

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

May 15, 2012

9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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Present: Judge David G. Deininger, Judge Michael Brennan, Judge Gerald C. Nichol, Judge Thomas H. Barland, Judge Thomas Cane and Judge Timothy Vocke

Staff present: Kevin Kennedy, Nathaniel E. Robinson, Jonathan Becker, Shane Falk, Michael Haas, Ross Hein, Sharrie Hauge, Jonathan Paliwal, Brian Bell and Reid Magney

A. Call to Order

Judge Deininger called the meeting to order at 9:00 a.m.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

Ethics and Accountability Division Administrator Jonathan Becker introduced two new employees in his division. Campaign Finance Auditor/Ethics Specialist Molly Sessler joins the Board from the Department of Children and Families, and Campaign Finance Auditor/Ethics Specialist Adam Harvell is a transfer from the Elections Division.

Elections Division Administrator Nathaniel E. Robinson introduced three new employees in his division. Elections Data Manager Brian Bell, a veteran and recipient of the Purple Heart, is a recent graduate of the University of Wisconsin's La Follette School of Public Affairs. Elections Specialist Jason Fischer joins the agency from the, Department of Workforce Development, and has experience in radio news. Colleen Adams comes from Minnesota, but has a Masters in Political Science from University of Wisconsin-Milwaukee.

C. Minutes of Previous Meetings

March 12, 2012 Meeting

March 20, 2012 Meeting

March 30, 2012 Meeting

April 17, 2012 Meeting

MOTION: Approve the Open Session minutes of the meetings of March 12, March 20, March 30, and April 17, 2012. Moved by Judge Barland, seconded by Judge Cane. Judge Vocke abstained from voting on all but the April 17 meeting minutes. Motion carried.

D. Personal Appearances from Members of the Public

Mary Ann Hanson of Brookfield appeared on her own behalf to express concerns about aspects of 2011 Wisconsin Act 23 involving curbside voting and signing of the poll book. She also expressed concern about the proposed guideline on central count absentee procedures

Ardis Cerny of Pewaukee appeared on her own behalf to comment on procedures for handling spoiled absentee ballots. She believes a voter must return a spoiled absentee ballot to receive a new one.

Bob Spindell of Milwaukee appeared on his own behalf to comment on problems with some election inspectors being too helpful to voters at the polling place which could border on electioneering.

Attorney James S. Mueller of Cross Plains appeared on behalf of Citizens for Election Protection to express concerns about fraud involving electronic voting equipment and discuss a University of California-Santa Barbara study on Edge voting machines. He encouraged the use of hand counted paper ballots.

Ed Smith of Denver appeared on behalf of Dominion Voting, where he is vice president of certification, to address concerns regarding the WinEDS software platform and voting system. He described problems encountered with the system in Florida and said it was a problem with the way the software was used, not with the software itself.

Discussion.

Bryan Bliss of Madison appeared on his own behalf to express concerns with the ES&S D-200 optical scan voting equipment, based on problems discovered in the State of New York.

E. Report on April 3, 2012 Presidential Preference – Spring Election and May 8, 2012 Recall Primary Election

Elections Division Administrator Nathaniel E. Robinson introduced Elections Supervisor Ross Hein and Elections Data Manager Brian Bell, who presented an oral and written report. Mr. Hein said the two main issues in the April 3 election were instances of poll worker errors that caused wrong ballot styles to be issued to some voters, and confusion about the enjoined status of the voter photo ID requirement. In the May 8 recall primary, the two major problems were questions about nomination petition signature collection outside polling places and over-votes because of confusion about crossover voting in the primaries for governor, lieutenant governor and state senator. Mr. Bell discussed call volumes to the Help Desk, and how data helped plan for extended hours to serve clerks and the public. Mr. Hein also discussed issues with absentee ballot delivery for non-military people who will be out of the state and unable to receive their ballot electronically due to recent legislation restricting the use of email and fax transmission.

Discussion.

G. Report on Verify the Recall Analysis

Staff Counsel Michael Haas and Assistant Staff Counsel Jonathan Paliwal presented an oral and written report. Mr. Haas said the standards Verify the Recall used for checking the validity of petition signatures were higher than allowed by state statutes, and would have eliminated legitimate signatures from the petitions. In addition, the lack of reliable quality control for data entry led to the organization discounting many valid signatures due to data entry errors by its volunteers. Staff's analysis of Verify the Recall's methodology validates the Board's decision not to partner with the group in analyzing the recall petitions.

Discussion.

H. Report on Concealed Carry Restrictions in the G.A.B. Offices and at Polling Places

Staff Counsel Haas presented an oral and written report, and noted that legal interns Matthew Giesfeldt and Blythe Kennedy drafted the majority of this memo. 2011 Wisconsin Act 35 allows Wisconsin residents to carry concealed weapons with a permit. The law also allows certain entities to prohibit persons from carrying a concealed weapon on property owned or controlled by the entity if it provides proper notice to visitors and patrons. The G.A.B. is permitted to prohibit firearms in its office.

Discussion about where signs might be posted and other details about implementation of a ban on concealed weapons in the G.A.B. offices.

Judge Nichol recounted his own experience on the bench of having an armed litigant outside his courtroom, and advocated having a safe environment for the staff.

Judge Vocke recounted his own experiences of losing a family member and others who might be alive if they had been allowed to carry a weapon for self-defense.

Judge Brennan recounted his own experience with gunshots fired outside a courthouse in Milwaukee County, and expressed concern that if weapons are allowed, somebody is going to get shot.

Judge Nichol said he would like the staff to make a recommendation to the Board at an upcoming meeting regarding weapons at Board offices. Judge Deininger noted that this is the consensus of the Board.

Mr. Haas continued to discuss the issue of concealed carry weapons at polling places and the analysis of staff's memo by the Department of Justice. He said DOJ is not certain about staff's analysis that elections qualify as "special events" as defined in the law; however, DOJ believes that when a municipality occupies a building for a polling place, the same rules apply as if it were municipal property. While a chief inspector has the right to order the removal of a person who creates a disturbance at a polling place, DOJ also wanted to make clear that under the law, having a weapon on one's person is not necessarily criminal disorderly conduct. Staff recommends that the municipal body make decisions regarding whether to ban concealed carry weapons at polling places, not the municipal clerk. He said it is important for municipalities to plan ahead for this issue. The Board directed staff to share that advice with municipal clerks and encourage them to work with their municipal attorney and governing body in making any decision related to conceal carry at the polling place.

Discussion.

Judge Deininger called a recess at 10:29 a.m. The Board reconvened at 10:48 a.m.

I. Proposed Revisions to Central Count Absentee Guideline

Staff Counsel Shane Falk presented an oral and written report. He said Wis. Stat. §6.86(6) was created by 2011 Wisconsin Act 227, which prohibits an elector from personally delivering or mailing an absentee ballot and voting in person at the same election on Election Day. This process affects the Central Count Absentee Guideline the Board previously adopted on December 13, 2011. That Guideline incorporated the statutory right and the Board's longstanding policy to permit an elector vote in person on Election Day, so long as the voter's absentee ballot had not been processed. The enactment of Wis. Stat. §6.86(6) impacts the whole absentee voting process and requires

a revision of the Central Count Absentee Guideline to take into account the impact of this statutory change.

Discussion of issues related to central counting of absentee ballots.

MOTION: Approve the draft revised Central Count Absentee Guideline, which incorporates procedural changes pursuant to 2011 Wisconsin Act 227, located starting on page 45 of the Board materials, and direct staff to incorporate more specific information on central count absentee processes in the Election Day Manual and G.A.B. training. Also, direct staff to notify all clerks, but specifically the clerks for municipalities with existing or considering central count absentee, that they shall forward copies of enabling ordinances and any written procedures for Central Count Absentee by May 25, 2012 for review by Board staff to ensure compliance with the Central Count Absentee Guidance and statutes. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

J. Adoption of Guideline Relating to Scope of Campaign Finance Regulation

Ethics and Accountability Division Administrator Jonathan Becker presented an oral report regarding the proposed guideline on page 53 of the Board materials. The guideline gives information to the public and regulated community about the status of Admin Rule GAB 1.28, which was updated in August 2010, but shortly thereafter enjoined by the Wisconsin Supreme Court until March 19, 2012. He said that in the time since the proposed guideline was circulated with Board materials, staff has received some feedback and may wish to make minor changes prior to Board action.

Discussion regarding the history and litigation surrounding GAB 1.28.

Mr. Becker said the rule does not restrict anyone's free speech rights; but consistent with recent U.S. Supreme Court rules, it does require disclosure if people engage in speech within the scope of regulated activity.

No action was taken.

K. Administrative Rules

1. Approve Scope Statement on Single Signer Recall Petitions, GAB 2.05 (8)

Staff Counsel Haas gave an oral and written report. The Joint Committee on Review of Administrative Rules requested the Board promulgate a rule regarding single-signer recall petitions. He said the statement of scope has now been

approved by the governor, and the Board needs to give its approval before staff can begin drafting the rule.

Judge Barland raised an issue regarding what information a circulator may pre-fill on a petition. He asked that the rule contain a positive statement of what information can be pre-filled.

MOTION: Approve the proposed statement of scope beginning on page 56 of the Board materials for an emergency and permanent rule permitting the use of election petitions executed and signed by a single individual subject to the conditions described in the staff memo, and direct staff to prepare a proposed rule for the Board’s consideration at a future meeting. Moved by Judge Nichol, seconded by Judge Cane.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Nay

Motion carried.

2. Approve Scope Statement on Use of Stickers on Student Identification Cards GAB 10.0x

Staff Counsel Haas gave an oral and written report. Because this rule involves acceptable forms of photo ID that are currently enjoined from enforcement, he advised the Board should move forward with procedural steps in promulgation but hold off on final steps so as not to be effective unless the injunctions are lifted. Viterbo University and Beloit College were the only institutions considering use of stickers to make their ID cards compliant with the requirements in 2011 Wisconsin Act 23.

Discussion.

MOTION: Approve the proposed statement of scope for an emergency and permanent rule permitting the use of stickers on student identification cards for purposes of photo identification subject to the conditions described in the memo beginning on page 60 of the Board materials, and direct staff to prepare a proposed permanent rule for the Board’s consideration at a future meeting and delay preparation of an emergency rule until such time as the photo identification provisions of 2011 Wisconsin Act 23 are reinstated. Moved by Judge Vocke, seconded by Judge Cane. Motion carried unanimously.

3. Status Report on GAB 1.91, Corporate Campaign Activity

Staff Counsel Falk presented a written report to update the Board.

L. Legislative Status Report

Staff Counsel Haas presented a written report. He updated the Board on one item not in the written report regarding a new statute that gives veterans one state professional license at no charge, which may have an impact on lobbying licenses issued by the Ethics and Accountability Division.

M. Director's Report

Ethics and Accountability Division Report – campaign finance, ethics, and lobbying administration

Written report from Division Administrator Becker was included in the Board packet.

Elections Division Report – election administration

Written report from Division Administrator Robinson was included in the Board packet.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included in the Board packet.

Judge Brennan asked staff for a reaction to the public comments regarding voting equipment.

Mr. Hein said that Command Central is a third-party vendor supporting equipment manufactured by Sequoia, which was approved in 2006, including the optical scan Insight and the touch-screen Edge. At the time it was approved in 2006, the equipment was certified by the National Association of State Election Directors, and any municipality could purchase it. Recently, Command Central entered into a business agreement with municipalities in Barron County, agreeing to swap one optical scan Insight machine for two touch-screen Edge machines. He said the Edge systems the municipalities received are the same systems approved by the State Elections Board in 2006, and use the same software and the same firmware. He said that statements that the systems are different are false.

Staff Counsel Falk asked whether there are other versions of Edge in use. Mr. Hein said yes, but not in Wisconsin.

Director Kennedy said that the Board staff is receiving allegations about voting equipment from people who do not trust it. Staff is checking out these allegations and has found that only approved voting equipment is being used. He noted there are challenges because the state's voting equipment is getting old, and staff is studying the best way to move forward.

N. Closed Session

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

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

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

Motion carried unanimously. The Board recessed at 12:23 p.m. and convened in closed session at 1:13 p.m.

H. Adjourn

The Board adjourned in closed session at 5 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Friday, June 8, 2012, at the State Capitol in Madison, Wisconsin beginning at 9 a.m.

May 15, 2012 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 17, 2012

May 15, 2012 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

June 8, 2012