



*Via Electronic Mail*

August 30, 2023

LaVera Scott, Director  
Tim Monaco, Deputy Director

Lucas County Board of Elections  
3737 W. Sylvania Ave., Suite 121  
Toledo, OH 43623

Re: Determination of Ballot Access for the Sensible Marihuana Initiative

Dear Director Scott and Deputy Director Monaco,

On June 26, 2023, the Lucas County Board of Elections (the “Board”) notified the Secretary of State’s Office that the Board voted to not certify “The OG Wild Bill Marihuana Ordinance” (the Sensible Marihuana Initiative) proposing to enact Village of Harbor View Codified Ordinance 420-2022 (the “Initiative”) to the ballot for the November 7, 2023 General Election. Under the Initiative, criminal penalties, including fines and court costs, would be reduced to \$0 for misdemeanor marijuana- and hashish-related charges under the Village of Harbor View Code of Ordinances.

In contrast, the Wood County Board of Elections certified The Sensible Marihuana Initiative filed in the Village of Risingsun proposing to enact Ordinance 2022-420 for the November 7, 2023 General Election ballot.

After reviewing each of these initiatives, I determine that the initiatives are substantially similar. Pursuant to R.C.3501.38(M)(3), if multiple substantially similar initiative petitions are submitted to multiple boards of elections and the determinations of certification of the petitions differ, the Secretary of State shall make a single determination as to certification of the petitions that shall apply to each such initiative petition.

**A. Municipal Initiative Powers**

Article II, Section 1f of the Ohio Constitution specifically reserves to the electors of each municipality the initiative and referendum powers on all questions which such municipalities are authorized by law to control by legislative action. R.C. 731.28 sets forth the legal requirements for placing a municipal initiative on the ballot. An initiative petition seeking to place an ordinance on the ballot generally must contain the signatures of at least ten percent of the number of electors who voted for governor within the municipality at the last general election at which the governor was elected. A petition for a municipal initiative is first filed with the city auditor or village clerk. The city auditor or village clerk then transmits the petition to the board of elections to examine signatures and to determine the number of electors of the municipal corporation who signed the petition.

Under R.C. 3501.38(M)(1)(a), when an initiative petition comes before a board of elections,

the board is required to determine whether the initiative is a permissible exercise of home rule powers and whether the petition satisfies the statutory prerequisites to be placed on the ballot. Under R.C. 3501.38(M)(2), the board is to then certify to the Secretary of State its decision on whether the initiative was placed on the ballot.

## **B. Previous Toledo Marijuana Ordinance**

In 2015, well before R.C. § 3501.38(M) became effective, a similar initiative relating to felony marijuana charges was addressed in Lucas County. In *State of Ohio v. City of Toledo*, the initiative was accepted by the Lucas County Board of Elections and placed on the ballot, and the proposed ordinance was subsequently enacted.<sup>1</sup> After the election, the Ohio Attorney General filed a complaint against the City of Toledo seeking to invalidate the ordinance on the grounds that it conflicted with state law.

A Lucas County Common Pleas Court judge found that some provisions of the ordinance conflicted with state law by eliminating criminal penalties for possession and trafficking of marijuana and hashish, by converting state law felony drug offenses into third-degree misdemeanors, and by prohibiting law enforcement officers from reporting felony drug law violations to anyone empowered to prosecute them. On February 12, 2016, the court held that the ordinance was unconstitutional and unenforceable because it conflicted with state law.

On February 23, 2016, the judge granted a permanent injunction, prohibiting the City of Toledo from enforcing its ordinance *as it related to felonies*. The Lucas County Board of Elections relied upon that decision as a basis to deny ballot access in the current matter. However, the court in *State of Ohio v. City of Toledo* did not determine whether an initiative dealing only with misdemeanor charges in relation to marijuana and hashish is prohibited. Therefore, the holding in that case is not determinative here.

## **C. Home Rule Powers**

When deciding whether an initiative may be placed on the ballot for a municipality, the board of elections must determine whether the initiative is a proper exercise of home rule powers under Section 7 of Article XVIII of the Ohio Constitution. Specifically, municipalities may “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.” *Am. Fin. Servs. Assn. v. Cleveland*, 2006-Ohio-6043, ¶¶ 22-23, 112 Ohio St. 3d 170, 173, 858 N.E.2d 776, 780.

The first step in a home-rule analysis is to determine “whether the matter in question involves an exercise of local self-government or an exercise of local police power.” *Id.*, quoting *Twinsburg v. State Emp. Relations Bd.*, 39 Ohio St.3d 226, 228, 530 N.E.2d 26 (1988), overruled on other grounds, *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 20, 539 N.E.2d 103 (1989).

“It is a fundamental principle of Ohio law that, pursuant to the “statewide concern” doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern.” *Id.* However, ordinances are not “in conflict with a general law on the same subject merely because differently penalties are provided for.” *Toledo v. Best*, 113 Ohio App 380, 383, 6th Dist. Ct.

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<sup>1</sup> *State of Ohio v. City of Toledo*, Case No. CI15-4290, Feb. 12, 2016

App. (1961), citing *Struthers v. Sokol*, 108 Ohio St. 263 (1923) (stating that “a different penalty was prescribed by the ordinance than that prescribed by the statutes of the state, and that fact was held to be unimportant and to not create a conflict between the statute and the ordinance”).

With the current Initiative, the municipal ordinances would be amended to reduce current criminal misdemeanor penalties found only within the Village of Harbor View’s Code of Ordinances. Even though the Initiative does prescribe a different misdemeanor penalty than the Ohio Revised Code for the obtaining, possessing, or using of marijuana and hashish, the Initiative is still a permissible use of the Village’s home rule authority. *See Id.*

#### **D. Conclusion**

While I acknowledge that the Lucas County Board relied on certain arguments advanced by the Lucas County Prosecutor’s Office, and while I encourage the Board to work with their local prosecutor in the future, I am unconvinced that placing the Initiative on the ballot is violative of R.C. § 3501.38(M) or of Section 7 of Article XVIII of the Ohio Constitution. Therefore, deciding on the side of ballot access, I direct the Lucas County Board of Elections to place “The OG Wild Bill Marihuana Ordinance” (the Sensible Marihuana Initiative) as established under Village of Harbor View Resolution 420-2022 (the “Initiative”) on the November 7, 2023 General Election ballot.

This determination is required pursuant to R.C. 3501.38(M) and should not be construed as either an endorsement of or an opposition to the Sensible Marijuana Initiative or any of the substantially similar local initiatives.

Should you have any additional questions, please do not hesitate to contact my Office.

Yours in service,



Frank LaRose  
Ohio Secretary of State

cc: Fritz Schoen, Chairman of the Lucas County Board of Elections  
Kurt M. Young, Board Member  
Dawn Christen, Board Member  
Donald R. Miller, Board Member