

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

October 5, 2009

9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Accepted an interim report on Early Voting	3
B. Directed Staff to Develop Guidelines for Identification and Reporting Requirements for Electronic Communications and Use of Electronic Technology for Political Purposes.	4
C. Directed staff to reexamine proposed language and recommend changes to ensure absentee ballot security in Chapter GAB 5.	5
D. Received a report from staff on improvements to the Campaign Finance Information System	5

Present: Judge Michael Brennan, Judge William Eich, Judge Gerald Nichol, Judge Thomas Cane, Judge Thomas Barland, and Judge Gordon Myse

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Barbara Hansen, David Buerger, Ross Hein, Sharrie Hauge, Tommy Winkler, and Reid Magney

A. Call to Order

Chairperson Brennan called the meeting to order at 9:36 a.m.

B. Director's Report of Appropriate Meeting Notice

G.A.B. Director Kevin Kennedy informed the Board that proper notice was given for the meeting.

C. Approval of Minutes of Previous Meetings

MOTION: Approve the minutes of the August 10, 2009 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Eich. Motion carried unanimously.

D. Public Comment

1. **John Washburn** of Germantown appeared on behalf of himself to comment on proposed changes to Chapter GAB 5. He expressed concern that proposed language would make destruction of voted ballots mandatory when Ch. 19.23 Wis. Stats. allows any record to be turned over to the Wisconsin State Historical Society.
2. **Mary Lou Diehl** of Madison, representing herself and Paul Malischke, appeared to comment on testing of new election equipment and regarding changes to Chapter GAB 5. She read a letter from Mr. Malischke asking that testing of new equipment be halted until the Board updates its rules on testing of equipment, and proposing language for the administrative rule regarding security of ballots and voting equipment. Also Chapter GAB 7 regarding voting systems approval.
3. **Mary Ann Hanson** of Brookfield appeared on her own behalf to comment on the HAVA Check process. She expressed concern about the number of people who did not respond to post cards and letters mailed by the Board and said voters should take responsibility for updating their information.
4. **Annette Kuglitsch** of Waukesha appeared on her own behalf to comment on Early Voting. She urged the Board not to rush into a plan for Early Voting and expressed concern that if in-person absentee voting is streamlined to eliminate the certificate envelope, there will be no way to challenge absentee votes when they are counted at the polls.
5. **Ardis Cerny** of Pewaukee appeared on behalf of herself to comment on why she believes voter fraud is an important issue. She cited a book by columnist John Fund of the Wall Street Journal, as well as a column by Mr. Fund regarding the 2004 election in Milwaukee. She also urged the Board to discontinue the Special Registration Deputy program.
6. **Diane Hermann-Brown** of Sun Prairie appeared on behalf of the City of Sun Prairie and the Wisconsin Municipal Clerks Association. She commended G.A.B. staff for attending clerks meetings and listening sessions throughout the state. She supported the proposed changes to Chapter GAB 5. She expressed concern that the Early Voting initiative not create unfunded mandates for municipalities, especially during tight budget times. She also urged the Board not to let municipalities opt out of using the Statewide Voter Registration System. She also commented on the recent testing of Election Systems & Software's election equipment.

7. **Gina Gretsch** of Delafield appeared on behalf of the City of Delafield and the Wisconsin Municipal Clerks Association to comment on the Early Voting initiative. She urged the Board to get rid of the Special Registration Deputy program.
8. **Maribeth Witzel-Behl** of Madison appeared on behalf of the City of Madison Clerk's Office and the Wisconsin Municipal Clerks Association to say the association appreciates the G.A.B.'s recent efforts to communicate with clerks. She also commented on the Early Voting initiative and streamlined in-person absentee voting.
9. **Andrea Kaminski** of Madison appeared on behalf of the League of Women Voters of Wisconsin Education Fund to comment on assertions made earlier about the 2004 election in Milwaukee made by John Fund. She said many claims about voter fraud in a report from the Milwaukee Police Department were debunked prior to release of the MPD Report.

Chairman Brennan called a recess at 10:50 a.m.

E. Status Report on Early Voting Initiative

(Presented by Nathaniel E. Robinson and Edward Edney)

Elections Division Administrator Nathaniel E. Robinson introduced a presentation by Training Officer Edward Edney about the Early Voting Initiative. Mr. Edney reported that after the November 2008 election there were reports from clerks, the public and the news media about problems with in-person absentee voting, including long lines for voters and additional workload for clerks. He said the staff decided to study ways to improve the process by studying Early Voting best practices from other states to see if they might possibly work in Wisconsin. The staff conducted listening sessions in eight locations around Wisconsin to gather feedback from election officials and voters. The sessions were attended by more than 500 people. He said that based on the feedback received, the staff is preparing recommendations for the Board's November meeting, and a draft of those recommendations should be available by October 15. He said the staff is exploring recommendations for Early Voting, as well as ways to streamline the existing in-person absentee voting process. He noted that any change would require action by the Legislature.

Discussion

Board members raised issues about ballot security with streamlined in-person absentee voting. Mr. Robinson said the report for the November Board meeting will include an analysis of security with each of the options.

F. Proposed Guidance

1. Disclaimers on Electronic Communications

(Presented by Shane Falk)

Staff Attorney Shane Falk made a presentation to the Board about issues raised by paid and unpaid Internet communications by candidates and committees using web sites including Facebook, Twitter and YouTube. He said the Board should consider issues raised by applying older statutes and rules to new technology, and cited the State of Florida's attempts to enforce outdated statutes and rules, which are being challenged in court. He said most candidates and committees are using a variety of Internet social networking web sites, which are relatively free, but are often maintained by paid staff. He said the law requires political communications to carry a disclaimer saying who paid for them. Some candidates' social media sites include a disclaimer while others do not, and that on some services such as Twitter and Google Adwords advertising, the length of the message is very short: 140 characters for Twitter and 64 characters for Google Adwords, and there may not be space for a disclaimer. He noted that the statutes include an exemption for disclaimers on small printed materials, such as pins.

Ethics Division Administrator Jonathan Becker also said there are issues with having paid staff members who monitor Internet blog sites and make campaign-related comments on those sites, which raises questions about whether those communications should carry disclaimers. Falk said staff requested the Board's direction to research and address identification and reporting requirements for electronic communications and the use of electronic technology for political purposes.

Discussion

MOTION: To direct staff to develop a guideline for comment and further consideration by the Board addressing identification and reporting requirements for electronic communications and the use of electronic technology for political purposes. Moved by Judge Nichol, seconded by Judge Myse. Motion carried unanimously.

Chairman Brennan called a recess at 12:15 p.m.

G. Legislation

1. Summary of Recent Legislative Activity

(Presented by Kevin J. Kennedy)

Director and General Counsel Kevin Kennedy led a discussion about 2009 Assembly Bill 322, which would delete the requirement that an individual identify himself or herself in order to view a Statement of Economic Interest (SEI). Passage of this bill would allow the G.A.B. to post SEIs on the agency web site. The bill has been reported out of committee with two amendments. One amendment would put restrictions on Internet disclosure of customers of a business or the address of income-producing real estate owned by an official. A second amendment would

eliminate any public disclosure of information about real property owned by a judge or a judge's spouse.

Mr. Kennedy also discussed proposed legislation which would change electronic reporting requirements for the Campaign Finance Information System.

H. Administrative Rules

1. GAB Chapter 5 (Security of Ballots and Electronic Voting Systems) (Presented by Michael Haas and Ross Hein)

Staff Attorney Haas led a discussion about changes to Chapter GAB 5 dealing with security of absentee ballots and absentee voting materials. Based on feedback from the ad-hoc committee that helped develop the rule and the Wisconsin Election Administration Council, staff believes the rule should not be too prescriptive because of different facilities and staffing levels in municipalities around the state. The simplified statement would direct local officials to take all steps necessary to secure absentee ballots and absentee voting materials during the period of absentee voting leading up to Election Day. There were concerns from clerks about the practicality of suggestions for a chain-of-custody log, as well as whether inadvertent gaps in the log could be the basis for challenging ballots.

Discussion

MOTION: To set the matter over to the November meeting and direct staff to reexamine proposed language and recommend changes to ensure absentee ballot security. Moved by Judge Myse, seconded by Judge Eich. Motion carried unanimously.

2. Status Report on Pending Administrative Rules (Presented by Shane Falk)

Shane Falk updated the Board on the status of the Citizens United case heard by the United States Supreme Court, which involves the scope of regulation of political communications permitted by the Constitution. The Court held oral arguments on an additional issue related to the review of Austin and the prohibition of corporate spending for a political purpose. He said that if the ban on corporate spending is lifted, there may likely still be disclosure requirements for corporate expenditures.

I. Report on Campaign Finance Information System (Presented by Jonathan Becker)

Jonathan Becker led a discussion about changes staff is making to the Campaign Finance Information System, based on feedback received from users of the system and Legislators at recent hearings. The whole purpose of the system is disclosure, which is helped greatly by electronic filing. Electronic filing provides immediate access to the

information, as well as the ability to analyze information across candidates and committees. Unfortunately there have been problems with the system used for filing reports, which staff is working to address. While there were numerous problems in January 2009, there were far fewer problems in July 2009, when only 23 registrants had varied issues filing. Board staff is working with the vendor to redesign the system's user interface, and has engaged staff from the Department of Enterprise Technology to look at the system's architecture to ensure it is up to date and designed optimally. The goal is for changes to be ready in time to allow extensive user testing before the January 2010 filing deadline.

Discussion

Judge Nichol noted criticism from frustrated Legislators and said Board staff handled it well. He asked about accusations that information in the system is inaccurate. Mr. Becker said the system was designed to convert previously filed campaign finance reports so users would have access to data from the entire 2008 election cycle. Unfortunately, the old data were in a variety of different formats, which created difficulties for conversion to the new system. That old information has been removed from the system to avoid confusion caused by the converted data. Also, there were discrepancies between the account balances reported by registrants and those calculated by the system. The errors were in the information reported by registrants. Finally, the Government Accountability Board was listed in some reports as the source of campaign funds. This was due to an error in private vendor software used by some committees to track contributions, not problems with CFIS.

Judge Barland said there is a perception in the Legislature that the system is not good. He said the idea of testing is good, and Legislative staff can help test the system. Mr. Becker reported that large political action committees, campaigns and party committees have not reported problems with the system because they have professional staff doing the work, but many candidates have volunteer treasurers who only deal with the system twice a year, which makes it difficult.

J. Resolution of Ethics Division Enforcement Matters

(Presented by Jonathan Becker)

Jonathan Becker said the agency could do a better job of communicating information about enforcement. Much happens in closed session, and there are draconian restrictions on what staff can say about enforcement actions. Ethics Specialist Tommy Winkler put together a summary of all the Board's enforcement actions since it was organized in January 2008, which was included in the Board materials. Mr. Becker stated that the Board has been tough but fair on violators, which he believes is having a direct and positive impact on compliance with statutes and regulations.

K. Director's Report

Elections Division Report – election administration

Written report from Nathaniel E. Robinson was included in Board packet. Mr. Robinson gave an oral presentation, and discussed efforts to improve the quality of the SVRS. He also discussed the Special Registration Deputies, saying the G.A.B. is administering a program enacted by the Legislature. He informed the Board of the upcoming visit of Ms. Gineen Bresso Beach, Chair of the U.S. Election Assistance Commission.

Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting

Written report from Jonathan Becker was included in Board packet. Mr. Becker said that all but 11 committees have filed their July Continuing Reports.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in Board packet. Ms. Hauge said there has been a great deal of activity with procurement lately. Mr. Kennedy highlighted a presentation in Stevens Point on judicial elections and his work with the Pew Charitable Trusts, which is working on Voter Registration Modernization issues.

L. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board. Moved by Judge Cane, seconded by Judge Eich.

Roll call vote: Brennan:	Aye	Cane:	Aye
	Eich:	Barland:	Aye
	Myse:	Nichol:	Aye

Motion carried.

Hearing no objection, the Chairman called a recess at 3:15 p.m. The Board reconvened in closed session beginning at 3:35 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Requests for Advice: Three matters considered; three informal opinions issued.
- B. Investigations: Six pending matters considered with one settlement offer authorized; four investigations authorized; eleven additional matters considered and legal action authorized.

####

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m. Monday, November 9, 2009 in Room 150 in the Risser Justice Center, 120 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.

October 5, 2009 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

October 6, 2009

October 5, 2009 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

November 9, 2009