
 Meeting of the Board

Thursday, January 15, 2009

9:30 A.M.

Risser Justice Center, Room 150

120 Martin Luther King Jr. Boulevard

Madison, Wisconsin

Agenda

Open Session

| 9:30 A.M. | Page # |
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| A. Call to order | |
| B. Director's report of appropriate notice of meeting | |
| C. Selection of Board Officers | 1 |
| D. Approval of minutes of previous meeting | 2 |
| | See accompanying minutes |
| E. Public Comment | |
| <i>Break</i> | |
| F. Review of Proposed Administrative Rule GAB 1.28; Scope of Campaign Finance Regulation | 8 |
| G. Review of Proposed Emergency Administrative Rule 6.05; Filing campaign finance reports in electronic format | 24 |
| H. Consideration of support for legislative proposal for adequate public financing of Supreme Court campaigns | |
| I. April 7, 2009 Spring Election Ballot Access Report | 30 |
| J. Update: A Continuing Discussion on HAVA Checks | 33 |
| <ul style="list-style-type: none"> • Distinction between Voter Eligibility and HAVA Checks • A Statistical Analysis Report on Initial HAVA Checks • Decision: Protocol for Conducting Retroactive HAVA Checks | |
| K. Report on Elections Division Legislative Initiatives | 52 |
| L. Delegation of Certain Authority to Director and General Counsel | 58 |
| M. Proposed Meeting Date January 2010 | 61 |
| N. Review of select former Ethics Board Guidelines and Formal Opinions Related to: | 63 |
| <ol style="list-style-type: none"> 1. Ethics Code for State Public Officials 2. Ethics Code for Local Public Officials 3. Lobbying Law | |

O. Director's Report

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Elections Division Report – election administration and SVRS, special report on Special Registration Deputies, special report on polling place accessibility.

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

Office of General Counsel Report – general administration and orders

P. Closed Session

- | | |
|--------------------------------|---|
| 5.05 (6a) and 19.85 (1) (h) | [The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session] |
| 19.85 (1) (g) | [The Board may confer with legal counsel concerning litigation strategy], |
| 19.851 | [The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session], |

The Government Accountability Board has scheduled its next meeting for Monday, March 30 and Tuesday, March 31, 2009 at the **GAB's new office** at 212 East Washington Avenue, Madison, Wisconsin, beginning at 9:30 a.m. on March 30th and 9:00 a.m. on March 31st.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

TO: Government Accountability Board Members

FROM: Kevin J. Kennedy, Director and General Counsel

DATE: January 15, 2009 Meeting

SUBJECT: Selection of Board Officers

Each state agency administered by a board must elect a chairperson, vice-chairperson and secretary at its first meeting of every year. §15.07(2), Wis. Stats. The Government Accountability Board is required to select its Chairperson by lot drawn by the current chairperson at the first meeting of the Board in January of each year. §15.07(2)(b), Wis. Stats. There is no restriction on an individual being selected more than once during the member's term.

Each Board is required to select a chairperson, vice-chairperson and secretary. The selection process for the chairperson of the Government Accountability Board is set by statute. The selection of the other officers is not. In January 2008, the Board established the practice of selecting the other officers by lot as well.

The Board has adopted the practice of filling a vacancy of an officer by having the remaining officers move up to fill the vacancy. This keeps the succession practice consistent with the statutory requirement the Board Chairperson be selected by lot. The position of Secretary is then chosen by lot to fill the vacancy created by this succession practice.

The staff will prepare the materials for selection of the officers by lot. The Board will be able to proceed with the selection of its 2009 officers at the January 15, 2009 meeting.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

Risser Justice Building, Room 150
120 Martin Luther King Jr. Boulevard
Madison, Wisconsin
December 17, 2008
9:30 a.m.

DRAFT

Not yet approved
by the Board

Open Session Minutes

| <u>Summary of Significant Actions Taken</u> | <u>Page</u> |
|--|-------------|
| A. Granted a request from a public official for an exemption from the requirement to disclose assets contained in a blind trust and denied a request from a second official for an exemption. | 2 |
| B. Authorized G.A.B. staff to conduct the four-year voter records maintenance on behalf of Wisconsin municipalities. | 3 |
| C. Accepted an interim report on a proposed "HAVA Check" protocol. | 3 |
| D. Authorized G.A.B. staff to send a memo to local election officials recommending one of four procedures for maintaining electronic voting equipment records. | 3 |
| E. Adopted a procedure for conducting on-site monitoring of electronic voting system security. | 4 |
| F. Extended the Board's schedule for review of administrative rules, formal opinions, and internal operating procedures by three months. | 4 |
| G. Reaffirmed four formal opinions of the former Elections Board; declined to reaffirm three formal opinions of the former Elections Board; reaffirmed administrative rule GAB 1.39: reaffirmed the reformatted Recall Manual. | 4 |

Present: Judge Michael Brennan, Judge Thomas Cane, Judge William Eich, Judge Victor Manian, Judge Gordon Myse, Judge Gerald Nichol

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, David Buerger, Shane Falk, Michael Haas, Barbara Hansen, Sharrie Hauge, Ross Hein, Ann Oberle, Kyle Richmond, Sarah Whitt, and Tommy Winkler.

A. Call to order

Chairman Cane called the meeting to order at 9:47 a.m.

B. Director's Report of Appropriate Notice of Meeting

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

Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the November 11, 2008, Government Accountability Board meeting. Moved by Nichol, seconded by Eich. Motion carried.

D. Public Comment

1. **Donald K. Schott**, representing Justice Patience Roggensack, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 35-50 of the G.A.B. meeting packet for the December 17, 2008 meeting.

Board members discussed the issue of blind trusts with Mr. Schott.

Hearing no objection, the Chairman took up Item I out of order.

I. Requests for Exemption from Filing Statement of Economic Interests

MOTION: Grant an exemption for Justice Patience Roggensack from the requirement that she disclose assets contained in her blind trust on the condition that she disclose the one remaining, unchanged asset currently contained in the trust. This motion was made with the following rationale: 1) The Justice acted in good faith on the advice of the former Ethics Board in setting up the blind trust ; 2) She created a truly blind trust and attempted to comply with related federal requirements; and 3) Her trust has been in existence for more than 10 years and the assets have changed significantly in character. Moved by Myse, seconded by Eich.

| | | | | |
|-----------------|----------|-----|---------|-----|
| Roll call vote: | Brennan: | Aye | Cane: | Aye |
| | Eich: | Aye | Manian: | Aye |
| | Myse: | Aye | Nichol: | No |

Motion carried, 5-1.

MOTION: Deny an exemption for Justice Annette Ziegler from the requirement that she disclose her blind trust. This motion was made with the following rationale: 1) The Justice did not seek or rely on advice from the former Ethic Board; 2) Her trust has not existed for an extended period; and 3) She has not complied with related federal requirements.

Moved by Myse, seconded by Eich.

| | | | | |
|-----------------|----------|-----|---------|-----|
| Roll call vote: | Brennan: | Aye | Cane: | Aye |
| | Eich: | Aye | Manian: | No |
| | Myse: | Aye | Nichol: | Aye |

Motion carried, 5-1.

Hearing no objections, the Chairman called a recess at 10:54 a.m. and reconvened the meeting at 11:10 a.m.

E. Elections Administration Voter Record Policies
(presented by Nat Robinson, Ann Oberle and Sarah Whitt)

- 1. Voter Registration Record Management Background**
- 2. Principles and Values Statements**

Nat Robinson summarized the issues for Board members.

3. Proposed Four-Year Voter Record Maintenance

Ann Oberle explained the proposed procedure.

MOTION: Authorize the G.A.B. staff to perform the four-year voter records maintenance function on behalf of all municipalities, in accordance with the standards and procedures summarized in the recommended protocol.

Moved by Brennan, seconded by Nichol. Motion carried.

4. Report on Status of HAVA Check Protocol

Sarah Whitt explained the proposed “HAVA Check” protocol, and Wisconsin Municipal Clerks Association President and City of Milton Clerk Nancy Zastrow also spoke to the Board on behalf of the Association and supported the Board’s intent to assume statewide responsibility for both the Four-Year Voter Records Maintenance and the proposed retroactive “HAVA Checks.”

MOTION: Accept the interim report on the “HAVA Check” protocol.

Moved by Manian, seconded by Nichol. Motion carried.

The Chairman called a break for lunch at 12:20 p.m. and reconvened the meeting at 12:50 p.m.

F. Report on Recount Manual

David Buerger and Shane Falk presented the report for information purposes only. The Board took no action.

G. Report on Maintenance of Electronic Voting Equipment Records

Ross Hein explained the proposed recommendations.

MOTION: Send a memo to local election officials to tell them that in accordance with Wis. Stats. 7.23 (1) (g), the Board recommends that they adopt one of the four procedures outlined on pages 31 & 32 of the G.A.B. meeting materials for December 17, 2008.

Moved by Myse, seconded by Manian. Motion carried.

H. Protocol for Conducting On-Site Monitoring of Electronic Voting System Security

MOTION: Adopt the monitoring procedure set out on page 34 of G.A.B. meeting materials for the December 17, 2008 meeting.
Moved by Nichol, seconded by Eich. Motion carried.

I. Requests for Exemption from Filing Statement of Economic Interests

(Dealt with previously.)

J. Proposed Three-Month Extension of Review Schedule

MOTION: Extend Board's review schedule by three months.
Moved by Myse, seconded by Eich. Motion carried.

K. Review of Select Former State Elections Board Administrative Rules, Operating Procedures, and Formal Opinions related to:

1. Federal Campaigns

MOTION: Decline to reaffirm Opinions El.Bd. 74-3, El.Bd. 77-2 and ElBd. 00-3.
Moved by Nichol, seconded by Eich. Motion carried.

MOTION: Reaffirm Opinion El.Bd. 77-3.
Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Reaffirm rule GAB 1.39.
Moved by Myse, seconded by Nichol. Motion carried.

2. Vacancies

MOTION: Reaffirm Opinions El.Bd. 89-2, El.Bd. 95-1 and ElBd. 05-01.
Moved by Nichol, seconded by Eich. Motion carried.

3. Recall Manual

MOTION: Reaffirm the Recall Manual with formatting changes.
Moved by Nichol, seconded by Eich. Motion carried.

L. Director's Report

Elections Division Report

(Presented by Nathaniel E. Robinson and Barbara Hansen)

Report received for information purposes only. The Board took no action.

Ethics & Accountability Division Report
(Presented by Jonathan Becker and Tommy Winkler)

Report received for information purposes only. The Board took no action.

Office of the General Counsel Report
(Presented by Sharrie Hauge)

Report received for information purposes only. The Board took no action.

In other business, by consensus, the Board changed its May 2009 meeting date from May 11 and 12 to May 6 and 7.

M. 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 Sections 5.05(6a), 19.85(1) (c), (g), (h), and 19.851 Wis. Stats., to consider written requests for advisory opinions, 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;. Moved by Nichol, seconded by Brennan.

| | | | | |
|-----------------|----------|-----|---------|-----|
| Roll call vote: | Brennan: | Aye | Cane: | Aye |
| | Eich: | Aye | Manian: | Aye |
| | Myse: | Aye | Nichol: | Aye |

Motion carried.

Hearing no objection, the Chairman called a recess at 3:35 p.m. The Board reconvened in closed session beginning at 3:50 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: Two considered and closed.
- B. Investigations: Three matters considered; one matter closed.

The meeting adjourned at 4:52 p.m.

###

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Thursday, January 15, 2008, in Room 150, Risser Justice Building, 120 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.

December 17, 2008 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

December 22, 2008

Date

December 17, 2008 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

January 15, 2008

Date

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the January 15, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Notice of Proposed Order Amending Rule GAB 1.28
Notice of Submittal to Legislative Council Clearinghouse
Notice of Hearing

Pursuant to §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Furthermore, the legislature has generally authorized agencies, such as the Government Accountability Board, to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

The Notice of Proposed Order Adopting Rule and Notice of Hearing set forth the authority for the Board to act. In addition to the authority set forth in these Notices, the Board should also note the compelling legislative policy findings of s. 11.001, Stats., (below, *emphasis added*), which further support the necessity of the revisions to GAB 1.28:

11.001 Declaration of policy.

(1) The legislature finds and declares that our democratic system of government can be maintained only if the electorate is informed. **It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections.** It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters. **One of the most important sources of information to the voters is available through the campaign finance reporting system.** Campaign reports provide information which aids the public in fully understanding the public positions taken by a candidate or political organization. **When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly**

dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate.

(2) This chapter is also intended to ensure fair and impartial elections by precluding officeholders from utilizing the perquisites of office at public expense in order to gain an advantage over nonincumbent candidates who have no perquisites available to them.

(3) This chapter is declared to be enacted pursuant to the power of the state to protect the integrity of the elective process and to assure the maintenance of free government.

At the November 11, 2008 Board meeting, this Board adopted a final draft of a revised rule, GAB 1.28, and directed the staff to promulgate it; however, members of the Board requested staff to return to the Board with the analysis for the Board's review. Incorporated in this Memorandum by reference are the attached Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing.

The Notice of Proposed Order Adopting Rule is ready for submittal to the Legislative Council Clearinghouse. The Notice of Submittal to Legislative Council Clearinghouse is ready for submittal to the Legislative Reference Bureau for publication in the Register. Pursuant to §227.14(4m), Stats., the Board, as the policy-making body of the agency, must approve the two Notices.

Furthermore and pursuant to s. 227.16(6), Stats., the public Board meetings at which the revised GAB 1.28 has already been discussed, do not satisfy the public hearing requirements of s. 227.16, Stats. The Board also must approve the Notice of Hearing. It is preferable to wait to publish the Notice of Hearing until after receiving the Legislative Council report, as further technical modifications of the analysis and rule may be made. A proposed public hearing date of March 30, 2009 should give the Legislative Council sufficient time to complete its report on the proposed rule, prior to the public hearing per s. 227.15(1), Stats.

Following the public hearing, a Report must be submitted to the legislature for review and comment. Once that is complete, the rule will be ready for final publication in the Register and will be effective the first day of the month following publication in the Register.

Recommendations

1. Pursuant to §§5.05(1)(f), 227.11(2)(a) and 227.14(4m), Wis. Stats., I recommend that the Board formally approve the attached Notice of Proposed Order Adopting Rule and Notice of Submittal to Legislative Council Clearinghouse and direct the staff to file them.
2. Pursuant to §§5.05(1)(f), 227.11(2)(a), 227.15(1), and 227.16-17, Wis. Stats., I recommend that the Board formally approve the attached Notice of Hearing, subject to

any technical modifications suggested by the Legislative Council, specifically setting a public hearing date on March 30, 2009, and direct the staff to file it at the appropriate time.

3. I recommend that the Board authorize staff to take all other steps necessary to complete promulgation of the amended GAB 1.28, Wis. Adm. Code.

Proposed motions follow:

1. **MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a) and 227.14(4m), Wis. Stats., the Board approves the Notice of Proposed Order Adopting Rule and Notice of Submittal to Legislative Council Clearinghouse included in these materials and regarding amended GAB 1.28, Wis. Adm. Code.
2. **MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a), 227.15(1), and 227.16-17, Wis. Stats., the Board approves the attached Notice of Hearing included in these materials and regarding amended GAB 1.28, Wis. Adm. Code, subject to any technical modifications suggested by the Legislative Council, and direct the staff to file it at the appropriate time.
3. **MOTION:** Staff shall take all other steps necessary to complete promulgation of amended GAB 1.28, Wis. Adm. Code.

NOTICE OF PROPOSED ORDER ADOPTING RULE

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

The Wisconsin Government Accountability Board proposes an order to amend GAB 1.28, Wis. Adm. Code, relating to the definition of the term “political purpose.”

1. Statute Interpreted: s. 11.01 (16), Stats.
2. Statutory Authority: ss. 5.05 (1) (f) and 227.11 (2) (a), Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.01(16), Stats., an act is for “political purposes” when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person’s present or future candidacy. Further, s. 11.01(16)(a)(1), Stats., provides acts which are for “political purposes” include but are not limited to the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate. Under the existing rule, GAB 1.28(2)(c), provides that the campaign finance regulations under ch. 11 of the Wisconsin Statutes apply to making a communication that contains one or more specific words “or their functional equivalents” with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate.

Under the existing statute, s. 11.01(16), Stats. and rule, GAB 1.28, individuals and organizations that do not spend money to expressly advocate the election or defeat of a clearly identified candidate, or to advocate a vote “Yes” or vote “No” at a referendum, are not subject to campaign finance regulation under ch.11 of the Wisconsin Statutes. The term “expressly advocate” initially was limited to so-called “magic words” or their verbal equivalents. The Wisconsin Supreme Court, in *WMC v. State Elections Board*, 227 Wis.2d 650 (1999), opined that if the Government Accountability Board’s predecessor, the Elections Board wished to adopt a more inclusive interpretation of the term “express advocacy,” it could do so by way of a rule. The Wisconsin Court of Appeals, in *Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis.2d 670 (Wis. Ct. App. 1999), further opined:

“And while, as plaintiffs point out, “express advocacy” on behalf of a candidate is one part of the statutory definition of “political purpose,” it is not the only part. Under s. 11.01(16), Stats., for example, an act is also done for political purpose if it is undertaken “for the purpose of influencing the election . . . of any individual.”

* * *

“Contrary to plaintiffs’ assertions, then, the term “political purposes” is not restricted by the cases, the statutes or the code to acts of express advocacy. It encompasses many acts undertaken to influence a

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candidate’s election—including making contributions to an election campaign.”

The United States Supreme Court, in *McConnell et al. v. FEC et al.*, (No.02-1674), in a December 10, 2003 opinion, has said that Congress and state legislatures may regulate political speech that is not limited to “express advocacy.” Specifically, the *McConnell* Court upheld, as facially constitutional, broader federal regulations of communications that (1) refer to a clearly identified candidate; (2) are made within 60 days before a general election or 30 days before a primary election; and (3) are targeted to the relevant electorate. The *McConnell* Court further opined:

“Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad . . . Indeed, the unmistakable lesson from the record in this litigation . . . is that *Buckley’s* magic-words requirement is functionally meaningless . . . Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.”

In *Federal Election Comm’n. v. Wisconsin Right To Life, Inc.* (No. 06-969)(June 25, 2007), a United States Supreme Court case, Chief Justice Roberts writing for the majority, opined that an ad is the functional equivalent of express advocacy, if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, i.e. mentions an election, candidacy, political party, or challenger; takes a position on a candidate’s character, qualifications, or fitness for office; condemns a candidate’s record on a particular issue.

The revised rule will more clearly specify those communications that may not reach the level of “magic words” express advocacy, yet are subject to regulation because they are the functional equivalent to express advocacy, for “political purposes,” and are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate

4. Related statute(s) or rule(s): s. 11.01(16), Stats., and GAB 1.28, Wis. Adm. Code.
5. Plain language analysis: The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criteria to the applicable campaign finance regulations and requirements of ch. 11, Stats.

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6. Summary of, and comparison with, existing or proposed federal regulations: The United States Supreme Court upheld regulation of political communications called “electioneering communications” in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674) and pursuant to its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court’s decision upholds provisions of BCRA that establish a new form of regulated political communication – “electioneering communications” – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor disbursements for electioneering communications in ss. 201, 203 BCRA. BCRA generally defines an “electioneering communication” as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary and if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR 100-114)and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Part 104, 114.) The FEC regulates “electioneering communications.”

7. Comparison with rules in adjacent states:

Illinois has a rule requiring a nonprofit organization to file financial reports to the State Board of Elections if it: 1) is not a labor union; 2) has not established a political committee; and 3) accepts or spends more than \$5,000 in any 12-month period in the aggregate:

- A) supporting or opposing candidates for public office or questions of public policy that are to appear on a ballot at an election; and/or
- B) for electioneering communications.

In addition, the same rule mandates all the same election reports of contributions and expenditures in the same manner as political committees and the nonprofit organizations are subject to the same civil penalties for failure to file or delinquent filing. (See Illinois Administrative Code, Title 26, Chapter 1, Part 100, s. 100.130).

Iowa prohibits direct or indirect corporate contributions to committees or to expressly advocate for a vote. s. 68A.503(1), Iowa Stats. Iowa does allow corporations to use its funds to encourage registration of voters and participation in the political process or to publicize public issues, but provided that no part of those contributions are used to expressly advocate the nomination, election, or defeat of any candidate for public office. s. 68A.503(4), Iowa Stats. Iowa does not have any additional rules further defining indirect corporate contributions or expressly advocating for a vote.

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Michigan prohibits corporate and labor contributions for political purposes (s. 169.254, Mich. Stats.) and requires registration and reporting for any independent expenditures of \$100.01 or more (s. 169.251, Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota statutes prohibit direct and indirect corporate contributions and independent expenditures to promote or defeat the candidacy of an individual. s. 211B.15(Subd. 3), Minn. Stats. A violation of this statute could subject the corporation to a \$40,000.00 penalty and forfeiture of the right to do business in Minnesota. A person violating this statute could receive a \$20,000.00 penalty and up to 5 years in prison. Minnesota does not have any additional rules defining indirect influence on voting.

8. Summary of factual data and analytical methodologies: Adoption of the rule was primarily predicated on federal and state statutes, regulations, and case law. Additional factual data was considered at several Government Accountability Board public meetings, specifically the expenditures on television advertisements, and the actual transcripts for the same, as aired during a recent Wisconsin Supreme Court race.

9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.

10. Effect on small business: The creation of this rule does not affect business.

11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-2094; Shane.Falk@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973, no later than March 30, 2009.

FISCAL ESTIMATE: The creation of this rule has no fiscal effect.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect business.

TEXT OF PROPOSED RULE:

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss. 5.05(1)(f) and 227.11(2)(a), Stats., the Government Accountability Board hereby amends GAB 1.28, Wis. Adm. Code, interpreting s. 11.01(16), Stats., as follows:

GAB 1.28 Scope of regulated activity; election of candidates.

(1) Definitions. As used in this rule:

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(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure related and recordkeeping related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a "political purpose" if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate ~~that expressly advocates the election or defeat of that candidate and that~~ unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;" or
8. "Reject."

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring

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election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate's position or stance on issues; or
3. Supports or condemns that candidate's public record.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.

Government Accountability Board
Scope of Regulated Activity; Election of Candidates, GAB 1.28
CR 09-

On January ____, the Government Accountability Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order amends GAB 1.28, Wis. Adm. Code, relating to the definition of the term “political purpose.”

Agency Procedure for Promulgation

A public hearing will be scheduled at a later time. The Government Accountability Board is primarily responsible for preparing the proposed rule.

Contact Information

Shane W. Falk, Staff Counsel
Government Accountability Board
212 E. Washington Avenue, 3rd Floor
P.O. Box 2973, Madison, Wisconsin 53701-2973
Phone 266-2094; Shane.Falk@wisconsin.gov

NOTICE OF HEARING
GOVERNMENT ACCOUNTABILITY BOARD
CR 09-

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f) and 227.11(2)(a), Stats., and interpreting s.11.01(16), Stats., the Government Accountability Board will hold a public hearing to consider adoption of a rule to amend GAB 1.28, Wis. Adm. Code, relating to the definition of the term “political purpose.”

Hearing Information

The public hearing will be held at the time and location shown below.

Date and Time
March 30, 2009
at 9:30 a.m.

Location
Government Accountability Board Office
212 E. Washington Avenue, 3rd Floor
Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: s.11.01(16), Stats.
2. Statutory authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.01(16), Stats., an act is for “political purposes” when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person’s present or future candidacy. Further, s. 11.01(16)(a)(1), Stats., provides acts which are for “political purposes” include but are not limited to the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate. Under the existing rule, GAB 1.28(2)(c), provides that the campaign finance regulations under ch. 11 of the Wisconsin Statutes apply to making a communication that contains one or more specific words “or their functional equivalents” with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate.

Under the existing statute, s. 11.01(16), Stats. and rule, GAB 1.28, individuals and organizations that do not spend money to expressly advocate the election or defeat of a clearly identified candidate, or to advocate a vote “Yes” or vote “No” at a referendum, are not subject to campaign finance regulation under ch.11 of the

Wisconsin Statutes. The term “expressly advocate” initially was limited to so-called “magic words” or their verbal equivalents. The Wisconsin Supreme Court, in *WMC v. State Elections Board*, 227 Wis.2d 650 (1999), has opined that if the Government Accountability Board’s predecessor, the Elections Board, wished to adopt a more inclusive interpretation of the term “express advocacy,” it could do so by way of a rule. The Wisconsin Court of Appeals, in *Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis.2d 670 (Wis. Ct. App. 1999), further opined:

“And while, as plaintiffs point out, “express advocacy” on behalf of a candidate is one part of the statutory definition of “political purpose,” it is not the only part. Under s. 11.01(16), Stats., for example, an act is also done for political purpose if it is undertaken “for the purpose of influencing the election . . . of any individual.”

* * *

“Contrary to plaintiffs’ assertions, then, the term “political purposes” is not restricted by the cases, the statutes or the code to acts of express advocacy. It encompasses many acts undertaken to influence a candidate’s election—including making contributions to an election campaign.”

The United States Supreme Court, in *McConnell et al. v. FEC et al.*, (No.02-1674), in a December 10, 2003 opinion, has said that Congress and state legislatures may regulate political speech that is not limited to “express advocacy.” Specifically, the *McConnell* Court upheld, as facially constitutional, broader federal regulations of communications that (1) refer to a clearly identified candidate; (2) are made within 60 days before a general election or 30 days before a primary election; and (3) are targeted to the relevant electorate. The *McConnell* Court further opined:

“Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad Indeed, the unmistakable lesson from the record in this litigation . . . is that *Buckley’s* magic-words requirement is functionally meaningless Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.”

In *Federal Election Comm’n. v. Wisconsin Right To Life, Inc.* (No. 06-969)(June 25, 2007), a United States Supreme Court case, Chief Justice Roberts writing for the majority, opined that an ad is the functional equivalent of express advocacy, if

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the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, i.e. mentions an election, candidacy, political party, or challenger; takes a position on a candidate's character, qualifications, or fitness for office; condemns a candidate's record on a particular issue.

The revised rule will more clearly specify those communications that may not reach the level of "magic words" express advocacy, yet are subject to regulation because they are the functional equivalent to express advocacy, for "political purposes," and susceptible of no other reasonable interpretation other than as an appeal to vote for or against a specific candidate.

4. Related statute(s) or rule(s): s. 11.01(16), Stats., and GAB 1.28, Wis. Adm. Code.
5. Plain language analysis: The revised rule will subject to regulation communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The revised rule will subject communications meeting this criteria to the applicable campaign finance regulations and requirements of ch. 11, Stats.
6. Summary of, and comparison with, existing or proposed federal regulations: The United States Supreme Court upheld regulation of political communications called "electioneering communications" in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674) and pursuant to its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court's decision upholds provisions of BCRA that establish a new form of regulated political communication – "electioneering communications" – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor disbursements for electioneering communications in ss. 201, 203 BCRA. BCRA generally defines an "electioneering communication" as a broadcast, cable, or satellite advertisement that "refers" to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary and if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR 100-114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Part 104, 114.) The FEC regulates "electioneering communications."

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7. Comparison with rules in adjacent states:

Illinois has a rule requiring a nonprofit organization to file financial reports to the State Board of Elections if it: 1) is not a labor union; 2) has not established a political committee; and 3) accepts or spends more than \$5,000 in any 12-month period in the aggregate:

- A) supporting or opposing candidates for public office or questions of public policy that are to appear on a ballot at an election; and/or
- B) for electioneering communications.

In addition, the same rule mandates all the same election reports of contributions and expenditures in the same manner as political committees and the nonprofit organizations are subject to the same civil penalties for failure to file or delinquent filing. (See Illinois Administrative Code, Title 26, Chapter 1, Part 100, s. 100.130).

Iowa prohibits direct or indirect corporate contributions to committees or to expressly advocate for a vote. s. 68A.503(1), Iowa Stats. Iowa does allow corporations to use its funds to encourage registration of voters and participation in the political process or to publicize public issues, but provided that no part of those contributions are used to expressly advocate the nomination, election, or defeat of any candidate for public office. s. 68A.503(4), Iowa Stats. Iowa does not have any additional rules further defining indirect corporate contributions or expressly advocating for a vote.

Michigan prohibits corporate and labor contributions for political purposes (s. 169.254, Mich. Stats.) and requires registration and reporting for any independent expenditures of \$100.01 or more (s. 169.251, Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota statutes prohibit direct and indirect corporate contributions and independent expenditures to promote or defeat the candidacy of an individual. s. 211B.15(Subd. 3), Minn. Stats. A violation of this statute could subject the corporation to a \$40,000.00 penalty and forfeiture of the right to do business in Minnesota. A person violating this statute could receive a \$20,000.00 penalty and up to 5 years in prison. Minnesota does not have any additional rules defining indirect influence on voting.

8. Summary of factual data and analytical methodologies: Adoption of the rule was primarily predicated on federal and state statutes, regulations, and case law. Additional factual data was considered at several Government Accountability Board public meetings, specifically the expenditures on television advertisements, and the actual transcripts for the same, as aired during a recent Wisconsin Supreme Court race.

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Scope of regulated activity; election of candidates

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9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-2094; Shane.Falk@wisconsin.gov
12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973, no later than March 30, 2009.

FISCAL ESTIMATE: The creation of this rule has no fiscal effect.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect business.

TEXT OF PROPOSED RULE:

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss. 5.05(1)(f) and 227.11(2)(a), Stats., the Government Accountability Board hereby amends GAB 1.28, Wis. Adm. Code, interpreting s. 11.01(16), Stats., as follows:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) “Political committee” means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) “Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) “Contributions for political purposes” means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for ~~political purposes~~ ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

~~(2) Individuals other than candidates and committees~~ persons other than political committees are subject to the applicable ~~disclosure-related and recordkeeping-related~~ requirements of ch. 11, Stats., ~~only~~ when they:

- (a) Make contributions or disbursements for political purposes, or
- (b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or
- (c) Make a communication for a political purpose.

(3) A communication is for a “political purpose” if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:

1. “Vote for;”
2. “Elect;”
3. “Support;”
4. “Cast your ballot for;”
5. “Smith for Assembly;”
6. “Vote against;”
7. “Defeat;” or
8. “Reject.”

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate’s position or stance on issues; or
3. Supports or condemns that candidate’s public record.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the January 15, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:

Jonathan Becker, Administrator, Ethics and Accountability Division
Shane W. Falk, Staff Counsel

SUBJECT: Notice of Emergency Order Amending Rule GAB 6.05

Pursuant to §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Furthermore, the legislature has generally authorized agencies, such as the Government Accountability Board, to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

Pursuant to s. 11.21(16), Stats., the legislature required registrants to file campaign finance reports in electronic format, if they accept \$20,000.00 or more during a campaign period. Within s. 11.21(16), Stats., the legislature specifically directed the Government Accountability Board to “specify, by rule, a type of software that is suitable for compliance with the electronic filing requirement of this subsection.” The Government Accountability Board has approved the use of the Campaign Finance Information System and affirmed a requirement that registrants begin using it January 1, 2009. Some registrants may continue to file campaign finance reports in electronic formats other than C.F.I.S., which would affect the comprehensiveness of that system. An emergency rule is needed to amend GAB 6.05, Wis. Adm. Code, to require use of C.F.I.S. to insure its effectiveness and a uniform filing system.

Pursuant to s. 227.24, Wis. Stats., the Government Accountability Board has the authority to issue an emergency rule that is effective upon publication in the Wisconsin State Journal. Attached to this Memorandum is the proposed Notice of Order of The Government Accountability Board (Emergency Rule Order Amending GAB 6.05, Wis. Adm. Code). The Board is required to make an emergency finding, which is included in the attached Notice of Order. If the Board approves the Notice of Order, it will be published in the Wisconsin State Journal and effective immediately. Thereafter, a public hearing must be held within 45 days.

The work to complete a permanent rule cannot begin until the staff publishes a Statement of Scope in the register and 10 days thereafter the Board approves the State of Scope.

Recommendations

1. Pursuant to §§5.05(1)(f), 11.21(16), 227.11(2)(a) and 227.24, Wis. Stats., staff recommends that the Board formally approve the attached Notice of Order of the Government Accountability Board (Emergency Rule Order Amending GAB 6.05, Wis. Adm. Code) and direct the staff to publish it.
2. Pursuant to § 227.24(4), Stats., staff recommends that the Board schedule a public hearing to occur within 45 days of the anticipated publication date.

Proposed motions follow:

1. **MOTION:** Pursuant to §§5.05(1)(f), 11.21(16), 227.11(2)(a) and 227.24, Wis. Stats., the Board approves the attached Notice of Order of the Government Accountability Board (Emergency Rule Order Amending GAB 6.05, Wis. Adm. Code) and directs the staff to publish it.
2. **MOTION:** Pursuant to § 227.24(4), Stats., the staff shall schedule a public hearing to occur within 45 days of the anticipated publication date of the Notice of Order of the Government Accountability Board (Emergency Rule Order Amending GAB 6.05, Wis. Adm. Code).

NOTICE OF ORDER OF THE GOVERNMENT ACCOUNTABILITY BOARD

The Wisconsin Government Accountability Board proposes an order to adopt an emergency rule to amend GAB 6.05, Wis. Adm. Code, relating to filing campaign finance reports in electronic format.

STATEMENT OF EMERGENCY FINDING:

The Government Accountability Board amends GAB 6.05, Wis. Adm. Code, relating to filing campaign finance statements in electronic format. The amended rule creates a uniform requirement and restricts registrants to an “electronic format” compatible with the Board’s electronic filing system for filing campaign finance reports.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists because the Board’s January 18, 2008 decision to implement the use of a new electronic filing system, and the technical requirements thereof, conflicts with the technical electronic format filing permitted by the previous rule. In effect, the current electronic filing system cannot work without a uniform and restricted electronic format that is compatible with the new electronic filing system.

The Board adopts the legislature’s policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify a uniform electronic format filing requirement to ensure the proper operation of the current electronic filing system so that the campaign finance information is available to voters. The amended rule, GAB 6.05, must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: s.11.21(16), Stats.
2. Statutory authority: ss. 11.21(16), 5.05(1)(f), 227.11(2)(a) and 227.24, Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.21(16), Stats., the Government Accountability Board is specifically charged with developing rules to address compliance with the electronic format filing requirement of this statute. Under the existing rule, GAB 6.05 the term “electronic format” does not restrict registrants to the electronic filing system currently in use by the Board. Adoption of this rule will create a uniform electronic format filing requirement that is compatible with the Board’s current electronic filing system.
4. Related statute(s) or rule(s): Wisconsin Statutes ch. 11—Campaign Financing.

5. Plain language analysis: This amended rule, GAB 6.05, creates a uniform requirement and restricts registrants to an “electronic format” compatible with the Board’s electronic filing system for filing campaign finance reports.
6. Summary of, and comparison with, existing or proposed federal regulations: Federal regulations mandated electronic filing of campaign finance reports with a standard uniform system since January 1, 2001. 11 CFR 104.18.
7. Comparison with rules in adjacent states: Illinois mandates electronic filing of campaign finance reports with a standard uniform system for committees exceeding \$10,000.00 in receipts or expenditures, strongly encouraging all other committees to file electronically. Michigan, Minnesota, and Iowa have optional electronic filing of campaign finance reports.
8. Summary of factual data and analytical methodologies: Adoption of the rule was primarily predicated upon the legislature’s previous appropriation of funds to purchase an electronic filing system for campaign finance reports. In addition, the Government Accountability Board approved the use of an electronic filing system for campaign finance reports beginning year end 2008.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect. The legislature has previously appropriated funds to purchase the electronic filing system for campaign finance reports.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect business.

TEXT OF PROPOSED RULE:

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss. 11.21(16), 5.05(1)(f), 227.11(2)(a) and 227.24, Stats., the Government Accountability Board hereby adopts an emergency rule amending GAB 6.05, Wis. Adm. Code, interpreting s. 11.21(16), Stats., as follows:

GAB 6.05 Filing campaign finance reports in electronic format. (1)

Definitions: As used in this rule:

- (a) "Campaign period" for a candidate, personal campaign committee or support committee has the same meaning as provided in s. 11.26 (17), Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.
- (b) "Contribution" has the same meaning as provided in s. 11.01 (6), Stats.
- (c) "Electronic format" means ~~computer diskette or a computer file created using Access or Excel software or software that produces a delimited file~~ the government accountability board's internet-based Campaign Finance Information System.
- (d) "Filing officer" means the government accountability board.
- (e) "Registrant" has the same meaning as provided in s. 11.01 (18m), Stats.
- (f) "Report" means any filing required by ss. 11.05, 11.06, 11.12 (5) and (6), 11.20, and 11.23, Stats.
- (2) Any registrant who files with the government accountability board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by ch. 11, Stats., in ~~an~~the electronic format specified by this rule.
- (3) Any registrant not required to file reports electronically may elect to file any campaign finance report in ~~an~~the electronic format specified by this rule.
- (4) Any campaign finance report filed in ~~an~~ electronic format shall be transmitted in time to be received by the filing officer no later than the time provided by law for filing the report. Any registrant who files a campaign finance report electronically shall, thereafter, file electronically all campaign finance reports required to be filed by the registrant.
- ~~(5) A registrant shall submit a trial report to the board before the end of the report period to determine if the report is in a format that meets the board's requirements set out in this rule.~~
- ~~(6)~~(5) Each registrant who files a report in ~~an~~the electronic format specified by this rule shall file, with the filing officer, a paper copy of the report that complies with the format set forth in Forms EB-2, EB-2a, EB-3, EB-4, EB-7, EB-10, EB-10a, EB-12 or EB-24. That paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the

report need not file a copy of the report in any other medium and shall be deemed to have satisfied the requirement of s. 11.21 (16), Stats.

This rule shall take effect upon its publication in the official state newspaper, the Wisconsin State Journal, pursuant to s. 227.24, Stats.

Dated this 15th day of January 2009.

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

State of Wisconsin \ Government Accountability Board

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THOMAS CANE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the January 15, 2009, Board Meeting

TO: Members, Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared by Ross Hein
Elections Administration Specialist

Presented by Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: Ballot Access for the 2009 Spring Election

This memorandum presents a summary of important and noteworthy information about candidates requesting ballot access for the 2009 Spring Election.

Background

The nomination paper filing deadline for the 2009 Spring Election for the judicial offices of Supreme Court, State Superintendent of Public Instruction, Court of Appeals and Circuit Court was 5:00 p.m., on Tuesday, January 6, 2009. One hundred five (**105**) candidates registered for the Spring Election. One hundred two (**102**) candidates filed nomination papers with the Government Accountability Board, Elections Division.

The first day to circulate nomination papers was Monday, December 1, 2008. The first candidate filed nomination papers on December 11, 2008. Elections Division staff received sixty five (65) sets of nomination papers by December 31, 2008. On January 2, 2009 staff received fifteen (15) sets of papers. On January 5, 2009 ten (10) sets of papers were filed and on January 6, 2009 twelve (12) sets of papers were filed.

It is important to note that every nomination paper received was reviewed and a determination regarding sufficiency was made within 24-48 hours. By the deadline for filing nomination papers on Tuesday, January 6, 2009, twenty-four (24) candidates had also filed additional nomination papers to supplement their original filing.

Six (6) incumbents filed notifications of non-candidacy with the Elections Division by the deadline of December 26, 2008. These were incumbents who were not seeking re-election to their currently held office. One (1) incumbent, Jefferson County Circuit Court, Branch 1, Judge John M. Ullsvik failed to timely file a notification of non-candidacy. There was a 72-hour extension for Jefferson County Circuit Court, Branch 1 which ended at 5:00 p.m. January 9, 2009.

Staff Recommendations for Ballot Status

A listing of candidates recommended for ballot status will be provided at the board meeting on January 15, 2009 and is also available on the Elections Division website at <http://elections.wi.gov>. Staff requests Board affirmation of the ballot status of those candidates listed.

Irregularities in Ballot Access Documents Not Affecting Ballot Status

During review of nomination papers and other ballot access documents, Elections Division staff identified the following irregularities, none of which affected ballot status:

- Staff identified a candidate who used the primary date of February 17, 2009 instead of April 7, 2009. Staff determined that the electors understood the nomination papers were for the April 7, 2009 election and the papers were found to be sufficient.
- One candidate circulated nomination papers with an election date of April 1, 2009, instead of April 7, 2009. Staff determined that the electors understood the nomination papers were for the April 7, 2009 election and the papers were found to be sufficient.
- One candidate did not list the residential address in the heading of the nomination paper, instead listed an address which was determined to be the law office of the candidate. Staff directed the candidate to re-circulate and collect additional nomination signatures as this did not comply with § 8.10 (2)(b), Wis. Stats., which requires the residential address of the candidate to be printed at the top of each nomination paper. Candidate cured this deficiency by subsequently submitting properly completed forms that contained 355 valid signatures.

Sixteen (16) candidates required intervention by Elections Division Staff in order to complete, correct or repair deficiencies in ballot access documents. Six (6) candidates initially filed an insufficient number of signatures on their nomination papers. Supplemental filings of additional signatures or amending affidavits by the circulators were necessary. Each of these instances required additional contact with the staff and issuance of amended receipts.

Basic Requirements:

- Candidates for statewide offices must file a minimum of **2,000** valid signatures of qualified electors from the district to qualify for ballot access. § 8.10 (3)(a), Wis. Stats.
- Candidates for court of appeals must file a minimum of **1,000** valid signatures of qualified electors from the district to qualify for ballot access. § 8.10 (3)(am), Wis. Stats.
- Candidates for circuit court in counties over 500,000 population (Milwaukee County) must file a minimum of **1,000** valid signatures of qualified electors from the district to qualify for ballot access. § 8.10 (3)(c), Wis. Stats.

- Candidates for circuit court in counties less than 500,000 population must file a minimum of **200** valid signatures of qualified electors from the district to qualify for ballot access. § 8.10 (3)(b), Wis. Stats.

Recommendations for Non Ballot Status

No Candidates applying for April 7, 2009, ballot access are recommended for denial of ballot status.

Challenges to Ballot Status

The deadline for challenges to ballot status was Friday, January 9, 2009, 5:00 p.m.

Note: The deadline for challenges to ballot status is close of business which normally is 4:30 p.m. However, with the 72 hour extension for Jefferson County Circuit Court Branch 1 deadline at 5:00 p.m., G.A.B was open until 5:00 p.m.

Challenges will be discussed in a separate memorandum by staff Legal Counsel.

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS CANE
Chairperson

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A Statistical Analysis of HAVA Checks in Wisconsin August 6, 2008 through January 4, 2009

Report Prepared for the
Government Accountability Board

by

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Executive Summary

At the August 2008 meeting of the Government Accountability Board., the Board directed staff to prepare a statistical report analyzing the non-match facts that resulted from the newly implemented comparison between the Statewide Voter Registration System's (SVRS) voter data and the Wisconsin Department of Transportation (DOT), and Social Security Administration (SSA).

There are several key findings from this statistics and report:

1. Most HAVA Checks result in a match. Ninety-one percent (91%) of HAVA Checks sent to DOT have come back with a match. Ninety percent (90%) of voters overall who received a HAVA Check currently show a match. Eighty-eight percent (88%) of voters match on their very first HAVA Check.
2. The number of HAVA Check non-matches is decreasing due to the efforts of Wisconsin's clerks. The non-match rate for a voter's initial first-time HAVA Check started at 25% in August and is now down to 12%. The overall HAVA Check non-match rate after corrections are made is only 10%. This percentage is considerably lower than the non-match rates reported by other states.
3. Preliminary numbers show the non-match rate for Election Day Registrations at the November 2008 Election is as low as 9%. This figure indicates that Election Day Registrations do not result in a higher number of mismatches, or higher probability of potential voter fraud, as compared to other methods of voter registration.
4. The two most common reasons for non-matches are problems with names, and driver license numbers. These two categories account for 92% of all the non-matches with the DOT database. This conclusion supports the comments made by clerks that name variations and typographical errors with the driver license are the most common problems.
5. There is not enough statistical information to conclusively determine the number of HAVA Check non-matches that are due to voters willfully giving false or fraudulent information versus HAVA Check non-matches that are due to some sort of error (name variation, typographical error, unclear handwriting, errors on the form).
6. Between 18,000 and 24,000 voters would have been required to show Proof of Residence or vote on a Provisional Ballot at the November Election if the Board had imposed a consequence for a HAVA Check non-match. This would have been 78 times as many provisional ballots as the number cast in the November 2006 election, or a 7,709% increase.

A Statistical Analysis of HAVA Checks in Wisconsin

August 6, 2008 through January 4, 2009

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. In accordance with the Board's August 27 directive, staff has prepared the following statistical report providing the facts related to HAVA Checks that have been run since August 6, 2008 through January 4, 2009 (when the report was prepared).

Based on staff's report, the Board committed to revisit the policies surrounding the HAVA Check process and determine the best course of action for Wisconsin, including whether to implement a statewide uniform procedure for improving the quality of voter data for voters preceding August 6, 2008, with the DOT and Social Security databases. Please refer to the Retroactive HAVA Check Protocol for more information regarding the policies related to these statistics.

Assumptions and Notes Related to this Report

The following points should be taken into consideration when reviewing this report:

1. This report includes all voters who were entered into SVRS from August 6, 2008 through January 4, 2009.
2. The HAVA Check can be run from two different places in the SVRS, the voter application and the voter record. When a voter is first entered into SVRS, the HAVA Check is run from the voter application. Once the voter application has been completed in SVRS, the voter application is approved, which stores the voter application (including the initial HAVA Check result) for historical purposes, and a new voter record is created (or the existing voter record is updated if the voter was already registered somewhere else). After the application is approved, all updates (including future HAVA Checks) are made directly to the voter record.

The voter record is updated each time the HAVA Check is run, and will always show the most recent HAVA Check result. This allows clerks to update the voter's information and rerun the HAVA Check from the voter record as many times as necessary to correct a mismatch, while still preserving the initial HAVA Check result on the voter application. For this reason, statistics in this report that relate to a voter's initial HAVA Check result were pulled from the voter application. Statistics relating to a voter's current HAVA Check result were pulled from the voter record.

3. The HAVA Check process became available in SVRS on August 6, 2008, and was made mandatory in the SVRS for all new voter applications on August 23, 2008. Before the HAVA Check was made mandatory on all voter applications, some voter applications were processed without at HAVA Check being run. These voters were later identified, and the HAVA Check was run from the voter record. For those voters whose initial HAVA Check was run from the voter record, we can only determine their current HAVA Check values, and do not have a record of the initial HAVA Check result.
4. HAVA Checks can only be run if the voter provides three critical pieces of information. The voter must provide their name, date of birth, and one of the following identifying numbers: driver license number, state ID card number, or last four digits of Social Security Number. If all three pieces of information are not provided, (such as if the voter provides their name and date of birth, but does not have a driver license, state ID card or a social security number) a HAVA Check cannot be run. For this reason, there are voters who registered on or after August 6, 2008 but have not had a HAVA Check run.
5. HAVA Check values on voter records in SVRS are still being updated by clerks as they continue to run and rerun HAVA Checks and enter Election Day Registrations. Voter records and HAVA Check values were updated while the statistics for this report were being extracted. Therefore, discrepancies between numbers may be seen on this report. For example, the sum of the subcategories may equal more or less than the total, depending on when the subcategory statistics were extracted relative to when the totals were extracted. This is normal, and indicates that clerks continue to work on the HAVA Checks.
6. A small number of voters had their HAVA Check in Pending status when this report was prepared. These voters are included in the totals, but are not further broken down. This can also account for discrepancies between the sum of subcategories and the total.
7. This report excludes voter records that have been merged into another voter record due to duplicate matching. In the case of merged voter records, only the final record that remains after the merge is counted for statistical purposes. This report also excludes any voter records or voter applications that were created in SVRS but then deleted by the user (this normally occurs if the record was added by mistake). This report DOES include voters who are marked as inactive or cancelled.

Statistics

A total of 736,048 voters were entered into SVRS from August 6, 2008 through January 4, 2009. 724,646 (99%) of these voters had their initial HAVA Check run from the voter application at the time the record was entered into SVRS. The remaining 1% needed to have their HAVA Check run later from the voter record. 2,048 (0.3%) of the total voters entered have not had a HAVA Check run, either because they were marked inactive or cancelled before the HAVA Check was run, or because they did not provide a driver license, state ID card, or last 4 digits of their social security number when they registered.

421,110 (57%) of the voters entered from August 6 through January 4 were voters who registered on Election Day for the November 4 Presidential and General Election. Please note that approximately 200 of Wisconsin's 1851 municipalities were still in the process of entering their November 2008 Election Day registrations (EDRs) into SVRS when this report was

generated, including some larger cities, so the number of Election Day Registrations will continue to grow.

Table 1
Overall Statistics

| Number Of: | Statistic | Percent |
|---|------------------|----------------|
| voters who registered on or after August 6, 2008 | 736,048 | |
| voters who received a HAVA Check | 733,999 | 99.7% |
| voters who did not receive a HAVA Check | 2,048 | 0.3% |
| voters who were initially checked from voter application | 724,646 | 99% |
| voters who were initially checked from the voter record | 9,353 | 1% |
| | | |
| EDR's for the November 2008 election ¹ | 421,110 | 57% |
| Municipalities still entering November 2008 EDR's in SVRS (approximate) | 200 | |

Matching Rates

The result of the initial first-time HAVA Check for a voter is stored in SVRS for the 724,646 voters who had the HAVA Check run from their voter application. For these voters, 635,812 (88%) matched on their first HAVA Check attempt. 88,278 (12%) did not match the first time, and needed some further investigation and follow-up.

Table 2
Matching Rates for Initial HAVA Check
(from voter application)

| Number Of: | Statistic | Percent |
|--|------------------|----------------|
| Initial HAVA Checks that resulted in a match | 635,812 | 88% |
| Initial HAVA Checks that resulted in a non-match | 88,278 | 12% |
| Initial HAVA Checks that were still pending when the report was prepared | 556 | 0.08% |

At the August 2008 meeting of the Government Accountability Board, G.A.B. staff reported that preliminary HAVA Check statistics for the month of August showed an initial HAVA Check non-match rate as high as 22%. Reviewing the final statistics, August had the highest non-match rate, with 6,018 (25%) non-matches out of the 23,799 HAVA Checks run. Subsequent months showed a non-match rate of 11% or 12%, which aligns with the overall initial HAVA Check non-match rate of 12% shown above.

¹ This refers to Election Day Registrations entered into SVRS as of January 4, 2009

Table 3
 Non-Match Rates for Initial HAVA Checks Month by Month
 (from voter application)

| Month | Total | Matches | Non-Matches | Match Percent | Non-Match Percent |
|----------------------|---------|---------|-------------|---------------|-------------------|
| August | 23,799 | 17,654 | 6,018 | 74% | 25% |
| September | 38,150 | 33,604 | 4,535 | 88% | 12% |
| October ² | 192,861 | 169,099 | 23,356 | 88% | 12% |
| November | 294,745 | 261,690 | 33,046 | 89% | 11% |
| December | 172,516 | 151,434 | 21,077 | 88% | 12% |
| January ³ | 2,594 | 2,342 | 250 | 90% | 10% |

SVRS also shows the current HAVA Check result (from the voter record) for all voters who have received a HAVA Check. The current HAVA Check result shows the result at the time the statistics were collected, which takes into consideration the fact that many voters have had their records corrected and updated, and had their HAVA Check rerun. Of the 733,999 voters who have received a HAVA Check, 662,244 (90%) currently show a match, and 71,449 (10%) still show a non-match.

Table 4
 Current HAVA Check Matching Rates
 (from voter record)

| Number Of: | Statistic | Percent |
|--|-----------|---------|
| Voters that currently show a match | 662,244 | 90% |
| Voters that currently show a non-match | 71,449 | 10% |
| Voters that currently show pending | 306 | 0.04% |

Given that the non-match rate for initial first-time HAVA Check is 12%, and the current non-match rate is 10%, this indicates that clerks have been able to successfully correct some of the initial non-matches. A reasonable conclusion can be made that the current HAVA Check non-match rate could continue to drop as clerks continue to research and correct errors related to the November 2008 Election Day registrations.

Non-Match Rates for DOT versus SSA

HAVA Checks are sent to DOT if the voter provides a driver license or state id number, or sent to SSA if the voter provides the last four digits of their social security number. The majority of HAVA Checks were sent to DOT. Of the 733,999 voters who received a HAVA Check, 658,004 (90%) went through DOT. 75,409 (10%) went to SSA.

The non-match rate for HAVA Checks sent to SSA is considerably higher than the non-match rate for HAVA Checks sent to DOT. Of the 75,409 checks sent to SSA, 11,153 (15%)

² Note that due to data entry errors, October 2008 had a higher than normal number of HAVA Check results that show "pending" which appear in the total but do not appear as a match or a non-match. This accounts for the discrepancy between the sum of the matches and non-matches versus the total.

³ This includes January 1 through January 4 only

currently show a non-match. Of the 658,004 checks sent to DOT, 60,027 (only 9%) currently show a non-match⁴.

Table 5
Non-match Rates for DOT versus SSA
(from voter record)

| Number Of: | Statistic | Percent |
|--|------------------|----------------|
| HAVA Checks sent to DOT | 658,004 | 90% |
| HAVA Checks sent to SSA | 75,409 | 10% |
| | | |
| DOT checks that currently show match | 597,970 | 91% |
| DOT checks that currently show non-match | 60,027 | 9% |
| | | |
| SSA checks that currently show match | 64,256 | 85% |
| SSA checks that currently show non-match | 11,153 | 15% |

Reasons for Non-Matches

When HAVA Checks are sent to DOT, they provide information back to SVRS regarding the reason for a non-match:

- Of the 60,027 non-matches that came back from DOT, most of them, 35,280 (59%) did not match because the name in SVRS did not match the name at DOT. This means that the driver license number and date of birth were valid and matched, but the name did not.
- 19,744 (33%) did not match because the driver license number provided was not a valid number.
- 4,390 (7%) did not match because the date of birth did not match. This means that the driver license number and name were valid and matched, but the date of birth did not.
- 792 (1%) did not match because the name and date of birth both did not match. This means that the driver license number provided was a valid number, but it did not match the name and date of birth provided.

Of the 35,280 voters that non-matched with DOT because the name did not match, 4,722 (13%) have an apostrophe, hyphen, or space somewhere in their name. Names with special characters such as these are very challenging to match with DOT because of the many variables in how they can be spelled, and what characters are accepted by the different databases.

SSA does not provide a reason for a non-match. Of the 11,153 non-matches that came back from SSA, 11,062 (99.2%) showed that no match was found. The remaining 91 (0.8%) non-matches were due to invalid data submitted.

⁴ Anecdotal information from other states, along with reports provided by the Election Assistance Commission and the Brennan Center indicate that the non-match rate for SSA is higher than anticipated nationwide. It is not yet known what accounts for the higher non-match rate at SSA.

Table 6
Reasons for Non-Matches
(from voter record)

| Number Of: | Statistic | Percent |
|---|------------------|----------------|
| DOT non-matches because the name does not match or invalid name | 35,280 | 59% |
| DOT non-matches because no record of DL# | 19,744 | 33% |
| DOT non-matches because DOB does not match | 4,390 | 7% |
| DOT non-matches because name and DOB both do not match | 792 | 1% |
| | | |
| DOT non-matches due to name mismatch that have a space, hyphen or apostrophe in first, middle, or last name | 4,722 | 13% |
| | | |
| SSA non-matches that show no match found | 11,062 | 99.2% |
| SSA non-matches that show Invalid Data Submitted | 91 | 0.8% |

Clerk Comments Regarding Reasons for Non-Matches

Clerks were asked to put comments on the voter record when investigating HAVA Checks non-matches to assist G.A.B. staff in determining how many HAVA Checks did not match due to typographical errors, or errors on the form that were corrected by contacting the voter. These comments would be added to the voter record if the clerk identified a data entry error, or if the voter responded to the clerk when notified that their information did not match. Therefore, not all HAVA Checks that resulted in a mismatch would have a voter comment.

Also, the process of adding these comments was a manual process that required an additional step in the HAVA Check process. Clerks entered these comments as they remembered to and as time permitted. Therefore, the number of voter comments are not sufficient to provided to offer conclusive results. Please also note that extracting statistical information based on the comments was very difficult as the comment field is a free-form text field and there was a wide degree of variability in the wording of the comments. G.A.B. staff made a best effort to identify and extract all comments from voter records that related to HAVA Checks.

Approximately 5,539 voters currently show one or more comments related to a HAVA Check. (This represents 1% of the 733,999 total voters who received a HAVA Check.) 3,992 (72%) of these voters have comments indicating that the HAVA Check needed to be corrected and rerun due to a data entry error. 1,133 (20%) have comments indicating that the HAVA Check was corrected and rerun because the voter responded to letter from the clerk notifying them of the non-match. 518 (9%) have comments indicating that the voter verified that the information in SVRS is correct, and yet the HAVA Check still did not match⁵.

Please note that some voters have more than one comment, and could appear in multiple categories (i.e. data entry AND voter verified) if the clerk made multiple corrections.

⁵ If the voter verifies that their information is correct but the HAVA Check still results in a non-match, the clerk can contact the G.A.B. Help Desk and G.A.B. will follow up with DOT to determine why the HAVA Check failed. If there is a problem with the information in SVRS, it is corrected and the HAVA Check is rerun. If there is a problem with the information at DOT, the voter would need to correct their information at DOT in order for the HAVA Check to result in a match.

Table 7
HAVA Comments from Voter Record

| Number Of: | Statistic | Percent |
|---|------------------|----------------|
| # of voters with a HAVA comment on their voter record | 5,539 | 1% |
| # of voters with a Data Entry comment | 3,992 | 72% |
| # of voters with a Letter Response comment | 1,133 | 20% |
| # of voters with a Voter Verified comment | 518 | 9% |

Clerks have also provided much anecdotal information to the G.A.B. regarding reasons for HAVA Check non-matches. Based on comments clerks have made to G.A.B. staff, the most common reasons for HAVA Check non-matches are:

1. Typographical errors, particularly with the driver license number, due to the length of the number and the ease of transposing digits within the number.
2. Variations in names in SVRS versus DOT, particularly with names that include a space, apostrophe, or hyphen. Examples include "Robert" versus "Bob", or "Olson-Brown" versus "Olson Brown".
3. Voters who have a middle initial at DOT but not in SVRS, and vice versa.

Clerks have also reported that they have a higher number of voter verified non-matches with SSA. These are voters whose HAVA Check comes back from SSA as no match found, but the voter verifies that all information in SVRS is correct. More research needs to be done with SSA to determine why the non-match rate with SSA is higher than that of DOT, particularly in the case of voters who verify that their information is correct.

The G.A.B. has not been informed of any voter fraud investigations that resulted from HAVA Check non-matches. HAVA Check results have been provided to the Milwaukee County District Attorney's office as part of on-going voter fraud and voter registration fraud investigations.

Potential Election Day Impact

One of the options presented to the Board at the August 2008 meeting included marking voters whose HAVA Check resulted in a non-match on the poll book, and requiring them to show Proof of Residence at the polling place. If the voter could not provide Proof of Residence, they would be allowed to vote on a Provisional Ballot.

G.A.B. staff reviewed some additional statistics to attempt to determine the potential impact this policy could have had at the November 4, 2008 Election. G.A.B. staff reviewed the number of voters who registered after August 6, 2008 but prior to November 4, 2008 who resulted in a HAVA Check non-match and would have been subject to this policy:

- 35,030 voters who registered during this period had their initial HAVA Check run from the voter application result in a non-match. 24,393 of these voters voted in the November Election.

- At the time this report was generated, 28,320 of these voters still showed a HAVA non-match. 17,932 of these voters voted in the November Election

It is not possible to determine the exact number of voters that had a HAVA Check non-match at the time their poll book was printed, so an exact number of voters who would have been impacted cannot be determined. However, it can safely be stated that between 18,000 and 24,000 voters would have been required to show Proof of Residence or vote on a Provisional Ballot at the November Election if that alternative had been approved.

Only 271 provisional ballots were issued at the November 2006 General Election. If provisional ballots had been required for the HAVA Check non-matches in the November 2008 election, there would have been approximately 21,163 additional provisional ballots⁶. This equates to an 7,709% increase in provisional ballots (78 times more ballots), and corresponding work-load and stress increase for Wisconsin's clerks.

Table 8
Voters Who Registered Since August 6 but Prior to the November Election

| Number Of: | Did not Match | Voted |
|--|----------------------|--------------|
| Voters who showed a non-match on their initial HAVA Check (from the voter application) | 35,030 | 24,393 |
| Voters who currently still show a HAVA Check non-match (from the voter record) | 28,320 | 17,932 |

Table 9
Provisional Ballots

| Number Of: | Statistic | Percent Increase |
|--|------------------|-------------------------|
| Provisional Ballots issued in November 2006 Election | 271 | |
| Projected Provisional Ballots for November 2008 Election if provisional ballots were required for non-matches ⁷ | 21,163 | 7,709% |

Election Day Registrations

G.A.B. staff also looked at the HAVA Check statistics specifically for those voters who registered on Election Day at the November 4, 2009 Election.

Of the 421,110 November Election Day registrations recorded in SVRS thus far, 379,409 (90%) currently show a HAVA Check match on their voter record. 39,365 (9%) have a non-match. 1,421 (0.3%) are currently pending, and 914 (0.2%) could not be run (because they did not have a driver license, state ID, or social security number).

⁶ This is an average of the low and high number in the projected range

⁷ This is an average of the low and high number in the projected range

Table 10
Election Day Registrations for November 2008 Election
(from voter record)

| Number Of: | Statistic | Percent |
|--|------------------|----------------|
| November 2008 EDRs who currently show a HAVA Check match | 379,409 | 90% |
| November 2008 EDRs who currently show a non-match | 39,365 | 9% |
| November 2008 EDRs who currently show pending | 1,421 | 0.3% |
| November 2008 EDRs with no HAVA Check run | 914 | 0.2% |

Retroactive HAVA Checks

The G.A.B. has committed to considering implementing a statewide uniform procedure for improving the quality of the voter data for voters who were entered in SVRS prior to August 6, 2008 when the HAVA Check functionality became available.

Preliminary queries indicate that approximately 872,014 voters registered on or after January 1, 2006 that have not received a HAVA Check. Of these, 785,412 (90%) registered using their driver license, and 64,236 (7%) used their social security number (last 4 digits). 22,366 (3%) did not provide either, and will therefore not be able to have a HAVA Check run.

Based on the initial first-time HAVA Check mismatch rate, it is anticipated that approximately 101,958 (12%) of these records will not match and will require some follow-up after the initial HAVA Check.

Table 11
Potential Impact of Retroactive HAVA Checks

| Number Of: | Statistic | Percent |
|--|------------------|----------------|
| Voters who registered after on or after January 1, 2006 and have not yet received a HAVA Check | 872,014 | |
| Voters who registered with a Driver License or State ID Card | 785,412 | 90% |
| Voters who registered a with Social Security Number | 64,236 | 7% |
| Voters who registered with neither | 22,366 | 3% |
| | | |
| Projected # of mismatches | 101,958 | 12% |

Major Findings

1. 733,999 voters have received a HAVA Check thus far.
2. The current overall non-match rate is only 10%.
3. The non-match rate for November 2008 Election Day Registrations is 9%.
4. The current overall non-match rate for HAVA Checks sent to DOT is 9%.
5. 92% of HAVA Check non-matches from DOT were due to the name not matching or the driver license number being incorrect. (59% and 33% respectively).
6. The non-match rate for initial first-time HAVA Checks has decreased from 25% in August to 12% overall.

Analysis and Conclusions

There are several things that can be concluded from the statistics in this report:

1. The current overall match rate with DOT is 91%. (See Table 5). This is much higher than the national average (based on anecdotal information).
2. The number of current overall HAVA Check non-matches is going down due to the follow-up efforts of clerks. The initial first-time non-match rate (from the voter application) started at 25% in August, and is now 12% overall. The current non-match rate (from the voter record) is only 10%. (See Tables 2, 3, and 4). It is reasonable to conclude that the initial first-time non-match rate will continue to decrease as clerks take greater care during data entry. It is also reasonable to conclude that the current overall non-match rate will continue to fall as more HAVA Checks non-matches are investigated.
3. The non-match rate for Election Day Registrations at the November 2008 Election is actually lower than the overall current non-match rate (9% versus 10%). (See Table 10). This indicates that Election Day registrations do not result in a higher number of mismatches, and does not indicate potential higher fraud with Election Day Registrations, as some have speculated.
4. The two highest reasons for non-matches are problems with names, and problems with the driver license number. These two categories account for the vast majority of the non-matches. (See Table 6). This supports the anecdotal information from clerks, and the comments on the voter record, that name variations and typographical errors with the driver license are the most common complaints. (See Table 7).
5. The lowest reason for a non-match was that both the name and date of birth do not match the driver license number provided (1% of the total non-matches), which is the category that seems most likely to be due to voter fraud. (See Table 6). This also supports the lack of anecdotal information on any voter fraud investigations resulting specifically from HAVA Check non-matches.
6. The non-match rate for SSA is significantly higher than that for DOT (15% versus 9%). However, the vast majority of HAVA Checks are going through DOT which mitigates some of the impact. (See Table 5). More investigation should be done with SSA to determine why the non-match rate is higher, specifically for voters who have verified that their information is correct.
7. There is not enough statistical information to conclusively determine the number of HAVA Check non-matches that are due to voters willfully giving false or fraudulent information versus HAVA Check non-matches that are due to some sort of error (name variation, typographical error, unclear handwriting, errors on the form)
8. Between 18,000 and 24,000 voters would have been required to show Proof of Residence or vote on a Provisional Ballot at the November Election if the Board had opted to have a consequence for a HAVA Check non-match. (See Table 8). This presents a 7,709% increase, or 78 times as many ballots as November 2006.

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Government Accountability Board Protocol Retroactive HAVA Checks of Voter Records

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

A common misconception is that HAVA Checks are intended to confirm a voter's eligibility to vote. In reality, HAVA Checks were not designed or intended to prove or affect voter eligibility. Rather, HAVA Checks are performed for the purpose of improving the quality of voter data and to facilitate list maintenance. A voter's eligibility is determined by verifying information contained on the Wisconsin Voter Registration Application, EB-131 Form and related documents.

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. Based on staff's report, the Board committed to revisit the policies surrounding the HAVA Check process and determine the best course of action for Wisconsin, including whether to implement a statewide uniform procedure for improving the quality of voter data for voters preceding August 6, 2008, with the DOT and Social Security databases. On August 27, 2008, specifically, the G.A.B. ruled that county and municipal clerks and the G.A.B. staff should:

"Continue with the 'HAVA Check' procedure in effect as of August 6, 2008, through the fall election, **and correct the SVRS database later**. A mismatch with Wisconsin DOT data, in and of itself, shall not result in disqualification of a voter." (official/approved excerpted minutes from the G.A.B. August 27, 2008 Meeting).

We now have the benefit of gathering voter data from the November 4 General and Presidential Election that is still being HAVA Checked, in addition to the Circuit Court's decision upholding the Board's previous action. In accordance with the Board's August 27 decision, staff is proceeding in consultation with clerks to develop a method and guidance on how to improve data quality for voters who were registered prior to August 6, 2008.

Issues

1. On what date should retroactive HAVA Checks commence?
2. Who should conduct retroactive HAVA Checks, clerks or G.A.B. staff?

3. For quality control and consistency, what should uniform standards and procedures be applied and implemented?

What is Needed

In order to ensure consistency and quality control, a uniform process and procedure needs to be developed and applied. Standard criteria will be utilized statewide for conducting retroactive HAVA Checks on voters who registered after January 1, 2006, but before the HAVA Check process became available on August 6, 2008.

Background

HAVA requires that voters' information be compared with records at the DOT or SSA when registering to vote. The HAVA Check process became available in SVRS on August 6, 2008, and the G.A.B ordered them to be mandatory for new voter applications as of August 23, 2008. G.A.B. is considering the most efficient and effective process and procedure to improve the quality of the data in the statewide voter database for voters who registered on or after January 1, 2006, but prior to August 6, 2008. The following background information is helpful to frame the issue and understand the dynamic factors that must be considered.

HAVA Compliance Milestones: HAVA required states to be compliant by January 1, 2004, with the option to file a waiver to be compliant by January 1, 2006. Wisconsin was granted the waiver to January 1, 2006, at which point Wisconsin was partially compliant. Approximately one third of Wisconsin's counties were using the SVRS as of that date. The remainder of the State was brought into SVRS and went "live" during the summer of 2006, resulting in all Wisconsin municipalities using the SVRS for the first election in 2006 (the September Partisan Primary). The HAVA Check process was first available in the SVRS on August 6, 2008. On August 23, 2008, the process became mandatory for all new voter applications entered into the system.

Current HAVA Check Process: HAVA Checks are currently "run" by local election officials on all new voter applications that are entered into the SVRS. The result of the check usually comes back the following day. If the result is a non-match (no match, partial match, or problem completing HAVA Check), the clerk should take the following steps:

1. Review the paper voter registration application and compare it to SVRS to determine if there is a typographical error. If so, correct the error and "rerun" the HAVA Check.
2. If no typographical error is found, send the DMV Ping Notification letter to the voter, notifying the voter that the information does not match and instructing the voter to contact the clerk to correct any data errors or inconsistencies.
3. If the voter responds to the letter, validate the relevant information in SVRS with the voter. Make any appropriate updates to the voter record in SVRS and "rerun" the HAVA Check.

If the voter confirms that all information matches SVRS and the HAVA Check still results in a non-match, the clerk should contact the G.A.B. Help Desk. Staff will investigate the reason for

failure with DOT or SSA. Non-matches can occur due to special characters such as apostrophes, hyphens, spaces in names, or variations of names. The clerk should attempt the HAVA Check on different variations of the name (i.e. Bill versus William), or with or without the hyphen, apostrophe, or space in order to resolve the non-match.

The outcome of a HAVA Check Non-match: There are several reasons a HAVA Check may result in a non-match. The most serious reason could be that a voter gave false information when registering to vote. However, the data that have been analyzed to date, show that the overwhelming reason for a non-match is that the information is incorrectly inputted into SVRS, or there are differences in a voter's name format or name variation in the three databases.

On August 27, 2008, the Board ruled that a non-match with Wisconsin DOT data, in and of itself, shall not result in the disqualification or disenfranchisement of a voter. However, the Board decided that additional information was needed before deciding what, if any, the next step may be. The Board asked staff to collect specific data regarding the HAVA Checks that were "run" from August 6, 2008 when the HAVA Check process became available, and November 4, 2008 (the date of the 2008 Presidential and General Election).

Discussion

The G.A.B. has several critical factors to consider for developing a sound and defensible policy for retroactive HAVA Checks.

1. What is the appropriate pool of voters for the retroactive HAVA Check process?

Significant considerations in this decision are:

- A. Should the Board HAVA Check all voters who were entered into the SVRS since January 1, 2006, who have not yet received a HAVA Check?
- B. Should the Board perform HAVA Checks on voters who registered after January 1, 2006, but before the SVRS went "live" in the voter's region?
- C. Can the Board rely on data that was converted into SVRS from local municipal voter registration systems to determine when those voters actually registered?

2. What is the intent and purpose of the HAVA Check Process:

The purpose of the HAVA Check process is to improve the quality of the data in SVRS by comparing the voter information in SVRS to another data source (DOT or SSA). The HAVA Check process was never intended to determine a voter's eligibility to vote. Voter eligibility is based on factors such as whether a voter has resided at their residence at least 10 days with no present intent to move; whether the voter is eighteen years of age or older; and, whether the voter is not currently serving a sentence related to a felony conviction.

Clearly the HAVA Checks do not verify any of these eligibility requirements. However, the HAVA Checks are very useful in detecting and correcting data quality issues such as typographical errors, a voter's name format, or name variation within databases that were

not designed with the intent to facilitate perfect data matches. These data “corrections” improve the quality and integrity of the voter registration list.

3. How much work should be required of local election officials related to these checks:

Due to the volume of voters that would be checked retroactively (872,014), this process could place a significant burden on local election officials. Implementing the HAVA Check process requires time-consuming steps in order to resolve a non-match. Paper registration forms for voters who registered in 2006 or 2007 may no longer be readily available to clerks if they are stored offsite. Currently, the HAVA Check process in SVRS may only be “run” one voter at a time which is tedious and painstakingly slow and time consuming.

Recommendations

G.A.B. staff makes the following recommendations regarding the retroactive HAVA Check Process:

1. In order to obtain the best quality voter data, perform the HAVA Check on voters who registered on or after January 1, 2006, but who have not yet had a HAVA Check. Include records that were converted into SVRS from local municipal voter registration systems, using the most reliable information that is available to determine when they actually registered.

Rationale: This ensures that the HAVA Check process is completed for voters for whom it is required; thereby, ensuring the best available quality of data are maintained in SVRS.

2. G.A.B. will conduct statewide HAVA Checks on voter records between January 1, 2006 and August 5, 2008. The capability is being developed in SVRS that will enable G.A.B. staff to “run” the retroactive HAVA Checks in batches/bundles.

Rationale: Having G.A.B. staff “run” HAVA Checks will ensure uniformity and consistency across-the-board, statewide. Plus, this single point of operation alleviates the need for local election officials to have to manually conduct each HAVA Check individually, one voter at a time.

3. Commence performing retroactive HAVA Checks on May 1, 2009, and complete the process by December 1, 2009 (7 months).

Rationale: Even with G.A.B. conducting the HAVA Checks in bulk, there is still a significant burden of follow-up work that local clerks may need to complete. It is not practical or feasible for clerks to perform this work while performing the election-related tasks for the February Primary and April Spring Election, as well as attend to their other clerk duties.

G.A.B.’s HAVA Check Process

1. On behalf of all municipalities, G.A.B. staff will send an appropriately worded WI DMV Ping Notification Letter to voters whose HAVA Check results in a non-match. The letter

will include return contact information for the G.A.B. (not the municipal clerk), and request the voter to contact G.A.B. within 30 days to verify their information. The G.A.B. will validate the voters' information and “rerun” the HAVA Check.

2. The G.A.B. will provide reports to clerks (both county and municipal) listing which voters were impacted by a non-match during the retroactive HAVA checks. Municipalities will be given the option to have Ping letters sent immediately after the retroactive HAVA Checks are “run”, or sent 60 days after the checks are “run”, giving municipalities the opportunity to clean up errors prior to having the letters sent.

Rationale for both Steps 1 and 2: This procedure helps alleviate much of the burden of follow-up work for the local clerks. Given that these voters registered as much as two years ago, it may not be practical or feasible for all municipalities to validate the data against the original voter application. The expense of sending the appropriately worded WI DMV Ping Notification Letter to all voters who result in a non-match is less than the expense in staff time required for clerks to find and pull original registration forms and validate the information.

3. The August 27, 2008, ruling of the Government Accountability Board continues in effect (Refer to G.A.B.’s August 27 ruling on page one of this Protocol)

Rationale: Many of the voters who will be affected by the retroactive HAVA Check process have been registered for several years, and most have already voted in one or more elections. Since, the HAVA Check does not determine voter eligibility, and these voters have clearly been voting, it would be inappropriate to apply any penalty against voters merely because their data in two different databases do not match.

G.A.B. must ensure that voters are not disqualified or disenfranchised simply because their name is spelled or formatted differently or varied in two different state databases. However, if a clerk suspects voter fraud as a result of the retroactive HAVA Check process, the G.A.B. staff and the District Attorney should be notified. The HAVA Check is simply an additional tool that clerks can use to compare voter data. It is not an "across the board" fraud detection tool.

Proposed Timeline and Activities

The G.A.B. proposes the following general timeline (**May 1 - December 1, 2009**) and activities for completing the retroactive HAVA Check process. Note it is anticipated that this timeline will vary. The timeframes below are intended to be general and are expected to overlap.

1. **May 1, 2009 - June 30, 2009**

G.A.B. Staff “runs” HAVA Checks.

- A. Throughout this period of time, G.A.B. staff will conduct retroactive HAVA Checks on a county-by-county basis -- in population order -- beginning in descending order, with the largest population counties. This will be done on a rolling basis as the HAVA Checks are performed.

- B. This process allows those municipalities with the greatest number of HAVA Checks the longest amount of time to follow up. Running checks by counties also makes the follow up process simpler for providers because all their municipalities will be “run” at approximately the same time.
- C. Once the HAVA Checks are “run” for a given county, reports of voters with a non-match status will be sent to both the county clerks and the appropriate municipal clerks within the respective counties.
- D. Clerks are encouraged to make a determination as soon as possible if they wish to follow up with voters through telephone contacts to attempt to correct the non-matches, or if they wish to have G.A.B. send out Ping Letters.

2. **July 1 – September 1, 2009**

During this timeframe, clerks are given the opportunity to follow-up with voters to attempt to correct the non-matches, or ask G.A.B. staff to send Ping Letters to voters.

- A. Clerks are given the opportunity to follow up with voters to attempt to correct the non-matches. If clerks wish to follow up with voters to attempt to correct the non-matches, they will have from July 1 – September 1, 2009, to do so.
- B. If clerks do not wish to conduct follow up telephone calls, they should make this decision as soon as possible, but no later than September 1, 2009. G.A.B. will then send out Ping Letters to those affected voters.
- C. Clerks who choose to follow up with voters to attempt to correct the non-matches should inform G.A.B. staff as soon as possible, but no later than September 1, 2009, of the voters who did not respond to telephone contacts.

3. **September 1- October 31, 2009**

During this timeframe, G.A.B. staff will mail Ping Letters on behalf of clerks.

- A. In an appropriately worded Ping Letter, voters will be asked to respond to G.A.B. within 30 days.
- B. G.A.B. staff will compile county-by-county reports of the outcome of the Ping letter mailing and send to both county and municipal clerks.

4. **November 1 - December 1, 2009**

During this time, G.A.B. staff will develop a report of the 2009 Retroactive HAVA Check Process, to present to the Government Accountability Board during its December 14, 2009 regular meeting.

- 5. **December 14, 2009: G.A.B. Board Meeting.** G.A.B. staff will provide a final report on the retroactive HAVA Check process to the Board at its December 14, 2009, meeting.

Communication Plan

It is critical that G.A.B. remains in close communication with local election officials throughout this retroactive HAVA Check process. Communication is intended to take place in the following ways:

1. G.A.B. staff met with the SVRS Standards Committee on November 24, 2008, to review preliminary recommendations and gather feedback for further development of uniform standards and procedures for conducting retroactive HAVA Check of voter records.
2. G.A.B. staff posted the draft protocol on the G.A.B.'s website on November 28, 2008, and sent it to county and municipal clerks for review on December 1, 2008.
3. G.A.B. staff presented an interim report to the G.A.B. at its December 17, 2008, meeting for information or consideration.
4. Between the December 17, 2008, G.A.B. meeting, G.A.B. staff continued to ask clerks to provide feedback on the proposed protocol.
5. Present the Protocol to the G.A.B. at its January 15, 2009, meeting for formal acceptance and approval. Clerks have been invited and encouraged to attend the Board's January 15, 2009, meeting.
6. Share the retroactive voter record protocol with the two major political ballot parties, state agencies (Department of Transportation and the Department of Administration's Division of Enterprise Technology), the Federal Social Security Administration, county, labor and community groups.
7. Following the January 15, 2009, G.A.B. meeting, share G.A.B.'s ruling on the retroactive voter record protocol with the Legislature, all municipalities, clerks and the general public.
8. Prepare a timeline with communication milestones based on the G.A.B. decision, keep the Legislature, municipalities, clerks and the general public duly informed before, during, and after the actual retroactive HAVA Check processing.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the January 15, 2009, Meeting

TO: Members, Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:
Michael Haas
Staff Counsel

SUBJECT: Preliminary List of Possible 2009 Legislative Initiatives

Task

Compile a list of items to be considered for possible legislative initiatives regarding elections-related statutes for the Board's consideration.

Process

Elections Division staff members submitted ideas for potential legislative changes, which are listed below. Also included are several ideas submitted by local clerks and other interested parties. For purposes of this memorandum, a brief summary of the suggested changes and topics to review is provided, along with a notation regarding the primary relevant statutes which would need to be amended.

Request

Staff is seeking the Board's direction and authorization to continue researching these topics for the purpose of pursuing legislative initiatives and changes designed to improve the efficiency and effectiveness of elections administration in Wisconsin. As noted below, in some instances staff is requesting the Board's approval to proceed with drafting legislation, and in other instances staff is seeking the Board's input regarding continuing to research potential legislative options and the policy decisions involved. The items are generally listed in order of staff's judgment of their priority and importance.

Proposed Initiatives for Legislative Consideration

1. Initiate Early Voting

Create and amend multiple sections of the Wisconsin Statutes to allow for or require true early voting in which ballots are processed prior to Election Day, replacing much of the current system of absentee voting in which election officials process all ballots on Election Day. *Various sections in Chapters 5, 6, 7, 8, and 10.*

Staff has conducted extensive research on this issue and is preparing a comprehensive report for the Board's consideration. Several significant policy and legal considerations will need to be addressed as part of any effort to institute early voting in Wisconsin

2. Absentee Voting

A. Policy Issues

The items in this subsection involve policy matters related to absentee voting that require further study after being raised during the 2008 General Election.

1. Mandate minimum hours for absentee voting statewide. §6.87.
2. Allow for the processing of absentee ballots prior to Election Day, so that absentee ballots are recorded as final votes and absentee voters do not have the option to also vote on Election Day. §6.88(3)(a).
3. Terminate in-person absentee voting prior to the Monday before Election Day. §6.87(6).
4. Clarify whether or not a power-of-attorney agent can sign a voter's registration application or absentee application. §6.86(2), (3).
5. Assure privacy for in-person absentee voters. §6.87.

B. Technical Issues

The following items are primarily technical issues to clarify and improve existing procedures for absentee voting, which involve minimal policy considerations, and for which drafting of legislative proposals may begin.

1. Establish consistent deadlines for absentee requests submitted by email and facsimile. §6.86(1)(ac), (b).
2. Refine requirements regarding address information for voters and witnesses. §6.87(2), (4).
3. Specifically authorize a special voting deputy assisting an elector who is an occupant of a nursing home, retirement home or community-based residential facility to sign as both a witness and as an elector assisting the voter. §6.875(6)(c).
4. Specify that both special voting deputies must sign as witnesses. §6.875(6)(c)

3. Improve Accommodation of Voting by Military and Overseas Electors

Legislation is being drafted to address some of the following issues. Staff anticipates and recommends that G.A.B.'s role should be to work with legislators who are initiating action on these matters as well as state agencies and veterans organizations.

- A. Explore the use of remote access voting by military and overseas electors. §6.24.
- B. Implement initiatives to simplify the voting process for military and overseas electors. §6.24.
- C. Address the requirement that overseas voters obtain the signature of a U.S. citizen as a witness. §6.24.

4. Clarify Requirements for Retention of Election Data

Staff will be working to initiate legislative changes regarding the following items based upon the Board's prior review and authorization.

- A. Revise requirements related to retention period for election materials for federal and state elections. §7.23(1).
- B. Clarify categories of data to be preserved. §7.23(1).
- C. Require manufacturers to either escrow all programming data or provide a mechanism for election officials to preserve programming data. §5.095.

5. Update and Simplify Voter Registration Procedures

The following items require further study and policy determinations, but they have been raised as issues for G.A.B. consideration.

- A. Restructure registration periods to provide clerks more time to process applications and prepare for Election Day. This item would also be related to and affect any changes regarding procedures for absentee voters and overseas and military voters. §§6.28, 6.29.
- B. Explore alternative methods to accomplish voter mailings to make them more uniform and cost-effective for all parties.
- C. Eliminate the requirement to record financial account numbers on poll lists and instead record those numbers, as well as other proof of residency documentation, on the registration form, and require redacting it in the case of an open records request. §6.79(4).
- D. Explore permitting additional items that may or may not be used as proof of residence given changes in technology and documentation, such as electronic bank statements displayed on a personal electronic device. §6.34(3).
- E. Consider prohibiting Special Registration Deputies from receiving compensation based on hourly or daily wages, in addition to the current prohibition on compensation based on the number of voter registrations obtained. §§6.26, 12.03(3)(ze).
- F. Require that Special Registration Deputies for high schools with students residing in multiple jurisdictions be appointed by the G.A.B., rather than requiring their appointment by the clerk of each municipality. §6.26(2)(am), 6.28(2)(b).

- G. Clarify that Special Registration Deputies at high schools may register voters only during the in-person registration period, to eliminate a possible interpretation that registrations at high schools may continue up to election day. §6.28.

6. Revise and Clarify Recount Process

Based on the Board's review of the recount manual and lessons learned in the fall recounts, amend various provisions of Chapter 9 related to the recount process, including the following items.

- A. Revise deadlines for filing recount petitions, convening recount canvass, and appealing recount decisions to circuit court. §9.01(1)(ar)(3), (b), and (6).
- B. Permit substitute notice of recount on candidates and allow recount to commence upon reasonable attempt of service and open meeting notice. §9.01(2).
- C. Require analysis of absentee application and permit drawdown of defective applications. §9.01(1)(b)(2) and (1)(b)(4)(b).
- D. Prioritize drawdown of improperly initialed ballots, starting with pool of ballots with no initials, then ballots with one initial. §9.01(1)(b)(4)(d).
- E. Consider increasing the cost of recounts between .5% and 2% margin from \$5 per ward to a higher amount. §9.01(1)(ag)(1m).
- F. Clarify that the G.A.B. has the authority to issue orders regarding the conduct of election officials during the recount process without the filing of a formal complaint, except that the Board may not review the recount result or substantive decisions of the recount board. §5.06(10).

7. Update and Simplify SVRS Procedures

Staff considers these items to be technical in nature and helpful for elections administration.

- A. After general elections, extend the deadline for local clerks to process voter information in SVRS from 30 to 45 days with the option to apply to the G.A.B. Director for further extensions. §§6.33(5)(a), 7.15(4).
- B. Add voter telephone numbers and email addresses to the list of items that are exempt from release on voter lists. §6.36(1)(b)1.

8. Establish Automated and Simplified Registration and Voting Processes

Staff considers the following items to be "outside the box" ideas that would require further analysis, and is seeking Board authorization to conduct further study.

- A. Provide for simultaneous registration of voters upon obtaining a drivers license or registering at a Wisconsin university or college.
- B. Establish an online registration system for voters with a Wisconsin driver's license or identification card.
- C. Explore the feasibility of a vote-by-mail system.

9. Standardize Process Resulting From Extension of Polling Hours by Circuit and Federal Courts

Staff considers this item to be a technical change.

Specify that the same notation shall appear resulting from an extension of voting hours by a circuit court as currently required after a federal court. §6.96.

10. Revise Timeline for Filling Municipal Judge Vacancy by Election

Staff considers this item to be a technical change.

Permit a vacancy in the office of municipal judge that occurs after December 1 and before the spring election, as a result of the resignation of an incumbent who is not on the ballot to succeed himself or herself, to be filled at the regularly scheduled spring election, rather than at the second succeeding spring election, consistent with the procedures for other judges. §§17.23(1)(bm), 8.50(4)(fm).

11. Clarify Treatment of Annexed Wards

Staff considers this item to be a technical change.

Mandate that a ward in a city or village resulting from an annexation shall not have lines which cross the boundaries of an assembly district, consistent with the same requirement for townships. Also, when a county does not adjust boundaries for county supervisor districts to reflect an annexation, require municipalities to create a separate voting ward. §§5.15(7), 5.15(2)(f)4, 66.0217(8)(b).

12. Ease Requirement to Record Votes for Write-in Candidates

Eliminate requirement for clerks to record certain write-in ballots of prank candidates or unregistered write-in candidates.

13. Expand Time Allowed for Pre-Election Test

Staff considers this item to be a technical change.

Permit municipalities of over 10,000 persons to begin the pre-Election tests of voting machines 15 calendar days prior to Election Day, rather than 10 days. §5.84(1).

14. Clarify Authority to Publish Election Notices as Inserts

Staff considers this item to be a technical change.

Expand the category of Chapter 10 election notices that may be published as inserts to include B, C, D and E notices, and specify that newspapers must charge rates consistent with commercial rates for election notices published as advertising inserts. §§5.94, 985.08(7).

15. Use of Poll Lists

- A. Permit municipalities using a central count absentee process to use one original poll list and one original absentee ballot log instead of two original poll lists. §7.52(2).
- B. Explore the use of electronic poll lists or the use of one poll list when issuing the voter number. §6.79(1m).

16. Simplify Process for Governmental Employees to Act as Election Officials

Clarify the administrative process for local and state governmental employees to serve as election officials. §7.33.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

TO: Government Accountability Board Members
FROM: Kevin J. Kennedy, Director and General Counsel
DATE: January 15, 2009 Meeting
SUBJECT: Delegation of Authority to Director and General Counsel

By statute, the Government Accountability Board has plenary authority over all of the state's election laws. In separate subsections of §5.05(1), Wis. Stats., the election law gives the Board a series of specific, quasi-judicial and litigative powers in addition to its plenary authority and, under §5.05(1)(e), Wis. Stats., the Board may delegate some but not all of those specific responsibilities to the Director and General Counsel.

Section 5.05 Government Accountability Board; Powers and Duties.

(1) . . .the Board may:

(e) Delegate to its *Director and General Counsel* the authority to intervene in a civil action or proceeding under [sub. \(9\)](#), issue an order under [s. 5.06](#), exempt a polling place from accessibility requirements under [s. 5.25 \(4\) \(a\)](#), exempt a municipality from the requirement to use voting machines or an electronic voting system under [s. 5.40 \(5m\)](#), approve an electronic data recording system for maintaining poll lists under [s. 6.79](#), or authorize non-appointment of an individual who is nominated to serve as an election official under [s. 7.30 \(4\) \(e\)](#), subject to such limitations as the board deems appropriate.

At its December 10, 2007 meeting the Board adopted a motion delegating certain authority to its Director and General Counsel. Before the passage of 2007 Wisconsin Act 1, the State Elections Board was authorized to delegate this authority along with other specified powers related to the conduct of investigations and enforcement actions to its executive director. 2007 Wisconsin Act 1 removed the authorization for the Government Accountability Board to delegate authority to its chief administrative officer to issue a subpoena, apply for a search warrant or commence a legal action. Now the Board must specifically authorize these actions. Section 5.05 (1)(b), (2m)(c)4., 6.a., Wis. Stats.

Recommendation

Pursuant to §5.05 (1)(e), Wis. Stats., and his role as agency head and chief state election official, I recommend that the Board formally delegate the following quasi-judicial and litigative authority to the Director and General Counsel:

- To intervene in actions under the provisions of §5.05(9), Wis. Stats.
- To issue compliance review orders under the provisions of §5.06, Wis. Stats.
- To exempt municipalities from polling place accessibility requirements pursuant to the provisions of §5.25(4)(a), Wis. Stats.
- To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of §5.40(5m), Wis. Stats.
- To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of §7.30(4)(e), Wis. Stats.
- To sign contracts on behalf of the Board.
- To certify and sign election related documents including candidate certifications, certificates of election on behalf of the Board.
- To apply for federal funds and sign certifications related to federal funding eligibility on behalf of the Board.

This delegation would be subject to the requirement that before it is exercised, the Director and General Counsel consult with the Board Chair to determine whether Board members should be polled or a special meeting conducted before action is taken. In addition, the Director and General Counsel would be required to report, at the Board meeting immediately following action on the delegated authority, the specifics of the action taken, the basis for taking the action and the outcome of that action.

The only exceptions to consultation with the Board Chair would be decisions to permit a municipality to use paper ballots instead of electronic voting equipment, to exempt municipalities from polling place accessibility requirements, to authorize the non-appointment of an individual who is nominated to serve as an election official, to sign contracts election and federal funding certifications on behalf of the Board. These are fairly routine decisions that are predicated on unique circumstances such as the cost of programming electronic voting equipment when there is only one race on the ballot.

The delegation continues beyond the calendar year until reviewed by the Board. This specific delegation should be reviewed each January by the Board or upon any transition in the position of Director and General Counsel. The next scheduled review would be January, 2010 or the first meeting in 2010.

A proposed motion accompanies the memorandum.

MOTION: Pursuant to § 5.05 (1)(e), Wis. Stats., and his role as agency head and chief state election official, the Government Accountability Board delegates the following authority to its Director and General Counsel:

- 1) To intervene in actions under the provisions of section 5.05(9), Wis. Stats.;
- 2) To issue compliance review orders under the provisions of section 5.06, Wis. Stats.;
- 3) To exempt municipalities from polling place accessibility requirements pursuant to the provisions of section 5.25(4)(a), stats.;
- 4) To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of section 5.40(5m), Wis. Stats.; and,
- 5) To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of section 7.30(4)(e), Wis. Stats.

The Director and General Counsel shall consult with the Board Chair to determine whether board members should be polled or a special meeting conducted before action is taken. The Director and General Counsel does not need to consult with the Board Chair with respect to decisions to permit a municipality to use paper ballots instead of electronic voting equipment, to exempt municipalities from polling place accessibility requirements, to authorize the non-appointment of an individual who is nominated to serve as an election official and to sign contracts election and federal funding certifications on behalf of the Board.. The Director and General Counsel shall also report, at the Board meeting immediately following action on the delegated authority, the specifics of the action taken, the basis for taking the action and the outcome of that action.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

TO: Government Accountability Board Members

FROM: Kevin J. Kennedy, Director and General Counsel

DATE: January 15, 2009 Meeting

SUBJECT: January 2010 Meeting Date

Several Board Members make arrangements to be out of state during the month of January. The State Elections Board had traditionally scheduled a meeting in January to deal with ballot access issues for the spring election. In 2008, the Government Accountability Board held its January meeting at the end of the month because the new Division Administrators started work and the former Boards ceased operating on January 10, 2008. This year the Board scheduled its January meeting for the week following the filing deadline because of the anticipated contests in the two statewide non-partisan races: Supreme Court and State Superintendent of Public Instruction.

Staff has been asked to present a proposed timetable for the January 2010 Board meeting to enable Board Members to make January out-of state travel arrangements in advance. In July 2008, the Board approved its 2009 meeting calendar. In order to facilitate review of ballot access issues, staff recommends scheduling a meeting at the end of the week following the filing deadline for the Spring election. This would be the week of January 11th because the filing deadline is Tuesday, January 5, 2010. The challenge deadline is Friday, January 8, 2010.

Staff recommends the meeting be held on Thursday, January 14, 2010. However, staff recommends the Board plan to hold the meeting by teleconference. The Board has scheduled a meeting for December 14, 2009. Because of the end of the year holidays and the short time between meetings, this leaves very little time for staff to develop meeting materials following the December meeting.

Staff believes the agenda for the meeting should be limited to ballot access issues for state office – there will be a Supreme Court election, along with elections for Court of Appeals and Circuit Court Judge. The Board must also select officers at the January meeting. §15.07(2)(b), Wis. Stats. There may be some closed session matters to follow up on as well.

A proposed motion accompanies this memorandum.

MOTION: The Government Accountability Board will hold its January 2010 meeting on Thursday, January 14, 2010 by teleconference. Agenda items will be limited to state office ballot access issues, selection of officers and other items approved by the Chair in consultation with the Director and General Counsel.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For January 15, 2009 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability

SUBJECT: Review of Ethics Board opinions and guidelines deferred from earlier meetings

Background

The Government Accountability Board is nearing the end of the review, mandated by 2007 Wis Act 1, of opinions and guidelines issued by the Ethics Board interpreting and applying provisions of the Ethics Code and lobbying law. The Board has acted on almost all of these matters, but it omitted acting on a number of opinions and deferred others. I recommend that the Board conclude this mandated process at its January meeting but that, beginning in March 2009, it begin the process of a fresh examination and reissuance of key guidelines.

Omitted opinions

In addition to the opinions and guidelines it specifically deferred, the Board has yet to act on a number of opinions that were scheduled for review. At its meeting of August 27, 2008, the Board affirmed 9 Ethics Board opinions on the agenda at the behest by Mr. Marchant,* but took no action on the remaining opinions under review at that meeting. No objections were raised with respect to those opinions and the Board's inaction appears to have been due to mere oversight. **I have attached my memorandum and the digests of opinions from that meeting and recommend that the Board reaffirm all remaining opinions except 2003 Wis Eth Bd 14. I recommend that the Board withdraw this opinion in light of subsequent statutory changes.**

Deferred opinions and guidelines

In the course of its review of prior Ethics Board opinions and guidelines, the Government Accountability Board deferred action on a number of opinions and guidelines. The deferred matters were identified either by members of the Board, Mike Wittenwyler of Godfrey & Kahn, Senate Chief Clerk Rob Marchant, or Shana Lewis of Lathrop & Clark.

The Board directed that I meet with Mr. Wittenwyler to discuss a number of opinions he identified. That meeting occurred on January 2, 2009. I believe the better context in which to take up the concerns Mr. Wittenwyler has identified would be in issuing new guidelines, rather than in withdrawing or modifying past opinions addressing specific circumstances. Guidelines serve to restate the law, as interpreted by the Board, and to prescribe safe harbors for those subject to the statutes the Board administers. The Board has already indicated that it wants to make the process for adopting and issuing guidelines more open to public comment. **I**

* The opinions the Board affirmed were 2007 Wis Eth Bd 08, 2007 Wis Eth Bd 01, 2005 Wis Eth Bd 10, 1998 Wis Eth Bd 10, 1997 Wis Eth Bd 03, 1995 Wis Eth Bd 02, 1992 Wis Eth Bd 07, 1992 Wis Eth Bd 04, and 1991 Wis Eth Bd 10.

recommend that the Board reaffirm existing guidelines on an interim basis, so that individuals can still have some guidance. These include the following guidelines about which concerns have been raised by interested parties:

- 211, Officials' receipt of food and drink
- 231, Solicitation of items and services
- 234, Telephone calls
- 237, Inviting officials to government sponsored events
- 245, Public service announcements
- 250, Campaign contributions
- 252, Campaigning by legislative staff
- 281, Legal defense funds

My intent would be to place several guidelines on the agenda of each Board meeting. The Board would receive public comment and direct the staff either to issue or modify the guideline in question in light of those comments. Modified guidelines would come back to the Board at its next meeting with the requested modifications

With respect to the deferred opinions, my analysis and recommendations follow:

2002 Wis Eth Bd 06 – In this opinion, the Ethics board advised:

“A legislator is free to commence a lawsuit to challenge the constitutionality of a law and to seek and retain legal counsel to represent him or herself.

“If a legislator wants to join an existing lawsuit, the Ethics Board recommends that the legislator direct a letter to the Court asking that he or she be permitted to join the plaintiffs as a party or as amicus curiae, representing him or herself.

“The Board further advises that a legislator not permit a lobbying organization to pay or arrange for legal services for the legislator.”

The basis for this advice was the Ethics Board's view that the provision of free legal representation is a furnishing of something of pecuniary value to the party receiving the legal services. One could argue that a legislator does not really receive anything from a lobbying organization's financing a lawsuit if a legislator (a) simply joins a lawsuit as an additional nominal party, (b) the legislator's presence as a party is not necessary for standing purposes, (c) and there is no possibility of any monetary recovery or other personal benefit for the legislator. In my view, if a legislator initiates a lawsuit, is required as a party for standing purposes, or can receive a personal benefit from the lawsuit, a legislator does receive a personal benefit from the payment of legal fees by a lobbying principal.

The Government Accountability Board could (1) affirm 2002 Wis Eth Bd 06, (2) modify the opinion to permit a legislator to join a lawsuit brought and financed by a lobbying principal if the above criteria are met, or (3) withdraw the opinion. **I recommend that the Board affirm the opinion and take up in a guideline the general issue of a legislator's ability to accept reimbursement of legal fees or free legal representation.** This issue has come up a number of times in varying contexts and I believe a definitive guideline would be useful.

2007 Wis Eth Bd 06 – In this opinion the Ethics Board addressed restrictions on legislators soliciting campaign contributions from lobbyists. In my view, this is an important opinion addressing the interaction between legislators and lobbyists while the Legislature is in session.

I recommend that the Board reaffirm this opinion. These matters would also be the subject of a guideline.

2007 WisEth Bd 14 – In this opinion, the Ethics Board advised:

A legislator may appear in a lobbying principal's video for employees and directors of the organization's members on the importance of talking about how the member institutions serve members and communities but the lobbying organization should not disseminate the video proximate to an election in which the legislator is or is likely to be a candidate.

The rationale behind this opinion is that an official receives nothing of value from appearing in such a video unless the video is disseminated close to an election, in which case there might be a campaign benefit. **I recommend that the Board reaffirm this opinion.**

1992 Wis Eth Bd 31 – In this opinion, the Ethics Board advised:

A vendor should not sponsor a river cruise for local public officials attending a convention if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the vendor's goods.

The question raised is whether this opinion is consistent with subsequent opinions which have advised officials attending a conference that they may participate in events that are provided or sanctioned by the conference organizer that are intended for and conducive to the informal discussion of issues that are the subject of the conference. (1993 Wis Eth Bd 08, Guideline 222, Attending Conferences). **I believe the opinion is not consistent with subsequent guidance and should be withdrawn.**

1993 Wis Eth Bd 08 – In this opinion, the Ethics Board advised:

A law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm.

The question is whether this opinion should be withdrawn or modified in light of the above. I think not. The distinction is between an event that is an official part of a conference concerning state or local government issues, even if paid for by an independent party, and an event that is simply a private dinner or reception held coincident to someone else's conference. Generally, an official attending a conference has either paid for attendance or has been authorized to attend by the official's agency or government entity. That payment or authorization can be seen as encompassing all conference events. Such payment or authorization does not cover extraneous events. **I recommend that the Board reaffirm this opinion.**

Opinions issued to local officials concerning conflicts of interest – The board raised a question about opinions issued to local officials that advised that an official not participate in a matter in which the official, the official's spouse, or the official's dependent child had a financial interest. I have identified two such opinions – 1996 Wis Eth Bd 10 and 2000 Wis Eth Bd 1. The board asked why the advice would not apply to other relatives. The answer is that the statute only applies to an official and a member of the official's "immediate family" and the opinions track the language of the statutory definition.

Section 5.05 (6a), *Wisconsin Statutes*, provides that “To have legal force and effect, each advisory opinion issued by the board must be supported by specific legal authority under a statute or other law, or by specific case or common law authority.” I think it is fair to say that case law addressing whether an action by a local government is valid or not would go further than the Ethics Code in defining an impermissible conflict of interest. **But I recommend that, rather than modifying prior opinions, the Board affirm all prior opinions addressing local officials’ conflicts of interest and address this issue in future opinions and in a guideline.**

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: July 30, 2008

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability

SUBJECT: Further review of Ethics Board opinions

Attached to this memorandum are the digests of all the remaining opinions of the Ethics Board, issued since 1990, that the Government Accountability Board is scheduled to review this year. For review at the Board's August meeting there are 17 opinions addressing Lobbying Registration and Reporting issues, 20 opinions addressing an official's accepting meals, transportation, and speaking fees. There is also 1 opinion on an appointed official running for elective office and 2 on improper use of office (all of which should have been part of the Board's earlier reviews). In addition, there are 32 opinions addressing local officials' conflicts of interest, 8 opinions addressing local officials' acceptance of gifts, and 4 opinions addressing miscellaneous issues under the Code of Ethics for Local Officials. These are scheduled for review at the Board's November meeting.* Finally, there are 16 Guidelines that need to be reviewed.

I recommend that the Board affirm each Guideline and all but one opinion. The Board should withdraw 2003 Wis Eth Bd 14 in light of a statutory change exempting tribal officials from provisions of the lobbying law.

There are several issues to which I would like to draw the Board's attention. The Ethics Board and the Attorney General have both interpreted the lobbying law's prohibition on a lobbyist or principal furnishing items to a state official to include both giving and selling. I believe that the Government Accountability Board should adopt that interpretation.

The Ethics Board created a policy exception to the prohibition to permit officials to purchase food and drink from a lobbying principal at an event intended for and conducive to the discussion of state governmental processes, proposals, or issues. The Government Accountability Board should decide whether it wants to continue that exception. I recommend that it do so. (Guidelines 211, 212, 213, 214, 216, and 218.

* I am also attaching a 57 page index of opinions issued between 1978 and 1990. Many opinions are listed more than once because they were indexed under more than one topic heading. I am recommending that the Board not review these opinions and allow them to lapse. The opinions were issued before the Ethics Board assumed administration of the lobbying law, before the Code of Ethics for Local Officials was adopted, and before substantial changes were made to the restrictions on state officials' accepting meals and travel. The opinions are between 18 and 30 years old. To the extent they created useful precedent, that precedent almost certainly found its way into later opinions that the Board will review. Alternatively, I suggest that the Board take up the older opinions early next year, rather than as part of the current review.

The final issue is that the Ethics Board advised that, in general, an official could demonstrate that food and drink were received on behalf of the state and for the state's benefit (and hence permitted under the specific statutory exception for such receipt) if the official obtained authorization to attend the event from superiors or, in the case of legislators, from the Assembly Speaker or Senate Committee on Organization. I think this policy has worked well for the most part. The Board should consider whether it wants to continue this policy.

To access a .pdf copy of the full opinion, click on the blue text.

For August meeting:

Lobbying registration and reporting

LOBBYING..... [2005 Wis Eth Bd 1](#)

This is in response to your letter in which you have asked a number of general questions concerning application of laws administered by the Ethics Board to a 501 (c) (3) or 501 (c) (4) organization. The answers pertain equally to a 501 (c) (3) or 501 (c) (4) organization.

¶1 Any organization may invite any or all state public officials or candidates for state office to attend a fundraising event and may note that attendance publicly. As Ethics Board Guideline 211 indicates, if the organization employs a lobbyist, a state official or candidate must generally decline to partake of food or drink. If the organization does not employ a lobbyist, a state official may accept food and drink but must pay for it; a candidate may accept food and drink without payment. Please note that §11.34, Wisconsin Statutes, forbids a person to solicit a charitable contribution from a candidate for office.

¶2 Any organization may invite a state public official or candidate for state office to be a speaker at a fundraising event and may provide a meal or reimbursement to the official or candidate if, but only if, the official is presenting a talk about state issues. Ethics Board Guideline 223 addresses this. If an official directs that a member of the official’s staff accompany the official in that circumstance, then the organization may provide a meal to the staff member.

¶3 Wisconsin Statutes impose no limitations on a 501 (c) (3) or a 501 (c) (4) organization’s ability to engage in lobbying activities. Such an organization, of course, is subject to the same restrictions and requirements under the lobbying law as any business or organization that pays an individual to lobby. If an organization does not pay an individual to lobby on its behalf, it is not subject to the lobbying law. Ethics Board Guideline 510 outlines the lobbying law’s requirements. Our understanding is that federal tax laws impose limitations on the amount of lobbying in which a tax-exempt organization may engage without losing its tax-exempt status. You should consult with the Internal Revenue Service about this issue.

¶4 If an organization that employs a lobbyist provides money to a second organization to lobby on issues under the first organization’s direction, the first organization may need to report those payments to the Ethics Board.

¶5 The lobbying law does not place restrictions on the sources from which an organization that employs a lobbyist obtains its money.

LOBBYING AND LOBBYISTS..... [2003 Wis Eth Bd 14](#)

The Ethics Board advises that the lobbying law does not exempt elected leaders of Wisconsin’s Native American tribes from its registration and reporting requirements.

LOBBYING AND LOBBYISTS..... [1997 Wis Eth Bd 19](#)

The Ethics Board advises:

- (1) If an individual contracts for or receives economic consideration (including stock or an option to acquire stock) from a company, attempts to influence legislation or rules on its behalf, and communicates with state officials, either orally or in writing, on five or more days in a reporting period in attempting to influence those officials,

then Wisconsin's lobbying law will require the company to register as a lobbying principal and to authorize the individual to lobby on its behalf; and

(2) An individual should not agree to lobby on behalf of a company if the individual's compensation is stock or a stock option, unless the individual is prepared to clearly and convincingly demonstrate that the value of the stock or the stock option is not *in any manner* dependent on the success or failure of legislative or administrative action.

LOBBYING AND LOBBYISTS..... [1999 Wis Eth Bd 7](#)

The Ethics Board advises that: (1) Wisconsin law requires an officer or member of a union who makes a lobbying communication on the union's behalf on more than four days in a reporting period to be licensed and authorized as a lobbyist if the union reimburses the member's employer for the individual's wages for the time spent in lobbying activities; and (2) the union should include, in its semi-annual report of lobbying expenditures, the union's salary reimbursement for an individual's time spent in lobbying activities, whether or not the individual is a lobbyist.

LOBBYING..... [1999 Wis Eth Bd 2](#)

Each independent chapter of a network of organizations that spends more than \$500 in a year to employ a lobbyist must separately register as a lobbying principal if its lobbyist makes lobbying communications on at least five days in a six-month reporting period. If the network (1) has articles or other written agreement of association; (2) has officers, directors, or others who jointly direct the association's activities; and (3) the lobbyist does not take direction from any one chapter or combination of chapters other than the association; then the network rather than the individual chapter should register as a principal.

LOBBYING LAW [1997 Wis Eth Bd 10](#)

The Ethics Board advises that a lobbying principal include in its semi-annual report to the Ethics Board the time an individual, who is not a lobbyist, spends on the principal's behalf participating, and preparing to participate, on a committee established by a state agency to formulate recommended changes to state statutes.

LOBBYING AND LOBBYISTS..... [1997 Wis Eth Bd 5](#)

A lobbying principal should not report in its Statement of Lobbying Activities and Expenditures the time and money it has spent on developing and airing television commercials that do not urge members of the general public to try to influence legislation or administrative rulemaking.

LOBBYING..... [1996 Wis Eth Bd 17](#)

An association is a lobbying principal subject to Wisconsin's lobbying law if (1) it reimburses a member for lost wages in connection with lobbying on the association's behalf and (2) the member communicates with state officials other than the legislators from the member's own district, on more than 4 days in a 6-month reporting period.

A lobbying principal may not, consistent with the lobbying law, reimburse its members' campaign contributions that are furnished at a time not permitted to the principal.

LOBBYING AND LOBBYISTS..... [1993 Wis Eth Bd 10](#)

A. Regardless of whether a lobbyist is acting on behalf of the organization that employs the lobbyist or independent of it, the lobbyist need not account to the Ethics Board:

1. For time the lobbyist spends participating as a member in the deliberations either of a rule-making advisory committee established by a state agency under §227.13 or of a committee of the Legislature or
2. For time the lobbyist spends providing information to a state agency official in response to the official's request.

B. Otherwise the lobbyist should account for all the time he or she is engaged in attempting to influence state legislation or an administrative rule on his or her employer's behalf, even if the information the lobbyist provides was requested by a legislator.

C. A lobbyist is not obliged to account to the Ethics Board for activities:

1. That are unrelated to influencing state legislation or administrative rules or
2. That the lobbyist undertakes independent of his or her employer's interests and not as its representative.

LOBBYING AND LOBBYISTS..... [1993 Wis Eth Bd 1](#)

An individual is a lobbyist if he or she engages in activities that constitute lobbying under the lobbying law, even if the activities are merely an outgrowth of legal representation. Lobbying includes attempting to influence or affect legislation or administrative rules, but does not include attempting to influence other kinds of agency decisions. Discussions with state agencies concerning the use of conventional construction bidding as opposed to privatization for prisons, attempts to get a state agency to make payments due your client, a conversation with a state agency regarding the effect of a highway project on your client, contacts regarding a client's proposal to design buildings for the State of Wisconsin, and discussions with a state agency concerning possible investment in a client do not appear to constitute lobbying and an individual's pursuit of these activities would not require the individual to obtain a lobbying license or require the individual's client to register as a lobbying principal with the Ethics Board.

LOBBYING – DEFINITIONS..... [1992 Wis Eth Bd 21](#)

Wisconsin's lobbying law poses no restriction on a lobbyist representing clients in negotiating a purchase of land to a state agency on a contingency fee basis unless the matter is associated with adoption, modification, or repeal of a rule or the Legislature's consideration of an appropriation earmarked for the purchase of the land at issue, or an agency's development of such a legislative proposal.

LOBBYING AND LOBBYISTS..... [1992 Wis Eth Bd 16](#)

The time and expenses related to the lobbying activities of individuals employed by companies that are members of a trade association that is a principal should be recorded as follows:

- (1) If the individuals are lobbying on the trade association's behalf, and under its supervision or control, the trade association should account for their time and the lobbying expenses that the association incurs;
- (2) If the individuals are lobbying on their employer's behalf, then if the employer otherwise meets the definition of "principal," the employer

should account for the employees' time and the lobbying expenses that the employer incurs; and

- (3) If the individuals are lobbying on behalf of both the trade association and the employer, then both the trade association and the employer should undertake the accounting described in (1) and (2).

The exemption for participating in the deliberations of an agency's advisory committee on rulemaking established under §227.13 or of a legislative committee of which the individual is a member extends to preparation and communication with committee members and staff, outside a meeting, that is directly related to committee deliberations.

LOBBYING..... [1992 Wis Eth Bd 11](#)
Two organizations jointly lobbying under a different name should continue to report separately the time and resources expended in lobbying by each organization.

LOBBYING..... [1992 Wis Eth Bd 6](#)
The exemption in § 13.621(1)(c) applies only to service on ad hoc advisory committees established by state agencies to advise with respect to rule making. Moreover, service on a state board or committee may not be lobbying if the individual exercises independent judgment and is not a representative of his or her employer.

LOBBYING..... [1992 Wis Eth Bd 2](#)
Both organizations may be principals when one organization contracts with another for the latter's employee to lobby on the former's behalf.

LOBBYING..... [1992 Wis Eth Bd 1](#)
An employee does not violate the so-called "gag" law if he or she communicates with the legislature in his or her capacity as a union officer.

LOBBYING AND LOBBYISTS..... [1991 Wis Eth Bd 7](#)
Non-lobbyists need not maintain an individual daily log of activities. A principal need only maintain a log for the time of its employees and individuals engaged in lobbying activities under the supervision or control of the organization. Costs incurred by a principal for research must be reported only if the cost would not have been incurred but for lobbying.

Meals, travel, talks

LOBBYING LAW [2007 Wis Eth Bd 08](#)
The Ethics Board advises that a state official may not accept food, drink, and entertainment from anyone as long as the person extending the invitation is not a lobbyist or a lobbying principal and the official can demonstrate that the person made the offer for a reason unrelated to the official's holding or having held a government position.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [2007 Wis Eth Bd 1](#)
You ask whether laws administered by the Ethics Board restrict your acceptance of a trip to a foreign country jointly sponsored by organizations whose purposes include fostering better relationships between that country and the United States and fostering understanding, harmony, and cooperation among different religious

traditions. You have indicated that you would be meeting with cultural groups and public officials, both to learn about the diverse cultures in the foreign country and potentially to develop cultural exchanges with that country.

FEES AND HONORARIUMS [2006 Wis Eth Bd 06](#)

Wisconsin law [§19.56 (1), Wisconsin Statutes] encourages you to address groups about legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch and to accept reasonable compensation from the sponsor when you do. The bookends offered are well within the ambit of reasonable compensation. If your address can be appropriately characterized as meeting the subject matter criterion, you may surely retain them.

FEES AND HONORARIUMS [2005 Wis Eth Bd 09](#)

The Ethics Board advises that a crystal bowl, valued at \$125, is reasonable compensation for an elected official who spent eight to nine hours preparing a talk and presented a keynote address related to state government issues to an out-of-state organization.

MEALS, LODGING, TRAVEL AND ENTERTAINMENT [2005 Wis Eth Bd 10](#)

The Ethics Board advises that state agency may accept funds from private sources to be used to reimburse a state official's travel expenses incurred by the official while engaged in official duties.

LOBBYING LAW [2004 Wis Eth Bd 07](#)

The Ethics Board advises that an agency official should pay a lobbying organization on whose board of directors the official serves for any food, lodging, or transportation the organization furnishes the official in connection with serving on its board of directors. Because the official's state agency encourages its employees to participate in the organization's activities, routinely permits employees to participate in those activities without the need to take leave time, and reimburses employees' expenses for those activities when it can, it appears appropriate for the agency to reimburse the official for those costs. The lobbying law is not an obstacle to the organization's reimbursing the state agency for those expenses.

IMPROPER USE OF OFFICE [2003 Wis Eth Bd 3](#)

The Ethics Board advises:
For chairing a conference about state government issues, a state public official may accept an award sanctioned, approved, endorsed by, and presented under the auspices of the organization that is sponsoring the conference but may not accept an award from another organization.

IMPROPER USE OF OFFICE, MEALS, LODGING, TRAVEL AND ENTERTAINMENT [2003 Wis Eth Bd 1](#)

The Ethics Board advises:

1. Consistent with laws it administers, a legislator may participate in a charitable fundraising event that includes golf and a lunch of which the primary beneficiaries are charities with which the legislator is not associated; and
2. A legislator should not accept the offer to bring guests or to attend the awards dinner without paying the same amount as members of the public for those activities.

MEALS, LODGING, TRAVEL
AND ENTERTAINMENT 1998 Wis Eth Bd 15

Apart from the limited exceptions contained in §19.56(3), *Wisconsin Statutes*, the Ethics Board advises that a judge either not partake of free food and drink not available to the general public or pay the higher of the fair value of such food and drink or the ticket cost of the event.

MEALS, LODGING, TRAVEL
AND ENTERTAINMENT 1998 Wis Eth Bd 10

The Ethics Board advises:

- [1] A state public official may accept for the official and for the official's spouse transportation, lodging, meals, food, and beverages, or reimbursement of actual and reasonable costs, from a national association of which the official's state agency is a member, for attendance at the association's meetings to the extent that the official can clearly and convincingly demonstrate that the association's payments are received on behalf of, and primarily for the benefit of, the state and not primarily for private benefit.
- [2] In the normal course of business and in the absence of evidence to the contrary, the Ethics Board will defer to a state agency's determination of whether the provision of travel costs for an official or an official's spouse by a national association of which the state agency is a member is primarily of benefit to and on behalf of the state.

MEALS, LODGING, TRAVEL
AND ENTERTAINMENT 1997 Wis Eth Bd 16

The Ethics Board advises that:

- (1) Both state and local officials may participate in a round-trip train excursion that celebrates a lobbying organization's 10th anniversary;
- (2) The lobbying organization should not furnish refreshments to elected state officials or to state agency officials whose responsibilities relate to rule-making; and
- (3) Local public officials and non-elected state officials whose responsibilities do not involve state rule-making may pay for and partake of the food and drink that is offered in connection with the proposed event. The official should pay the greater of [i] the established charge to others for the refreshments, [ii] the organization's cost of providing the refreshments, or [iii] the fair market value of the recipient's independently acquiring like items at a comparable event.

MEALS, LODGING, TRAVEL
AND ENTERTAINMENT 1997 Wis Eth Bd 12

The Ethics Board advises:

A lobbying organization may, consistent with the Ethics Code and lobbying law, furnish food and drink to state officials at a reception if:

- (1) the organization can demonstrate its genuine attempt to attract the general public to the reception;
- (2) the reception is open to the public on the same terms it is available to state officials without the purpose or effect of the manner of invitation conferring an advantage on a state official greater than that available to the general public; and

either: (a) the organization sets and collects from each state official the greater of: [i] the established charge or ticket price, if any, charged others for the same or comparable benefit, [ii] the organization's cost of acquiring the goods or services the organization provides, or [iii] the market price of the recipient's independently

acquiring like benefits; or (b) the reception is unrelated to state officials' discussion of state government processes or issues initiated by or affecting state government.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [1997 Wis Eth Bd 3](#)

Agency officials may participate in a trip to a foreign country if the trip is authorized by the agency as an undertaking on behalf of the state and primarily for the state's benefit and the agency officials travel as the state's representatives.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [1995 Wis Eth Bd 2](#)

Lobbying principals may furnish cash and in-kind contributions to a national organization or the Department of Development for the organization's annual meeting in Wisconsin. Wisconsin's officials may accept food and drink furnished at events that are provided, sponsored, or sanctioned by the national organization and authorized by the officials' agency. State officials generally may accept items that the national organization or the Department of Development furnishes. A state official should accept an item furnished by a vendor at the meeting only if the item is of insubstantial value and the vendor is not a lobbying principal.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [1993 Wis Eth Bd 2](#)

The Department of Development may sponsor an anniversary celebration for a Wisconsin corporation if, but only if, the department determines that the event will benefit the State of Wisconsin and will promote business, economic development, or tourism. State and local public officials may accept food, drink, and lodging offered in connection with the celebration to the extent that the items are provided by the Department of Development.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [1992 Wis Eth Bd 7](#)

A state public official may participate in a tour on which the official is invited because of his or her public position if it is primarily for the benefit of the state and not for private benefit.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [1992 Wis Eth Bd 4](#)

A state public official may attend a dinner to which the official has been invited because of his or her public position if attendance is primarily for the benefit of the state and not for private benefit.

MEALS, LODGING, TRAVEL

AND ENTERTAINMENT [1991 Wis Eth Bd 10](#)

Consistent with the Ethics Code, a legislator, while attending a conference on behalf of the state, may accept meals, refreshment, and the like that are provided, sponsored, or sanctioned by the event organizer and authorized by the legislature.

LOBBYING AND LOBBYISTS..... [1991 Wis Eth Bd 4](#)

A judge may not accept an honorarium from a principal for presenting a talk but may accept reimbursement of expenses.

Appointed official running for elective office

EMPLOYMENT CONFLICTING

WITH OFFICIAL RESPONSIBILITIES..... [1997 Wis Eth Bd 14](#)

The Ethics Board: (1) advises that the Ethics Code does not require an appointed official of a state agency to resign if the official runs for election to public office; and (2) reaffirms the advice given in 1997 Wis Eth Bd 7.

¶ 1. You have asked about the propriety of an appointed official of a state agency establishing a committee to explore running for election to public office.

¶ 2. The matter about which you have asked is a personnel matter not governed by Wisconsin’s Ethics Code. Nothing in the Ethics Code requires an appointed official of a state agency to resign if the official runs for election to public office. Whether the official may simultaneously retain his position with the agency and seek election to a government position rests in the discretion of the official’s appointing authority.

¶ 3. The Ethics Board reaffirms its recent opinion addressing a like matter, 1997 Wis Eth Bd 7; and commends it as a guide for the agency.

Improper use of office

IMPROPER USE OF OFFICE

[2006 Wis Eth Bd 03](#)

A legislator should not take official action that has a fiscal effect on a private organization on whose board of directors the legislator serves unless the legislator’s appointment to the organization’s board were pursuant to a statute, a resolution of the Legislature, or a condition imposed by the State of Wisconsin that established the legislator’s role as an agent of our state’s government representing governmental interests, not the separate interests of the organization.

IMPROPER USE OF OFFICE

[1992 Wis Eth Bd 24](#)

A legislator should not solicit or accept contributions of legal services or money to pay for legal services if the contributions could reasonably be expected to influence judgment or actions or be considered a reward for past action. A legislator should not accept legal services or contributions to defray litigation expenses unless the legislator can demonstrate, clearly and convincingly, that the contribution is made primarily for a reason that is independent of the legislator’s holding a public office.

For November meeting:

Local officials – conflicts of interest

LOCAL OFFICIALS – DISQUALIFICATION.....

[2007 Wis Eth Bd 9](#)

The Ethics Board advises:

1. If a matter before a town board, is reasonably likely to have more than a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD ABSTAIN from discussion, deliberation, and votes on that matter.
2. If a matter before a town board will have no effect or only a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD PARTICIPATE; and
3. If reasonable people cannot reasonably foresee the effect of a board of supervisors’ action on a supervisor’s financial interests or disagree about whether the effect will be positive or negative or will be substantial or insignificant then the supervisor’s financial interest is too speculative to deny the supervisor’s participation in related discussion, deliberation, and votes, and the supervisor SHOULD PARTICIPATE UNLESS, in the supervisor’s

judgment, to do so would undermine public confidence in the decision or in government.

LOCAL CODE 2005 Wis Eth Bd 04

The Ethics Board advises:

1. A school board member, who is a retiree of the district, should not take any vote on the budget if resolution of the matter is likely to affect the level of health insurance premiums the school district will contribute to retirees.
2. The school board member may vote on a budget matter if any effect on the member's health benefits is remote and speculative.
3. Application of these principles depends on the facts. A local school board attorney is in a better position to resolve this factual issue than are we.

LOCAL CODE – DISQUALIFICATION 2005 Wis Eth Bd 2

The Ethics Board advises:

1. That the retired teacher who is a member of the school district's board of education should not vote on the resolution that would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy if that is likely to affect the health benefits the member receives; but
2. That the retired teacher who is a member of the school district's board of education may vote on the resolution if its effect on the member's health benefits is remote and speculative.

LOCAL CODE 2004 Wis Eth Bd 05

A member of a county board who serves as a trustee of the county's nursing home facility, whose mother is a resident of the facility, should not use her position to obtain anything of substantial value or a substantial benefit for the official personally or for a member of the official's immediate family. Whether that will, or is likely to occur, is a question of fact that the Ethics Board cannot resolve. If a matter comes before the nursing home board that would have a financial effect on the supervisor or the supervisor's immediate family, then she should abstain from participation in the matter. If her need to recuse herself becomes so frequent as to impede her ability to contribute to the nursing home board, then the better alternative is that another individual take her place.

LOCAL CODE – DISQUALIFICATION 2003 Wis Eth Bd 17

The Ethics Board advises that a member of the Village's governing board may participate in the consideration or decision about improvements the village will make to the village's sewage system and the financing of those improvements as follows:

1. If the sewer improvement does not personally and substantially benefit the property interest of a village trustee, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement's cost will be met.
2. If the sewer improvement personally and substantially benefits the property interest of a village trustee, but the improvement also confers a substantial benefit on all or a sizeable portion of the village's property owners, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement's cost will be met.
3. If the sewer improvement produces a substantial or personal benefit to the trustee's property interest that is not common to all or a sizeable portion of the village's property owners, but the village assesses the improvements' costs to the property owners who are the beneficiaries of the improvement,

the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement's cost will be met.

4. If the sewer improvement produces a substantial or personal benefit to the trustee's property interest that is not common to all or at least to a sizeable portion of the village's property owners, and the village assesses the improvements' costs to all of the village's property owners or at least to property owners who do not benefit from the improvements ordered, the trustee should not participate in discussions and actions that have as their goal the transfer of the costs of the sewer improvements to the trustee's property to others in the village.

LOCAL CODE – DISQUALIFICATION [2003 Wis Eth Bd 9](#)

The Ethics Board advises:

That a special purpose district reconsider its vote because a commissioner who voted to distribute a large monetary refund to original members of the district would be a recipient of that sum. In any new vote on the same proposal, the commissioner who would receive the distribution should abstain from any participation in discussion, debate, or vote.

LOCAL CODE – DISQUALIFICATION [2003 Wis Eth Bd 8](#)

The Ethics Board advises that a town chair should not simultaneously participate in Town decisions concerning services provided to the Town by a company owned by the same individual that owns the company of which the town chair is an employee.

LOCAL CODE [2002 Wis Eth Bd 5](#)

The Ethics Board advises:

The effect of building a public facility on the value of an official's adjacent property is a factual one. The factual assessment is important but is not one we can make. In the absence of anything other than conjecture about that effect, public policy favors a public official's exercise of official duties. But the official, at his or her discretion, may abstain from participation if the official believes participation is likely to undermine citizen confidence in the county's government. Therefore:

1. If building the public facility on adjacent property will, or is reasonably likely to have a financial effect on the official's land, the official should abstain from participation in the decision.
2. In the absence of any financial effect, the official should participate; and
3. If the effect is conjectural or attenuated, the official should participate unless, in the official's judgment, to do so would undermine public confidence in the decision or in government.

LOCAL CODE – DISQUALIFICATION [2002 Wis Eth Bd 4](#)

The Ethics Board advises:

If a county's contract with a union will provide a significant precedent for a union contract in which a county board supervisor has a personal financial interest, then the supervisor should not participate in negotiations, discussions or votes on the former. If the effect of the county's contract on the contract covering the supervisor is merely conjectural or inconsequential, the supervisor may participate in decisions concerning that contract.

LOCAL OFFICIALS – DISQUALIFICATION [2002 Wis Eth Bd 2](#)

The Ethics Board advises that :

1. Under §19.59, Wisconsin Statutes, the village trustee whose property abuts the property that is the subject of the company's rezoning petition, and who is an employee of the company, should not participate in discussion, debate, or votes on the petition;
2. Section 19.59, Wisconsin Statutes, is unlikely to restrict the village trustee who is an employee of a company that sells supplies to the company seeking the rezoning to vote on the petition; and
3. Section 19.59, Wisconsin Statutes, is unlikely to restrict the village trustee who owns a company that, in the past, has done business with the company seeking the rezoning to vote on the petition.

LOCAL CODE – DISQUALIFICATION [2002 Wis Eth Bd 1](#)

The Ethics Board advises:

1. As long as the effect of teacher contract negotiations on the salary and benefits provided to school principals is uncertain and conjectural, §19.59 does not restrict a school board member whose spouse is a principal to participate in negotiations with the teachers' union. Resolution of the issue requires a determination of fact that cannot be made in an opinion. A school district's attorney is in a better position to ascertain this fact.
2. A school board and superintendent should amend the superintendent's employment contract to remove a provision that ties the superintendent's salary increases to increases provided to district administrators.

LOCAL CODE – DISQUALIFICATION [2001 Wis Eth Bd 1](#)

The Ethics Board advises: (1) that local governmental officials should not accept free or discounted admission to events at a facility owned by the local governmental unit; (2) that, except as just stated, statutes administered by the Ethics Board are not an obstacle to the facility's oversight authority using, for the conduct of official business, a conference room that looks out on events; (3) that a local governmental official may not use the conference room for a non-governmental purpose unless the use of private rooms, or admission to private rooms, is for sale to the general public for the pertinent event, and then only under the same terms and conditions available to the public; and (4) that statutes administered by the Ethics Board are not an obstacle to the local governmental unit's making the conference room available to charitable organizations; however, a local governmental official should not use his or her position to arrange for use of the conference room by an organization of which the official is an officer, director, or authorized representative or agent. Because the room is a public facility, other laws may govern the room's use.

LOCAL CODE – DISQUALIFICATION [2000 Wis Eth Bd 4](#)

The Ethics Board advises that in the case of a local official who has been elected to serve on the board of directors of a municipal mutual insurance corporation by a government approved process, to represent the local government's interests on the board, §19.59, *Wisconsin Statutes*, does not bar the official from participating in the local government's consideration, discussion, or votes to award a contract to or change government policy to permit the purchase of services from the corporation.

LOCAL CODE – DISQUALIFICATION 2000 Wis Eth Bd 2

The Ethics Board advises that:

In the case of a county board supervisor who has been selected as a member of an insurance company’s board of directors by the company’s organizer, the supervisor should not participate in county board consideration, discussion, or votes to award a contract to the company or to change county policy to permit the purchase of services from the company.

LOCAL CODE – DISQUALIFICATION 2000 Wis Eth Bd 1

The Ethics Board advises (1) that a county board supervisor not participate in discussions or votes about litigation strategy or whether or not the county should sue a business with which the supervisor is associated and should absent himself or herself from that portion of a meeting at which the matter is discussed; (2) that §19.59 is not an impediment to a county supervisor’s participation in decisions affecting the liability of a municipality of which the supervisor is an elected official, but considerations of incompatibility of office, which may be addressed by the Attorney General, may speak to abstention; and (3) that §19.59 is not an impediment to a county supervisor’s participation in decisions affecting the financial interests of a child’s spouse, unless the child's family either receives one-half of their support from the supervisor or furnishes one-half of the supervisor’s support, but considerations of the appearance of impropriety may lead the supervisor to abstain.

LOCAL CODE – DISQUALIFICATION 1999 Wis Eth Bd 3

A village trustee should not participate in the discussion, consideration, or vote on a proposal to ban or regulate a business activity in the village in which the trustee is engaged unless the trustee can demonstrate that the trustee's official actions will not result in a substantial financial gain, or avoidance of a substantial financial loss, for the trustee's business.

LOCAL CODE 1998 Wis Eth Bd 4

The Ethics Board advises that, under §19.59, *Wisconsin Statutes*, a county board supervisor should not simultaneously be a member of a county task force established to recommend the feasibility of the county’s building a proposed facility and hold an interest or option to purchase an interest in a company seeking to operate that facility if it is built.

LOCAL CODE 1998 Wis Eth Bd 1

The Ethics Board advises:

that a member of a municipality’s governing body who lives in an unsewered subdivision may, consistent with §19.59, *Wisconsin Statutes*, participate in a decision whether to require the extension of water and sewer service to all existing and future development in the municipality.

LOCAL CODE – DISQUALIFICATION 1997 Wis Eth Bd 6

The Ethics Board advises that a school board member whose spouse is employed as a teacher by the school district:

- (1) not participate in negotiations, discussions, or votes on the teachers’ contract;
- (2) may vote on the district’s budget if the school board has already entered into a contract that establishes teachers’ salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits;

(3) not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner;

(4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a school board member's spouse obtaining a substantial benefit or anything of substantial value from such decision;

(5) may participate in decisions affecting class size, teaching hours, other general school district policy decisions if the effect on the school board member's spouse does not differ materially from the effect on other teachers.

The Ethics Board advises that a school board member who is covered by the school district's health benefits plan not participate in consideration of the terms of that plan or the award of the district's health benefits contract.

LOCAL CODE – DISQUALIFICATION [1996 Wis Eth Bd 13](#)

A member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of a tourism organization and participate in discussions or votes to establish a room tax to support the organization financially.

A member of a local unit of government's legislative body who is a director of a tourism organization generally should not participate in a decision concerning room tax receipts if the decision could substantially affect the level of receipts earmarked for the organization. If decisions on these issues are presented to the legislative body in the form of an ordinance or ordinance amendment, then a member of that body who also serves on the board of the tourism organization should not act in a way that aids the organization of which he or she is a director.

LOCAL CODE – DISQUALIFICATION [1996 Wis Eth Bd 12](#)

A member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of the tourism organization and participate, in a governmental capacity, in discussions or votes to establish a room tax to support the organization financially.

A member of a local unit of government's legislative body to whose business the tourism organization will furnish a substantial benefit through the use of room tax revenues should not participate in discussions or votes to establish a room tax.

LOCAL CODE – DISQUALIFICATION [1996 Wis Eth Bd 10](#)

A city council member who is a retired city employee and who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts.

A city council member whose child participates in the city's health insurance program, and who either provides more than one-half of the official's support or receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts.

A city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance.

LOCAL CODE – DISQUALIFICATION 1996 Wis Eth Bd 9

The Ethics Board advises that §19.59, *Wisconsin Statutes*, does not bar a local government official (1) from acting in a matter concerning another body politic with which the official is associated or (2) from acting in a matter that could affect the financial interests of an organization to whose board of directors the local governmental unit has appointed the official pursuant to statute, ordinance, or resolution to represent the interests of the local government.

A local government official may not simultaneously be an officer or director of a private organization (in a capacity other than as a representative of the local governmental unit's interests) and (a) take official action substantially affecting the organization or (b) use his or her public office to produce a substantial benefit for the organization.

LOCAL CODE – DISQUALIFICATION 1994 Wis Eth Bd 7

A town board member should not as a matter of policy, participate in the town's consideration of a landfill expansion as long as the member derives financial benefit from his or her spouse's employment by a company owned by the individual owning the controlling interest in the landfill operator. A town board member may participate in such a decision without restriction from laws administered by the Ethics Board where the town board member's child is so employed and the member's child neither supports nor derives support from the town board member.

LOCAL CODE – DISQUALIFICATION 1994 Wis Eth Bd 6

The Ethics Board advises that a member of the governing body of a local government unit should not participate in any labor issues in which a union is involved or that could affect the union's interests while the member's law firm simultaneously represents that union.

LOCAL CODE – DISQUALIFICATION 1994 Wis Eth Bd 6 Supplemental

A member of the governing body of a local governmental unit should not participate (1) in labor issues in which a union that is a client of the member's law firm, or one of that union's members, is a party or (2) in labor matters involving other unions that could have a precedential effect on issues affecting the client. The board member may participate in other policy matters as long as those matters have no more than an incidental effect on the union and its members.

LOCAL CODE – DISQUALIFICATION 1994 Wis Eth Bd 5

The Ethics Board advises that two city council members should not participate in any official discussions, consideration, or vote concerning a city's lease or purchase of a building while each simultaneously derives income from a business that itself has, or from a business whose principal owner has, a direct financial stake in the outcome of the city's decision.

LOCAL CODE – DISQUALIFICATION 1994 Wis Eth Bd 4

The Ethics Board advises that a member of a city council that is a negotiator for a labor union in other municipalities should not participate in any official discussions or vote on the Union's contract with the city on whose council the member serves; should not use any information not available to the public, derived from the council member's holding public office, to benefit the Union in other municipalities; and should not be present during closed sessions in which labor negotiations with the Union are being discussed.

LOCAL CODE – DISQUALIFICATION 1992 Wis Eth Bd 28

A village engineer should not act in an official capacity with respect to the review of plans the engineer has prepared in a private capacity or submitted by developers with which the village engineer is associated.

LOCAL CODE – DISQUALIFICATION 1992 Wis Eth Bd 22

A village board member should not participate in official discussions, deliberations and votes with respect to legislation (that is, ordinances and the like) affecting his or her real estate interests except to the extent that the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board member's private interests is neither significantly greater nor less than upon other interests affected by the act.

The village board member ought not to participate in quasi-judicial deliberations or decision-making such as actions on permits, licenses, rezoning of specific parcels, and the like affecting the member's interests or competing real estate interests.

In those instances in which the member should refrain from votes, the member should also refrain from discussion and deliberations and ask that the minutes reflect that the member has withdrawn.

LOCAL OFFICIALS – DISQUALIFICATION 1992 Wis Eth Bd 20

The Ethics Board recommends that a village board member not participate in official discussions, deliberations, and votes with respect to legislation affecting his or her business unless the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board members' private interest is neither significantly greater nor less than upon other interests affected by the act.

The village board member ought not to participate in quasi-judicial deliberations or decisionmaking affecting his or her own business or competing businesses.

LOCAL OFFICIALS – DISQUALIFICATION 1992 Wis Eth Bd 12

Members of local landfill negotiating committees or other local officials, whose financial interests are likely to be affected by negotiations concerning a landfill expansion, should not participate in those negotiations or any decisions to ratify an agreement reached through those negotiations.

LOCAL OFFICIALS – DISQUALIFICATION 1992 Wis Eth Bd 10

A local public official is not disqualified from participating in the award of a contract to a business simply because that business is involved in an unrelated joint venture with the official's employer.

Local officials – gifts and meals

LOCAL CODE –

INFLUENCING OFFICIAL JUDGMENT 2003 Wis Eth Bd 16

The Ethics Board recommends that an official who is a member of a city's plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.

LOCAL OFFICIALS [2002 Wis Eth Bd 7](#)

If a member of a village board participated in the village’s decision to hire him to supervise a village project, then he should return the checks he has received and not accept any payment for the services he has provided. If the member of the village board abstained from participating in the village’s earlier decision, then §19.59, Wisconsin Statutes, permits him to accept payment for the services he has provided.

LOCAL CODE – GIFTS..... [1997 Wis Eth Bd 15](#)

The Ethics Board advises:

An official of a school district who receives a gift from foreign dignitaries visiting the district should treat the gift as given to the school district. The school district may retain, sell or otherwise dispose of the item in accordance with the school district’s policies and interests. This can include selling the item to an official of the district.

LOCAL CODE – MEALS, LODGING,
TRAVEL AND ENTERTAINMENT [1993 Wis Eth Bd 8](#)

A law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm.

LOCAL CODE –
INFLUENCING OFFICIAL JUDGMENT [1992 Wis Eth Bd 31](#)

A vendor should not sponsor a river cruise for local public officials attending a convention if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the vendor’s goods.

LOCAL OFFICIALS – IMPROPER USE OF OFFICE..... [1992 Wis Eth Bd 17](#)

A law firm should not purchase meals for officials of the local units of government the firm represents (nor should a local public official accept) unless, and only to the extent that, the local government would otherwise bear the official’s expense and the governmental units’ obligation to bear the expense is expressly authorized by, and in accordance with, established written criteria.

LOCAL OFFICIALS – MEALS, LODGING,
TRAVEL AND ENTERTAINMENT [1992 Wis Eth Bd 9](#)

A local public official may attend a breakfast meeting sponsored by a private firm at a convention if the official's local governmental unit would otherwise pay the cost.

LOCAL OFFICIALS – MEALS, LODGING,
TRAVEL AND ENTERTAINMENT [1992 Wis Eth Bd 8](#)

A local official should not permit another to pay the official's costs of a golf outing to which the official has been invited because of holding an official position.

Local officials – miscellaneous

LOCAL CODE..... [2006 Wis Eth Bd 01](#)

Whether a member of a school board may serve as an unpaid coach in the school district is primarily a question of compatibility of offices. Generally, the Ethics Code prohibits a member of a school board to use his or her position to obtain a position as an employee in, or a contract with, the school district.

LOCAL CODE 2003 Wis Eth Bd 13

The person or persons on whose behalf a town attorney sought the Ethics Board's advice are entitled to keep the Board's opinion confidential. Whether the attorney directed the letter to the Ethics Board on half of the Town, or on behalf of the Town's chair, is a question of fact the Board cannot resolve.

LOCAL CODE – JURISDICTION 1999 Wis Eth Bd 1

Except in the uncommon instance in which the teacher's appointment is for a specified term or at the pleasure of the appointing authority, a public school teacher is not a local public official covered by §19.59, *Wisconsin Statutes*.

In an instance in which a teacher is a local public official, the teacher should consult with the school district's legal counsel to review the specific circumstances to determine whether §19.59 restricts participation in a program open to teachers whose benefits include lodging and meals in connection with a training seminar in another state, the provision of certain equipment, reimbursement for released time (with prior approval), expense reimbursement for presentations (with prior approval), and lodging and meals in connection with an annual reunion.

LOCAL CODE – JURISDICTION 1998 Wis Eth Bd 16

The Ethics Board advises that §19.59, *Wisconsin Statutes*, does not empower a county to amend its ethics code to require officials and employees whose duties involve oversight, regulation, or reporting with respect to campaigns for county office to identify the campaigns in which the official or employee is involved, together with a description of the involvement.

2002 Wis Eth Bd 06
LOBBYING, IMPROPER USE OF OFFICE

The Ethics Board advises:

A legislator is free to commence a lawsuit to challenge the constitutionality of a law and to seek and retain legal counsel to represent himself or herself.

If a legislator wants to join an existing lawsuit, the Ethics Board recommends that the legislator direct a letter to the Court asking that he or she be permitted to join the plaintiffs as a party or as amicus curiae, representing himself or herself.

The Board further advises that a legislator not permit a lobbying organization to pay or arrange for legal services for the legislator.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You are a member of the Legislature.
 - b. You want to join as a plaintiff in a lawsuit challenging the constitutionality of a recently enacted law.
 - c. One lawsuit has been filed by a number of organizations that employ lobbyists.
 - d. In that lawsuit, the lobbying organizations are paying the attorney fees.
 - e. A second lawsuit has been filed by another organization that employs a lobbyist.
 - f. In that lawsuit, the attorney has agreed to represent the organization and you, without charging a fee. The attorney has indicated that he will rely solely on collecting court-ordered attorney fees if the plaintiff prevails.

Question

- ¶2 The Ethics Board understands your question to be:

Do laws administered by the Ethics Board forbid you to accept or forbid a person or organization to furnish you with legal services in either of the two lawsuits challenging the constitutionality of a law?

Discussion

¶3 You are free to support or oppose any act of the legislature and you are free to pursue either of those courses by resort to the courts. You are at liberty to commence a suit and, if you wish, to retain your own legal counsel. At issue is whether, consistent with Wisconsin's lobbying laws and ethics code, others may pay or arrange for your legal expenses. Because we conclude that they may not, we advise that, if you want to join the existing lawsuits, you petition the Court to permit you to join the plaintiffs in the suits as a party or as *amicus curiae*, representing yourself. This will permit you to be a part of the lawsuit without accepting valuable legal services paid or arranged by lobbying principals.

Application of lobbying law

¶4 Except in limited circumstances not pertinent here,¹ Wisconsin's lobbying law, Chapter 13, subchapter III, *Wisconsin Statutes*, forbids an elected state official from soliciting or accepting anything of pecuniary value from an organization that employs a lobbyist. This restriction plainly encompasses a lobbying principal's payment of an official's legal expenses. 1992 Wis Eth Bd 24.

¶5 The thrust of the governing statute is to foreclose a lobbying organization's furnishing an elected government official with valuable services as a reward for, or to influence, the official's using his or her position to further the organization's legislative goals. Here, the lobbying organizations are offering either to pay, or arrange for, an attorney to represent you as an additional party in the organizations' lawsuits. For the first eighteen months of the legislative session, those organizations alone reported spending about two million dollars to influence the policies of Wisconsin's government. It is to bolster citizens' confidence in their government officials that Wisconsin has, for many years, prohibited those organizations trying to influence the legislature to provide favors for individual legislators. §13.625, *Wisconsin Statutes*. For this reason we advise you not to permit any of these organizations to defray your legal fees.

Application of Ethics Code

¶6 Independent of the lobbying law, the Ethics Code leads to the same result. Section 19.45(2), *Wisconsin Statutes*, reduced to its elements, provides:

No state public official

¹ §13.625(3), *Wisconsin Statutes*, provides:

13.625(3) No candidate for an elective state office, elective state official, agency official or legislative employee of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c), (2), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).

May use his or her public position
To obtain financial gain or anything of substantial value
For private benefit.²

¶7 You are a state public official and the provision of legal services or the payment of legal fees clearly is something of substantial value.³ Two elements of inquiry remain:

- Would this arrangement result in a private benefit for you?
- Would your acceptance of legal services in this instance be a use of public position?

Would this arrangement result in a private benefit for you?

¶8 Yes. That you are not seeking monetary damages from the lawsuit and believe the lawsuit serves the interests of the public does not clear the way for a lobbying organization to pay or arrange for the costs of your legal bills.

¶9 We emphasize that in spite of the good motives that spur your interest in challenging an act of the Legislature, your lawsuit is a personal matter. There is a mechanism whereby the Legislature can seek legal redress and authorize the initiation of a suit in the courts. This is decidedly not the case here. You propose to act on your own; in fact, we understand that you, as an individual, wish to contest an act of the Legislature. That, of course, you may certainly do, but it is important to note that legal fees under discussion would be for a matter you take on in a private capacity, not as a government official. In an earlier circumstance the Ethics Board noted that participation as a litigant in a lawsuit is not normally part of the official function or duties of a legislator.⁴ Election to the legislature simply does not

² §19.45(2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

³ Substantial value is more than nominal or token value. 11 Op. Eth. Bd. 1 (1989); 5 Op. Eth. Bd. 107 (1982).

⁴ See 12 Op. Eth. Bd. 1 (1990). In that opinion, the Ethics Board was asked whether a legislator could use the resources of office in connection with the prosecution of a lawsuit. The Board recognized that Wisconsin law establishes that state funds and resources may only be used for public purpose of statewide concern, rather than for a private purpose. See, e.g., *Wisconsin Solid Waste Recycling Authority v. Earl*, 70 Wis. 2d 464 (1975); *State Ex Rel Wisconsin Development Authority v. Dammann*, 228 Wis. 147 (1938); 72 OAG 172 (1983); 66 OAG 43 (1977). The Ethics Board applied the test whether the expenses arise independently of official functions or because of them. 9 Op. Eth. Bd. 1, 2 (1985); 5 Op. Eth. Bd. 49 (1981). The Board determined that use of

give a blanket commission to participate in lawsuits as a part of holding office.⁵ In contrast, a legislator generally would be free to attempt to persuade another party to participate in litigation as long as the legislator has no pecuniary interest in the litigation's outcome.

Would your acceptance of legal services in this instance be a use of public position?

¶10 Yes. The critical question is whether you would be using your office to obtain free legal services or whether the organizations are providing or arranging legal services for you primarily for a reason independent of your holding public office. That is, would they be allowing you to join as a plaintiff in their lawsuits if you were not a legislator? 1992 Wis Eth Bd 23; 1992 Wis Eth Bd 24.

¶11 The Ethics Board has long interpreted the prohibition on "use of office" to include an official's use of the status or prestige of office to obtain items or services of value.⁶ It appears to us that the lobbying organization approached you to join its lawsuit precisely because you are a member of the Legislature and that the other organizations want you to join as a plaintiff for the same reason. Moreover, we understand that your standing in the lawsuit will be based, at least in part, on your holding elective office and the parties believe that may bolster their legal arguments. As we have previously held, if a legislator's standing in a lawsuit is dependent on the individual's position as a legislator, then, *a fortiori*, the provision of legal services or payment of legal fees is not independent of the individual's holding public office. 1992 Wis Eth Bd 23; 1992 Wis Eth Bd 24.

Advice

¶12 The Ethics Board advises that you are free to commence a lawsuit to challenge the constitutionality of a law and to seek and retain legal counsel to represent you.

state resources in connection with legal representation of a private party in a lawsuit is not a public purpose and is prohibited by the Ethics Code. See *State ex rel. Bowman v. Barczak*, 34 Wis. 2d 57 (1967) (factors to be considered in determining whether an activity is for public purpose are the course or usage of government, whether the object is one for which taxes have been customarily levied, and whether the objects and purposes have been considered necessary for government support). See also 66 OAG 43, 47, *supra* (incidental benefits to the public which result from the promotion of private interests cannot justify the expenditure of public funds).

⁵ The Ethics Board understands that at times the legislature as an institution is involved in litigation and that state funds may be used to fund that litigation. The distinction in such a case is that the determination to participate in such litigation is one made by the legislature in the normal course of exercising its authority.

⁶ 12 Op. Eth. Bd. 5 (1990); 10 Op. Eth. Bd. 47 (1988), 43 (1987); 9 Op. Eth. Bd. 45, 46 (1987), 21, 22 (1986); 8 Op. Eth. Bd. 61 (1985); 7 Op. Eth. Bd. 22 (1983); 5 Op. Eth. Bd. 98 (1982), 57 (1981); 4 Op. Eth. Bd. 63, 46 (1980); 3 Op. Eth. Bd. 54 (1979).

We propose that if you want to join the existing lawsuits, you direct a letter to the Court asking that you be permitted to join the plaintiffs as a party or as amicus curiae, representing yourself.

The Board further advises that you not permit a lobbying organization to pay or arrange for legal services for you.

WR1022

2007 Wis Eth Bd 06
CAMPAIGN ACTIVITIES, LOBBYING LAW

¶1 The Ethics Board advises that a legislator may not ask a lobbyist to pass along information to others about the legislator's desire for a campaign contribution except during the time that the legislator may accept a campaign contribution from a lobbyist. A legislative campaign committee may solicit a campaign contribution from a lobbyist at any time. A legislative campaign committee's employee, not employed by the Legislature, may solicit a campaign contribution from a lobbyist for a legislative candidate at any time if the committee is acting independent of the legislator for whose campaign the contribution is sought. A lobbyist may arrange a fundraising event for a legislative campaign committee at any time.

¶2 This is in response to your letter in which you ask a number of questions about the lobbying law's restrictions on soliciting lobbyists for campaign contributions. We understand your questions to relate to time periods during which the *Statutes* prohibit a lobbyist to furnish, and a legislator to solicit a lobbyist for, a campaign contribution. Our answers pertain to that same period.

¶3 The answers to your questions are governed by §13.625, *Wisconsin Statutes*, which provides, in relevant part:

13.625 Prohibited practices. (1) No lobbyist may:
* * *

(b) Furnish to any . . . elective state official or candidate for an elective state office, or to the official's, employee's or candidate's personal campaign committee:

1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session.
2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

* * *

(3) No candidate for an elective state office, elective state official, agency official or legislative employee of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1) (b) 3. and

(c), (2), (4), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3. and (c), (2) and (6).

¶4 A driving principle of Wisconsin's lobbying law is to place lobbyists and their employers out of the campaign fundraising equation until after the Legislature has concluded the final floorperiod of the legislative session. The idea is to protect legislative activity from the corrupting power of money while the legislature meets and to protect individuals who earn their livelihood by petitioning the legislature for action affecting their clients from government officials' requests for money.

¶5 By the nature of their work, elected officials and lobbyists have many and frequent opportunities to interact on any number of issues of law and policy. A purpose of the lobbying law is to protect them both from discussions of campaign contributions during the legislative session.

¶6 You have posed ten questions.

¶7 **Asking a lobbyist for a nonlobbyist contact.** Statutes that the Ethics Board administers do not prevent a legislator's asking a lobbyist -- without elaboration about the nature, amount, or need for a campaign contribution -- for the name of a nonlobbyist from whom the legislator may request a PAC or conduit campaign contribution.

¶8 **Asking a lobbyist to convey information about a fundraiser.** Section 13.625 (3) forbids a legislator to ask a lobbyist for any campaign contribution or other item or service of pecuniary value. The Legislature has not limited the prohibition to seeking a contribution from the lobbyist's own pocket. Asking a lobbyist for a campaign contribution regardless of the source from which the money will be derived is what the Legislature has prohibited. Asking a lobbyist to pass along information to others about the legislator's desire for a campaign contribution is a solicitation.

¶9 The Supreme Court of the United States, writing about a Wisconsin matter, compels this result. Interpreting the meaning of the phrase "solicitation of orders," the Court said:

We think it evident that in this statute the term includes, not just explicit verbal requests for orders, but also any speech or conduct that implicitly invites an order. Thus, for example, a salesman who extols the virtue of his company's product to the retailer of a competitor's brand is engaged in "solicitation" even if he does not come right out and ask the retailer to buy some.

Wisconsin Dept. of Revenue v. William Wrigley, Jr. Co., 505 U.S. 214, 223 (1992).

- ¶10 **Disclaimer to address circumstance in which an invitation is inadvertently directed to a lobbyist.** As administrator of the statute [§13.625 (3)] that forbids a legislator's solicitation of a lobbyist for a campaign contribution, the Ethics Board asks that legislators use their best efforts to purge lobbyists from their invitation lists.
- ¶11 The Ethics Board recognizes that in spite of a person's best intentions and efforts to avoid directing an invitation to a fundraiser to a lobbyist an invitation may nevertheless find its way to a lobbyist; accordingly, we recommend that an invitation include something like this:
- “Lobbyists: if you received this invitation, please disregard” OR
- “We have tried to exclude Wisconsin lobbyists from this mailing list, if you are a lobbyist and received this notice, please disregard.”
- ¶12 **Legislative campaign committee's inviting a lobbyist to a fundraiser for the legislative campaign committee.** Statutes that the Ethics Board administers do not prevent any of the four legislative campaign committees from inviting a lobbyist to a fundraiser for the committee. Because neither a legislator nor a legislative employee may solicit a campaign contribution from a lobbyist or principal, neither a legislator nor a legislative employee should sign the invitation nor issue it in his or her name. [§13.625 (3), Wisconsin Statutes]
- ¶13 **Legislative campaign committee's employee soliciting contribution to the legislative campaign committee.** Statutes that the Ethics Board administers do not prevent a person not employed by the Legislature but employed by any of the four legislative campaign committees to solicit a lobbyist for a contribution to the legislative campaign committee.
- ¶14 **Legislative campaign committee's employee soliciting contribution to a legislator's personal campaign committee.** Statutes that the Ethics Board administers do not prevent a person not employed by the Legislature but employed by any of the four legislative campaign committees to solicit a lobbyist for a contribution to a legislator's personal campaign committee IF the legislative campaign committee is acting independent of, and not as the agent of, the legislator for whose campaign committee the contribution is sought. The legislative campaign committee's action cannot, as a practical matter, be independent of the legislators who direct the committee's activity.
- ¶15 **Lobbyist's arranging a fundraising event for a legislative campaign committee.** Statutes that the Ethics Board administers do not prevent a lobbyist's making arrangements for and obtaining potential contributors for a fundraising event for a legislative campaign committee.
- ¶16 **Lobbyist's arranging a fundraising event for a legislator's personal campaign committee.** Section 13.625 (1)(b) forbids a lobbyist to furnish to a personal campaign committee his or her personal campaign contribution,

or the campaign contributions of others, or anything else of pecuniary value, including the contribution of time and resources of arranging a fundraiser

¶17 **Lobbyist’s asking legislator for advice about direction of campaign contributions.** Statutes that the Ethics Board administers do not prevent a legislator’s replying to an unsolicited communication from a lobbyist asking who should be the recipients of PAC or conduit contributions.

¶18 **Meaning of the Statutes’ use of “principal”.** The answer to your question is supplied by §13.62 (12), which provides:

13.62 Definitions. In this subchapter:

(12) “Principal” means any person who employs a lobbyist. If an association, corporation, limited liability company or partnership engages a lobbyist, an officer, employee, member, shareholder or partner of the association, corporation, limited liability company or partnership shall not be considered a principal.

¶19 This reply is governed solely by the statutes that the Legislature has provided. The Ethics Board is obliged to abide by the published opinions of our state’s and nation’s courts; otherwise, apart from the statutes themselves, the Ethics Board has no rules or interpretations that affect the *Statutes’* application.

WR1255

2007 Wis Eth Bd 14
IMPROPER USE OF OFFICE, LOBBYING LAW

A legislator may appear in a lobbying principal's video for employees and directors of the organization's members on the importance of talking about how the member institutions serve members and communities but the lobbying organization should not disseminate the video proximate to an election in which the legislator is or is likely to be a candidate.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You write on behalf of an organization that is a registered lobbying principal.
 - b. The organization is proposing to make a video for employees and directors of your organization's members on the importance of their talking to others about how their institutions serve members and communities.
 - c. The organization will make the video available to its member institutions.
 - d. The organization would like to ask a legislator to appear in the video to talk about his family's experience being helped by a member institution.
 - e. The organization would pay no compensation or other consideration to the legislator.

Question

- ¶2 The Ethics Board understands your question to be:

May a legislator appear in the organization's proposed video?

Discussion

- ¶3 A legislator may appear in the organization's video, but the organization should not disseminate the video proximate to an election in which the legislator is or is likely to be a candidate.

Ethics Code's application

¶4 Reduced to its elements, §19.45 (2), *Wisconsin Statutes*, provides, in pertinent part:

No state public official
May use public position or office
To obtain anything of substantial value
For the private benefit of himself or herself or his or her immediate family, or
for an organization with which he or she is associated.¹

¶5 A legislator is a state public official.²

¶6 An official's accepting an item or service offered because the individual holds a government position is a use of office.³

¶7 Appearing in a video that will be shown to a relatively small audience of employees and directors of the organization's member institutions and talking about one's experience with those institutions does not appear to be something of substantial personal value to the legislator.⁴

¶8 Because your organization's communication of its message to employees and directors conveys no private benefit to the legislator, §19.45 (2), *Wisconsin Statutes*, does not prohibit the organization's selection of the legislator as a participant in the organization's video message.⁵ Nor does the legislator's

¹ Section 19.45 (2), *Wisconsin Statutes*, provides:

19.45 (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. * * * *

² Section 19.42 (13) (c) and (14), *Wisconsin Statutes*.

³ See, e.g., 2006 Wis Eth Bd 04, ¶61995 Wis Eth Bd 5, ¶5; 4 Op. Eth. Bd. 71 (1980).

⁴ "Substantial" is anything more than token or inconsequential value and may be synonymous with "merchantable value". 2006 Wis Eth Bd 04, ¶10; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

⁵ "Private benefit" refers to an advantage for oneself. 7 Op. Eth. Bd. 13 (1983).

Even if acceptance of an item or service is of private benefit to a state official, the official may still accept an item or service if the public, rather than the official, is the primary beneficiary. 1997 Wis Eth Bd 13 ¶5. Even if there is a private benefit associated with an act, it is consistent with the Ethics Code if the private benefit is merely incidental to the public benefit. 8 Op. Eth. Bd. 50 (1985); 6 Op. Eth. Bd. 12 (1982). The test is not whether there is any personal benefit; the issue is whether the benefit conveyed is primarily a personal benefit. 2003 Wis Eth Bd 1 ¶6 citing 1996 Wis Eth Bd 15, ¶5; 1996 Wis Eth Bd 02, ¶6. In at least one instance, a legislator could participate in a charitable golf outing because the event was primarily to benefit charities, not the legislator.

appearance in the video appear to be a use of his office to obtain anything of substantial value for an organization of which he is an officer, director, or agent.

Lobbying law’s application

Application to a candidate for elective office

¶9 Reduced to its elements, § 13.625, *Wisconsin Statutes*, provides, in pertinent part:

No lobbying principal
May furnish
To a candidate for elective state office
Anything of pecuniary value

AND

No candidate for elective state office
May accept
Anything of pecuniary value
From a lobbying principal.⁶

¶10 Your organization is a lobbying principal.

¶11 There is no benefit to the legislator as an elected official from his appearing in the video, apart from his candidacy for election to a government office.

¶12 “Candidate” means a “person for whom it is contemplated or desired that votes be cast at any election held within the state . . . and who either tacitly or

Application of sec. 19.45(2) turns on whether the official's act results in a private benefit for the official, regardless of the official's motives. In making a determination on this section's applicability, the Board might take into account (i) whether the private benefit is substantial when considered alone; (ii) the relative importance of the private benefit when compared either to public benefits or to all benefits conferred; or (iii) even if the private benefit is substantial whether it is separable from the public or other benefits obtained.

⁶ Section 13.625, *Wisconsin Statutes*, provides, in pertinent part:

13.625 Prohibited practices. (1) No lobbyist may:
* * *

(b) Furnish to any . . . candidate for an elective state office . . . :
3. Food, meals, beverages, money or any other thing of pecuniary value
* * *

(2) No principal may engage in the practices prohibited under sub. (1) (b)

(3) No candidate for an elective state office . . . may solicit or accept anything of pecuniary value from a lobbyist or principal

expressly consents to be so considered.”⁷ For purposes of this opinion, we will presume that the legislator about whom you have asked is a candidate.

¶13 The production and distribution of a video featuring a person in a positive light may be a substantial benefit to a candidate for election to state office. Payment of production costs can be a pecuniary benefit to a candidate either because it relieves the candidate of a cost that the candidate otherwise would pay or because it affords the candidate a powerful source of positive name recognition for which the candidate could not otherwise pay. Under the lobbying law, the fact that there may be a benefit to the public as well as to an official is irrelevant if the official is the recipient of an item or service of pecuniary value.

¶14 However, airtime’s pecuniary value to a candidate may have a temporal quality. Showing a video featuring a candidate for election during the days and weeks preceding an election has greater pecuniary value to the candidate than would a like purchase months or years before a vote at which the candidate might stand for election.⁸

¶15 The term of office to which voters elected the legislator extends to the opening days of 2011. The State of Wisconsin has not set any elections for statewide partisan offices until November 2010 – more than thirty-six months hence. Today, the pecuniary value, if any, of airtime for a public service announcement featuring a person who may then be a candidate is too remote and speculative to permit application of §13.625, *Wisconsin Statutes*.⁹

Advice

¶16 A legislator may appear in the organization’s video for employees and directors of the organization’s members on the importance of talking about how the member institutions serve members and communities but your organization should not disseminate the video proximate¹⁰ to an election in which the legislator is or is likely to be a candidate.

WR1274

⁷ Sections 11.01 (1) and 13.62 (5g), *Wisconsin Statutes*.

⁸ 2007 Wis Eth Bd 7.

⁹ The lobbying law applies equally to an elected state official as well as to a candidate for elective state office. The organization’s dissemination of the video, whose message is about the value its member institutions, is unlikely to have pecuniary value to an official, as official, who is not and is not likely to be a candidate for state office.

¹⁰ Although the contour of “proximate” is not precise, we have cautioned:
Within the five months preceding an election for a governmental office for which an elected state official will be a candidate, an elected state official should not permit the use of his or her name or image or office in a “public service announcement”.
“Public Service Announcements,” Ethics Board publication #245, created July 2005.

1992 Wis Eth Bd 31
LOCAL CODE - INFLUENCING OFFICIAL JUDGMENT; LOCAL CODE -
MEALS, LODGING, TRAVEL & ENTERTAINMENT

A vendor should not sponsor a river cruise for local public officials attending a convention if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the vendor's goods. OEB 92-31 (November 25, 1992)

Facts

- [1] This opinion is based upon these understandings:
- a. You write on behalf of an association whose members are local public officials.
 - b. The association will be holding its convention at a future date.
 - c. The association wants to sponsor a river cruise on the first night of the convention with a bar and entertainment.
 - d. A private business, which is a vendor to a number of local governmental units, has offered to pay the cost of the river cruise for all members of the association attending the convention as well as the members' spouses.

Question

- [2] The Ethics Board understands your question to be:

Does the Ethics Code place any restrictions on a vendor's providing a river cruise to local public officials attending your association's convention?

Discussion

- [3] The two provisions of the Ethics Code for local officials most pertinent to your question are §19.59(1)(a) and (b), *Wisconsin Statutes*. Section 19.59(1)(a) provides that no local public official may use his or her public position or office to obtain financial gain or anything of substantial value for private benefit.¹ Section 19.59(1)(b), *Wisconsin Statutes*, provides that no

¹ §19.59(1)(a), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not

person may give to a local public official, and no local public official may accept, anything of value if it could be reasonably expected to influence the local public official's vote, official actions or judgment or reasonably be considered as a reward for any official action or inaction on the part of the local official.²

[4] Section 19.59(1)(a)

Your question presumes that the individuals about whom you ask are local public officials. It appears that the officials attending the association's convention would be in attendance and receiving the river cruise as a result of their holding local public office. It also appears that the river cruise has substantial value. The question then is whether the benefit realized from the payment of the cruise expense is of private benefit to the officials or of public benefit.

[5] Normally, a Wisconsin public official who is attending a conference at the behest of his or her governmental unit may, consistent with statutes administered by the Ethics Board, accept meals, refreshment, and the like that are provided, sponsored, or sanctioned by the event's organizer and authorized by the chief executive or governing body of the unit of government of which the official is a part.³ When a governmental unit authorizes an official's attendance at a conference, it is usually fair to presume that the official's attendance is in furtherance of a public purpose or benefit and that the local government contemplates that the official will partake fully of all the conference has to offer, including forums and receptions that are sponsored or sanctioned by the organization putting on the conference and that are intended for and conducive to discussion of issues and activities pertinent to the conference's purposes. These types of incidental events often are an integral part of the educational and learning experience that comes from attending a conference by affording an opportunity for the informal exchange of ideas among officials.

[6] In contrast, payment of an expense for an official's spouse is unlikely in these circumstance to be of public rather than private benefit, and we advise that this not be done.

prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

² §19.59(1)(b), *Wisconsin Statutes*, provides:

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

³ See Ethics Board Guideline Eth 222. See also 1992 Wis Eth Bd 17; 1992 Wis Eth Bd 09.

[7] Section 19.59(1)(b)

Although the above analysis is generally applicable, another concern arises in the circumstances you have described because the organization paying for the river cruise is a vendor to local governmental units.⁴ As a result, §19.59(1)(b), which prohibits an official from accepting anything of value if it could be reasonably expected to influence an official's vote, actions, or judgment, also is pertinent. We note that it is likely that a vendor is willing to pay for an event like the river cruise specifically in order to influence official judgment in purchasing decisions by creating good will and thus enhance business opportunities. We do not possess enough facts to offer a concrete opinion as to how this provision might apply in the present case. Important factors to consider include the cost of the cruise, whether the vendor is currently seeking business from the official's local unit of government and the official's decision-making role in awarding bids to the vendor. On the whole, absent a showing that only an insignificant number of officials attending the event are not responsible for making or approving purchasing decisions that could involve the vendor's goods, we advise that a vendor not sponsor an event associated with your convention.

Advice

[8] A vendor should not sponsor a river cruise for local public officials attending a convention if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the vendor's goods.

⁴ Because your letter asks about local, and not state, officials, the lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*, does not come into play.

1993 Wis Eth Bd 8
LOCAL CODE -- MEALS, LODGING, TRAVEL AND ENTERTAINMENT

A law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm. OEB 93-8 (November 3, 1993)

Facts

- [1] This opinion is based upon these understandings:
- a. You write on behalf of a law firm that represents a number of local governmental units.
 - b. Each year a statewide association whose membership comprises officials of the local governmental units holds a convention attended by local public officials.

Questions

- [2] The Ethics Board understands your questions to be:
1. To what extent, if at all, does the Code of Ethics for Local Officials restrict vendors' sponsoring of hospitality suites offering food and drink without charge to local public officials attending the convention?
 2. To what extent, if at all, does the Code of Ethics for Local Officials restrict vendors' sponsoring or offering a dinner to local public officials in connection with the convention?

Discussion

[3] Although the statutory provisions that are pertinent to discussion of your questions are clear, their application to any given situation will be dependent on specific facts and circumstances. Your questions are broad in nature. In this circumstance, the Ethics Board can provide general guidance as to what the law means, but cannot provide advice on every situation that could arise.

[4] Section 19.59, *Wisconsin Statutes*, establishes a code of ethics for local government officials. The elected officials of the local governmental units your firm represents are covered by this code. See §19.42(7u), (7w), (7x), *Wisconsin Statutes*.¹ Section 19.59 contains two provisions pertinent to the questions you have asked. Section 19.59(1)(a), *Wisconsin Statutes*, provides:

¹ Section 19.42(7u), (7w), and (7x) provide:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by Ch. 11.

[5] Section 19.59(1)(b), *Wisconsin Statutes*, provides:

19.59(1)(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

Section 19.59(1)(a) 's prohibitions apply only to local officials. Section 19.59(1)(b) 's prohibitions apply both to local officials as well as to any persons offering or providing items to an official.

[6] Hospitality suites and dinners underwritten by non-vendors

For twelve or more years the Ethics Board has found, and so advised, that the term "substantial value" means anything of more than inconsequential or token value.² Free beer, wine, liquor, buffets, and the like clearly have more than token value.

19.42(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

(b) A county administrator or administrative coordinator or a city or village manager.

(c) An appointive office or position of a local government in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(d) An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(7x) "Local public official" means an individual holding a local public office.

² See, e.g., 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982), 73, 58 (1981).

Normally, a Wisconsin public official who is attending a conference at the behest of his or her governmental unit may, consistent with statutes administered by the Ethics Board, accept meals, refreshment, and the like that are provided, sponsored, or sanctioned by the event's organizer and authorized by the chief executive or governing body of the unit of government of which the official is a part.³ When a governmental unit authorizes an official's attendance at a conference, it is usually fair to presume that the official's attendance is in furtherance of a public purpose or benefit and that the local government contemplates that the official will partake fully of all the conference has to offer, including forums and receptions that are sponsored or sanctioned by the organization putting on the conference and that are intended for and conducive to discussion of issues and activities pertinent to the conference's purposes. These types of incidental events often are an integral part of the educational and learning experience that comes from attending a conference by affording an opportunity for the informal exchange of ideas among officials.

In contrast, the presumption of a public purpose or benefit does not exist with respect to social events that are not provided, sponsored, or sanctioned by the conference organizer and not authorized by the official's local governmental unit. Indeed, food and drink offered at such events appear generally to be primarily of private benefit to the official and should not be accepted.

[7] Hospitality suites and dinners sponsored by vendors

Although the above analysis is generally applicable, an additional concern arises in the circumstances you have described because your law firm is a vendor of legal services to local governmental units.⁴ As a result, §19.59(1)(b), which prohibits an official from accepting anything of value if it could be reasonably expected to influence an official's vote, actions, or judgment, also is pertinent. We note that it is likely that a vendor is willing to pay for an event like a hospitality suite or dinner specifically in order to influence official judgment in purchasing decisions by creating good will and thus enhance business opportunities. We do not possess enough facts to offer a concrete opinion as to how this provision might apply in a particular case. Important factors to consider include the cost of the event, whether the vendor is currently seeking business from the official's local unit of government and the official's decision-making role in awarding bids to the vendor.⁵

On the whole, if a significant number of officials attending an event are responsible for making or approving purchasing decisions that could involve the vendor's goods, we advise that a vendor not sponsor an event associated

³ See Ethics Board Guideline Eth 222. See also 1992 Wis Eth Bd 17; 1992 Wis Eth Bd 09.

⁴ Because your letter asks about local, and not state, officials, the lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*, does not come into play.

⁵ See 1992 Wis Eth Bd 31.

with a convention even if the event is sanctioned by the convention. In any event, an individual official should not accept food and drink of exceptional value from a vendor if the official is in a position to influence the purchase of goods or services from the vendor.

Advice

[8] The Ethics Board advises that a law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm.

1996 Wis Eth Bd 10
LOCAL CODE - DISQUALIFICATION

A city council member who is a retired city employee and who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts.

A city council member whose child participates in the city's health insurance program, and who either provides more than one-half of the official's support or receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts.

A city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance.
OEB 96-10 (July 31, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are a City Attorney.
- b. Two members of the city council are retired city employees who participate in the city's health insurance benefits for retired employees.
- c. The city provides health insurance to active and retired employees at no cost.
- d. The city pays, on average, \$8,777 per year for each retiree's health insurance.
- e. Neither member participates in the negotiation of health insurance contract provisions.
- f. The city council votes on health insurance contracts with specific companies as a package for all active and retired employees.

- g. The city's budget includes as a line item funding for health insurance.

Questions

[2] The Ethics Board understands your questions to be:

- a. What restrictions, if any, does §19.59, *Wisconsin Statutes*, impose on the city council members' ability to participate in discussions or votes on retiree health insurance contracts?
- b. What restrictions, if any, does §19.59, *Wisconsin Statutes*, impose on the city council members' ability to participate in discussions or votes on the city's budget which contains funding for health insurance?
- c. Would the restrictions of §19.59, *Wisconsin Statutes*, apply if a city council member's child is a city employee?

Discussion

[3] Several provisions of the Code of Ethics for Local Government Officials, Employees and Candidates apply to your questions.

[4] Section 19.59(1)(a), *Wisconsin Statutes*, reduced to its elements, provides:

No local public official
May use his or her public position or office
To obtain financial gain or anything of substantial value
For the private benefit of himself or herself or his or her immediate family.¹

¹ Section 19.59(1)(a), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district

[5] Similarly, §19.59(1)(c)2, *Wisconsin Statutes*, reduced to its elements, provides:

No local public official
May use his or her office or position
In a way that produces or assists in the production
of a substantial benefit, direct or indirect
For the official or a member of his or her immediate family.²

[6] Finally, §19.59(1)(c)1, *Wisconsin Statutes*, reduced to its elements, provides:

No local public official
May take any official action
Substantially affecting a matter
In which the official or a member of his or her immediate family
Has a substantial financial interest.³

[7] A member of a city council is a local public official subject to §19.59.⁴ Participating as a member of a city council in discussions, deliberations, or votes on an issue before the council is a use of office. *See, e.g.*, 1992 Wis Eth Bd 22. The terms of a health insurance contract can be something of sub-

board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

² Section 19.59(1)(C)2., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

³ Section 19.59(1)(c)1., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

⁴ Under §19.42(7u), (7w), and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective city office.

stantial value and a substantial benefit to the insured.⁵ In the situation about which you have asked, a city council member's private interest in the health insurance contract may directly conflict with the interest of the public whom the official serves. Therefore, the statute requires that the city council members who are retired city employees not participate in consideration of the terms or award of such contracts.

[8] Moreover, if a member of a city council member's immediate family is a participant in the city's health insurance program, that city council member is also subject to the same restrictions. A child is defined as a member of an official's immediate family if the child receives more than one-half of his or her support from the official or if the official receives more than one-half of his or her support from the child. §19.42(7), *Wisconsin Statutes*.

[9] Finally, in our view, §19.59 would not restrict a city council member's voting on the city's budget as a whole as long as (1) the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance and (2) any personal benefit that may result from a vote on the entire budget is indirect and attenuated. As a representative of the people, an individual holding a legislative office has an obligation to consider and vote on issues before the legislative body. Therefore, voting on a governmental budget, only one small part of which may directly have a financial effect on an official, should not, we believe, be viewed as an improper use of office.

Advice

[10] The Ethics Board advises:

(1) That a city council member who is a retired city employee, who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts.

⁵ Section 19.59(1)(d), *Wisconsin Statutes*, is inapplicable. That section provides:

19.59(1)(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

First, this exception applies only to §19.59(1)(c) and does not affect the restrictions of §19.59(1)(a). Second, the exception applies to the *payment* of salaries and employee benefits, not to setting the level of those benefits.

(2) That a city council member whose child participates in the city's health insurance program, and who either provides more than one-half of the official's support or receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts.

(3) That a city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance.

WR936

2000 Wis Eth Bd 01
LOCAL CODE - DISQUALIFICATION

The Ethics Board advises

(1) that a county board supervisor not participate in discussions or votes about litigation strategy or whether or not the county should sue a business with which the supervisor is associated and should absent himself or herself from that portion of a meeting at which the matter is discussed;

(2) that §19.59 is not an impediment to a county supervisor's participation in decisions affecting the liability of a municipality of which the supervisor is an elected official, but considerations of incompatibility of office, which may be addressed by the Attorney General, may speak to abstention; and

(3) that §19.59 is not an impediment to a county supervisor's participation in decisions affecting the financial interests of a child's spouse, unless the child's family either receives one-half of their support from the supervisor or furnishes one-half of the supervisor's support, but considerations of the appearance of impropriety may lead the supervisor to abstain.

Facts

¶1 This opinion is based upon these understandings:

- a. You are an attorney for a county.
- b. The county may be liable for remediation of groundwater contamination that may have been caused by its landfill.
- c. A number of businesses that deposited or transported waste to the landfill could be liable to the county for remediation costs.
- d. Some county board supervisors or their families own some of these businesses.
- e. Other supervisors are elected officials for municipalities that might also be liable for remediation.
- f. Other supervisors are elected officials for municipalities that have no liability.
- g. One supervisor is a parent-in-law of an heir to a property that may have been contaminated by the county landfill.

Question

¶2 The Ethics Board understands your question to be:

What restrictions, if any, does §19.59, *Wisconsin Statutes*, impose on these county board supervisors participating in discussions and votes on litigation strategy and whether to seek payments from the above businesses and municipalities with potential liability?

Discussion

¶3 Three provisions of §19.59, *Wisconsin Statutes*, apply to your question.

¶4 Reduced to its elements, §19.59(1)(a) provides:

No local public official
May use his or her public position or office
To obtain anything of substantial value
For the private benefit of the official
Or for a member of the official's immediate family
Or for an organization with which the official is associated.

¶5 Reduced to its elements, §19.59(1)(c)1. provides:

No local public official
May take any official action
Substantially affecting a matter
In which the official, a member of the official's immediate family,
or an organization with which the official is associated
Has a substantial financial interest
Except with respect to modifying a county ordinance.

¶6 Reduced to its elements, §19.59(1)(c)2. provides:

No local public official
May use his or her public position or office
To produce or assist in the production
Of a substantial benefit
For the official, a member of the official's immediate family,

or an organization with which the official is associated
Except with respect to modifying a county ordinance.¹

Local public official

¶7 A member of a county board is a local public official subject to §19.59, *Wisconsin Statutes*.²

¹ Section 19.59(1)(a), and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.42(7u), *Wisconsin Statutes*, provides:

19.42(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

See 1997 Wis Eth Bd 6, ¶6.

Section 19.42(7x), *Wisconsin Statutes*, provides:

19.42(7x) "Local public official" means an individual holding a local public office.

Section 19.42(7w), *Wisconsin Statutes*, provides:

19.42(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

- (a) An elective office of a local governmental unit.

Official action

¶8 Participation in discussions, debates, and votes on county matters is a use of office.³ Moreover, use of office encompasses the use of confidential information obtained through holding public office.⁴

Anything of substantial value or benefit

¶9 The statute defines “anything of value” to include a favor, service, or forbearance.⁵ A decision not to seek payment, through litigation, from a business or municipality that might be liable for remediation costs, is a favor, service, or forbearance of substantial value to the business or municipality. It is also a benefit.⁶ This is true regardless of the outcome of litigation because of the costs a litigant can incur in connection with defending a lawsuit. In addition, a decision to pay money to the owner of contaminated land has substantial value if the amount of money at issue is more than a token or inconsequential amount.⁷

Substantial financial interest or benefit

¶10 Similarly, a decision whether or not to seek payment, through litigation, from businesses or municipalities that might be liable for remediation costs, appears to be something in which a potential defendant has a substantial financial interest.⁸ Again, this is true regardless of the outcome of litigation. Finally, the owner of contaminated land has a substantial financial interest in whether the county will pay damages.

³ 1999 Wis Eth Bd 3, ¶5; 1998 Wis Eth Bd 4, ¶7; 1998 Wis Eth Bd 1, ¶5; 1997 Wis Eth Bd 1, ¶4; 1995 Wis Eth Bd 6, ¶4; 1995 Wis Eth Bd 3, ¶4.

⁴ 1994 Wis Eth Bd 4, ¶6.

⁵ Section 19.42(1), *Wisconsin Statutes*, provides:

19.42(1) “Anything of value” means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

⁶ The dictionary definition of “benefit” includes “advantage.” The American Heritage Dictionary (1991); Webster’s Ninth New Collegiate Dictionary (1983).

⁷ 1997 Wis Eth Bd 15, ¶4; 1995 Wis Eth Bd 5, ¶6; 1993 Wis Eth Bd 8, ¶6.

⁸ 1999 Wis Eth Bd 3 (an official should not vote on a proposal that could adversely affect the official’s business by banning a portion of that business resulting in substantial financial consequences); 1998 Wis Eth Bd 1 (extending water and sewer services to an official’s house appears to have substantial financial consequences).

Organization with which associated

¶11 A supervisor is associated with a business if the supervisor or a member of the supervisor's immediate family is an officer, director, or authorized representative or agent of a business, or owns or controls 10% or more of the outstanding equity of the business.⁹ A member of a supervisor's immediate family includes the supervisor's spouse, or a child or parent that either receives more than one-half of the his or her support from the supervisor or furnishes more than one-half of the supervisor's support.¹⁰ An "organization" with which a supervisor may be associated within the meaning of the statute does *not* include a municipality.¹¹

Conclusion

¶12 Section 19.59, *Wisconsin Statutes*, bars a county supervisor from participating in the decisions about which you have asked if those decisions involve the supervisor's personal financial interests, distinct from the financial interests of county taxpayers as a whole,¹² or if they affect the financial interests of a member of the supervisor's immediate family or an organization with which the supervisor is associated. This is consonant with

⁹ Section 19.42(2), *Wisconsin Statutes*, provides:

19.42(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

¹⁰ Section 19.42(7), *Wisconsin Statutes*, provides:

19.42(7) "Immediate family" means:

- (a) An individual's spouse; and
- (b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

¹¹ Section 19.42(11), *Wisconsin Statutes*, provides:

19.42(11) "organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

See 1996 Wis Eth Bd 9, ¶6.

¹² An official may vote on a matter, even if the official has a financial interest in the matter, if the official's interest is no different from that of a large number of other individuals affected by the decision. See, e.g., 1992 Wis Eth Bd 32, ¶5; 11 Op. Eth. Bd. 9 (1989).

common law principles that a member of a legislative body is disqualified to vote on propositions in which he or she has a direct pecuniary interest.¹³

¶13 Section 19.59 does not bar a supervisor from participating in decisions affecting other municipalities or the taxpayers residing in those municipalities. However, we note that the Attorney General has said:

Public policy requires, that an office holder discharge his duties with undivided loyalty, therefore, in general terms, two offices are incompatible if there is a conflict of interest or duties, so that the incumbent of one office cannot discharge with fidelity and propriety the duties of both.

58 Op. Att’y Gen. 241, 247 (1968).

¶14 Moreover, §19.59 does not bar a supervisor from participating in decisions affecting family members who are not members of the supervisor’s immediate family. However, a public official owes a duty of undivided loyalty to the public whom he or she serves.¹⁴ This duty may speak to a supervisor abstaining from participating in a decision if the supervisor believes a private interest could materially affect the supervisor’s judgment or adversely affect the image or effectiveness of the county decision-making process.

Advice

¶15 The Ethics Board advises

(1) that a county board supervisor not participate in discussions or votes about litigation strategy or whether or not the county should sue a business with which the supervisor is associated and should absent himself or herself from that portion of a meeting at which the matter is discussed;

(2) that §19.59 is not an impediment to a county supervisor’s participation in decisions affecting the liability of a municipality of which the supervisor is an

¹³ *The Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879). As the Attorney General has said:

A pecuniary interest sufficient to disqualify exists . . . where it is one which is personal or private to the member, not such interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the [government] to tax his property in a lawful manner.

36 Op. Att’y Gen. 45 (1947). See also 1997 Wis Eth Bd 1; 1995 Wis Eth Bd 3; 67 C.J.S. Officers §204.

¹⁴ 1994 Wis Eth Bd 6, ¶8; 1992 Wis Eth Bd 32, ¶3; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

elected official, but considerations of incompatibility of office, which may be addressed by the Attorney General, may speak to abstention; and

(3) that §19.59 is not an impediment to a county supervisor's participation in decisions affecting the financial interests of a child's spouse, unless the child's family either receives one-half of their support from the supervisor or furnishes one-half of the supervisor's support, but considerations of the appearance of impropriety may lead the supervisor to abstain.

WR1069

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the January 15, 2009, Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:
Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: Elections Division Activities

Elections Administration Update

Introduction

Since your December 17, 2009, meeting, the Elections Division has focused on the following:

1. Provided information, technical assistance and feedback to candidates applying for ballot access for the Spring 2009 Election. A Supreme Court and a Superintendent of Public Instruction race top the statewide non-partisan ballot. Below are important dates pertaining to the 2009 Election Cycle.
 - First day to circulate nomination papers: Monday, December 1, 2008
 - Deadline to submit nomination papers: Tuesday, January 6, 2009
 - Deadline for statements of economic interest: Friday, January 9, 2009
 - Spring Primary Election: Tuesday, February 17, 2009
 - Spring General Election: Tuesday, April 7, 2009
2. Continued to work with, and urged clerks to complete the November 4, 2008, post-elections activities. This included clerks inputting election voting and registration statistics into SVRS, and providing detailed information to the G.A.B. for satisfying the terms and conditions of our election data collection grant.
3. Solicited ideas and input from clerks, staff and the general public for development of a 2009-2011 Elections Administration Policy and Legislative Agenda.

4. Explored cost effective strategies and efficiencies for implementing the approved protocols on Four-Year Voter Record Maintenance, and prepared for mailing-out postcards to approximately 328,918 voters.
5. Developed a statistical report on HAVA Check matches and non-matches, and refined the draft protocol on Retroactive HAVA Checks.
6. Commenced planning for conducting a post-2008 election cycle assessment on our election administration business procedures and practices.

Key Metrics

Training, technical assistance and public information/education initiatives with our partners, customers, constituents and stakeholders continued.

A. Training and Technical Assistance Summary

See Attachment #1

B. Public Education and Information Summary

See Attachment #2

Other Noteworthy Activities

1. Accessibility Survey Instrument Revisions Finalized

Working closely with our accessibility community group partners and advisors, the revision of our Accessibility Survey Instrument is now ready to be presented to the Government Accountability Board.

2. First Year Implementation of the Special Registration Deputy Program Reviewed

The Wisconsin Legislature charged the former Elections Board and the new Government Accountability Board with responsibility for designing a training and certification process for a Statewide Special Registration Deputy (SRD) Program. Administrative rules were promulgated and became effective February 1, 2008. We have reviewed and prepared a report of the first year implementation of the SRD Program.

3. Elections Administration: 2008 Significant Achievements and Major Initiatives

We are proud of the our efforts, accomplished in concert with our local elections partners (1,923 county and municipal clerks who staffed and managed 2,822 polling places and over 30,000 poll workers for the General and Presidential Election), who worked hard to ensure the 2008 Election Cycle was virtually problem free and successful. We compiled a list of the Elections Division's significant 2008 achievements and initiatives.

30-day Forecast

1. Continue preparing for the Tuesday, February 17, 2009, Spring Primary Election.
2. Continue to oversee implementation of our \$2 million data grant.

Statewide Voter Registration System Update

Barbara A. Hansen, SVRS Project Director

Introduction

The following Statewide Voter Registration System (SVRS) activities took place since the December 17, 2008, meeting of the Government Accountability Board:

Status of Voter Data Interface

Clerks continue to use SVRS to run HAVA Checks to validate against Department of Transportation (DOT) and Social Security Administration (SSA) records, and to confirm matches with Department of Corrections (DOC) for felon information, and Department of Health Services (DHS) for death data, as part of on-going HAVA compliance. During the month of December (through December 21), over 151,000 HAVA Checks with DOT/SSA were processed in SVRS.

| HAVA Checks reported by month | |
|--|----------------|
| August 2008 | 23,832 |
| September 2008 | 38,168 |
| October 2008 | 192,994 |
| November 2008 | 294,905 |
| December 2008 | 171,026 |
| Total HAVA Checks since August 6: (as of December 31, 2008) | 720,925 |

We continue to have issues with processing Felon voter data. These problems continue to be investigated by the Department of Administration/Division of Enterprise Technology, but with only marginal success. A workaround continues to be used so that service, could still be performed by our local election partners – our clerks, but in a less efficient manner.

Action Items

No action is required of the Board at this time.

ATTACHMENT #1

GAB Election Division's Training Initiatives
12/18/2008 – 1/15/2009

| Training Type | Description | Class Duration | Target Audience | Number of Classes | Number of Students |
|----------------------|--|-----------------------|--|--|---|
| Voter Registration | Basic training in adding voter registration applications, searching for voters, updated voters. | 3 hours | Municipal and county clerks, staff and temp workers who provide election support only. | The WBETS site is available to train temporary workers. | Ongoing, self-directed training is available online. |
| WBETS | Web Based Election Training System. Still under development. | Varies | County and municipal clerks and their staff. | Phase 1 of eLearning training plan still under construction Phase 2 under discussion. | Site is available for clerks to train temp workers in date entry. |
| Interfaces | Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements. | 2 hours | All clerks (staff as determined by clerk). | Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008. | Eventually 2000+ |
| Other Activities | <ul style="list-style-type: none"> ➤ Training staff worked on additional modules for Phase 1 of the WBETS site. ➤ Training staff worked on materials relating to early voting in Wisconsin. ➤ Training staff compiled information in SVRS regarding municipal clerk recertification hours and special registration deputy training. | n/a | n/a | n/a | n/a |

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
December 16-January 15, 2008**

| Topic | Message | Media | Audience | Follow-up Activities |
|---|--|---|--|---|
| Elections Division accomplishments for 2008 | The Wisconsin Elections Division made real accomplishments in 2008. | List and memo: 12/26/08 | Municipal and county clerks. | Distributed to Clerks, Community Partners and G.A.B. Staff. Also, posted to the website. |
| “Accountability Board Achieves Major First-Year Goals” | The G.A.B. has completed significant work in 2008. | News release: 12/30/08 | General public, news media. | Distributed to Media, Clerks, Community Partners and G.A.B. Staff. Also, posted to the website. |
| Preparing for 2009 election cycle and SVRS maintenance, and promoting a new legislative agenda. | Clerks should prepare for voter records maintenance and retroactive HAVA Check process, etc. | <i>Election Update: 1/9/09</i> | Municipal and county clerks. | Distributed to Clerks, Community Partners and G.A.B. Staff. Also, will be posted to the website. |
| “Statewide Voter Registration Deputy Program Enters Second Year” | New SRD program has improved registration in Wisconsin. | News Release: To be distributed during week of 1/12/09 | General public, news media. | To be distributed to Media, Clerks, Community Partners and G.A.B. Staff. Also, will be posted to the website. |
| “State Prepares to Update Voter Records” | Four-year voter record maintenance will begin in February. | Notification to Governor, Legislature, and relevant State Government Agencies: To be distributed during week of 1/12/09 | Governor, Legislature and relevant State Government Agencies. | Governor, Legislature and relevant State Government Agencies. To be posted to the website. |
| “State Prepares to Update Voter Records” | Four-year voter record maintenance will begin in February. | News Release: To be distributed during week of 1/17/09 | General public, news media, state government. | To be distributed to Media, Clerks, Community Partners and G.A.B. Staff. To be posted to the website. |
| “Government Accountability Board Moves to New Office” | The G.A.B. will consolidate its offices at a new headquarters on January 26, 2009 | News Release: To be distributed during week of 1/12/09, and a reminder released during week of 1/19/09 | Governor, Legislature, general public, news media, state government. | To be distributed to Media, Clerks, Community Partners and G.A.B. Staff. To be posted to the website. |

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

GOVERNMENT ACCOUNTABILTY BOARD Special Registration Deputy Program

Review of First Year Implementation January 2008 – December 2008

2003 Wisconsin Act 265 created § 6.26(2)(am) which allowed any qualified elector of the state to apply to the board to be appointed as a special registration deputy (SRD) for the entire state. While this law was enacted in April 2004, it was not widely used until 2008 when the Government Accountability Board (G.A.B.) began offering training to those individuals interested in becoming statewide special registration deputies. This was a new program for the staff to administer and it has had both benefits and drawbacks. The purpose of this report is to summarize staff's experience, observations and facts of the first year of administering the SRD program.

Background

Since 1988, municipal clerks have been allowed to appoint SRDs for their own municipalities. SRDs are authorized to register qualified electors outside of the clerk's office prior to the close of registration at 5 pm on the 20th day before an election. The use of SRDs is intended to relieve the clerk of some of the registration duties leading up to an election, resulting in fewer mail-in registrations, in-office registrations and Election Day registrations.

In 2004, despite the appointment of local SRDs, municipal clerks were deluged with mailed-in voter registration application forms before the November general election. These forms were typically a result of organized registration drives. A large percentage of these forms were found to be incomplete or did not include the required proof of residence. Clerks were required to make a "good faith effort" to notify the registrants that their application was incomplete so the registrant would have the opportunity to provide the required information or be prepared to re-register on Election Day. This resulted in a tremendous workload for Wisconsin's elections officials that only increased with the advent of mandatory voter registration in 2006.

In 2005, an audit by the Legislative Audit Bureau recommended that the Elections Board promulgate administrative rules to establish training requirements, appointment and revocation procedures for SRDs. The Elections Board did so with the most recent administrative rule for special registration deputies being enacted in February 2008 by the new Government Accountability Board.

In 2007, the staff began preparing the curriculum, materials and procedures for training statewide SRDs. Two pilot training classes were held to test the curriculum and materials, one

with G.A.B. staff and one with representatives from the League of Women Voters. Suggestions and modifications based on those pilot training sessions were incorporated into the final training curriculum and materials. Staff developed internal procedures for scheduling classes and uniform procedures for tracking all SRDs in SVRS. Staff also designed further materials and reference aids to improve the quality of SRD submissions. See Appendix C – SRD Training Materials.

Results

1. **67** state SRD training sessions were scheduled in a number of locations across Wisconsin during March – October 2008.
2. Approximately **1,500** state SRDs were trained and certified for the 2007-2008 term. See Appendix A – Distribution of Statewide Special Registration Deputies.
3. SRDs registered over **140,000** voters, which is approximately 14% of all registrations during the 2008 election cycle. See Appendix B – 2008 Voter Registration Statistics.

Process/Procedure

The first year of administering the statewide SRD program was successful. There was a very large interest expressed by both partisan and non-partisan groups for training as statewide SRDs. G.A.B. sent out letters to the four major political parties as well as major labor unions to invite them to have representatives trained to be statewide SRDs. Demand for SRD training exceeded staff resources to the degree that G.A.B. staff had to be selective about which areas of the state to hold training sessions in and could not simply go anywhere there was sufficient demand.

In each two-hour class, applicants were required to complete an Application for Special Registration Deputy Appointment (EB-158) which described the necessary qualifications, read relevant excerpts of Wisconsin Statutes Chapter 6 and G.A.B. Chapter 3, review Wisconsin's voter eligibility requirements, receive direction on how to properly complete the voter registration application form including an emphasis on the legibility and confidentiality of the information, review the statutory deadlines for voter registration, be instructed on how to provide assistance to individuals with difficulty understanding the English language and individuals with disabilities, be warned about accepting compensation on a per form basis, and receive information about the consequences of misusing their SRD appointment. G.A.B. staff also detailed the revocation procedure. Upon the completion of the training class, applicants read and signed the SRD Oath (EB-156) and were sworn in by a notary. Finally, they were issued a SRD Certificate of Appointment (EB-159) with their name, SRD number and term of office listed.

In SVRS, each SRD was assigned a unique identifying number which allows election officials to track which SRD submitted each form. The SRD number is also recorded in the voter's record in SVRS just like it is recorded on the physical form on which the SRD must print their SRD number. It is assumed that because not all clerks properly recorded SRD registrations in SVRS, the 140,000 registrations is only a conservative estimate of the true number of voters registered through SRDs. Still, in 2008, SRD registrations accounted for 14% of the total number of registrations collected.

Challenges/Concerns

There were some challenges as well. Anecdotally, staff received a number of complaints about SRD-submitted applications. A number of these complaints were not justified. For example, a common complaint was that SRDs were not collecting proof of residence. However, by law SRDs are not required to collect proof of residence because they are registering electors during the open registration period. See Wis. Stat. § 6.34(2). This points to a further problem among election officials who continue to insist on collecting proof of residence when it is not required by law.

A significant number of legitimate complaints regarded the legibility and completeness of the SRD-submitted forms. A number of SRD-submitted applications were reported to be missing important information such as ID number (driver's license number or last 4 digits of the social security number), date of birth or a physical street address. This resulted in a significant amount of follow-up work needing to be done by local clerks. The LAB uncovered similar problems with SRDs in their September 2005 report (Report 05-12).

The largest number of complaints regarded the sheer volume of registrations submitted and the manner in which they were delivered to clerks. Many clerks complained of not getting forms in a timely fashion. Sometimes this was due to the SRD or their sponsoring organization holding the forms longer than allowed, while at other times the delay was simply due to the large volume of forms that had to be forwarded to clerks from the G.A.B. G.A.B. staff originally planned to enter all statewide SRD-submitted voter registration applications, but as volume continued to increase staff were challenged just to keep up with forwarding the growing volume of applications being submitted to the appropriate clerk. In part this was due to the fact that some local SRDs were also submitting their forms to the G.A.B. instead of to their appointing municipal clerk. In response to the unexpected volume of applications G.A.B. augmented our original team of data-entry limited term employees.

Another aspect of delay complaints was that some forms were directed to the wrong municipality and had to be re-forwarded. This was likely equally attributable to SRDs, G.A.B. staff and the voters themselves. In some instances this problem was exacerbated by local municipal clerks asking state SRDs to send them the forms direct, in contradiction of what the SRDs were taught. In other cases, G.A.B. staff sent forms to the wrong municipality. Finally, there were a number of instances of voters giving the wrong municipality on the application.

A final challenge was that the SRD registration process did not synergize well with the absentee request process which was also very popular in 2008. Many SRDs would attempt to facilitate absentee voting in addition to voter registration, but the voter registration would be sent to the G.A.B. while the absentee request was sent directly to the municipal clerk. This resulted in a large amount of redundant effort as clerks attempted to get registrations from absentee voters who had already registered via SRD, but whose forms had not yet arrived in the clerk's office. A possible solution for the future would be to direct SRDs if they are offering registration and absentee forms together, they should forward them together to the G.A.B.

While we did receive a significant number of undocumented anecdotal complaints, in all of 2008 only a single SRD was revoked and two were issued warnings for problems with their submissions. While a true error rate may be impossible to determine, with over 1,500 SRDs in

the field, only 3 documented cases of disciplinary action may be a good indicator. It should be noted however that a detailed SRD disciplinary procedure was not in place at the beginning of

2008, but was instead developed and implemented in response to the growing number of complaints. G.A.B. now has a formal SRD disciplinary procedure and as such, will be able to better follow-up SRD complaints in a timely fashion so as to make warnings and revocations more useful. See Appendix D – SRD Appointment Revocation Procedure.

The 2009-2010 Election Cycle

Moving into the 2009-2010 election cycle, G.A.B. staff have already begun the process of reappointment of SRDs. We sent a letter to every SRD thanking them for their service in 2008 and asking if they were interested in reappointment in next term. If interested, SRDs were directed to complete a new Application for Appointment and return it to us by January 9, 2009. We have received approximately 300 applications for reappointment at this time.

The next step in the process will be to review the 2008 performance those individuals who reapplied including checking with clerks whom the SRD may have had contact. Once the applicants have been screened, G.A.B. staff will send new SRD Oaths which will need to be signed and notarized and then send out new SRD ID numbers and refresher materials including a pocket calendar with the statutory deadlines for registration in 2009-2010. Reappointed SRDs will be eligible to begin registering voters immediately upon receiving their new SRD number, but their appointment will be contingent on attending another 2 hour training session by July 2009. Failure to attend this required training will be grounds for revocation.

Future Business Practices: Considerations & Recommendations

1. Possible administrative changes

- Enter newly-appointed SRDs into the SVRS database immediately after the completion of a training class to maintain accurate and timely records.
- Review voter registration forms submitted by state-trained SRDs within 24 hours of their receipt to the GAB – Elections Division to identify any problems with the forms.
- Following the revocation procedure (see Appendix D), contact problem SRDs within 2 business days by certified letter.
- Limit scheduling of new SRD training classes to more than 45 days prior to an election to encourage SRDs to sign up and complete the training they need for reappointment in a timely fashion.
- Consider training municipal clerks as “trained-trainers” to supplement our efforts in more rural, more underserved areas of Wisconsin.

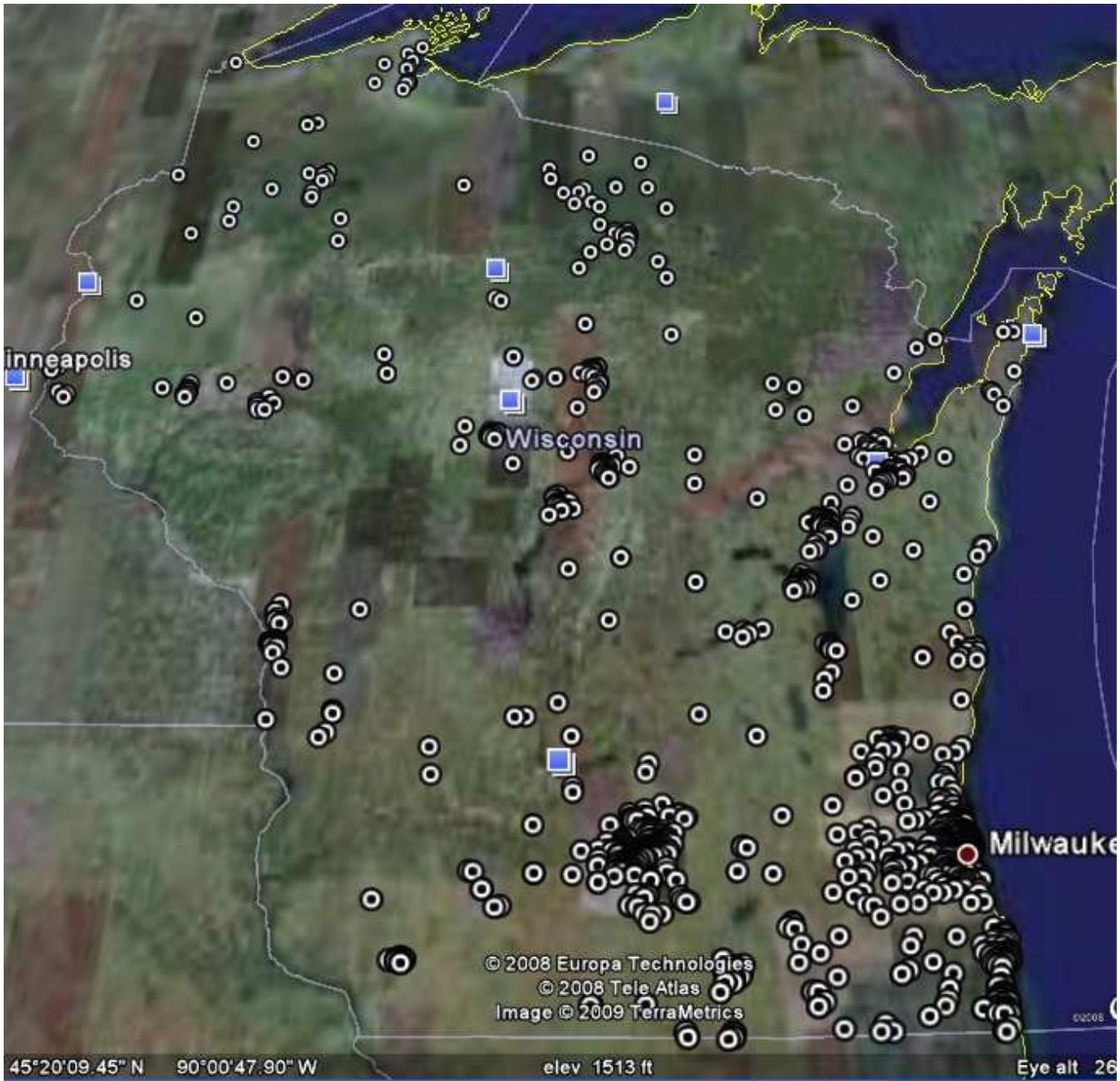
2. Possible legislative changes

Current administrative rules prohibit SRDs from being paid per form submitted. In light of public perception about voter fraud. The question is, do we want to consider a prohibition

on any type of compensation, such as hourly wages or prizes to the person who signs up the most individuals?

Appendix A

Distribution of Statewide Special Registration Deputies



LEGEND

- ⊙ Location of a Special Registration Deputy
- Photograph of geographical location for viewing with Google Earth

Appendix B

Total 2008 Approved Voter Applications by Source Within SVRS*

| AppType | ASRC | CLRKO | EDR | EDRNBI | FPCA | LATE | MAIL | REGDR | SPCRD | TOTAL |
|--------------------|------------|----------------|----------------|--------------|--------------|---------------|---------------|--------------|----------------|------------------|
| January | 13 | 6690 | 161 | 0 | 58 | 26 | 2275 | 520 | 4917 | 14660 |
| February | 7 | 8395 | 86357 | 165 | 65 | 3028 | 1167 | 192 | 3953 | 103329 |
| March | 9 | 3396 | 123110 | 101 | 113 | 1029 | 3861 | 182 | 3885 | 135686 |
| April | 5 | 1237 | 22223 | 40 | 24 | 233 | 681 | 8 | 1302 | 25753 |
| May | 0 | 690 | 985 | 1 | 30 | 15 | 1181 | 31 | 4121 | 5378 |
| June | 0 | 907 | 722 | 1 | 41 | 19 | 917 | 31 | 6612 | 7620 |
| SubTotal | 34 | 21,315 | 233,558 | 308 | 331 | 4,350 | 10,082 | 964 | 24,790 | 292,426 |
| July | 0 | 1525 | 526 | 59 | 59 | 4 | 1780 | 78 | 11717 | 15748 |
| August | 28 | 4521 | 314 | 1 | 147 | 349 | 2326 | 181 | 29027 | 36894 |
| September | 42 | 10824 | 11084 | 526 | 539 | 860 | 5384 | 440 | 8652 | 38351 |
| October | 81 | 69103 | 669 | 9 | 1452 | 12368 | 29128 | 3635 | 64545 | 180990 |
| November | 27 | 23149 | 252354 | 68 | 77 | 16942 | 1002 | 43 | 1945 | 295607 |
| December** | 4 | 3960 | 163492 | 41 | 37 | 5372 | 259 | 10 | 36 | 173211 |
| SubTotal | 4 | 113,082 | 428,439 | 704 | 2,311 | 35,895 | 39,879 | 4,387 | 115,922 | 740,801 |
| Grand Total | 216 | 134,397 | 661,997 | 1,012 | 2,642 | 40,245 | 49,961 | 5,351 | 140,712 | 1,033,227 |

New 2008 Approved Voter Applications by Source Within SVRS

| AppType | ASRC | CLRKO | EDR | EDRNBI | FPCA | LATE | MAIL | REGDR | SPCRD | TOTAL |
|-----------------|------------|---------------|----------------|------------|--------------|---------------|---------------|--------------|---------------|----------------|
| January | 11 | 3460 | 79 | 0 | 47 | 11 | 1074 | 334 | 2502 | 7518 |
| February | 7 | 3970 | 37065 | 68 | 44 | 1272 | 592 | 144 | 2058 | 45220 |
| March | 8 | 1622 | 48467 | 56 | 87 | 459 | 2299 | 111 | 1969 | 55078 |
| April | 4 | 638 | 10319 | 26 | 18 | 116 | 310 | 4 | 610 | 12045 |
| May | 0 | 388 | 501 | 0 | 22 | 8 | 529 | 28 | 2166 | 3642 |
| June | 0 | 497 | 468 | 1 | 34 | 9 | 554 | 11 | 3917 | 5491 |
| SubTotal | 30 | 10,575 | 96,899 | 151 | 252 | 1,875 | 5,358 | 632 | 13,222 | 128,994 |
| July | 0 | 873 | 328 | 1 | 42 | 2 | 798 | 65 | 6057 | 8166 |
| August | 16 | 2603 | 221 | 0 | 100 | 180 | 1261 | 114 | 13932 | 18427 |
| September | 35 | 5847 | 4940 | 358 | 383 | 407 | 2840 | 240 | 4504 | 19554 |
| October | 55 | 36378 | 355 | 7 | 895 | 6064 | 16755 | 2146 | 32555 | 95210 |
| November | 11 | 8575 | 211584 | 40 | 12 | 6246 | 34 | 10 | 33 | 226545 |
| December** | 3 | 1764 | 82241 | 19 | 24 | 2627 | 126 | 8 | 24 | 86836 |
| SubTotal | 120 | 56,040 | 299,669 | 425 | 1,456 | 15,526 | 21,814 | 2,583 | 57,105 | 454,738 |

| | | | | | | | | | | |
|----------------------|------------|---------------|----------------|------------|--------------|---------------|---------------|--------------|---------------|----------------|
| Grand Total | 150 | 66,615 | 396,568 | 576 | 1,708 | 17,401 | 27,172 | 3,215 | 70,327 | 583,732 |
| %New of Total | 69% | 50% | 60% | 57% | 65% | 43% | 54% | 60% | 50% | 56% |

1/7/2009

* Total Includes New and Updated Voter Records
 **December Numbers through 12/21/2008 EDRs include Provisional

| Legend | |
|---------------|---|
| ASRC | Armed Services Recruiting |
| CLRKO | Clerks Office |
| EDR | Election Day Registration |
| EDRNBI | Election Day Registration Ballot Not Issued |
| FPCA | Federal Postcard Application |
| LATE | Late Registration |
| MAIL | Mail |
| REGDR | Registration Drive |
| SPCRD | Special Registration Deputy |

Appendix C

Special Registration Deputy Training Materials

- Application for Special Registration Deputy Appointment (EB-158)
- Special Registration Deputies Training PowerPoint (w/ Notes section)
- Voter Registration Form (EB-131) and Instructions
- Voter Registration Form Required Fields Aid
- Common Sense and Common Courtesy
- Voter Qualifications poster (EB 115vr)
- Relevant excerpts of Chapter 6 of Wisconsin Statutes
- Wisconsin Administrative Code, Chapter G.A.B. 3
- Enabling Qualified Homeless Individuals to Vote
- Oath of Special Registration Deputy (EB-156)
- Pocket Calendar of Registration Deadlines
- Mailing Label Template
- Certificate of Special Registration Deputy Appointment (EB-159)

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Elections Division Government Accountability Board Significant 2008 Accomplishments and Major Policy Initiatives

Benefits of a Fully Functioning/Quality-Based Statewide Voter Registration System

1. Enhanced the personal satisfaction of the voting experience for Wisconsin's individual electors by carrying out four successful statewide elections – two with high voter turnout – with the help of Wisconsin's county and municipal clerks. The lack of any major problems or glitches for voters reinforced the state's reputation for fair, transparent, efficient elections.
2. Achieved compliance with the Help America Vote Act of 2002 (HAVA) by beginning the cross-checking of voter data with state Department of Transportation and federal Social Security Administration data since August 6, 2008. This has allowed local election officials to more efficiently "clean up" voter records to ensure the quality of the database.
3. Launched and promoted the Voter Public Access (VPA) function of the SVRS, allowing the public to check polling place locations and voter registration status online prior to every election. The implementation of VPA provided basic election information to thousands of voters and others who otherwise would need to contact their county or municipal clerk, or G.A.B.'s Help Desk for the same information.
4. Staff assumed responsibility for maintenance and support of the Statewide Voter Registration System (SVRS) following the termination of a contract with system vendor, Accenture LLP. The G.A.B. has not only kept the system running but also made improvements, including the ability to track absentee ballots and to interface with other State agency databases to perform "HAVA Checks" (see above).

Training and Technical Assistance

5. Trained more than 1500 Special Registration Deputies before the November election of 2008. This effort enabled more than 137,000 new voters to register easily and conveniently to ensure their names would be on the poll list on Election Day, November 4.
6. Launched the Web-Based Election Training System (WBETS) for local election officials, a secure online education site for Wisconsin's 1923 county and municipal clerks. This has permitted clerks and their staff members to conveniently receive training and refresher lessons about various election administration topics at their desks.
7. Launched a three-hour training course for Wisconsin's municipal clerks, as now required by state law, on basic elections administration topics. More than 1800 local election officials and their staff members took the class in 2008.
8. Trained more than 1000 new chief election inspectors – who manage Wisconsin's polling places and its 30,000 poll workers – in 60 three-hour classes across the state. Chief election inspectors

are the “backbone” of the Election Day administration process, and must be recertified every two years according to state law.

Election Day Best Practices

9. Implemented new measures to ensure the accessibility of Wisconsin polling places to all voters, including older residents and those with disabilities. This effort has included the development of a new polling place accessibility survey and staff visits to nearly 300 polling places (at least one in every county, or 10% of Wisconsin’s 2,822 Polling Places) during five elections., four statewide elections and one special school district election held June 24, 2008.
10. Promulgated and implemented a new state administrative rule regarding election observers and their conduct at Wisconsin polling places. The G.A.B. distributed copies of the new rule and a brochure to educate observers and poll workers to all polling places in the State.
11. Assisted local election officials in recruiting 30,000 poll workers for the November 4 General Election by contacting private businesses, state workers and community groups through direct appeal, letters, the Governor’s Office and news releases. The promotion of the need for poll workers was broadcast across the state and helped some local clerks to ensure their polling places were properly staffed.

Post Election Day Activities

12. Conducted regular voting equipment audits to ensure the integrity of Wisconsin election results. The audit calendar and procedures allow local election officials to double-check the process of tabulation of votes after Election Day, and generally promote confidence in the system and in the State’s electoral process.
13. Revised Wisconsin’s procedures for conducting a recount of an election. With the assistance and consultation of local election officials, the G.A.B. studied and changed the way election recounts must be carried out, making the process clearer and fairer.

Renewed the Core Covenant with Local Election Partners, and the Public, our Customers

14. Improved Wisconsin’s partnership with local election officials by increased collaboration and communication, offering more training opportunities, and continuing to directly consult about Elections Administration laws, policies and procedures.
15. Increased and improved information, education and services to the public including the Voter Public Access site (see above), creation of model news releases for local election officials, and timely briefings for the news media.
16. Expanded efforts to solicit input from a broader variety of constituents, stakeholders, community groups, political parties, organized labor, advocacy groups and other customers.

Major Legislative/Administrative Rule/Policy Development Initiatives

17. Improved G.A.B. Ch. 5 Ballot and Electronic Voting System Security.
18. Formalized G.A.B. Ch. 3 Voter Registration Guidance.
19. Implemented G.A.B. §§3.10-3.13 Special Registration Deputies.
20. Developed Emergency G.A.B. Ch. 4 Observer Rules/Regulations.
21. Revised the Recount Manual.

22. Developed and Clarified Guidance for Maintaining Electronic Voting Equipment Records.
23. Developed Protocol for Conducting On-Site Monitoring of Electronic Voting System Security.
24. Developed Protocol for Conducting Statewide Four-Year Maintenance of Voter Records.
25. Developed Protocol for Conducting Statewide Retroactive HAVA Checks of Voter Records.

Other Elections Administration Achievements

26. Received a \$2 million grant from the U.S. Election Assistance Commission to improve elections data collection throughout Wisconsin. The G.A.B. staff completed the grant project, the results of which will enhance the State's ability to report more accurate and complete election data. Best practices will be shared with other states.
27. Updated and promoted Wisconsin non-English forms for voter registration application and absentee ballot application. Spanish and Hmong versions of the forms are available on the G.A.B. website, as well as election/voting glossaries in five other languages provided by the federal Election Assistance Commission.

Looking Ahead

As we begin to focus on 2009, we will continue to closely collaborate with our local election partners and the public as we review and develop the following program, policy, and legislative areas:

1. Review elections business processes, practices, policies, and procedures, for the purpose of continued improvement of elections administration in Wisconsin.
2. Examine "Early Voting."
3. Review deadlines for post-election activities.
4. Address differences in registration requirements due to date of registration.
5. Review implementation of the new administrative rule for election observers, revise as necessary, and promulgate a final rule.
6. Consider expanding the central count absentee model.
7. Examine the state of Special Registration Deputies.

Elections Division 2009 Agenda

The above "Looking Ahead" enumeration of items is only a preliminary and incomplete list. The Elections Division is in the process of developing its 2009 Program, Policy, Administrative and Legislative Agenda. G.A.B. staff, local elections partners (county and municipal clerks), and customers (the public, "good government" community and advocacy groups, and interested residents) are invited to submit ideas for a "post-mortem" about the 2008 election cycle, and what the G.A.B. can do to look ahead for further improvement of elections administration policy, processes, procedures and practices in Wisconsin. We would appreciate input by **Friday, January 16, 2009**. Note the original due date for recommendations was Monday, January 5, 2009.

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KEVIN J. KENNEDY
Director & General Counsel

MEMORANDUM

DATE: January 15, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Activities

Campaign Finance Program

Richard Bohringer, Tracey Porter and Dennis Morvak, Campaign Finance Auditors

Staff have conducted 15 (3 hr.) training sessions on the new CFIS website during December and January. To date approximately 100 people have attended the trainings. There are an additional 14 sessions planned for January. The materials for the January Continuing report were sent to all candidates, PACs, parties, conduits, and sponsoring organizations. This report covers their activity through December 31, 2008 and is due by February 2, 2009. Any non-candidate committee with expenses over \$2,500 is required to pay a filing fee (\$100) by February 2, 2009. If this fee is not paid timely, the committee is required to pay \$300 and a possible \$500 settlement offer.

Lobbying Update

Barton Jacque, Ethics Specialist

The lobbying program has began processing new registrations and lobbying licenses from those organizations and individuals who intend to influence the legislative and rule making process for the 2009-2010 legislative session. To date we have received approximately \$270,000 in lobbying fees. The Ethics and Accountability Division receives between 50-75 new registrations and licenses per day and it's expected to continue throughout January. If past trends are an indication the G.A.B can expect between 775-825 licensed lobbyists and 825-875 lobbying organizations registered in the 2009-2010 session. This equates to approximately \$520,000 in revenue for the lobbying program. Also, lobbyists and organizations Statements of Lobbying Activity and Expense (SLAE) reports will be due at the end of January. Through effective communication and knowledgeable staff we can again expect these reports to be completed on time and without incident. Looking back on the 2007-2008 legislative session the lobbying program experienced a 99% return on SLAE reports.

Financial Disclosure Update
Tommy Winkler, Ethics Specialist

Government Accountability Board staff recently mailed and processed Statements of Economic Interests for candidates running in the spring election. 103 circuit court candidates, 4 Superintendent of Public Instruction candidates and 124 municipal judge candidates filed statements by January 9, 2009 in order to have their name appear on the ballot this spring. Staff also prepared approximately 2100 Statements of Economic Interests filing packets to send out to all state public officials required to file under Chapter 19, *Wisconsin Statutes*. Statements are mailed over the course of eight weeks, beginning January 5, 2009. Staff will work to process this information into an online index in the coming months. All statements are to be filed with the board no later than April 30, 2009 and it is staff's goal to have all of them processed into the online index no later than July 1, 2009.

Contract Sunshine Update
Tommy Winkler, Ethics Specialist

Staff continues to process transactions reported by state agencies into the Contract Sunshine website application. The G.A.B. team will resume testing the second version of the system in order to identify that improvements in system functionality and appearance are working correctly. After completing this user acceptance testing, staff will communicate with Sundial Software employees those system features that need to be corrected; once corrected, the second version of the application will be released to all agencies for use. Training sessions on the new version of the application will be conducted in the future by staff members in order to effectively administer the program.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the January 15, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Special Assistant to the Director

SUBJECT: Administrative Activities

Agency Operations

Introduction

It continues to be an extremely busy time. The primary administrative focus has been on preparing for the agency's move to its new location, presentations and staff recruitment.

Noteworthy Activities

1. New Office Space Update

The agency's move team (Sharrie Hauge, Barbara Hansen, Steve Rossman and Eric Learn) have been working feverishly on final preparations for the agency move on January 26, 2009.

On December 23, 2008, the Mullins Group received an occupancy permit; thus rent at the new location commenced.

On December 29, the first shipment of systems furniture was delivered. On January 5, the second shipment of furniture arrived. On January 5, the installers began configuring the furniture and anticipate completion on Friday, January 9.

Staff met with three moving-companies on Monday, January 5 to go over bid specifications for the move. The moving companies are preparing the bids. We expect to make a final decision on which moving company to hire within the next week.

Staff continues to work with DOA Facilities' staff, the new landlords, the office furniture suppliers, the Division of Enterprise Technology, our local phone company and numerous others to ensure we are prepared for our move.

2. Staffing

EAC Data Collection Grant Positions

All five-positions are now filled for EAC Data Collection Grant. Karen Bassler began her appointment as Project Manager on January 5. Zachary Wyatt began his appointment as Assistant Project Manager on December 22. Kathryn Mueller began her appointment as Training Coordinator on January 5.

3. Presentations

On January 8, 9 and 10, 2009, I attended a meeting of the Joint Election Officials Liaison Committee (JEOLC). This annual meeting provides an opportunity to meet with Congressional staff to discuss proposed and pending federal legislation related to election administration. This provides an excellent opportunity to provide input as Congress continues to consider election reform proposals.

Jon Becker and I made a presentation to new members of the Legislature on January 14, 2009.

4. Confirmation of Board Members

The Senate has not acted to confirm the appointment of our most recently selected Board Members: Judge Manian and Judge Myse. They were appointed in May of last year, but the Senate was not able to schedule confirmation hearings before the Legislature adjourned for the year. Members may serve pending confirmation.

Staff is working with the Senate to schedule confirmation hearings before the March meeting.

5. Government Accountability Candidate Committee

The terms of the 4 Court of Appeals Judges serving on the Government Accountability Candidate Committee expire on March 1, 2009. The Chief Justice must select new members by drawing names in the presence of the other members of the Supreme Court. §15.60 (2), Wis. Stats. I will make arrangements for this to occur in February.

Judge Manian's term expires on May 1, 2009. The Committee will meet in April to nominate at least two individuals to fill the 6-year term. §5.052 (3), Wis. Stats. All nominees must be unanimous selections of the Committee. §5.052 (2), Wis. Stats.

The staff obtains a list of former judges and sends a letter soliciting applications from those individuals who are interested in serving on the G.A.B. The letter includes a checklist of eligibility requirements. The Committee reviews the letters of interest and determines its list of nominees at a public meeting.

The nominees will be forwarded to the Governor for appointment and confirmation by the Senate.

Looking Ahead

We will complete our office relocation the last week in January. We expect to host an open house in February for our clientele, members of the public and the press.

The staff will be working with the Legislature as it begins its work on the biennial budget and new initiatives. We will have a series of legislative recommendations for the Board to consider at its March meeting.

Action Items

None