



Wisconsin Elections Commission

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Dear Ms. Witzel-Behl,

¶1 You asked the Wisconsin Elections Commission (“the Commission”) to issue an advisory opinion concerning three questions. First, you asked whether a municipality could modify absentee ballot certificate templates, EL-122 forms, by removing the boxes found in the Step 1 field and printing directly onto the forms the voter information that would either be handwritten onto the forms or printed as a label from the Commission’s WisVote system. Second, you asked whether a municipality could alter the size of the EL-122 envelope that was prescribed by the Commission. Third, you asked whether a municipality could affix a QR code to the top of a ballot form that was approved by the Commission that would facilitate a municipality sending a voter the correct ballot style.

¶2 The Commission may issue a formal or informal written electronic advisory opinion in response to a request for an advisory opinion made under Wis. Stat. § 5.05(6a). The Commission welcomes this opportunity to provide its position on this question of first impression in Wisconsin. The interpretation provided herein reflects the formal advisory opinion of the Commission with respect to your specific question. The Commission’s opinions on these matters may be subject to judicial or legislative review.

¶3 After a review of the statutory provisions, it is the Commission’s opinion that the voter information boxes within Step 1 of the EL-122 forms may be covered with a label printed from the Commission’s WisVote system or removed and replaced with information printed directly into the Step 1 box consisting only of the information specified on the EL-122 forms or the information that would be printed on a label from the Commission’s WisVote system. However, the Commission’s opinion is that ballot forms approved by the Commission cannot be modified and that the uniform size of the EL-122 cannot be altered. Part I. of this opinion will first discuss modification of template styles, part II. modification of template sizes, and part III. modification of ballot forms.

I. Modification of EL-122 Template Style

¶4 Based on a review of relevant statutes, it is the Commission’s opinion that the Commission’s approved EL-122 template and envelope cannot be modified in any substantive way. However, the Step 1 box on the template—except for the words “Step 1 CLERK or VOTER must complete this part” and “Voter Information”—may be covered with a label printed from the Commission’s WisVote system or removed and replaced with information printed directly into the Step 1 box consisting only of the information specified on the EL-122 forms that would have been written by hand onto the form or the information that would have been printed on a label from the Commission’s WisVote system. The additional information that would be printed on the label from the Commission’s WisVote system is ballot style, mailing ID number, voter registration number, absentee application type, and a bar code.

Wisconsin Elections Commissioners

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A. Relevant Statutory Provisions

¶5 Chapter Six of the Wisconsin State Statutes covers the law on how to vote, including procedures for absentee voting. Among the Chapter Six provisions is a statute, Wis. Stat. § 6.87(2), that expressly states the form that the absentee ballot certificate shall substantially be in. The Commission specifically developed, vetted, tested, and approved the current iterations of the EL-122 forms in compliance with that provision of statute, other legal requirements, and United States Postal Service recommendations. This forms the basis for the Commission’s opinion that substantive changes cannot be made to the form. However, the Commission’s opinion is that labels printed from WisVote and information printed directly onto the EL-122 form within the Step 1 box that is identical to that which would be handwritten onto the form or printed onto the WisVote labels and affixed to the form do not amount to substantive changes, and are acceptable. This opinion concerns only the specific changes discussed and may not be read to imply that any other small changes not discussed herein are acceptable under Wisconsin’s absentee voting system.

B. Analysis

¶6 The Commission’s legal analysis of the issue before it centers on the fact that Wisconsin law is clear on what must be present on the certificate portion of EL-122. The context of Wis. Stat. § 6.87(2), which mandates that clerks use envelopes that contain “a printed certificate which shall include . . .” reveals that the Commission should assume the role of creating uniform templates for municipalities to distribute to absentee voters that not only comply with the many statutory requirements but which have been tested and vetted by the various authorities and parties that have a role in the end-to-end voting and delivery processes. No other party is better positioned or has the authority necessary to interpret statute and conduct such activities. Any other method would result not in one printed certificate, but many different certificates depending on each municipality’s reading of the many requirements within Wis. Stat. § 6.87. While this opinion finds that municipal clerks may complete Step 1 either by handwriting the information directly onto the document in the spaces provided, by covering the spaces provided with a label printed from the Commission’s WisVote system, or by removing the information and replacing it with what would be either handwritten or printed on the WisVote label, it does not change the fact the EL-122 forms are standardized forms that must be uniformly compliant to mitigate risk to voters.

¶7 During the September 29, 2023, meeting, the Commission approved the longstanding ability of clerks to use labels printed from WisVote containing, in addition to the information from Step 1, ballot style, mailing ID number, voter registration number, absentee application type, and a bar code. As a result of the approval of this modification, the Commission finds that printing directly onto the certificate envelope the information the Commission already allows to be handwritten or affixed via the WisVote label does not amount to a substantive change and is acceptable. No other changes are contemplated by this opinion, and the Commission believes that even small style or substantive changes beyond what is discussed in this opinion could violate the requirements of Wis. Stat. § 6.87 or put voters at risk by the existence of a non-standardized form.

C. Modification of EL-122 Template Size

¶8 You have also asked whether a municipality could alter the size of the envelope that was prescribed by the Commission, which for the EL-122 forms is 4.75 inches by 11 inches. Your proposal would reduce the length to 9 inches, which would result in a reduction in the size of the text on the envelope. Based on the same statutory reading discussed above in section I., the Commission believes that a change in the size of the envelope amounts to a substantive change that would result in voters effectively receiving different certificate envelopes, as opposed to the uniform envelope that the Commission believes is needed to comply with the requirements of Wis. Stat. § 6.87. A smaller envelope with smaller text would be harder to read, particularly for voters with any vision disability, and may result in more voters either requiring assistance to complete their certificate envelope, or more voters and

witnesses misreading the requirements of the certificate envelope. For these reasons, the Commission does not believe that the size of the certificate envelope may be altered by municipalities.

D. Modification of the Ballot

¶9 You have also asked the Commission if you could modify a ballot form by placing a QR Code on the upper right-hand corner of the ballot. It is the opinion of the Commission that the ballot form approved by the Commission cannot be modified in any way. The Commission distinguishes this “ballot form” addition from the statutorily required additions of ballot content such as candidates and referenda that must appear on different ballot styles for the appropriate voters.

A. Relevant Statutory Provisions

¶10 Chapter Five of the Wisconsin State Statutes governs ballot templates. Chapter Seven is also relevant to this issue due to its cross-reference in the relevant provision of Chapter Five. Wisconsin Statute § 5.51(8) states that, “[u]nless otherwise specifically provided, the form of all ballots shall conform to the ballot forms prescribed by the commission under 7.08(1)(a).” Wis. Stat. § 7.08(1)(a) states “the commission shall: . . . [p]rescribe all official ballot forms[.]”

B. Analysis

¶11 Wisconsin law is clear that no modifications can be made to a ballot form that is approved by the Commission. Wisconsin Statute § 7.08(1)(a) clearly states that the Commission is tasked with authorizing all ballot forms and Wis. Stat. § 5.51(8) works in conjunction with § 7.08(1) and makes it clear that once the Commission authorizes a ballot form, it cannot be changed absent another statutory reason. It is the opinion of the Commission that a QR code may not be added by a municipality to a ballot form unless prescribed by the Commission in a uniform manner.

I. Conclusion

¶12 The Commission finds that while changes to the size of an EL-122 form and to ballot forms cannot be made by a municipality, a municipality can affix labels printed from WisVote into Step 1 of the EL-122 forms or print directly onto the Step 1 box, as discussed in this opinion, the information that would have either been written in by hand or printed on the WisVote label.