312, eff. 8-22-06; 2003 H 95, eff. 9-26-03; 1993 S 150, eff. 12-29-93; 1983 S 213; 1974 H 662; 1969 H 1; 132 v H 934; 128 v 82; 126 v 1117; 1953 H 1; GC 4785-98)

Notes of Decisions (5)

R.C. § 3505.01, OH ST § 3505.01

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Title XXXV. Elections (Refs & Annos)

Chapter 3501. Election Procedure; Election Officials (Refs & Annos)

Board of Elections

R.C. § 3501.11

3501.11 Duties of board

Effective: February 25, 2014

Currentness

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

- (A) Establish, define, provide, rearrange, and combine election precincts;
- (B) Fix and provide the places for registration and for holding primaries and elections;
- (C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;
- (D) Appoint and remove its director, deputy director, and employees and all registrars, precinct election officials, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;
- (E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;
- (F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;
- (G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;
- (H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;

(I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.

(J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;

(K) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;

(L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those abstracts to the proper authorities;

(M) Issue certificates of election on forms to be prescribed by the secretary of state;

(N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;

(O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;

(P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;

(Q) Investigate and determine the residence qualifications of electors;

(R) Administer oaths in matters pertaining to the administration of the election laws;

(S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;

(T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;

(U) 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 law and directives of the secretary of state;

(V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;

(W) Prepare and cause the following notice to be displayed in a prominent location in every polling 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 law.”

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) 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 at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

(AA) Perform any duties with respect to voter registration and voting by uniformed services and overseas voters that are delegated to the board by law or by the rules, directives, or advisories of the secretary of state.

CREDIT(S)

3501.11 Duties of board, OH ST § 3501.11

(2013 S 109, eff. 2-25-14; 2012 S 295, eff. 8-15-12; 2010 H 48, eff. 7-2-10; 2007 H 119, eff. 9-29-07; 2006 H 3, eff. 5-2-06; 2001 H 5, eff. 8-28-01; 1997 H 215, eff. 6-30-97; 1995 H 99, eff. 8-22-95; 1994 S 300, eff. 1-1-95; 1986 H 555, eff. 2-26-86; 1980 H 1062; 1977 S 125; 132 v H 1; 131 v S 257; 125 v 713; 1953 H 1; GC 4785-13)

Notes of Decisions (124)

R.C. § 3501.11, OH ST § 3501.11
Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title XXXV. Elections (Refs & Annos)
Chapter 3501. Election Procedure; Election Officials (Refs & Annos)
Candidacy

R.C. § 3501.39

3501.39 Unacceptable petitions

Effective: July 2, 2010

Currentness

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

(B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(3) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition.

(C)(1) If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the ninetieth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline.

(2) If a petition for the nomination or election of a candidate is invalidated under division (C)(1) of this section, that person's name shall not appear on the ballots for any office for which the person's petition has been invalidated. If the ballots have

3501.39 Unacceptable petitions, OH ST § 3501.39

already been prepared, the board of elections shall remove the name of that person from the ballots to the extent practicable in the time remaining before the election. If the name is not removed from the ballots before the day of the election, the votes for that person are void and shall not be counted.

CREDIT(S)

(2010 H 48, eff. 7-2-10; 2006 H 3, eff. 5-2-06; 2002 H 445, eff. 12-23-02; 1995 H 99, eff. 8-22-95; 1990 H 405, eff. 4-11-91; 1986 H 555)

Notes of Decisions (70)

R.C. § 3501.39, OH ST § 3501.39

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or Preempted/Held Unconstitutional by Ohio Organizing Collaborative v. Husted, S.D. Ohio, May 24, 2016

Baldwin's Ohio Revised Code Annotated

Title XXXV. Elections (Refs & Annos)

Chapter 3509. Absent Voter's Ballots (Refs & Annos)

R.C. § 3509.01

3509.01 Absent voter's ballots

Effective: June 1, 2014

Currentness

(A) The board of elections of each county shall provide absent voter's ballots for use at every primary and general election, or special election to be held on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state. Those ballots shall be the same size, shall be printed on the same kind of paper, and shall be in the same form as has been approved for use at the election for which those ballots are to be voted; except that, in counties using marking devices, ballot cards may be used for absent voter's ballots, and those absent voters shall be instructed to record the vote in the manner provided on the ballot cards.

(B) The rotation of names of candidates and questions and issues shall be substantially complied with on absent voter's ballots, within the limitation of time allotted. Those ballots shall be designated as "Absent Voter's Ballots." Except as otherwise provided in division (D) of this section, those ballots shall be printed and ready for use as follows:

(1) For overseas voters and absent uniformed services voters eligible to vote under the Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924, 42 U.S.C. 1973ff, et seq., as amended, ballots shall be printed and ready for use other than in person on the forty-fifth day before the day of the election.

(2) For all voters, other than overseas voters and absent uniformed services voters, who are applying to vote absent voter's ballots other than in person, ballots shall be printed and ready for use on the first day after the close of voter registration before the election.

(3) For all voters who are applying to vote absent voter's ballots in person, ballots shall be printed and ready for use beginning on the first day after the close of voter registration before the election.

If, at the time for the close of in-person absent voting on a particular day, there are voters waiting in line to cast their ballots, the in-person absent voting location shall be kept open until such waiting voters have cast their absent voter's ballots.

(C) Absent voter's ballots provided for use at a general or primary election, or special election to be held on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state, shall include only those questions, issues, and candidacies that have been lawfully ordered submitted to the electors voting at that election.

(D) If the laws governing the holding of a special election on a day other than the day on which a primary or general election is held make it impossible for absent voter's ballots to be printed and ready for use by the deadlines established in division (B) of this section, absent voter's ballots for those special elections shall be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of that special election.

(E) A copy of the absent voter's ballots shall be forwarded by the director of the board in each county to the secretary of state at least twenty-five days before the election.

CREDIT(S)

(2014 S 238, eff. 6-1-14; 2013 S 109, eff. 2-25-14; 2013 S 10, eff. 6-26-13; 2012 S 295, eff. 8-15-12; 2010 H 48, eff. 7-2-10; 2001 H 5, eff. 8-28-01; 1996 S 261, eff. 11-20-96; 1995 H 99, eff. 8-22-95; 1993 S 150, eff. 12-29-93; 1983 S 213; 1980 H 1062; 1974 H 662; 1973 S 44; 132 v H 934; 129 v 1653; 128 v 82; 125 v 713; 1953 H 1; GC 4785-113)

VALIDITY

For validity of this section, see *Ohio Organizing Collaborative v. Husted*, 2016 WL 3248030 (S.D. Ohio 5-24-2016); and *Ohio State Conference of the NAACP v. Husted*, 43 F.Supp.3d 808 (S.D. Ohio 9-4-2014), *aff'd* by Ohio State Conference of the NAACP v. Husted, 768 F.3d 524 (6th Cir. 9-24-2014), preliminary injunction stayed by *Husted v. NAACP*, 135 S.Ct. 42 (Mem), 189 L.Ed.2d 894, 83 USLW 3145 (9-29-2014).

Notes of Decisions (25)

R.C. § 3509.01, OH ST § 3509.01

Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated

Title XXXV. Elections (Refs & Annos)

Chapter 3511. Armed Service Absent Voters and Overseas Voters (Refs & Annos)

Ballots

R.C. § 3511.04

3511.04 Notice of incomplete application for ballot; sending of ballots

Effective: June 1, 2014

Currentness

(A) If a director of a board of elections receives an application for uniformed services or overseas absent voter's ballots that does not contain all of the required information, the director promptly shall notify the applicant of the additional information required to be provided by the applicant to complete that application.

(B) Not later than the forty-fifth day before the day of each general or primary election, and at the earliest possible time before the day of a special election held on a day other than the day on which a general or primary election is held, the director of the board of elections shall mail, send by facsimile machine, send by electronic mail, send through internet delivery if such delivery is offered by the board of elections or the secretary of state, or otherwise send uniformed services or overseas absent voter's ballots then ready for use as provided for in section 3511.03 of the Revised Code and for which the director has received valid applications prior to that time. Thereafter, and until twelve noon of the third day preceding the day of election, the director shall promptly, upon receipt of valid applications for them, mail, send by facsimile machine, send by electronic mail, send through internet delivery if such delivery is offered by the board of elections or the secretary of state, or otherwise send to the proper persons all uniformed services or overseas absent voter's ballots then ready for use.

If, after the seventieth day before the day of a general or primary election, any other question, issue, or candidacy is lawfully ordered submitted to the electors voting at the general or primary election, the board shall promptly provide a separate official issue, special election, or other election ballot for submitting the question, issue, or candidacy to those electors, and the director shall promptly mail, send by facsimile machine, send by electronic mail, send through internet delivery if such delivery is offered by the board of elections or the secretary of state, or otherwise send each such separate ballot to each person to whom the director has previously mailed or sent other uniformed services or overseas absent voter's ballots.

A board of elections that mails or otherwise delivers uniformed services or overseas absent voter's ballots to an elector under this section shall not prepay the return postage for those ballots. In mailing uniformed services or overseas absent voter's ballots, the director shall use the fastest mail service available, but the director shall not mail them by certified mail.

CREDIT(S)

(2014 S 205, eff. 6-1-14; 2012 S 295, eff. 8-15-12; 2011 H 224, eff. 10-27-11; 2010 H 48, eff. 7-2-10; 2005 H 234, eff. 1-27-06; 1995 H 99, eff. 8-22-95; 1993 S 150, eff. 12-29-93; 1980 H 1062; 1974 H 662; 1953 H 1; GC 4785-141)

Notes of Decisions (3)

R.C. § 3511.04, OH ST § 3511.04
Current through File 123 of the 131st General Assembly (2015-2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Administrative Code Annotated
109 Attorney General (Refs & Annos)
109:2 Peace Officer Training Commission (Refs & Annos)
Chapter 109:2-1. Peace Officers Basic Training Program (Refs & Annos)

OAC 109:2-1-03

109:2-1-03 Ohio peace officer basic training program course

Currentness

(A) Who is required to complete the basic course:

- (1) Those persons set out in division (A) of section 109.71 of the Revised Code;
- (2) A training recruit as defined in paragraph (H) of rule 109:2-1-02 of the Administrative Code;
- (3) Any person employed in a position statutorily required to complete the basic training course.

(B) Who may attend the basic course

- (1) An open enrollment student as defined in paragraph (I) of rule 109:2-1-02 of the Administrative Code.

(C) No person who has been convicted of a felony or other disqualifying offense shall attend the basic course.

(D) All persons attending the basic course shall possess a high school diploma or certificate of high school equivalency.

(E) Statement of purpose.

- (1) It shall be clearly understood that the basic course described is designed as an absolute minimum program. Commanders are encouraged to exceed this minimum program wherever possible.
- (2) Nothing in this chapter shall limit or be construed as limiting the authority of a commander, the civil service commission, or other appointing authority, to enact rules and regulations which establish a higher standard of training above the minimum required by the rules of this chapter.

(F) Local matters

Instruction in such matters as department rules and regulations, local ordinances, personnel policies and procedures may be given entirely upon local initiative. No portion of the instructional time devoted to this training or other non-commission required topics shall be credited against the hours of instruction required under rule 109:2-1-16 of the Administrative Code.

Credits

HISTORY: 2015-16 OMR pam. # 2 (A), eff. 1-1-16; 2009-10 OMR pam. #12 (RRD); 2004-05 OMR pam. #6 (RRD); 1999-2000 OMR 225 (A), eff. 1-1-00; 1990-91 OMR 1021 (A), eff. 3-25-91; 1987-88 OMR 571 (A), eff. 1-1-88; 1981-82 OMR 381 (A), eff. 3-1-82; prior PC-1-03.

RC 119.032 rule review date(s): 8-10-20; 6-1-15; 5-25-15; 6-2-10; 12-29-09; 1-1-05; 12-29-04; 6-16-99

Editors' Notes

CROSS REFERENCES

~~RC 109.73~~, Powers and duties

Notes of Decisions containing your search terms (0)

View all 1

Rules and appendices are current through August 19, 2016

109:2-1-03, OH ADC 109:2-1-03

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Administrative Code Annotated
109 Attorney General (Refs & Annos)
109:2 Peace Officer Training Commission (Refs & Annos)
Chapter 109:2-1. Peace Officers Basic Training Program (Refs & Annos)

OAC 109:2-1-12

109:2-1-12 Certification before service and re-entry requirements

Currentness

(A)

(1) No person shall, after January 1, 1966, receive an original appointment on a permanent basis as a peace officer unless such person has previously been awarded a certificate by the executive director attesting to satisfactory completion of the basic course prescribed in rule 109:2-1-16 of the Administrative Code.

(2) No person shall, after January 1, 1989, be permitted to perform the functions of a peace officer or to carry a weapon in connection with peace officer duties unless such person has successfully completed the basic course and has been awarded a certificate of completion by the executive director.

(3) All peace officers employed by a county, township, or municipal corporation of the state of Ohio on January 1, 1966, and who have either completed at least sixteen years of full-time active service as such peace officer or have completed equivalent service as determined by the executive director, may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer without receiving a basic training certificate signed by the executive director.

(B) Credit for prior equivalent training or education:

(1) An individual who has successfully completed prior training or education and who is appointed as a peace officer in Ohio may request credit for that portion of the basic training course which is equivalent to training previously completed. Training or education which shall be accepted includes, but is not limited to, training or education certified by another state, another government agency, military service, the state highway patrol or a college, university or other educational institution.

(2) The applicant shall provide to the executive director documented evidence of the training. The executive director shall review the record of the prior training or education and make a determination of the training the person shall be required to complete in a commission-approved basic training school.

(3) Applicants that have five or more years of full-time experience in a position in another state that is substantially similar to that of an Ohio peace officer within the previous four years shall only be required to complete all statutorily mandated peace officer basic training topics as well as topics that contain material specific to Ohio.

(4) Credit for equivalent training may also be given under this rule for experience when the applicant can, through a means that the executive director has approved in advance, demonstrate to the executive director a level of proficiency that is equivalent to the proficiency required to complete one or more portions of the basic training course.

(5) All applicants, regardless of the amount of credit received, shall be required to sit for and successfully complete the statewide certification exam set forth in rule 109:2-1-11 of the Administrative Code and, prior to carrying a firearm during the course of their official duties, shall successfully complete a firearms requalification course pursuant to section 109.801 of the Revised Code.

(6) If the applicant disputes any of the training assigned by the executive director, he or she may request a hearing before the commission as provided in sections 119.06 and 119.07 of the Revised Code. The commission shall conduct the hearing as required by sections 119.01 to 119.13 of the Revised Code.

(7) Evidence of successful completion of a commission approved basic training course shall not be accepted for prior equivalent credit.

(C) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director, or those peace officers described in paragraph (A)(3) of this rule who terminate their appointment from an agency, will have their training eligibility reviewed by the executive director upon reappointment.

Upon appointing a person to a peace officer position as described in division (A) of section 109.71 of the Revised Code, the appointing agency shall submit a request for the executive director to evaluate the officer's training and eligibility to perform the functions of a peace officer. Such request will be made on a form provided by the executive director and shall be submitted immediately upon appointing the officer.

(D) Breaks in service/requirements for update training evaluations:

(1) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director, or those peace officers described in paragraph (A)(3) of this rule who have had no appointment as either a peace officer or a trooper for one year or less, shall remain eligible for re-appointment as a peace officer and shall not be required to complete additional, specialized training to remain eligible for re-appointment as a peace officer.

(2) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who have not been appointed as either a peace officer or a trooper for more than one year but less than four years, shall, within one year of the re-appointment date as a peace officer, successfully complete a refresher course prescribed by the executive director. This course and appropriate examination must be approved by the executive director and shall be sufficient in content and subject material to refresh that officer's knowledge of the role, function, and practices of a peace officer in light of that officer's past training and experience. Officers have one year from the date of re-appointment to complete the refresher course, and may perform the functions of a peace

officer during that period. In the event specialized training has been mandated during the period between the date of the original appointment and the re-appointment date, said individual shall be required to successfully complete that mandated specialized training within one year of re-appointment as a peace officer or else demonstrate to the executive director a level of proficiency in that area of specialized training that is equivalent to the proficiency of one who has completed such training.

(3) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who have not been appointed as either a peace officer or a trooper for more than four years shall, upon re-appointment as a peace officer, complete the basic training course prior to performing the functions of a peace officer.

(4) Notwithstanding the training requirements set forth in paragraphs (D)(1) and (D)(2) of this rule, a member of the national guard or a military reservist who has previously been appointed as a peace officer and has been awarded a certificate of successful completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who are members of the national guard or military reserves and have not been appointed as a peace officer for one year or more due to active duty in the uniformed services, when such absence from the appointment is as a direct result of the person's mobilization to active duty service, shall, upon return from active duty, be immediately eligible for appointment as a peace officer and shall not be required to meet the training requirements set forth in paragraphs (D)(1) and (D)(2) of this rule.

(E) Any person who has been appointed as a peace officer and has been awarded a certificate of completion of basic training by the executive director and has been elected or appointed to the office of sheriff shall be considered a peace officer during the term of office for the purpose of maintaining a current and valid basic training certificate. Any training requirements required of peace officers, including continuing professional training pursuant to section 109.803 of the Revised Code, shall also be required of sheriffs who wish to maintain a current and valid peace officer certificate during their term in office.

(F) Every person who has been re-appointed as a peace officer and who must complete training pursuant to paragraph (D)(1) or (D)(2) of this rule shall cease performing the functions of a peace officer and shall cease carrying a weapon unless the person has, within one year from the date of re-appointment, received documentation from the executive director that certifies that person's compliance with the training requirements listed in this rule.

(G) The executive director may extend the time for completion of the training requirements based upon written application from the appointing authority of the individual. Such application will contain an explanation of the circumstances which create the need for the extension. Factors which may be considered in granting or denying the extension include, but are not limited to, serious illness of the individual or an immediate family member, the absence of a reasonably accessible training course, or an unexpected shortage of manpower within the employing agency. Based on the circumstances in a given case, the executive director may modify the completion date for any training assigned. An extension shall generally be for ninety days, but in no event may the executive director grant an extension beyond one hundred eighty days.

(1) Should the executive director deny the request for an extension, he shall notify and advise the appointing authority that the appointing authority may request a hearing before the commission as provided in sections 119.06

and 119.07 of the Revised Code. The commission shall conduct the hearing as required by sections 119.01 to 119.13 of the Revised Code.

(2) The provisions of paragraph (F) of this rule shall remain in effect until such time as the commission makes the determination to grant or deny the request.

(H) This rule shall not be construed to preclude a township, county, or municipal corporation from establishing time limits for satisfactory completion of the basic course and re-entry requirements of less than the maximum limits prescribed by the commission. If a township, county, or municipal corporation has adopted time limits less than the maximum limits prescribed above, such time limits shall be controlling.

Credits

HISTORY: 2015-16 OMR pam. # 7 (A), eff. 1-16-16; 2014-15 OMR pam. # 6 (A), eff. 1-1-15; 2009-10 OMR pam. #3 (A), eff. 10-16-09; 2005-06 OMR pam. #11 (A), eff. 6-9-06; 2004-05 OMR pam. #6 (RRD); 1999-2000 OMR 229 (A), eff. 1-1-00; 1993-94 OMR 156 (A), eff. 10-1-93; 1990-91 OMR 1022 (A), eff. 3-25-91; 1990-91 OMR 179 (A), eff. 8-21-90; 1987-88 OMR 575 (A-TF 109:2-1-11), eff. 1-15-88; 1987-88 OMR 575 (R), eff. 1-1-88; prior PC-1-12.

RC 119.032 rule review date(s): 10-16-19; 10-16-14; 10-7-14; 5-30-11; 12-29-09; 7-13-09; 12-21-05; 1-1-05; 12-29-04; 6-16-99

Notes of Decisions (2)

Rules and appendices are current through August 19, 2016

109:2-1-12, OH ADC 109:2-1-12

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

1976 WL 189880

Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES
FOR REPORTING OF OPINIONS AND
WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Tenth
District, Franklin County.

Gerald F. Schroer, Inc., an Ohio Corporation,
dba Mann Nursing Home, Plaintiff-Appellee,

v.

The Board of Elections of Franklin County,
Ohio, and Jenniev Henson, William Schneider,
Richard Ryan, and Nelson Lancione, as
members thereof, Defendants-Appellees,
(Robert E. Vaughn, Intervening
Defendant-Appellant).

No. 75AP-638.

|
June 22, 1976.

Attorneys and Law Firms

SMITH & TOBIN, MR. HARRISON W. SMITH, JR.,
37 West Broad Street, Columbus, Ohio, For Plaintiff-
Appellee.

MR. GEORGE C. SMITH, Prosecuting Attorney, MR.
DENNIS S. PINES and MR. CHARLES I. COHEN,
Assistants, Franklin County Hall of Justice, Columbus,
Ohio, For Defendants-Appellees.

LANE, ALTON & HORST, MR. DAVID L. DAY,
of Counsel, 150 East Broad Street, Columbus, Ohio,
and MR. CHARLES E. WESTERVELT, JR., 18 West
College Avenue, Westerville, Ohio 43081, For Intervening
Defendant-Appellant.

DECISION

HOLMES, J.

*1 This matter involves the appeal of a judgment of
the Common Pleas Court of Franklin County, wherein
the trial court granted an injunction to plaintiff-appellee
Gerald F. Schroer, Inc., dba Mann Nursing Home,

enjoining defendant Board of Elections of Franklin
County, Ohio, from submitting ordinance No. 74-49 of
the city of Westerville to a referendum vote. The ordinance
in question, as passed by the city council of Westerville,
provided for the vacation of a portion of a certain street
in Westerville, Ohio, known as Knox Street.

The matter was submitted to the Common Pleas Court
on an agreed statement of facts, along with a copy of the
ordinance No. 74-49.

The facts in brief upon which this matter was brought
before the trial court, and thence to this court upon
appeal, are that the plaintiff, who owned and operated the
stated nursing home in Westerville, Ohio, had requested
the city of Westerville to vacate a portion of Knox Street
in order to enlarge its business establishment. The street
to be vacated was adjacent to two lots owned by the
plaintiff in the James Langham Addition to the city of
Westerville, such street having originally been dedicated to
the city of Westerville by an inclusion in the stated platted
subdivision.

The city of Westerville, pursuant to law, had a hearing
on the application for vacation and, on November 19,
1974, council duly passed an ordinance, No. 74-49, titled
as follows:

“To vacate Knox Street adjacent
to Lots 2 and 3, James Langham's
Addition, Plat Book 1, page 121,
Recorder's Office, Franklin County,
Ohio said street extending southerly
from the south line of West Home
Street a distance of 198 feet to the north
line of Cochran Alley.”

It appears from the record that the intervenor Robert
E. Vaughn, who owns property adjacent to such street,
and who operates a business thereon, appeared at the
council meeting and protested the vacation petition. It
also appears from the record that after the passage of such
ordinance the intervenor hired certain persons to circulate
referendum petitions against the ordinance passed by the
city of Westerville, and that such petitions were then filed
with the Board of Elections of Franklin County, Ohio, and
that this injunctive action as against the Board of Elections
to enjoin said board from submitting such ordinance
to residents of Westerville by referendum followed. The

Common Pleas Court of Franklin County, in a well written opinion, concluded that the vacation of Knox Street by ordinance No. 74-49, as passed by the council of the city of Westerville, was an administrative act and, consequently, not subject to the test of referendum, and decided that the Board of Elections had no authority to accept for filing the referendum petition, and permanently enjoined the board from presenting the issue to the voters of Westerville.

Although there were other issues presented to the court, including the issue of the invalidity of the petitions due to the age minority of the circulators, the trial court concluded that it need not consider and decide such other issues in that the injunction would be issued on the basis that a referendum was inappropriate.

*2 Mr. Robert E. Vaughn, the intervenor herein, appealed, setting forth the single assignment of error as follows:

"The court erred in holding that the passing of ordinance 74-49 by the city council of Westerville was an administrative [Illegible text] and therefore not subject to referendum and in enjoining Franklin County Board of Elections from presenting the issue of vacating Knox Street to the people of Westerville."

We are in agreement with the decision of Judge Thompson of the Court of Common Pleas of Franklin County, and adopt his decision in overruling the single assignment of error of the intervenor-appellant.

There appears to be no disagreement between the parties here as to the basic legal proposition that legislative bodies, such as a city council in this instance, may, in the execution of their official duties, perform functions which are legislative in character, as well as perform functions which are administrative in character. A legal basis, among many others to be found for such proposition, is to be found in the first paragraph of the syllabus of *Donnelly v. Fairview Park* (1968), 13 Ohio St.2d 1, 233 N.E.2d 500, which is as follows:

"1. A public body essentially legislative in character may act in an administrative capacity."

The Constitution of the state of Ohio, by way of section 1f, Article II, provides that the people of the municipalities of the state may exercise the powers of initiative and referendum as to all questions which the municipalities are authorized by law to control by legislative action. The specific words of such section of the Constitution are as follows:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

In carrying out the constitutional mandate to preserve the right of referendum to the people, the state legislature has enacted R. C. 731.29, which provides in pertinent part as follows:

"Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum except as provided by section 731.30 of the Revised Code.
* * *

We note that R. C. 731.30 relates to the passage of ordinances dealing with public improvements, ordinances providing for appropriations for current expenses of the municipal corporation, or for street improvements petitioned for by owners, emergency ordinances, or measures necessary for the immediate preservation of the public peace, health or safety. It is agreed that all of these types of ordinances as are excepted from referendum petition are not applicable to the ordinance as passed in the instant case.

*3 It is further agreed by the parties hereto as a broad proposition of law that actions of the legislative body which are administrative or executive in nature are generally not subject to initiative or referendum procedures. This stated proposition of law is in conformity with the overwhelming weight of authority to be found throughout the country. See 42 American Jurisprudence

2d, Initiative and Referendum, at section 11, page 659. Also, such principle of law has been applied rather uniformly in this state, and has most recently been alluded to in the case of *Myers v. Schiering* (1971), 27 Ohio St.2d 11, 271 N.E.2d 864, wherein we find, within the first paragraph of the syllabus, the following:

"1. Under Section 1f of Article II of the Ohio Constitution, municipal referendum powers are limited to questions which municipalities are 'authorized by law to control by legislative action.'"

As stated by the court in *Myers v. Schiering*, and again by the trial court in this case, the issue to be decided, that of whether or not such act of a legislative body would be subject to referendum, may be concluded only after a determination of whether the passage of such ordinance herein constituted legislative action versus administrative action. The test for determining whether an action of the legislative body is in fact legislative or administrative was set down in the case of *Donnelly v. Fairview Park, supra*, where, in the second paragraph of the syllabus, we find the following:

"2. The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence."

The facts in *Donnelly* are that the city council of Fairview Park failed to act upon, and refused to approve, the decision of the city planning commission, which had approved an application for subdivision of certain lots in that city, and the subdivider-owner appealed such refusal to act to the Common Pleas Court of Cuyahoga County, such appeal being based upon Chapter 2506 of the Ohio Revised Code. The Common Pleas Court held that it had jurisdiction to entertain such appeal, pursuant to Chapter 2506, in that the city council, in not approving such subdivision, was not acting in a legislative capacity, but was acting in a quasi-judicial administrative capacity. The Court of Appeals reversed; and, upon appeal to the Supreme Court of Ohio, the court affirmed the trial court, setting forth the specific holding applicable thereto, in paragraph three of the syllabus, as follows:

*4 "3. The failure or refusal of a municipal council to approve a plan for the resubdivision of land which meets the terms of a zoning ordinance already adopted and in existence is an administrative act, and an appeal from such failure or refusal to approve lies to the Court of Common Pleas under Chapter 2506, Revised Code."

The court, in the decision of *Donnelly*, at page 3, 233 N.E.2d 500 thereof, after stating the general principle that a public body essentially legislative in character may act in an administrative capacity, stated as follows:

"* * * Of course, the adoption or amendment of a zoning regulation or ordinance is a legislative act (*Tuber v. Perkins*, 6 Ohio St.2d 155, 216 N.E.2d 877), but the failure or refusal to approve a resubdivision of land coming within the terms of a zoning regulation or ordinance already adopted and in existence is an administrative matter.

"Thus, in the case of *Jacobs v. Maddux*, 7 Ohio St.2d 21, 23, 218 N.E.2d 460, 461, it is said in the opinion by O'Neill, J.:

"This court held in *Tuber v. Perkins et al., Board of Trustees*, * * * that a Board of Township Trustees may function as a legislative body, and, when it functions as such, there can be no appeal from its action.

"Functionally, the action which the trustees took in the instant case [denial of a petition for incorporation of a village] is not legislative since it involves merely the application of existing law to a given factual situation."

In the case of *Myers v. Schiering, supra*, the facts are that the city council of Fairfield adopted a resolution providing for the granting of a permit "for the use of a part of Lot 62 in the city of Fairfield * * * for the purposes of operating a sanitary landfill." The court, after quoting the paragraphs of the syllabus of *Donnelly*, as referred to previously herein stated at page 14 of the opinion, as follows:

"We are of the opinion that the resolution in question did not enact a 'law, ordinance or regulation,' but constituted the 'executing or administering a law, ordinance or regulation already in existence,' Consequently, the

passage of the resolution was not 'legislative action,' but was administrative action. As such, it is not subject to referendum."

Accordingly, the Supreme Court held, in the second paragraph of the syllabus, as follows:

"2. The passage by a city council of a resolution granting a permit for the operation of a sanitary landfill, pursuant to an existing zoning regulation, constitutes administrative action and is not subject to referendum proceedings."

*5 The law as set forth in *Donnelly* and *Myers v. Schiering*, *supra*, was again approved in the more recent case of *Forest City Enterprises, Inc., v. City of Eastlake* (1975), 41 Ohio St.2d 187, 324 N.E.2d 740.

It is indeed often difficult to decide whether a legislative body, in carrying out its functions of local government, has in fact acted in its legislative or in its administrative capacity. There are many fine lines encountered in separating out, and analyzing, some of the functions and actions of these legislative bodies, which functions or actions may, to a varying degree, have the characteristics of both general areas within which local governmental entities operate. The reviewing court, in determining in which capacity the legislative body has acted, must specifically look to the basic genesis of the authority upon, or by which the legislative body had acted.

An enlightening statement of the test to be applied which furtherly expands that as set forth in *Donnelly*, *Myers v. Schiering* and *Forest City Enterprises, Inc.*, is to be found in 42 American Jurisprudence 2d, Initiative and Referendum, section 12, at page 660, which is as follows:

"Generally, an enactment originating a permanent law or laying down a rule of conduct or course of policy for the guidance of citizens or their officers or agents is purely legislative in character and referable, while an enactment which simply puts into execution previously declared policies or previously enacted laws is administrative or executive in

character and not referable. If an act carries out an existing policy of a legislative body, it is administrative whether the policy came into existence in an enactment of the body itself, in the organic law creating the body, or in an enactment of a superior legislative body."

In the instant case, the ordinance as enacted by the city council of Westerville, Ohio, was pursuant to the state enabling act, R. C. 723.04, which law authorizes legislative authorities of municipal corporations to change names of, to vacate, and to narrow, streets upon petition. Such section is as follows:

"The legislative authority of a municipal corporation, on petition by a person owning a lot in the municipal corporation praying that a street or alley in the immediate vicinity of such lot be vacated or narrowed, or the name thereof changed, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation, or narrowing, that it will not be detrimental to the general interest, and that it should be made, may, by ordinance, declare such street or alley vacated, narrowed, or the name thereof changed. The legislative authority may include in one ordinance the change of name, vacation, or narrowing of more than one street, avenue, or alley."

*6 It has been held that a municipal corporation can abandon streets and alleys only in the [Illegible text] as prescribed by statute, and in no other way. *Louisville & N. R. Co. v. Cincinnati* (1907), 76 Ohio St. 481, 81 N.E. 983; *Messinger, et al. v. City of Cincinnati, et al.* (1930), 36 Ohio App. 337, 173 N.E. 260.

All of the sections pertaining to the vacation of a street or alley by a municipal corporation provide for notice and hearing of any such potential action by the legislative authority of the city. R. C. 723.04 provides such vacation may be provided for only "upon hearing, and upon being

satisfied that there is good cause for such ***vacation ** * that it will not be detrimental to the general interest ** *,” R. C. 723.07 provides for notice by publication where streets or alleys are to be vacated; and, such section calls for publication in a newspaper of general circulation for six consecutive weeks preceding action on such vacation petition or, where there is no newspaper published in the municipal corporation, by posting notice in three public places six weeks preceding such action. All of these procedures as provided for by statute comply with the constitutional requirements of notice and hearing, and are, by way of the mandatory procedural requirements, typical of administrative procedures.

The appellee argues the very acceptable proposition that such procedures, as provided by this act enabling the vacation of streets and alleys, may be reasonably compared with the state laws which grant the director of highways the right to vacate state highways, pursuant to R. C. 5511.01, and the state law which provides the county commissioners the right to vacate county roads, pursuant to R. C. 5553.04, et seq. An interpretation of these acts and the procedures as contained therein leads us to the conclusion that they are administrative in nature in that they provide for notice and hearing, and provide for administrative appeal of such determinations.

We accept the appellee's premise that the act of vacating a street either is or is not administrative, and that the nature of the act would not change dependent upon the body exercising such function, We also agree that if the act is administrative when performed by a board of county commissioners or the state highway department, it would also be administrative when performed by the legislative authority of a municipality acting pursuant to law. It may be validly concluded that it is the nature of the act which determines whether or not it is administrative, not the label placed upon it, nor the body performing it.

The determination by a municipal legislative authority as to whether or not to continue to maintain a public

street has within it many administrative determinations, including the continuing utility and usefulness of such street to the general public; the degree of continued upkeep and repair, and the costs thereof; and the desirability to be relieved of such continued responsibility for the care of such street or alley; and, whether the vacation of such street would ultimately inure to the best interests and welfare of the citizens in the community. It is our view that such determinations as made by a municipal legislative body should not be tested or determined by way of referendum, but should be tested by way of an appeal pursuant to Chapter 2506 of the Ohio Revised Code. Such a review would be based upon the standards set forth in such chapter as to whether the acts of the municipal authority are unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by a preponderance of substantial, reliable and probative evidence on the whole record.

*7 It is our belief that the determination as to the questions of whether the municipality and its people would be best served by a continuance of the public use of a street within the city, with the attendant costs of supervision and repair thereof, requires an informed judgment and administrative determination by those who have the knowledge of the current needs, requirements, and budgetary considerations of the municipality as a whole. We hold that such determinations are better reviewed by way of appeal, pursuant to R. C. 2506.04, rather than by way of referendum as attempted here.

Based upon all of the foregoing, the judgment of the Common Pleas Court of Franklin County is hereby affirmed.

STRAUSBAUGH, P. J., and REILLY, J., concur.

All Citations

Not Reported in N.E.2d, 1976 WL 189880

**HAMILTON COUNTY BOARD OF ELECTIONS
MEETING HELD
August 16, 2016 AT 10:30AM**

The meeting of the Hamilton County Board of Elections was called to order at 10:30am by Chairman Burke. Present were members Mr. Triantafilou, Mr. Gerhardt and Mr. Faux. Also present: Director Sherry Poland, Deputy Director Sally Krisel and Dave Stevenson.

Chairman Burke noted that proper notice was duly provided as required by O.R.C. 121.22.

I. APPROVE BOARD MEETING MINUTES: AUGUST 1 & 2, 2016

Mr. Triantafilou made a motion to approve the Board meeting minutes from August 1 & 2, 2016; Mr. Faux seconded. The motion passed unanimously.

II. AUGUST 2, 2016 SPECIAL ELECTION PROVISIONAL BALLOT REVIEW

The Provisional Ballot report and staff recommendation was presented to the Board based upon bipartisan review in accordance with the Secretary of State Directive and Board policy. The staff recommendation was as follows:

Accept	30	
Reject	12	
Not registered:		11
Voted wrong precinct/wrong location:		1

Mr. Triantafilou made a motion to accept the staff recommendation and approve the Provisional Ballot Summary report; Mr. Faux seconded. The motion passed unanimously.

III. AUGUST 2, 2016 SPECIAL ELECTION BALLOT REMAKES

There were no ballots required to be remade



IV. CERTIFICATION OF QUESTIONS AND ISSUES FOR THE NOVEMBER 8, 2016 GENERAL ELECTION

The list of Questions and Issues for the November 8, 2016 General Election was presented to the Board. Staff recommended the Board separate the City of Norwood proposed ordinance regarding marijuana from the list of Questions and Issues and approve the remainder of the list.

Mr. Triantafilou made a motion to accept the staff recommendation to separate the City of Norwood proposed ordinance from the list and certify the remaining items to the November 8, 2016 General Election Ballot; Mr. Faux seconded. The motion passed unanimously.

A discussion regarding the City of Norwood proposed ordinance followed. The Board was advised that the ballot language which was proposed in the ordinance was submitted to the Ohio Secretary of State; the Secretary of State returned the language to the BOE with instructions to consult with the Hamilton County Prosecutor's office. The relevant information was then forwarded to the Prosecutor's office and an opinion was issued. It was discussed that the legal opinion was an attorney/client communication and may not be released without expressed permission by the Board.

Mr. Triantafilou made a motion to waive the attorney/client privilege as it relates to this legal opinion from the Hamilton County Prosecutor's office; Mr. Faux seconded. The motion passed unanimously.

Mr. Stevenson summarized the legal opinion to the Board. As the proponents of this legislation were previously unaware of this development, it was suggested that this issue be tabled to provide them the opportunity to speak with counsel. The Board agreed to hold a special meeting on Monday, August 22, 2016 for the purpose of addressing this issue.

V. CERTIFICATION OF JUDICIAL CANDIDATES TO THE NOVEMBER 8, 2016 GENERAL ELECTION; HAMILTON COUNTY COURT OF COMMON PLEAS UNEXPIRED TERM

Mr. Triantafilou made a motion to certify Judge Lisa Allen and Mr. Michael Mann to the 2016 General Election Ballot; Mr. Faux seconded. The motion passed unanimously.

VI. DISCUSSION: EVENDALE CITY COUNCIL UNEXPIRED TERM ELECTION

The Board discussed the petition filed by Carolyn Smiley-Robertson to fill an unexpired term on the Evendale Village Council. The vacancy was created in September, 2015. Pursuant to the charter of the Village of Evendale, the election to fill the unexpired term shall take place at the "next" general election. In this situation, the vacancy occurred too late to be included in the November, 2015 General Election. Ms. Smiley-Robertson filed her petition under the assumption the vote to fill the unexpired term would be in the November 2016 General Election. The Board was advised by Mr. Stevenson that pursuant to law, Municipal Elections are to occur in odd numbered years and therefore the "next" general election for this unexpired term will be November 2017. Mr. Stevenson advised Staff to reject the petition. Mr. Burke stated for the record that he was the law director for the Village of Evendale and as such was aware of this situation. He stated that an Evendale Charter Amendment was on the November 2016 ballot which would clarify the wording of the Charter to specify the next "Municipal" election.

Mr. Triantafilou made a motion to follow the advice of counsel and reject the petition for the 2016 General Election; Mr. Faux seconded. Mr. Burke – abstain; Mr. Triantafilou – aye; Mr. Faux – aye; Mr. Gerhardt –aye. The motion carried.

VII. CERTIFY RESULTS OF THE AUGUST 2, 2016 SPECIAL ELECTION

The Board entertained various questions and discussions while waiting for the results of the August 2, 2016 Special Election to be tabulated.

Mr. Triantafilou made a motion to stand in recess; Mr. Faux seconded. The motion passed unanimously.

Mr. Triantafilou made a motion to return to session; Mr. Faux seconded. The motion passed unanimously.

The results of the August 2, 2016 Special election were presented to the Board. Mr. Triantafilou made a motion to certify the results; Mr. Faux seconded. The motion passed unanimously.

There being no further business to come before the Board, Mr. Triantafilou made a motion to adjourn; Mr. Faux seconded. The motion passed unanimously.

APPROVED:
DATE: September 13, 2014

CHAIRMAN:


TIMOTHY M. BURKE

DIRECTOR:


SHERRY L. POLAND

**HAMILTON COUNTY BOARD OF ELECTIONS
MEETING HELD**

August 22, 2016 AT 8:30AM

The meeting of the Hamilton County Board of Elections was called to order at 8:30am by Chairman Burke. Present were members Mr. Triantafilou, Mr. Gerhardt and Mr. Faux. Also present: Director Sherry Poland, Deputy Director Sally Krisel and Dave Stevenson.

Chairman Burke noted that proper notice was duly provided as required by O.R.C. 121.22.

I. BALLOT ISSUE: PROPOSED ORDINANCE (BY PETITION) CITY OF NORWOOD

The Board heard the matter of the City of Norwood Ballot Issue: Proposed Ordinance (by petition). A transcript of the proceedings is attached hereto.

Mr. Brice Keller, Keller Law Office LLC, presented on behalf of the petitioners. Mr. Keller read a prepared statement, attached as reference, and provided a testimonial statement to the Board.

The Board also heard testimonial statements from the following proponents of the issue:

Chad Thompson, Resident of the State of Ohio; not a resident of the City of Norwood

Amy Wolfinbarger, Founder, Sensible Norwood; Resident of Norwood

Jason Durham, Resident of Michigan, formerly Ohio resident

Mr. Timothy Garry, Assistant Law Director, City of Norwood Department of Law presented on behalf of the City of Norwood. Mr. Garry presented a prepared statement, attached as reference, and provided a testimonial statement to the Board.

Upon hearing the statements and questioning the speakers, the Board sought counsel from Mr. Stevenson. Mr. Stevenson's opinion statement is attached as reference.

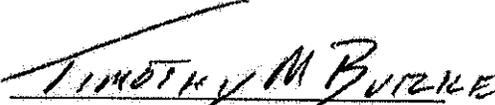


Mr. Triantafilou moved and Mr. Faux seconded a motion that the matter not be certified to the November ballot because it attempts to create a new felony law which is beyond the power of the City of Norwood to enact and because it includes administrative directives instructing the Norwood police and city attorney how to enforce existing Ohio law. The motion passed unanimously.

There being no further business to come before the Board, Mr. Triantafilou made a motion to adjourn; Mr. Faux seconded. The motion passed unanimously.

APPROVED:
DATE: September 13, 2014

CHAIRMAN:


TIMOTHY M. BURKE

DIRECTOR:


SHERRY L. POLAND

937-5400-LAW
937-938-6585 Fax

Keller Law Office LLC
Brice@BriceKellerLaw.com

7480 Mad River Rd
Dayton, OH 45459

To: Hamilton County Board of Elections
Date: Aug 22, 2016
RE: Sensible Norwood Initiative Petition

To Whom It May Concern:

I, Michael Brice Keller, of Keller Law Office LLC, have been retained by petitioners of the Initiative Petition "The Sensible Marihuana Ordinance."

In response to "opinion" submitted/presented by Counsel/Assistant Prosecuting Attorney, David T. Stevenson, petitioners assert the following as dispositive information requiring inclusion on the November 8, 2016 Ohio Ballot, as presented to the citizens of Norwood.

Concerning the assertion that the proposed ballot language is "misleading and does not accurately reflect the substance of the issue to be voted upon," this is a common challenge and remedied by a simple hearing where petitioners and Board of Elections may resolve any confusion as to the language. The Proposed Language in the case at issue is, however, not deficient as proposed because it is substantially similar to language presented in a similar successful petition and substantially similar to language presented in other local petitions.

As to the deficiencies cited as First and Second, Petitioners present the following responses...

First, any deficiencies as to whether the municipality may adjust, amend or affect felony level laws are subject to a severability provision in the Initiative itself. (r) Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections. Invalid sections shall be revised to the minimum extent necessary to maintain validity and enforceability.

This requires the conclusion that the initiative remains without the offending language. Further, in the present case, the issue as to effect as to reducing felonious exposure for citizens is subject to ongoing litigation in other jurisdictions in Ohio. Additionally, upon information and belief, as to where similar adjustments to felony issues have been included, the main thrust concerning misdemeanor decriminalization remains in effect.

Interestingly, *State ex rel. Walker v. Husted*, 2015-Ohio-3749 speaks directly to this issue as part of its holding in declining authority to both the Board of Elections and the Secretary of State in an important regard. Walker states at paragraph 15 that "this authority to determine whether a ballot measure is within the scope of constitutional power of referendum (or initiative) does *not* permit election officials to sit as arbiters of the legality or constitutionality of a ballot measure's substantive terms." *Id.* ¶15 This is

Michael "Brice" Keller, Attorney at Law, OH Bar # 0090210

controlling guidance from the Supreme Court concerning the issue of inclusion of the felony issues in the ballot language. If there were an offending provision not cured by severability it remains that neither the Secretary of State or Board of Elections would stand to withhold placement on the ballot for that reason, because it is entirely a question of illegality or constitutionality that is at issue.

Second, the presentation of "administrative vs. legislative" discussions in the present case are substantially strained. The main thrust of the petition is plain on its face and in effect. To this end, the initiative contains proposed ballot language identifying the same to wit: "...by lowering the penalty for marijuana to the lowest penalty allowed by state law?"

It is clear that the lowering of a penalty is the function of the initiative and that effect is wholly legislative. The inclusion of administrative guidance as to how, by what means, or other issues to effect the legislative end are incidental. The "Walker" case referred to by Attorney Stevenson, upon cursory inspection is one concerning "fracking" which discussed "administrative vs. legislative" because of Husted's claim concerning the exclusive regulatory authority of the Ohio Government of the Gas and Oil Industry. *State ex rel. Walker v. Husted*, 2015-Ohio-3749. This however is all discussion and not the holding as it was decided on alternative grounds. *Id.* discussion at ¶16- 18, alternative basis ¶22, holding at ¶24-25. The Walker case rested on a deficiency as to providing for a form a government and procedural or technical defects. *Id.* at ¶ 24-25.

As to the test, so cited by Attorney Stevenson, it begins, "The test for determining the action of a legislative body is"... I propose to point out that this is a test for determinations as it relates to actions of a legislative body, as opposed to the determination of actions as it relates to a petition, initiative, or referendum, the latter type fundamentally requiring administrative components to have effect.

Of note is the case of *Donnelly v. City of Fairview Park*, 13 Ohio St. 2d 1 (1968) in which the Supreme Court did identify administrative action where there was action by trustees in denying a petition for the incorporation of a village. *See Donnelly v. City of Fairview Park*. Here the initiative petition, The Sensible Marijuana Ordinance, repeals, replaces, modifies, and/or enacts changes in particular sections of the local code. This is on its face legislative.

I propose for analysis that if the petition was to establish a no Parking Zone, that the petition would undoubtedly contain some administrative discussion as to that the law would be recorded, that an employee would be directed to place a sign and even possibly that someone would be directed to make resources available. In any event, the function would be legislative in prohibiting an activity. Conversely, a petition that required the Town Council to approve a building permit would be administrative. I hope that we can consider both issues resolved, but further we remain prepared to more properly present arguments to the court on these issues.

937-5400-LAW
937-938-6585 Fax

Keller Law Office LLC
Brice@BriceKellerLaw.com

7480 Mad River Rd
Dayton, OH 45459

On behalf of the petitioners of The Sensible Marihuana Ordinance of Norwood, we humbly request that the question of whether Norwood should adopt The Sensible Marihuana Ordinance be presented at the November 8, 2016 election. Counsel for petitioners, requests opportunity to prepare, review, and discuss in more detail any issues related to Attorney Stevenson's concerns "First" and "Second" should those concerns not have be addressed and disposed of by this letter.

As to the proposed ballot language, petitioners are prepared to discuss and resolve any issues as your earliest convenience.

All The Best,



Michael Brice Keller
Attorney at Law, 90210
Keller Law Office LLC
BriceKellerLaw.com
Brice@BriceKellerLaw.com
765-760-1344
937-938-6585 Fax

Michael "Brice" Keller, Attorney at Law, OH Bar # 0090210

Municipal Court, reducing the convenient access to Courts for many accused people who could otherwise contest the charges against them in the Norwood Mayor's Court, rather than in the Hamilton County Municipal Court, which sits in Cincinnati, etc. In addition, it would likely take on-duty officers who would have to appear in the Hamilton County Municipal Court, which normally cannot resolve contested cases as quickly as does the Norwood Mayor's Court, away from their duties to patrol Norwood streets, and to respond to calls for service within the City of Norwood, longer. In addition, it would likely require at least as much police officer overtime as currently required to enforce Norwood's marijuana prohibitions in the Norwood Mayor's Court, probably more.

b. The penalties proposed by this ordinance are not, in fact, allowed by state law. Therefore, taxpayer's money would not be saved, In addition, there will be a high likelihood of civil litigation to the Common Pleas, Court of Appeals, and possibly Supreme Court of Ohio levels, probably requiring the involvement of not only the courts, but also staff attorneys from the Ohio Attorney General's Office, possibly the Hamilton County Prosecutor's Office, almost certainly the City of Norwood's Law Department, and/or special counsel for those entities, and the payment of court costs, probably by the City of Norwood.

2. The proposed ordinance appears to be missing multiple subsections, which can only lead to confusion among voters, litigants, attorneys and the Courts.

a. Specifically, Section 513.15(e), page 11, reads "No person shall knowingly cultivate or manufacture marihuana. The penalty for the offense shall be as follows:" One problem with the proposed ordinance is that nothing follows the colon, so this sentence about the penalty is incomplete, so it makes no sense.

b. Section 513.15(k), page 12, has the same problem as Section 513.15(e). 513.15(k) reads: "No person shall possess, sell, manufacture or use marihuana or hashish paraphernalia. The penalty for the offense shall be as follows:" The problem with this subsection is that nothing follows the colon, so this sentence about the penalty is incomplete, and makes no sense.

3. Major portions of the proposed ordinance appear to be administrative, rather than legislative, specifically directing city officials and officers, authorized by the Ohio Revised Code as to how they must do their jobs.

a. Section 513.15(m) of the proposed ordinances says:

"No Norwood police officer, or his or her agent, shall report the possession, sale, distribution, trafficking, control, use or giving away of marihuana or hashish to any other authority except the Norwood City Attorney; and the City Attorney shall not refer any said report to any other authority for prosecution or for any other reason."

All Norwood Police officers, the Norwood Law Director and the Assistant Law Director have all taken oaths to uphold and defend the constitutions of the United States and the State of Ohio, the laws of the United States, the State of Ohio, and the City of Norwood. An ordinance purporting to prohibit them from reporting crimes, including felonies to other law enforcement authorities for investigation and prosecution would be an improper exercise of administrative power. This provision would purport to prohibit both the Norwood Police and the Norwood Law Director from reporting felony drug trafficking conduct to the Hamilton County Prosecutor's Office, the Hamilton County Grand Jury, the Federal Bureau of Investigation or the DEA, or the United States Attorney.

The City of Norwood's Law Department supports and defends the Ohio Constitution, including Art. II, §1f which says:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities my now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

However, legislatively interfering with Norwood Police officers' and City Attorneys' administration of the law, is not a power which is reserved to the people of a municipality.

4. Large portions of a similar ordinance passed by referendum in the City of Toledo, Ohio have been found unconstitutional.

On February 23, 2016, Judge Dean Mandros, of the Lucas County Court of Common Pleas, in a civil case captioned State of Ohio, et al. v. City of Toledo, Case No. G-4081-CI-2015-4290-000, granted the State of Ohio, et al.'s request for declaratory and permanent injunctive relief, finding and declaring several sections of the ordinance that established the Sensible Marihuana Ordinance, to be in conflict with the general laws of the State of Ohio, and unconstitutional, unenforceable, without effect and null and void. Toledo's Sensible Marihuana Ordinance appears to have similar provisions to those found in the Norwood Sensible Marihuana Ordinance. The Court permanently enjoined Defendant City of Toledo and the City of Toledo Law Director from enforcing, observing, or complying with specific Ordinance provisions. An intervenor named Chad M. Thompson is appealing Judge Mandros's decision to Ohio's Sixth Circuit Court of Appeals. I have attached a pdf of the relevant pages of the Lucas County Court of Appeal's docket essentially stating Judge Mandros's orders.

Our specific concerns about the legality and constitutionality of The Norwood Sensible Marihuana ordinance initiative, include, but are not limited to, section 513.15 Marihuana Laws and Penalties sections (b)(2) and (3)(page 10); (d) (2) and (3), (e), (f)(2) and (3), (g)(page 11), and (j)(l) (m)(o)(q)(s)(page 12). Some of our specific concerns are based on the reasoning of the Ohio case law to which Judge Mandros cited in his rulings against the City of Toledo's Sensible Marihuana ordinance.

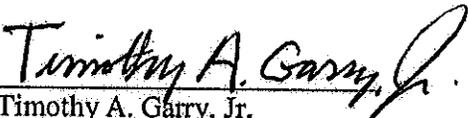
The proposed ordinance is 16 pages long, and is loaded with mistakes, misstatements, and other problems. This Board would not do the people of the City of Norwood any service whatsoever, to simply place this initiative ordinance on the ballot and hope that the voters can sort it out. This initiative petition should be corrected so that it does not misstate law, misstate facts, or interfere with the administrative discretion of sworn police officers and city attorneys, who not only

have the duty to enforce Norwood ordinances, but also the Ohio Revised Code, the United States Code and the Ohio and United States Constitutions.

If you have any questions or comments regarding this matter, please feel free to contact our office or the City of Norwood's Law Department at 458-4585. Thank you.

Sincerely,

NORWOOD LAW DIRECTOR

By: 
Timothy A. Garry, Jr.
Assistant Law Director

pc: Keith D. Moore, Esq., Law Director
Hon. Thomas Williams, Mayor
Norwood City Council

8/15/2016

Clerk of Courts Docket

Public Documents

LUCAS COUNTY COURT OF COMMON PLEAS
J. BERNIE QUILTER, CLERK
700 ADAMS STREET
TOLEDO, OHIO

TIME: 11:09:37 AM
DATE: 8/15/2016

CASE: G-4801 -CI -201504290-
000

TITLE: THE STATE VS CITY OF TOLEDO

JUDGE: DEAN MANDROS

FILING DATE: 10/6/2015

CASE TYPE: CI

CIVIL

STATUS: CLOSED/TERM'D

MONETARY AMOUNT:

ORIGINAL COURT:

PREVIOUS CASE NUMBER:

DOCKET/PAGE:

TAX TYPE:

STATE OF OHIO NUMBER:

Party	Counsel
PLAINTIFF 1: THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL MIKE DEWINE 30 EAST BROAD STREET 17TH FLOOR COLUMBUS, OH 43215	FREDERICK D NELSON 6147284947 30 EAST BROAD ST 17TH FL COLUMBUS, OH 43215
PLAINTIFF 1:	MICHAEL L STOKES 4192452550 OHIO ATTY GENERAL'S OFFICE ONE GOVERNMENT CENTER, STE 1340 TOLEDO, OH 436042261
PLAINTIFF 2: LUCAS COUNTY PROSECUTOR JULIA R BATES 700 ADAMS STREET STE 250 TOLEDO, OH 43604	KEVIN A. PITUCH 4192132051 LUCAS CTY PROSECUTORS OFFICE CIVIL DIVISION 711 ADAMS ST 2ND FL TOLEDO, OH 436242420
PLAINTIFF 2:	EVY M. JARRETT 4192132001 LUCAS COUNTY PROSECUTORS OFFICE 700 ADAMS STE 250 TOLEDO, OH 43604
PLAINTIFF 3: LUCAS COUNTY SHERIFF JOHN THARP 1622 SPIELBUSCH AVENUE TOLEDO, OH 43604	EVY M. JARRETT 4192132001 LUCAS COUNTY PROSECUTORS OFFICE 700 ADAMS STE 250 TOLEDO, OH 43604
PLAINTIFF 3:	KEVIN A. PITUCH 4192132051 LUCAS CTY PROSECUTORS OFFICE CIVIL DIVISION 711 ADAMS ST 2ND FL TOLEDO, OH 436242420
DEFENDANT 1: CITY OF TOLEDO ONE GOVERNMENT CENTER STE 2250 TOLEDO, OH 43604	ADAM W. LOUKX 4192451020 CITY OF TOLEDO DEPT OF LAW ONE GOVERNMENT CTR STE 2250 TOLEDO, OH 436042230
DEFENDANT 2: LOUKX ADAM	

- 12/7/2015 1 Title : ORD:ORDER
 The Ohio Supreme Court held in McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934), at paragraph one of syllabus, that "[a] statute is not a criminal statute unless a penalty is provided for its violation." See also, State v. Kosloff Fisheries, 1960 Ohio Misc. Lexis 230, 86 Ohio L. Abs. 442, 174 N.E.2d 640 ("A statute creating a penal offense and which contains no penalty for its violations, has been held not enforceable."); State v. Knecht, 21 Ohio Misc. 91, 253 N.E.2d 324, 1969 Ohio Misc. Lexis 247 ("It is fundamental that a criminal statute is of no force and effect if no penalty whatever is provided for its violation * * *"); State v. Schoepf, 17 Ohio Dec. 671, 1907 Ohio Misc. Lexis 158.
 It is ORDERED that the parties shall have until December 31, 2015, to submit briefs addressing what impact, if any, the above caselaw has on the positions raised in their previously-filed briefs.
 /S/ JUDGE DEAN MANDROS
 PARTY : -
- 12/7/2015 2 Title : EVT:ORDER FILE & JOURN EFF6/13
 E JOURNALIZED 12-8-15
 PERTAINING TO: IT IS ORDERED THAT THE PARTIES SHALL HAVE UNTIL 12-31-15 TO SUBMIT BRIEFS ADDRESSING WHAT IMPACT IF ANY THE CASELAW HAS ON THE POSITIONS RAISED IN THEIR PREVIOUSLY FILED BRIEFS
 Sent via email to P-3's attorney on 2015-12-08 11:26:07 AM:
 KEVIN A. PITUCH
 kpituch@co.lucas.oh.us
 Sent via email to D-1's attorney on 2015-12-08 11:26:07 AM:
 ADAM W. LOUKX
 adam.loukx@toledo.oh.gov
 Sent via email to P-3's attorney on 2015-12-08 11:26:07 AM:
 EVY M. JARRETT
 ejarrett@co.lucas.oh.us
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:
 MICHAEL L. STOKES
 michael.stokes@ohioattorneygeneral.gov
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:
 FREDERICK D. NELSON
 frederick.nelson@ohioattorneygeneral.gov
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:
 BRIDGET E. COONTZ
 bridget.coontz@ohioattorneygeneral.gov
 PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL
- 12/8/2015 1 Title : MIS:CRTRROOM SENT ORDINARY MAIL
 COPY OF ORDER FILED 12/7/15 MAILED TO:
 CHAD M THOMPSON
 4926 SWANBROOK CT
 TOLEDO OH 43614
 RITA E PERKINS
 2110 SOUTH AVE
 TOLEDO OH 43609
 DAVID A DANIEL
 510 MAPLEWOOD AVE
 DELTA OH 43515
 BRYAN THOMAS KOTH
 1770 CR 213
 FREMONT OH 43420

PARTY :-

- 12/30/2015 1 Title : PLD:RESPONSE
TO ORDER FILED ON 12/7/15 BY DAVID A DANIEL
PARTY :-
- 12/30/2015 2 Title : PLD:BRIF
DEFENDANTS BRIEF PURSUANT TO COURT ORDER OF 12/7/2015
PARTY : D1 - CITY OF TOLEDO
- 12/30/2015 3 Title : PLD:RESPONSE
PLAINTIFFS RESPONSE TO COURT INQUIRY OF DECEMBER 7 2015
PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL
- 1/4/2016 1 Title : PLD:NOTICE WITHDRAWAL COUNSEL
NOTICE OF WITHDRAWAL OF CO-COUNSEL FOR PLAINTIFF
PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL
- 1/4/2016 2 Title : PLD:RESPONSE
TO ORDER FILED ON 12-7-15 BY CHAD M THOMPSON
PARTY :-
- 1/4/2016 3 Title : PLD:RESPONSE
TO ORDER FILED ON 12-7-15 FILED BY BRYAN T KOTH
AMENDED FILING
PARTY :-
- 1/5/2016 1 Title : PLD:ANSWER
TO ORDER BY CHAD M THOMPSON
PARTY :-
- 2/12/2016 1 Title : ORD:OPINION ISSUED SEE JE
Identified provisions of the recently-enacted Toledo
Sensible Marihuana Ordinance ("Ordinance") conflict with
state general laws by eliminating criminal penalties for
possession and trafficking of marihuana and hashish,
converting state law felony offenses involving Schedule
III, IV, and V drugs into third-degree misdemeanors, and
prohibiting law enforcement officers from reporting felony
drug law violations to anyone empowered to prosecute them.
In addition, the Ordinance provisions are fundamentally
nugatory -- mere bruta fulmina -- as they prohibit
criminal conduct but impose no penalty. Accordingly,
these Ordinance provisions are unconstitutional and
unenforceable, and Plaintiffs' Motion for Preliminary
Injunction must be granted....
JOURNAL ENTRY
It is ORDERED that Plaintiffs' Motion for Preliminary
Injunction is GRANTED. The Court hereby preliminarily
enjoins Defendants the City of Toledo and City of Toledo
Law Director Adam Loukx from enforcing, observing, or
complying with the provisions of the City of Toledo's
newly adopted drug ordinance (the "Sensible Marihuana
Ordinance") that establish Toledo Municipal Code Sections
513.15(j), 513.15(e)-(g), 513.15(b)(3) and (d)(3), and
513.03.
This Preliminary Injunction Order shall continue in full
force and effect, unless modified by further order of this
Court, until a final judgment is entered on the merits of
this action. Pursuant to Civ.R. 65(C), and in light of the
nature of this case, no bond or other security is
required, and this Preliminary Injunction has immediate
effect.
It is further ORDERED that all submissions filed in this

8/15/2016

Clerk of Courts Docket

case by Brian Thomas Koth, Rita E. Perkins, David A. Daniel, and Chad M. Thompson shall be stricken from the record.

(See Opinion and Journal Entry for full text)

/s/ Judge Dean Mandros

PARTY : -

2/12/2016 2 Title : EVT:OPIN & JE FILED & JOURN
E-JOURNALIZED 2/16/16
PERTAINING TO PLTFS MOTION FOR PRELIMINARY INJUNCTION IS GRANTED
Sent via email to P-3's attorney on 2016-02-16 02:38:03 PM:
KEVIN A. PITUCH
kpituch@co.lucas.oh.us
Sent via email to D-1's attorney on 2016-02-16 02:38:03 PM:
ADAM W. LOUKX
adam.loukx@toledo.oh.gov
Sent via email to P-3's attorney on 2016-02-16 02:38:03 PM:
EVY M. JARRETT
ejarrett@co.lucas.oh.us
Sent via email to P-1's attorney on 2016-02-16 02:38:03 PM:
MICHAEL L STOKES
michael.stokes@ohioattorneygeneral.gov
Sent via email to P-1's attorney on 2016-02-16 02:38:03 PM:
FREDERICK D NELSON
federick.nelson@ohioattorneygeneral.gov
PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL

2/22/2016 1 Title : PLD:STIPULATION
OF SUBMISSION FOR FINAL RESOLUTION (BY ALL PARTIES) AND
PROPOSED ORDER (SUBMITTED BY PLAINTIFFS)
PARTY : -

2/23/2016 1 Title : PRO:JUDGMENT ENTRY GRANTED
This matter comes before the Court on the record as submitted by the parties and on Plaintiffs' request for final declaratory relief and permanent injunction. The Court having reviewed fully the arguments and other submissions in this matter, in keeping with all applicable legal standards, and for reasons including those expressed in its Opinion and Journal Entry of February 12, 2016, determines that Plaintiffs have demonstrated under the applicable law of this State that they are entitled to the relief they seek. Plaintiffs have shown by clear and convincing evidence that injunction is necessary to prevent irreparable harm and that they lack an adequate remedy at law, that no third party will be unjustifiably harmed by permanent injunction, and that the public interest is served by such injunction.

JOURNAL ENTRY

The Court enters judgment in fav or of Plaintiffs and against Defendants on each count of Plaintiffs' Complaint and GRANTS Plaintiffs' request for declaratory and permanent injunctive relief.

The Court finds and declares that the provisions of the City of Toledo's newly adopted drug ordinance (the "Sensible Marihuana Ordinance") that establish Toledo Municipal Code Sections 513.15(j), 513.15(e)-(g), 513.5(b)(3) and (d)(3), and 513.03 (to the extent that this Section reaches State felony drug offenses) and in conflict with the general laws of the State of Ohio are unconstitutional, unenforceable, without effect, and null

8/15/2016

Clerk of Courts Docket

and void.

The Court hereby permanently enjoins Defendant the City of Toledo and the City of Toledo Law Director from enforcing, observing, or complying with those specified Ordinance provisions as recited above. This Permanent Injunction has immediate effect.

This is a final and appealable Order, and there is no just cause for delay.

/s/ JUDGE DEAN MANDROS

PARTY :-

- 2/23/2016 2 Title : CLS:JUDGMENT FOR PLAINTIFF
PARTY :-
- 2/23/2016 4 Title : EVT:J.E. FILED & JOURNALIZED
E-JOURNALIZED 2/25/16
PERTAINING TO JUDGMENT GRANTED IN FAVOR OF PLTFs
Sent via email to P-3's attorney on 2016-02-25 02:12:33 PM:
KEVIN A. PITUCH
kpituch@co.lucas.oh.us
Sent via email to D-1's attorney on 2016-02-25 02:12:33 PM:
ADAM W. LOUKX
adam.loukx@toledo.oh.gov
Sent via email to P-3's attorney on 2016-02-25 02:12:33 PM:
EVY M. JARRETT
ejarrett@co.lucas.oh.us
Sent via email to P-1's attorney on 2016-02-25 02:12:33 PM:
MICHAEL L STOKES
michael.stokes@ohioattorneygeneral.gov
Sent via email to P-1's attorney on 2016-02-25 02:12:33 PM:
FREDERICK D NELSON
frederick.nelson@ohioattorneygeneral.gov
PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL
- 3/24/2016 1 Title : PLD:ENTRY OF APPEARANCE
OF COUNSEL FOR INTERVENOR CHAD M THOMPSON
(EDWARD J STECHSCHULTE)
PARTY :-
- 3/24/2016 2 Title : SRV:COPIES MAILED
EDWARD J STECHSCHULTE ATTORNEY ON RECORD FOR INTERVENOR
APPELLANT CHAD M THOMPSON, MAILED NOTICE OF APPEAL DOCKETING
STATEMENT AND PRAECIPE TO:
FREDERICK D NELSON
30 EAST BROAD STREET
17TH FLOOR
COLUMBUS OHIO 43215
MICHAEL L STOKES
ADAM W LOUKX
ONE GOVERNMENT CENTER
TOLEDO OHIO 43604
KEVIN A PITUCH
711 ADAMS STREET
2ND FLOOR
TOLEDO OHIO 43604
EVY M JARRET
700 ADAMS STREET
TOLEDO OHIO 43604
PARTY :-
- 3/24/2016 3 Title : PLD:NOTICE OF APPEAL FILED
BY INTERVENOR CHAD M THOMPSON
PARTY :-

The proposed ballot language is misleading and does not accurately reflect the substance of the issue to be voted upon. This is secondary, however, to deficiencies in the petition itself which render it invalid.

First:

Initiative petitions may only contain questions which a municipality is authorized by law to control by legislative action. OH Const. Art. II, § 1f; *State ex rel. Rhodes v. Bd. of Elections of Lake Cty.*, 12 Ohio St.2d 4, 230 N.E.2d 347, 348 (1967). A municipality may make the violations of its ordinances misdemeanors. R.C. 715.67. The Initiative petition purports, while it prohibits penalties for such violations, to create classes of crimes that are denominated as felonies (and are in fact felonies under Ohio and federal law). See proposed section 513.15 (b)(3), (d)(3), (f)(3) and (j). As Ohio municipalities have no authority by ordinance to enact and punish felonies, the initiative petition is outside the authority granted municipalities under the Ohio Constitution.

Second:

Section 513.15(m) of the proposed ordinance is entirely administrative and not legislative in nature. Section 1f, Article II of the Ohio Constitution authorizes initiative and referendum power only on those questions that municipalities "may now or hereafter be authorized by law to control by legislative action." (Emphasis added.) "Conversely, '[p]ursuant to Section 1f, Article II of the Ohio Constitution, actions taken by a municipal legislative body, whether by ordinance, resolution, or other means, that constitute administrative action, are not subject to [initiative or] referendum proceedings.' *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437, 442-43, 2007-Ohio-5379, 875 N.E.2d 902, 908-09, ¶¶ 34-36 (2007); see also: *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 697 N.E.2d 181 (1998). The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence. *Id.*

513.15(m) prohibits Norwood police officers and their agents from reporting the possession, sale, distribution, trafficking, control, use, or giving away of marijuana or hashish to any authority but the City Attorney, and further prohibits the City Attorney from referring any report to any other authority for prosecution. Under Ohio law, city law directors have broad discretion as to what matters will be prosecuted in Mayor's Court, or referred elsewhere. R.C. 733.53. If enacted, conduct proscribed by the initiative petition will still remain a violation of state and/or federal law. See eg. R.C. 2925.11. By attempting to limit the report of such crimes and thereby the venue in which such crimes are to be tried, the initiative petition is executing or administering state and/or federal laws already in existence.

Elections officials, in this case the Board, "serve as gatekeepers, to ensure that only those measures that actually constitute initiatives or referenda are placed on the ballot." *State ex rel., Walker v Husted* 144 Ohio St.3d 361, 2015-Ohio-3749 at {13}. Boards have discretion to determine which actions are administrative and which are legislative. *Id.*

From: Dave Stevenson [<mailto:Dave.Stevenson@hcpros.org>]
Sent: Tuesday, August 16, 2016 9:04 AM
To: Poland, Sherry
Subject: 00496048.docx

Sherry

Here is a clean copy of the opinion in the email I sent yesterday.

David T. Stevenson
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3120

1 HAMILTON COUNTY BOARD OF ELECTIONS
 2 AUGUST 22, 2016 BOARD MEETING
 3 824 BROADWAY, THIRD FLOOR
 4 COMMENCING AT 8:30 A.M.
 5
 6
 7 APPEARANCES:
 8 TIMOTHY M. BURKE, ESQ., CHAIRMAN
 9 CALEB FAUX
 10 CHARLES H. GERHARDT, III, ESQ.
 11 DAVID STEVENSON, ESQ.
 12 ALEX M. TRIANTAFILOU, ESQ.
 13 SHERRY POLAND, DIRECTOR
 14 SALLY KRISEL, DEPUTY DIRECTOR
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 It May Concern: I, Michael Brice Keller,
 2 of Keller Law Office, have been retained
 3 by the petitioners of the Initiative
 4 Petition, The Sensible Marijuana
 5 Ordinance.
 6 In response to an opinion submitted
 7 or presented by Counsel, Assistant
 8 Prosecuting Attorney, David Stevenson,
 9 the petitioner does assert the following
 10 as dispositive information requiring
 11 inclusion on the November 8, 2016 Ohio
 12 Ballot, as presented to the citizens of
 13 Norwood.
 14 Concerning the assertion that the
 15 proposed ballot language is misleading
 16 and does not accurately reflect the
 17 substance of the issue to be voted upon,
 18 this is a common challenge and remedied
 19 by a simple hearing where petitioners and
 20 Board of Elections may resolve any
 21 confusion as to the language. The
 22 proposed language in the case at issue
 23 is, however, not deficient as proposed
 24 because it is substantially similar to
 25 language presented in a similar

1 MORNING SESSION, August 22, 2016
 2 CHAIRMAN BURKE: We will call this
 3 meeting of the Hamilton County Board of
 4 Elections to order. Proper notice has
 5 been given as required by the Ohio
 6 Sunshine Act.
 7 The only purpose for this meeting
 8 today is to consider the proposed ballot
 9 issue, which is an initiative petition to
 10 place THE proposed ordinance on the
 11 ballot in the City of Norwood that would
 12 deal with marijuana.
 13 I do you understand Mr. Brice
 14 Keller is here as counsel for the
 15 petitioners. And it's probably
 16 appropriate to hear from the petitioners
 17 first.
 18 MR. STEVENSON: I would agree.
 19 CHAIRMAN BURKE: Mr. Keller.
 20 MR. KELLER: I have prepared a
 21 statement that I'll read and go through,
 22 but I have copies for everyone. May it
 23 please the Court?
 24 CHAIRMAN BURKE: Please.
 25 MR. KELLER: I'll begin. To Whom

1 successful petition and substantially
 2 similar in language presented in other
 3 local petitions,
 4 As to the deficiencies cited as
 5 first and second, petitioners present the
 6 following responses: First, any
 7 deficiencies as to whether the
 8 municipality may adjust, amend, or affect
 9 felony level laws are subject to a
 10 severability provision in the Initiative
 11 itself -- so if you refer to (r),
 12 Severability. The sections of this
 13 ordinance are severable. The invalidity
 14 of the section shall not affect the
 15 validity of the remaining sections. And
 16 invalid sections shall be revised to the
 17 minimum extent necessary to maintain
 18 validity and enforceability.
 19 This requires the conclusion that
 20 the initiative remains without the
 21 offending language. Further, in the
 22 present case, the issue is to the effect
 23 as to reducing felonious exposure for
 24 citizens is subject to ongoing litigation
 25 in other jurisdictions in Ohio.

1 Additionally, upon information and
2 belief, as to where similar adjustments
3 to felony issues have been included, the
4 main thrust concerning misdemeanor
5 decriminalization remains in effect.
6 Interestingly, Walker v Husted,
7 speaks directly to this issue as part of
8 its holding in declining authority to
9 both the Board of Elections and the
10 Secretary of State, and in an important
11 regard, Walker states at paragraph 15
12 that "this authority to determine whether
13 a ballot measure is within the scope of
14 constitutional power or referendum or
15 initiative does not permit election
16 officials to sit as arbitrators --
17 arbiters of the legality or
18 constitutionality of the ballot measure's
19 substantive terms.
20 This is controlling guidance from
21 the Supreme Court concerning the issue of
22 inclusion of the felony issues in the
23 ballot language. If there were an
24 offending provision not cured by
25 severability, it remains that neither the

1 concerning fracking which discussed
2 administrative versus legislative because
3 of Husted's claim concerning the
4 exclusive regulatory authority of the
5 Ohio government of the gas and oil
6 industry. This, however, is all
7 discussion and the not holding as it was
8 decided on alternative grounds.
9 You will see in -- if you refer to
10 the case, in paragraphs 16 to 18 is a
11 discussion of the alternative basis of
12 paragraphs one and two and in the holding
13 at 24 to 25. The Walker case rested on a
14 deficiency as to providing for a form of
15 government and additionally procedural
16 technical defects.
17 As to the test, so cited by
18 Attorney Stevenson, it begins: "The test
19 for determining the action of the
20 legislative body is" -- I propose to
21 point out that this is a test for
22 determinations as it relates to the
23 actions of the legislative body as
24 opposed to actions as related to a
25 petition, initiative, or referendum. The

6
1 Secretary of State nor the Board of
2 Elections would stand to withhold
3 placement on the ballot for that reason,
4 because it is entirely the question of
5 illegality or constitutionality as to
6 that issue.
7 Second, the presentation of the
8 administrative versus legislative
9 discussions in the present case are
10 substantially strained. The main thrust
11 of the petition is plain on its face and
12 in effect. To this end, the initiative
13 contains proposed ballot language
14 identifying the same, to wit: by lowering
15 the penalty for marijuana to the lowest
16 penalty allowed by state law.
17 It is clear that the lowering of
18 the penalty is the function of the
19 initiative and that effect is wholly
20 legislative. The inclusion of
21 administrative guidance as how, by what
22 means, or other issues to effect the
23 legislative end are incidental. The
24 Walker case referred to by Attorney
25 Stevenson, upon cursory inspection is one

8
1 latter type fundamentally requiring that
2 administrative component to have effect,
3
4 Of note is the case of Donnelly
5 versus City of Fairview Park, in which
6 the Supreme Court did identify
7 administrative action where -- in by the
8 trustees in denying a petition for
9 incorporation into the village. Here the
10 initiative petition, The Sensible
11 Marijuana Ordinance, repeals, relaces,
12 modifies, or enacts changes in particular
13 sections of the local code. This is on
14 its face legislative.
15 I propose for analysis that if the
16 petition was to establish a no parking
17 zone, the petition would undoubtedly
18 contain some administrative discussion as
19 to where the law would be recorded, that
20 an employee would be directed to place a
21 sign and even possibly that someone would
22 be directed to make resources available.
23 And in any event, the function would be
24 legislative and prohibiting an activity.
25 Conversely, a petition that
requires the town council to approve a

1 building permit would be administrative.
2 I hope we can consider both these issues
3 resolved, but further, we remain prepared
4 to more properly present arguments to the
5 court on these issues.
6 On behalf of the petitioners of The
7 Sensible Marijuana Ordinance in Norwood,
8 We humbly request that the question of
9 whether Norwood should adopt The Sensible
10 Marijuana Ordinance be presented at the
11 November 8, 2006 election. Counsel for
12 the petitioners request an opportunity to
13 prepare, review, and discuss in more
14 detail any issues related to Attorney
15 Stevenson's concerns first and second,
16 should those concerns not have been
17 addressed and disposed of by this letter.
18 As to the proposed ballot language,
19 the petitioners are prepared to discuss
20 and resolve any issues at your earliest
21 convenience.
22 That's the conclusion of my
23 prepared statement. And I wanted to
24 point out at the beginning of the
25 discussion, the points on the issue, that

1 must be included, notwithstanding the
2 felony issue.
3 I would like to read briefly just
4 some discussion from that case. As we
5 had said that -- as I said in my
6 statement: "The authority to determine
7 whether a ballot measure falls within the
8 scope of constitutional power" --
9 CHAIRMAN BURKE: You are in the
10 walker decision?
11 MR. KELLER: YES.
12 CHAIRMAN BURKE: Which paragraph?
13 MR. KELLER: Oh, sorry. Beginning
14 on paragraph 15.
15 CHAIRMAN BURKE: Thank you.
16 MR. KELLER: "But this authority to
17 determine whether the ballot measure
18 falls within the scope of constitutional
19 power of referendum or initiative, does
20 not permit election officials to sit as
21 arbiters of the legality or
22 constitutionality of the ballot's
23 measured substantive terms."
24 CHAIRMAN BURKE: Why don't you back
25 up for a minute --

1 to really understand what the difference
2 is between the administrative versus
3 legislative, the petition doesn't force
4 an administrative body to affect some
5 sort of thing that they are doing.
6 Like in the scenario of the
7 building permit, if the petition said for
8 the building inspector to interpret the
9 current rule and issue the building
10 permit, that would be forcing a
11 legislative thing. But even if the
12 proposed new law is only about
13 administrative issues, it's still
14 legislative in that it's making new law.
15 So it's a very strained point that
16 is not applicable to this type of
17 petition. This type of petition and its
18 fundamental element reduces the penalty,
19 and that is wholly legislative in its
20 entirety. It's interesting that the
21 Walker case was cited, and in their
22 declamation to give Husted and the Board
23 of Elections authority on the illegality
24 and constitutionality issue, that seems
25 to be controlling to the extent that it

1 MR. KELLER: Yeah.
2 CHAIRMAN BURKE: -- and look at
3 paragraph 13,
4 MR. KELLER: Yes.
5 CHAIRMAN BURKE: The Supreme Court
6 says we have a duty to act as
7 gatekeepers, specifically on the issue of
8 administrative measures, doesn't it?
9 MR. KELLER: That is what is --
10 that is what it says, absolutely.
11 CHAIRMAN BURKE: It is what it
12 says.
13 MR. KELLER: Yes. And that is what
14 Attorney Stevenson included in his
15 opinion or statement on the issue.
16 However, it is important to understand
17 that the Supreme Court said that despite
18 being gatekeepers, despite their
19 interpretation of the law, that there is
20 a duty to nullify administrative, and
21 that -- and that it necessarily follows
22 that Board's have the discretion to
23 determine whether it's administrative or
24 legislative. The holding was that in
25 this case it was a question of illegality

1 and constitutionality, which was the --
2 CHAIRMAN BURKE: I agree. I think
3 you will find that none of us disagree
4 with the fact that we're not here to
5 judge the legality of the ordinance or
6 its constitutionality.
7 MR. KELLER: Right.
8 CHAIRMAN BURKE: What we're
9 struggling with -- at least what I'm
10 struggling with are two things; one,
11 would the City of Norwood's counsel have
12 the authority to eliminate the felony
13 penalty; two, are the provisions with
14 regard to how you instruct Prosecutor's
15 to operate, or police to operate, are
16 those administrative in nature?
17 MR. KELLER: Okay. So the first
18 part is that the City of Norwood does not
19 have the ability to create a felony level
20 offense. Does the City of Norwood have
21 the ability to withhold prosecution of a
22 felony offense; maybe, probably. But in
23 any event --
24 CHAIRMAN BURKE: Can you cite to
25 any law that justifies your statement of

1 enjoined as to the felony issue?
2 MR. KELLER: Because of the
3 inability of municipalities to establish
4 a felony level offense, the reverse, as
5 you're concluding, is what they're
6 suggesting would be the result, but we
7 don't necessarily know that for sure.
8 CHAIRMAN BURKE: We know Common
9 Pleas Court issued a decision in that
10 regard, correct?
11 MR. KELLER: I do not know that.
12 I'm sorry, I am not -- but Chad,
13 Mr. Thompson, was involved with the
14 Toledo initiative and can present more
15 information as to that regard.
16 But, in any event, I believe that
17 the felony issue is one of illegality and
18 constitutionality is not ripe. If I may
19 continue, concerning that issue in the
20 holding regarding that issue in the
21 Walker case. And if we move to paragraph
22 16: "An unconstitutional proposal may
23 still be a proper item for referendum for
24 initiative."
25 CHAIRMAN BURKE: You win that

14
1 probably?
2 MR. THOMPSON: I can clear this up,
3 if you don't mind?
4 CHAIRMAN BURKE: Hang on. I don't
5 know who you are anyway.
6 MR. KELLER: So inherently,
7 prosecutorial discretion would include an
8 evaluation of state interest. So, in
9 that scenario, the prosecutor may decline
10 enforcement in a particular capacity, but
11 that's not my role to decide.
12 What I'm suggesting is that to the
13 extent that it's presented, it is
14 something that is in debate as -- from my
15 understanding, Toledo had similar issues
16 contained when it -- within its proposal
17 last year, and those things are currently
18 being litigated between the Attorney
19 General and the parties --
20 CHAIRMAN BURKE: And what is the
21 status of that litigation?
22 MR. KELLER: Currently, I believe
23 it's enjoined as to the felony issue and
24 preparing briefs.
25 CHAIRMAN BURKE: Why was it

16
1 argument here, at least in my mind, that
2 was the only issue you win.
3 MR. KELLER: And that's the felony
4 issue.
5 CHAIRMAN BURKE: No, it's not. Not
6 if the municipality doesn't have the
7 authority.
8 MR. KELLER: I guess I don't agree
9 with that analysis, I think that what
10 has happened, absolutely as a matter of
11 practice is that, that that is discussed
12 or determined by the court and,
13 furthermore, there is a severability
14 provision. So even if --
15 CHAIRMAN BURKE: But we're not here
16 to sever any of the portions of the
17 proposed ordinance. We have to take it
18 as a whole, do we not?
19 MR. KELLER: It would be presented
20 as a whole, but should it be found to
21 exceed constitutionality or to be found
22 to have illegality in it, it would still
23 be effective to the extent that it wasn't
24 severed.
25 CHAIRMAN BURKE: Are you familiar

1 with State ex rel. City of Youngstown
2 Versus Mahoning County Board of
3 Elections?
4 MR. KELLER: I am not.
5 CHAIRMAN BURKE: It was cited the
6 day after the Husted case was cited.
7 MR. KELLER: I am not. And I
8 apologize, because my primary focus in
9 law is that I have been, I'm working as
10 appointed counsel in criminal defense,
11 and I'm doing my best to respond to the
12 issue at hand.
13 The fundamental premise, the
14 fundamental premise is that there are
15 citizens of Norwood that have done the
16 best they can do to meet the substantive
17 requirements that you impose on them.
18 And it's a situation where the equities
19 seem to indicate that inclusion would be
20 the more appropriate.
21 And I think that that -- I think in
22 the voice of the Walker opinion, which
23 seems to be the -- for whatever reason
24 important from Mr. Stevenson's -- I don't
25 know Mr. Stevenson, from his opinion, I

1 MR. GERHARDT: Mr. Chairman?
2 CHAIRMAN BURKE: Yes.
3 MR. GERHARDT: We can't have people
4 just chiming in the audience, if you have
5 something to say --
6 MS. WOLFENBARGER: Okay.
7 MR. GERHARDT: This is all on the
8 record. Just so you know, this is all on
9 the record, so knowing who is saying
10 what, who you represent is important to
11 us as we go through that.
12 MS. WOLFENBARGER: We understand.
13 MR. KELLER: Sincerest apology.
14 MR. GERHARDT: That's all right.
15 CHAIRMAN BURKE: I'm looking at the
16 Youngstown case, which was decided a day
17 after the Husted case.
18 MR. KELLER: Okay.
19 CHAIRMAN BURKE: In that case, what
20 was proposed was a local ordinance to ban
21 fracking.
22 MR. KELLER: Okay.
23 CHAIRMAN BURKE: The Board of
24 Elections declined to allow that matter
25 to go to the ballot, arguing that there

1 think that there seems to be a
2 presumption in favoring inclusion.
3 If we need to come up with more
4 complex briefs to demonstrate it to you,
5 that's fine, but I think that this is a
6 situation where they're really doing all
7 they can do to comply with all the
8 substantive requirements.
9 And this is being -- similar
10 petitions are going to be on the ballot
11 in several other jurisdictions, and a
12 very similar petition was the same,
13 almost the same language was approved
14 last year -- I mean, not identical
15 language, because obviously it has got to
16 stay within the ordinance of each
17 particular place where it's presented.
18 CHAIRMAN BURKE: The Toledo
19 ordinance --
20 MR. KELLER: Yeah. I'm talking
21 about Toledo from last year. But I don't
22 know the names of all the ones -- I can't
23 remember all the names.
24 MS. WOLFENBARGER: Rosedale, Bel
25 Air, Newark and --

1 was already a state law that would
2 invalidate such an ordinance. And the
3 Supreme Court said the Board of Elections
4 was wrong to not allow it to go to the
5 ballot, because the position of deciding
6 whether or not the ordinance is illegal
7 is up to the courts to decide after it's
8 been approved by the voters.
9 But what the Court also said in its
10 opinion is this: 3501.11(K), "Empowers a
11 Board of Elections to determine whether a
12 ballot measure falls within the scope of
13 the constitutional power of referendum or
14 initiative. For example, the right of
15 referendum does not exist with respect to
16 a measure approved by City Council acting
17 in its administrative capacity rather
18 than legislative capacity."
19 I'm going to skip the citation.
20 "Because a referendum on an
21 administrative matter is a nullity, the
22 Boards of Election only have discretion
23 -- not only discretion, but the
24 affirmative duty to keep such items off
25 the ballot."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

So what the Supreme Court is saying is we have an affirmative duty. An affirmative duty according to the Supreme Court to keep administrative matters off the ballot.

MR. KELLER: And I understand that that language has been presented by the Supreme Court. However, this is not administrative, this is fundamentally legislative.

CHAIRMAN BURKE: A lot of it is, but portions of it would appear to be clearly administrative, and that's what this is talking about.

MR. KELLER: The difference between legislative and administrative is that it is whether it creates new law, a new language, new instruction, new -- amends, appeals, or adjust penalties.

CHAIRMAN BURKE: You used the example before of the direction given to a building commissioner. This ordinance is giving direction to the police and to the prosecutor, how is that different?

MR. KELLER: In the case of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

decided by the Supreme Court in 1968. They said that the prevailing rule as succinctly stated in Kelley v John, but the substance of it is, "The crucial test for determining which is legislative from that which is administrative or executive, is whether the action was taken making a law or executing and administering a law already in existence."

The law as it exists now is that there are certain penalties for marijuana. The ordinance establishes that there are different penalties for marijuana.

CHAIRMAN BURKE: Help me out,

MR. KELLER: Okay,

CHAIRMAN BURKE: The law only establishes the penalties for Norwood City ordinances, doesn't it? Or are you saying that it also establishes the penalties for violation of Ohio law?

MR. KELLER: No, it affects the local city ordinance. It does not --

CHAIRMAN BURKE: so there is an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

building permit, as I suggested, if someone had a referendum or initiative to say that, please direct the building commissioner or the building inspector to approve my permit consistent with the current practices or procedures, and doesn't change those procedures, but just says it so shall be that the building inspector will interpret the law to issue my permit, that would be administrative.

However, if the rule says that the building commissioner or so and so, shall do his or her duties in a different way, that is fundamentally legislative. I understand that we think of things in administrative versus legislative as to what it is that we're doing, but that's not the analysis here. And, if I may, the crucial test, and this comes from Kelley v John -- I'm sorry, if I may confer for just a moment.

Okay. I'm sorry, I have the same case in my file, but it's printed on a different format. Okay. So in Donnelly versus City of Fairview Park, which is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Ohio law that is already in existence and the ordinance is instructing the police and the City Attorney, the City Prosecutor what they can and can't do with regard to that Ohio statute that's already in existence.

MR. KELLER: The city council -- and to that end, the mayor could direct the police chief or the police commissioner to make an ordinance of their own choosing, or whatever, to determine what the policies are as regard -- as it regards officer discretion for misdemeanor offenses.

So I think that that is incidental and strained, because we understand the concept that state police and county officers and other law enforcement officials have conflicting issues with marijuana laws, but, I mean, that -- we can go all the way to arguing about the Department of Justice and the federal rules and everything if it's going to be that strained.

I mean, we're really just talking

1 about -- we're not talking about what
2 happens when there would be no reasonable
3 incentive or reasonable practice model
4 that would suggest that a police officer
5 in Norwood would not be enforcing the law
6 as the local law would suggest, I mean,
7 it would be -- it's just not logical.

8 CHAIRMAN BURKE: Okay. Do you have
9 anything else?

10 MR. KELLER: One moment to confer,
11 and then we will conclude.

12 CHAIRMAN BURKE: We do have cards
13 for some other speakers.

14 MR. TRIANTAFILOU: Everybody is
15 going to get heard.

16 MR. KELLER: Thank you for your
17 time, and I'll be available for questions
18 as you require.

19 CHAIRMAN BURKE: Appreciate it.

20 MR. KELLER: You have my contact
21 information,

22 MR. TRIANTAFILOU: Before I get to
23 the next speaker, can I ask counsel, the
24 issue of severability -- Mr. Keller makes
25 the point here that there are

1 MS. WOLFINBARGER: Yes.

2 CHAIRMAN BURKE: And Jason Durham.
3 Is there anybody else in favor of this
4 who wants to speak today? Then we will
5 go to Mr. Thompson.

6 MR. THOMPSON: Thank you so much.
7 My name is Chad Thompson. I'm here as an
8 Ohio citizen. I think that I can answer
9 any questions you may have regarding any
10 issues that you feel would allow you to
11 prevent this from going to the ballot.

12 To your point, you do have a very
13 thin, narrow obligation to keep
14 initiatives off the ballot in a very
15 specific case, administrative versus
16 legislative being the real issue here. I
17 know that felonies were mentioned, and
18 there are several issues so I'm just
19 going to tackle them one at a time.

20 I know felonies were mentioned. Is
21 it agreed that the felonies are there and
22 you have no right to dispute that, and
23 that is not what's keeping it off the
24 ballot, is that your position?

25 MR. TRIANTAFILOU: I am not sure we

26

1 deficiencies. It says -- he tells us the
2 "invalid sections shall be revised to the
3 minimum extent necessary to maintain
4 validity and enforceability." I'm
5 asking, Mr. Stevenson, he doesn't say --
6 can you talk about severability?

7 MR. STEVENSON: The question of
8 severability deals precisely with the
9 legality and constitutionality of the
10 ordinance and that's an issue for the
11 court to decide.

12 The question that the Board is
13 being asked to decide is whether or not
14 the power exists in enacting felonies and
15 control prosecutorial discretion. That's
16 the question, severability in this
17 instance right now is really kind of a
18 red herring.

19 MR. TRIANTAFILOU: I wanted to
20 cover that.

21 CHAIRMAN BURKE: I have three cards
22 from other speakers. I think they are
23 all in favor. Let me just ask, Chad
24 Thompson, I know who you are. Any
25 Wolfinbarger?

28

1 have taken one just yet. We're here to
2 figure it out.

3 MR. THOMPSON: okay, thank you.
4 So it had mentioned in the opinion
5 provided that I received that the
6 petition contains felonies, which local
7 ballot initiatives do not have the right
8 to affect felonies. That fact does not
9 give the Board of Elections the right to
10 keep the ballot from, or the initiative
11 from the ballot. That's my position.

12 And I guess if we're agreed, I am
13 not even going to go into -- and I guess
14 that -- well, I guess let me just go
15 ahead. That is long held case law that
16 the legality of a local ballot initiative
17 cannot be determined before the electors
18 vote it in. At that point, that is when
19 it can be challenged, and that's when the
20 severability issue would come into play.

21 state -- in DeBrosse v Cool, 1999:
22 "Any claims alleging unconstitutionality
23 or legality of the substance of the
24 proposed initiative to be taken when
25 enacted are premature before its approval

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

by the electorate." That's an Ohio Supreme Court case. So then that brings us to the issue of legislative versus administrative.

CHAIRMAN BURKE: Mr. Thompson, can I ask a quick question, are you an attorney?

MR. THOMPSON: I am not an attorney, no.

CHAIRMAN BURKE: Thank you.

MR. THOMPSON: But I'm very experienced with this language. I'm very experienced with local ballot initiatives.

MR. GERHARDT: Mr. Chairman? Just following up on that, are you a resident of Norwood, Mr. Thompson?

MR. THOMPSON: I'm a resident of Ohio. I'm acting as an advocate for the citizens.

MR. GERHARDT: I am not trying -- I'm just curious about who's speaking before us.

MR. THOMPSON: Sure.

MR. GERHARDT: This isn't a trick

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

legislative versus administrative, so this is something that's very clear. When you look up and think of those words, outside of case law, administrative means you do something, right, you administrate something. Legislative means you make a rule. Well, this is a decided test, the Supreme Court decided the test here, and it was mentioned by Mr. Keller.

So really, the only thing I think that is of issue here is whether or not section 513.15(m) is in fact legislative or administrative, and I argue it is not administrative. I argue that the entire initiative is legislative, because it's all a new law.

The Supreme -- the Ohio Constitution gives us a right to initiate an issue to direct police powers locally. That's a law given to us by the Ohio Constitution. So we're allowed to affect police powers. If this was currently a law and we were just telling you how to direct it, it's already established law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

question, are you a resident of the City of Norwood?

MR. THOMPSON: No.

MR. GERHARDT: It was intimated that, you just acknowledged yourself, that you have a great deal of experience with this issue and ballot issues specifically, are you with an organization that is specifically pushing marijuana legalization or sentencing reform or just -- I just want to know who you are, so --

MR. THOMPSON: sure, yeah, absolutely. I do belong to some pro cannabis organizations in the State of Ohio, NORML. That's an organization to reform Ohio laws. But really, I think myself as an Ohio citizen, but I do have an association in a pro cannabis organization.

MR. GERHARDT: And what's the name of that organization?

MR. THOMPSON: Ohio NORML.

MR. GERHARDT: Okay, thanks.

MR. THOMPSON: No problem. So

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

That's administrative. What's being proposed here is completely new law. It's a new law. That makes it legislative. There's no questions.

The crucial test for determining negligence legislative from what's that of administrative or executive is whether the action taken was, one, making a new law, or executing or administrating a law already in existence. If then the action of a legislative body creates a law, that action is legislative. But if the action of the body consists of executing an existing law, the action is administrative.

That's very clear to me, a new law is being proposed. Currently there is no local ordinance that directs Norwood police officers to not report a marijuana offense. It's not there. So just because it gives an administrative duty, you can't get confused with the traditional definition of administrative. There's only one test, and it's whether the law is already established, or if

1 it's a new law. This is clearly a new
 2 law.
 3 So, therefore, I think there's no
 4 question that the emphasis here is really
 5 this should be passed forward to the
 6 ballot. There's no grounds to keep it
 7 off the ballot. Your very narrow
 8 obligation, and that's really
 9 administrative versus legislative. That
 10 section is a new law, therefore, it's
 11 legislative.
 12 To act as a gatekeeper, that Walker
 13 v Husted case was referenced, and it
 14 actually says that you are enacted as a
 15 gatekeeper in very specific
 16 circumstances. I would argue outside of
 17 what we have here. Obviously, you have
 18 not engaged to determine if it's
 19 administrative or legislative. It's just
 20 clear that this is not administrative.
 21 This is wholly legislative. The entire
 22 ordinance is a brand new ordinance, all
 23 laws are new.
 24 CHAIRMAN BURKE: Any question for
 25 counsel? Thank you.

1 those signatures were valid. I would
 2 also like to point out that 12, only 12
 3 signers of our initiative were not
 4 currently registered to vote.
 5 I would also like to point out that
 6 we registered numerous citizens of Ohio
 7 to vote through our election -- or our
 8 signature gathering drive as well. So we
 9 would hope today that you would listen to
 10 the voters of -- citizens of Norwood who
 11 signed the initiative and allow this to
 12 go to the ballot.
 13 That's why we're here today. We
 14 would like this to go to ballot. We
 15 understand that challenges come after,
 16 but today we're here to get us to the
 17 ballot, that's why we gathered the
 18 signatures and that's why we worked so
 19 hard. And, as I said, there are 628 --
 20 or 645 signers in the City of Norwood
 21 that want to see this on the ballot, and
 22 I feel like it's their right to be able
 23 to cast their vote, yes or no. That's
 24 what this process is here for, and that's
 25 what we're using it for.

1 MR. THOMPSON: No questions?
 2 CHAIRMAN BURKE: No questions.
 3 Thank you.
 4 Amy Wolfinbarger.
 5 MS. WOLFENBARGER: Hi. My name is
 6 Amy Wolfinbarger. I'm the founder and
 7 President of Sensible Norwood. I'm here
 8 today to speak on behalf of the 645
 9 signers who signed the petition. We feel
 10 that we are enacting our rights under the
 11 Ohio Constitution, rights that are given
 12 to us through local ballot initiative.
 13 We followed the process as we knew
 14 to the letter of the law. We began our
 15 signature gathering campaign -- well, let
 16 me back up a little bit. We submitted an
 17 original copy of the initiative petition
 18 to the City Auditor's Office in Norwood,
 19 February 22nd, I believe it was.
 20 We began our signature gathering
 21 campaign on March 15th. Worked really
 22 hard to gather signatures presented on
 23 July 20th to the City Auditor's Office,
 24 645 signatures. Six hundred twenty-eight
 25 of those signatures were verified, 465 of

1 CHAIRMAN BURKE: Any questions?
 2 Thank you.
 3 MS. WOLFENBARGER: Thank you.
 4 MR. TRIANTAFILOU: Thank you.
 5 CHAIRMAN BURKE: Jason Durham.
 6 MR. DURHAM: Good evening,
 7 everybody. My name is Jason Durham. I'm
 8 just here to show support for the ballot
 9 initiative. I strongly urge you guys to
 10 listen to the people and let us decide.
 11 And I appreciate your time, if you guys
 12 have any questions?
 13 MR. TRIANTAFILOU: Are you a
 14 citizen of Norwood?
 15 MR. DURHAM: I am not currently a
 16 citizen of Norwood. I'm currently a
 17 medical refugee to the State of Michigan.
 18 I have medical cannabis prescribed from a
 19 doctor that saved my life with opiates.
 20 And any opportunity I get to help
 21 citizens with this life saving medicine,
 22 I mean, the government has a patent on
 23 it. The patent number is 6,630,507, if
 24 you would like to look that up.
 25 Clearly it states that this

1 cannabis is potentially life saving
2 medicine and, you know, there's a
3 petition to collect signatures all over
4 the state and also in Michigan, the
5 people, we just want a chance to decide,
6 the opportunity to have our voices heard
7 and in the polls the numbers will show.
8 And I believe that if this goes to the
9 ballot, the citizens of Norwood are more
10 than capable of making a responsible
11 decision of what's best for Norwood.
12 CHAIRMAN BURKE: Thank you.
13 MR. TRIANTAFILOU: Thank you.
14 MR. GERHARDT: Mr. Chairman?
15 CHAIRMAN BURKE: Yes.
16 MR. GERHARDT: Mr. Durham, you
17 currently reside in Michigan?
18 MR. DURHAM: Yes, sir. I have been
19 a resident of the state of Michigan for
20 four months now,
21 MR. GERHARDT: And where did you
22 live before that?
23 MR. DURHAM: In Woodlawn, about
24 five minutes from the City of Norwood.
25 MR. GERHARDT: Here, in Ohio, okay.

1 cards we have for speakers in support.
2 We have one card in opposition, and
3 that's from Tim Garry, Assistant Law
4 Director of the City of Norwood.
5 Mr. Garry,
6 MR. GARRY: Thank you. Appreciate
7 the opportunity to speak before the
8 Board. I'm going to be brief. First of
9 all, the City of Norwood has no issue at
10 all with the question of whether the
11 referendum and initiative powers are
12 reserved for the people of the, of each
13 municipality. That's clear, we have no
14 question about that. We have nothing but
15 respect for it,
16 The real issue that the City of
17 Norwood has is a great number of problems
18 with this 16-page ordinance. The most
19 important of which are the administrative
20 obligations that it imposes on both
21 Norwood Police as well as the Law
22 Department.
23 I just want to read briefly this
24 section that's in question, section
25 513.15(m) of this proposed ordinance

38
1 MR. DURHAM: Yes.
2 MR. GERHARDT: So prior to that you
3 were a resident of Ohio?
4 MR. DURHAM: Correct. And I was
5 also a resident of Norwood in 2002.
6 MR. GERHARDT: And the reason you
7 live in Michigan now is because of your
8 medical condition, is what you're telling
9 us?
10 MR. DURHAM: Yes. I have two rods,
11 ten bolts in my spine holding me up,
12 together. I have nerve damage. I'm able
13 to fully function. I took my son to ride
14 Thomas the Train. We go to the park and
15 play. I'm a really great example. I
16 would like to think, of someone who is
17 fully functional and able to take care of
18 all their responsibilities. As an adult,
19 be a productive citizen under medical
20 cannabis. My doctor prescribes it for
21 me, and I do it responsibly.
22 MR. GERHARDT: Thank you.
23 MR. DURHAM: Thank you, I
24 appreciate it.
25 CHAIRMAN BURKE: Those are all the

40
1 says: "No Norwood police officer or his
2 agent shall report the possession, sale,
3 distribution, trafficking, control, use
4 or giving away of marijuana or hashish to
5 any other authority except the Norwood
6 City Attorney. And the Norwood City
7 Attorney shall not refer any such support
8 to any other authority for prosecution or
9 for any other reasons." That is baldly,
10 completely administrative.
11 The City of -- Norwood Police take
12 an oath when they become commissioned
13 police officers, and they swear to uphold
14 the Constitution of the United States and
15 the State of Ohio and the laws of the
16 United States and the State of Ohio and
17 the ordinances of the City of Norwood.
18 This administrative proposal puts them in
19 conflict between federal law, Ohio law
20 and city ordinance, and that shouldn't
21 be. It does the same thing to the Law
22 Department, frankly, and that shouldn't
23 be.
24 Let's assume this thing were to be
25 placed on the ballot and were to pass on

1 November 8th. Let's assume further that
2 the Court -- or that the Board were to
3 certify the results of a passage on
4 November 29th. On November 29th, the
5 police would be coming to me saying, how
6 do I avoid the dereliction of duty
7 statute, which is Ohio Revised Code
8 Section 2921.44. And it says, among
9 other things: "No law enforcement
10 officer shall negligently do any of the
11 following: Fail to prevent or halt the
12 commission of an offense or apprehend an
13 offender when it is the law enforcement
14 officer's power to do so alone or with
15 available assistance."
16 Now if an officer observes
17 marijuana or hashish trafficking or
18 possession or any other violation of Ohio
19 or federal law, he has a sworn duty to
20 stop it. And by imposing this
21 administrative responsibility on him that
22 conflicts with his sworn duty, and that
23 shouldn't be. And that goes beyond, you
24 know, the constitutionality of it. It
25 goes to the constitutionality of whether

1 citizen's rights and saves taxpayers
2 money by lowering the penalty for
3 marijuana to the lowest penalty allowed
4 by state law." I submit that the
5 penalties that are suggested in this
6 ordinance are not even allowed by state
7 law, and that this is -- will not save
8 the taxpayers a nickel. What it would --
9 what functionally the police will do, I
10 expect, would be to enforce the law under
11 the Ohio Revised Code and under the
12 federal law.
13 CHAIRMAN BURKE: Tim, to be
14 clear --
15 MR. GARRY: Yes.
16 CHAIRMAN BURKE: -- the proposed
17 ballot language has already been rejected
18 by the Secretary of state --
19 MR. GARRY: Okay.
20 CHAIRMAN BURKE: -- and sent back
21 to us. The problem with the ballot
22 language is it's argumentative in
23 nature --
24 MR. GARRY: Right.
25 CHAIRMAN BURKE: -- and

1 it's administrative or legislative. But
2 it's so clearly administrative. It's
3 telling these officers how they may do
4 their jobs, and how they may not do their
5 jobs.
6 And the same is true of the Law
7 Department. For example, we couldn't --
8 if we got notice that, you know, the
9 largest marijuana trafficking entity in
10 the state was operating in the city of
11 Norwood, if we were to have to follow
12 this ordinance, we would be prohibited
13 from telling anybody; from telling the
14 County Prosecutor from presenting to the
15 Grand Jury, from presenting to the DEA or
16 FBI or anybody else. It just baldly is
17 administrative. And they can call it,
18 you know, any ordinance legislative, but
19 that doesn't make it so. This is
20 administrative, and it's the very -- it's
21 a very important part of this ordinance.
22 In addition to that, even the
23 proposed question, "shall the City of
24 Norwood adopt The Sensible Marijuana
25 Ordinance, which protects individual

1 inappropriate. That doesn't invalid the
2 petition process, it just means if we
3 thought this was a valid petition, we
4 have to come up with better ballot
5 language.
6 MR. GARRY: I apologize for that, I
7 didn't understand that procedurally.
8 CHAIRMAN BURKE: No, that's --
9 MR. GARRY: We have concern about
10 that, of course. We also have concern
11 about portions of the ordinance that
12 appear to be incomplete. But the main
13 concern that we have got is
14 administrative, frankly.
15 MR. FAUX: Mr. Chair, a quick
16 question. First of all, I'm the only
17 member of this Board who is not an
18 attorney, so I am trying to follow the
19 legal arguments here. But as I
20 understand it, what you are saying here
21 about Section 513.15 is that that is
22 administrative as opposed to legislative?
23 MR. GARRY: Yes, absolutely.
24 MR. FAUX: The distinction is being
25 drawn, if I understand it correctly, the

1 voters through the referendum initiative
2 process can propose legislation, but they
3 cannot propose administrative action; is
4 that correct?
5 MR. GARRY: That's my
6 understanding, sir.
7 MR. FAUX: But the City Council
8 does have the ability to vote --
9 MR. STEVENSON: That's not correct.
10 MR. GARRY: I don't agree with
11 that. And I wouldn't draft something
12 like this and present it to Council,
13 because it puts the police and the Law
14 Department in conflict with existing
15 federal and state law.
16 MR. FAUX: I understand, You
17 wouldn't propose to take something to
18 Norwood Council --
19 MR. GARRY: I don't think they have
20 the authority to pass it.
21 MR. FAUX: So if the Norwood
22 Council were to pass such a thing, you're
23 saying that would be challengeable in
24 court?
25 MR. GARRY: Absolutely.

1 proceed?
2 CHAIRMAN BURKE: Go ahead.
3 MR. GERHARDT: Mr. Stevenson, the
4 premise that was laid out before us by
5 Mr. Keller and Mr. Thompson essentially
6 comes down to whether this is directing a
7 legislative -- creating new legislation
8 or executing an existing law. Do you
9 agree that's the, sort of the crux of the
10 matter before us?
11 MR. STEVENSON: No.
12 MR. GERHARDT: Is that one of the
13 issues?
14 MR. STEVENSON: That's one of the
15 issues before you, but --
16 MR. GERHARDT: What are the others?
17 Just if you could enlighten us real
18 quick.
19 MR. STEVENSON: The crux of the
20 issue with this is not whether or not the
21 citizens of Norwood have a right to
22 repeal existing misdemeanors that exist
23 under the Norwood General Code, they do,
24 all right. What they cannot do is enact
25 felonies, which they purport to do here.

46
1 MR. FAUX: Okay. I just wanted to
2 make sure.
3 MR. STEVENSON: Or ignored by
4 administrative law.
5 CHAIRMAN BURKE: Any other
6 questions for Mr. Garry?
7 MR. TRIANTAFILOU: No.
8 CHAIRMAN BURKE: Chip?
9 MR. GERHARDT: No, Mr. Chairman.
10 CHAIRMAN BURKE: Anything else,
11 Mr. Garry?
12 MR. GARRY: Just to say that this
13 is a 16-page ordinance. It's fraught
14 with mistake. We have heard already
15 that, you know, there's issues with the
16 felony stuff. I don't think it is fair,
17 quite frankly, to the City of Norwood's
18 voters to put this on the ballot with all
19 the problems it's already got and
20 especially the administrative ones.
21 Thank you.
22 CHAIRMAN BURKE: Thank you.
23 Questions before us?
24 MR. GERHARDT: Mr. Chairman, I have
25 a number of questions, I would like to

48
1 The other thing they cannot do is
2 direct administrative officers in the
3 function of their duties with respect to
4 existing state and federal laws, which
5 they also do here. Those are the only
6 two issues that I see with the case.
7 when they are talking about the
8 fact that the legality and severability,
9 constitutionality, all that stuff is fine
10 and dandy. The question boils down to
11 this, do the citizens of Norwood have the
12 authority to enact legislation which they
13 would not be authorized to do under the
14 Constitution of the State of Ohio and
15 state law, and the answer to that is no,
16 and they don't have a right to initiate
17 such ordinance either. The fact of the
18 matter is, that this ordinance purports
19 to enact new felony sections, which is
20 the sole province of the General Assembly
21 and not the province of City Council of
22 the City of Norwood.
23 The other thing is that it purports
24 to direct administrative officers and
25 executive officers in functions of their

1 sworn duty. Under Ohio law, the City
2 Attorney has the authority to determine
3 which cases shall be tried in Mayor's
4 Court of the City of Norwood or in
5 Municipal Court in Hamilton County, or in
6 a Common Pleas Court in Hamilton County,
7 that is up to him. That is an
8 administrative function.
9 The fact is, is that this takes
10 away that discretion from the City
11 Attorney and prosecutorial discretion is
12 an administrative matter, and to some
13 extent a judicial matter, but it is not a
14 legislative matter.
15 MR. TRIANTAFILOU: Can I follow-up?
16 MR. GERHARDT: Sure.
17 MR. TRIANTAFILOU: You're also
18 confident, Mr. Stevenson, the law gives
19 us the gatekeeping responsibility?
20 MR. STEVENSON: Absolutely.
21 MR. GERHARDT: Mr. Chairman?
22 Mr. Stevenson, Mr. Garry brought up
23 an example of discovering a large cash of
24 marijuana that may be found in Norwood.
25 MR. STEVENSON: I don't think you

1 for a court to decide at some future
2 time.
3 CHAIRMAN BURKE: Anything else?
4 MR. GERHARDT: Nothing further.
5 Thank you.
6 CHAIRMAN BURKE: Caleb?
7 MR. FAUX: No.
8 MR. TRIANTAFILOU: Nothing else.
9 CHAIRMAN BURKE: In looking at the
10 ordinance, the second last page of the
11 ordinance, it is clear that subsection J
12 it is establishing a fifth degree felony.
13 MR. STEVENSON: Correct.
14 CHAIRMAN BURKE: That's direct in
15 the provision.
16 MR. TRIANTAFILOU: I'm prepared to
17 make a motion. Before I make it, I'm
18 just going to make a brief point that it
19 is not -- I think we're about to agree
20 it's not this Board's responsibility to
21 discuss the merits of marijuana
22 legalization. It's our obligation to
23 determine what's appropriate for the
24 voters to consider as they go to the
25 ballot or as they go to the polls in

1 need to go there, okay. You have to look
2 at section m, which respects the City
3 Attorney's discretion, okay, and that's
4 really it.
5 I understand the question, but to
6 me, hypotheticals deal with something
7 that's not what this Board is to
8 determine. The question that this Board
9 is to determine is whether or not they
10 have the authority to enact felony
11 provisions under the law, and they don't.
12 And the authority to control the City
13 Attorney and Police Department in the
14 exercise of their administrative function
15 according to the state laws in existence.
16 Those are the two questions.
17 MR. GERHARDT: Thank you. One of
18 the -- he brought up the dereliction of
19 duty concept with respect to the Norwood
20 Police Department, which certainly is an
21 interesting point.
22 MR. STEVENSON: It is an
23 interesting point, but I don't think it
24 goes to this Board's authority to get
25 this on or keep it off. That's something

1 November, so that's not our position. It
2 has nothing really to do with marijuana
3 or it's legalization, other than the fact
4 that it's the underlying issue that's
5 driving the debate, I suppose.
6 But with that, I have made the
7 determination in my own mind, as
8 gatekeepers here this is an overreach and
9 that the ordinance is flawed in several
10 ways that have already been enumerated.
11 So for that reason, I'm going to make a
12 motion that we deny this ordinance on the
13 ballot.
14 CHAIRMAN BURKE: Is there a second?
15 MR. FAUX: I will second.
16 CHAIRMAN BURKE: Discussion?
17 I will say, I'm going to vote in
18 favor of this motion, but I do so with
19 some reluctance, because I believe very
20 strongly in the right of citizens to
21 petition government. I am aware though
22 of our responsibility to ensure that we
23 are following the directives from the
24 Ohio Supreme Court. And I think the
25 Court has been very clear -- If this were

1 just a matter of constitutionality of the
2 ordinance, that's not for us to decide,
3 it would go to the ballot, and the Court
4 later on would make a determination.

5 But I think the law is clear that
6 citizens only have the authority to
7 propose what their -- as a city
8 ordinance, what their city council can
9 legally do. And the Norwood City
10 Council, as powerful as it may be,
11 doesn't have the authority to establish a
12 felony. And on that grounds alone, I
13 think the ordinance doesn't make it to
14 the ballot.

15 I think the administrative argument
16 is also a substantial one. I
17 understand -- I thought you did a very
18 good job with the argument, but where I
19 thought the argument failed is state law
20 exists. You're not changing state law,
21 you cannot change state law, but you have
22 directed in this ordinance how both your
23 police, the Norwood Police, and the
24 Norwood Law Director is to respond, and
25 that is giving administrative

1 unfortunately, the way to do it.

2 CHAIRMAN BURKE: Are we ready for a
3 vote? Alex, would you restate your
4 position.

5 MR. TRIANTAFILOU: Yes. It is that
6 we -- I guess that we deny the proposed
7 ordinance by petition, that it not be
8 placed on the ballot, I guess that's my
9 motion. A yes vote would me that we deny
10 placement on the ballot, the initiative
11 on to the ballot in November. Not great,
12 clear enough.

13 MR. STEVENSON: Clear enough.

14 CHAIRMAN BURKE: Since this is all
15 on the record, do we need to provide any
16 further explanation or have we
17 essentially done that?

18 MR. STEVENSON: I think the record
19 has provided the explanation required.

20 CHAIRMAN BURKE: Okay. Those in
21 favor of the motion signify by saying
22 aye.

23 MR. GERHARDT: Aye.

24 MR. TRIANTAFILOU: Aye.

25 MR. FAUX: Aye.

54

1 instructions as to how to enforce an
2 existing law, the state law, and that I
3 don't think you can do.

4 MR. TRIANTAFILOU: I want to also
5 just agree with what you just talked
6 about in terms of being reluctant. We
7 agree -- we don't always agree, but we
8 agree that we should empower citizens to
9 make those changes when it's appropriate.
10 And we don't face this issue very often.

11 But I am like you, I'm a little
12 reluctant sometimes to turn away citizens
13 on an initiative, but I think the law
14 here is fairly clear. As I indicated
15 when I made the motion, it seems to me
16 that the proposal was just a little bit
17 of an overreach, so that's where I am.

18 MR. FAUX: And just another
19 comment. I too am reluctant in my second
20 and my vote to not put this on the ballot
21 for some of the same reasons just
22 mentioned. I would also add that I have
23 some sympathy with the notion that our
24 laws with respect to marijuana probably
25 need to change, but this is not,

56

1 CHAIRMAN BURKE: Opposed?

2 Motion carries. The petition will
3 not certify to the ballot. You are
4 always free to seek what was done in the
5 Mahoning County case, the Supreme Court
6 approval to put the matter on the ballot.

7 MR. TRIANTAFILOU: Given the
8 special limited agenda, can we adjourn,
9 Mr. Chairman?

10 CHAIRMAN BURKE: We certainly can.

11 MR. TRIANTAFILOU: I move we
12 adjourn.

13 MR. FAUX: Second.

14 CHAIRMAN BURKE: Those in favor
15 signify by saying aye.

16 MR. GERHARDT: Aye.

17 MR. TRIANTAFILOU: Aye.

18 MR. FAUX: Aye.

19 CHAIRMAN BURKE: Opposed?

20 Motion carries.

21 (Proceedings concluded at
22 9:33 a.m.)
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

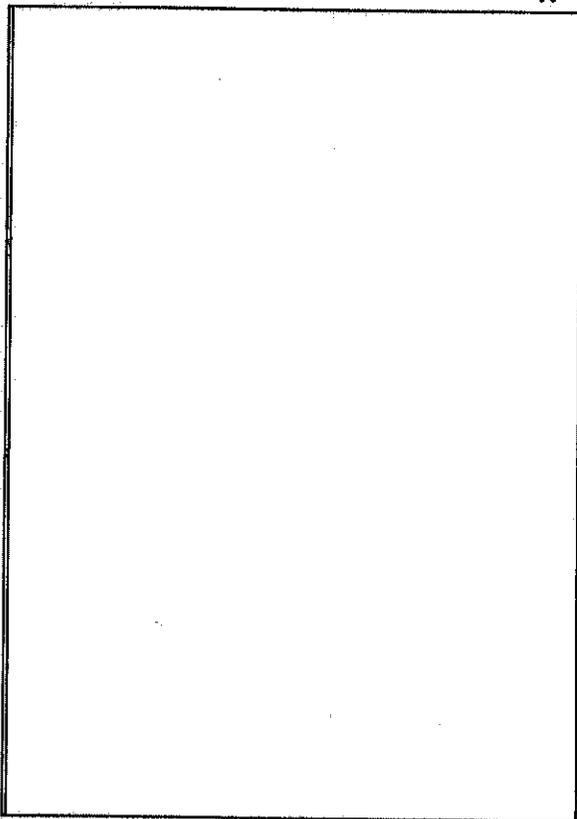
CERTIFICATE

I, BARBARA LAMBERS, RMR, the undersigned, an Official Court Reporter for the Hamilton County Court of Common Pleas, do hereby certify that at the same time and place stated herein, I recorded in stenotype and thereafter transcribed the within 56 pages, and that the foregoing Transcript of Proceedings is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 23rd day of August, 2016.

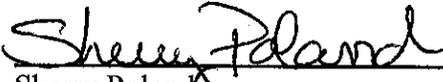
BARBARA LAMBERS, RMR
Official Court Reporter
Court of Common Pleas
Hamilton County, Ohio

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



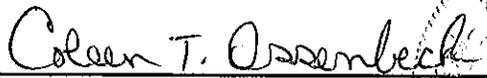
6. As of September 14th, the Board has received approximately 22,000 requests for regular absentee ballots.
7. The Board will print approximately 625,000 ballots to be used on Election Day. Printing is scheduled to begin on September 19th.
8. I have personal knowledge of the matters to which I have sworn.

Further Affiant sayeth naught.

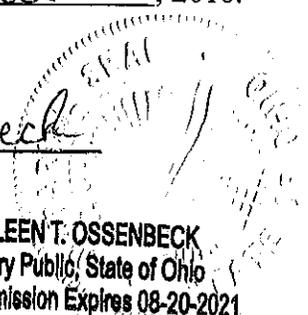


Sherry Poland
Director
Hamilton County Board of Elections

Sworn to and subscribed in my presence this 14th day of September, 2016.



Notary Public


COLEEN T. OSSENBECK
Notary Public, State of Ohio
My Commission Expires 08-20-2021