

State of Wisconsin\Government Accountability Board

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
Risser Justice Center, 120 Martin Luther King, Jr. Blvd.
Madison, Wisconsin
August 30, 2010
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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Present: Judge Gordon Myse, Judge Thomas Barland, Judge Gerald Nichol, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Barbara Hansen, Sharrie Hauge, Tommy Winkler, Diane Lowe, Ross Hein, Sarah Whitt, Ann Oberle, Allison Coakley, and Reid Magney

A. Call to Order

Chairperson Myse called the meeting to order at 9:30 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.

C. Approval of Minutes of Previous Meetings

MOTION: Approve the minutes of the July 21-22, 2010 and August 9, 2010 meetings of the Government Accountability Board. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

D. Public Hearing on GAB 1.91

Staff Counsel Shane Falk opened the hearing with a brief presentation about the rule regarding Organizations Making Independent Disbursements, which was promulgated following the *Citizens United v. FEC* case decided by the United States Supreme Court earlier in 2010 and the close of the Legislative Session without the Legislature passing legislation to address the decision. An Emergency Rule was also put in place to address the gap before the permanent rule goes into effect, through the General Election on November 2, 2010.

Mike McCabe of the Wisconsin Democracy Campaign testified in support of the rule, calling it a much-needed and important response to *Citizens United*. He said the rule provides less disclosure than the public deserves, but as much disclosure as state law allows.

Hearing no further comments, Judge Myse closed the public hearing.

E. Public Comment

- 1. Attorney Mike Wittenwyler of Madison** appeared on behalf of the Association of Wisconsin Lobbyists to disagree with the staff's memo on invitations to fund-raisers. Speaking on his own behalf, he asked the Board to delay action on two draft guidelines on individual political activities and on disbursements because he just saw them.
- 2. Paul Malischke of Madison** appeared on his own behalf to speak in favor of two online voter registration initiatives and against automatic voter registration at the Division of Motor Vehicles because of the time and expense.
- 3. Bob Spindell of Milwaukee** appeared on his own behalf to express concerns about the 45,000 people who had not responded to the retroactive HAVA Check ping letters. He said these people should have to reregister to vote.
- 4. Peter Theron of Madison** appeared on his own behalf to support voter list cleanup. He said people who cannot be found deserve to be marked as inactive.
- 5. Mark Musselman of New Berlin** appeared on behalf of the Wisconsin GrandSons of Liberty to urge the Board to remove the 18,000 to 20,000 people whose HAVA Check ping letters came back undeliverable and to re-contact the 45,000 people who did not respond to the HAVA Check letters.
- 6. Jean Smith of Madison** appeared on her own behalf to express concern about voter fraud and suggested an ID card for voters.

7. **Maryanne Hanson of Brookfield** appeared on her own behalf to urge the Board to mark people as inactive on the voter list if they do not respond to HAVA Check letters, and to express concerns about the Statewide Voter Registration System.
8. **Ardis Cerny of Pewaukee** appeared on her own behalf and asked questions about the cost of the Statewide Voter Registration System and the Board's budget.
9. **Joel Gratz of Madison** appeared on behalf of America Votes to support the Board's online voter registration efforts.
10. **Jon Waclawski** appeared on behalf of the Republican Party of Wisconsin to express concern about HAVA Check non-matches. He said non-matches should be required to register to vote again on Election Day.

Chairperson Myse called a recess at 10:31 a.m. The Board reconvened at 10:42 a.m.

F. Proposed Campaign Finance guidelines

1. Furnishing – Solicitation Issue (Guidelines 249, 250, 255)

Ethics and Accountability Division Administrator Jonathan Becker introduced proposed guidelines on lobbying and campaign finance issues.

Discussion.

MOTION: To approve publication of Guidelines 249, 250 and 255, with the addition of language spelling out when contributions are permitted. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

2. **Personal Political Activity**
3. **Independent Disbursement Organizations**

Staff Counsel Michael Haas introduced two proposed guidelines on personal political activity and independent disbursement organizations, which were distributed to interested parties for feedback. He recommended that the Board postpone consideration of the guidelines so that staff could review feedback to be provided by Attorney Wittenwyler.

Discussion.

MOTION: To set consideration of the two guidelines over until the September meeting of the Board. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

G. Administrative Rules

1. Statement of Scope Relating to GAB Chapter 3 – Voter Registration and GAB Chapter 12 – Certification and Training of Municipal Clerks.

Training Coordinator Allison Coakley and Staff Counsel Michael Haas presented changes that would provide for consistent terms for local election officials, making training easier to administer and track.

MOTION: Pursuant to §§5.05(1)(f) and (c), and 227.11(2)(a), Wis. Stats., approve the proposed Statement of Scope, and direct staff to proceed with promulgation of amendments to GAB 3.01 and GAB 12.01. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

2. Approval of Permanent Rule GAB 1.91 – Organizations Making Independent Disbursements

Staff Counsel Shane Falk presented the Board with Permanent Rule GAB 1.91. The proposed order will provide direction to organizations receiving contributions for independent disbursements or making independent disbursements following the U.S. Supreme Court decision in *Citizens United v. FEC*. The proposed rule enumerates registration, reporting, and disclaimer requirements of provisions of ch. 11, Stats., which apply to organizations receiving contributions or making independent disbursements. Comporting with *Citizens United*, the proposed rule does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to monetary or in-kind contributions received, this proposed rule requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.

Discussion.

MOTION: Approve the Notice of Proposed Order creating ch. GAB §1.91 (CR 10-087) containing the revisions recommended in the Legislative Council Report.

MOTION: Direct staff to submit a Legislative Report to the Legislature including a more detailed analysis of the agency’s authority to promulgate ch. GAB §1.91 and take all additional steps necessary to complete promulgation of the rule.

Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

3. Proposed Draft of Rules Relating to the Administration of Contract Sunshine, GAB Chapter 26

Staff Counsel Shane Falk presented information about the proposed draft of GAB Chapter 26, which interprets the Contract Sunshine law by clarifying which agencies are covered and which expenditures are covered. It also requires agencies to use the Contract Sunshine website and establishes a compliance certification process.

Discussion

MOTION: Pursuant to §§5.05(1)(f), 19.48(11), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., the Board formally approves the proposed Notice of Proposed Order Adopting Rule Creating ch. GAB 26, and directs staff to submit the proposed rule to Legislative Council for review, submit a Notice of Submittal to Legislative Council Clearinghouse to the Legislative Reference Bureau, prepare and schedule a Notice of Hearing to incorporate any recommendations by Legislative Council, and directs staff to proceed with promulgation of the rule.

MOTION: Staff shall take all other steps necessary to complete promulgation of the rule creating ch. GAB 26, Wis. Adm. Code.

MOTION: Staff shall publish a Contract Sunshine Administration Manual consistent with ch. GAB 26 and §16.753, Wis. Stats., and finalize a Certification of Contract Sunshine Compliance form.

Moved by Judge Brennan, seconded by Judge Cane. Motion carried unanimously.

4. Status Report on Pending Administrative Rules

Staff Counsel Shane Falk provided an oral and written report.

GG. MOVE Act Waiver Denial

Director and General Counsel Kevin Kennedy updated the Board on the status of Wisconsin's application for a waiver from certain provisions of the Military and Overseas Voter Empowerment (MOVE) Act. The U.S. Department of Defense found that the Act created a hardship for Wisconsin, but denied the waiver request because the timing of the September Partisan Primary does not allow mailing of official ballots to military and overseas voters 45 days before the Fall General Election. He said that, in staff's opinion, the Federal Voting Assistance Program (FVAP) applied the law incorrectly, but the Board is working with the U.S. Department of Justice on a resolution for the upcoming election, and the Legislature will have to address the timing of the primary for future elections. Details of the discussion with US-DOJ will be taken up in closed session under pending litigation.

Discussion.

H. HAVA Check – Disposition of Returned or Non-Responsive Mailings

Elections Division Administrator Nat Robinson and SVRS Lead Sarah Whitt presented an oral and written report to the Board regarding approximately 70,000 names in the Statewide Voter Registration System that still do not match Division of Motor Vehicle records following the retroactive HAVA Check process.

Discussion.

Chairperson Myse called a recess at 12:28 p.m. The Board reconvened at 1 p.m.

K. Presentation: Elections Division Migration of Manual Practices to Web-based Platforms

Herb Thompson and David Grassl of the Department of Administration, Division of Enterprise Technology, made a multimedia presentation about projects they are developing in partnership with Board staff. Those projects include the G.A.B. Canvass Reporting System, which will be used for the first time in the September Partisan Primary; the Accessibility Management Information System, which will replace a 27-page paper survey; and the Redistricting Project, which will allow Board staff to maintain accurate congressional, state senate and assembly district boundaries in SVRS and assist the Legislature and clerks with the redistricting process.

I. Proposed Initiatives for Automating Voter Registration Process

- 1. SVRS Facilitated Mail-in Voter Registration**
- 2. Online Voter Registration**

SVRS Acceptance Testing Lead Ann Oberle and SVRS Technical Lead Sarah Whitt presented information about a system that would allow voters to fill out registration documents online and capture that information, yet still require submission of the paper application for the registration process to be complete.

Discussion.

MOTION: Authorize staff to develop and administer a SVRS Automated, Voter Initiated Mail-In Voter Registration Process to be launched for public use by December 1, 2010.

MOTION: Reauthorize staff to study and develop an on-line voter registration proposal in collaboration with the Wisconsin Department of Transportation and other partners, and prepare a joint report with DOT for consideration by the Board at a meeting in early 2011.

Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

3. Motor Vehicle-based Voter Registration

Elections Division Administrator Nat Robinson and SVRS Technical Lead Sarah Whitt presented information about motor-vehicle based registration.

MOTION: Authorize staff to work with DOT to study the feasibility of a motor vehicle based voter registration concept, limited to DOT driver license data, and identify the most effective ways to accomplish this objective, using existing technologies. A joint G.A.B.-DOT report would be prepared for consideration by the Board at a meeting in early 2011. Also, that provisions be added to the Board's 2011-2013 biennial budget request to allow data sharing between the Department of Transportation and the Board, as well as between the Board and other states. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

J. Presentation: Elections Division Training Initiatives

Training Coordinator Allison Coakley presented an oral and written report regarding training provided to county and municipal clerks, as well as election workers.

Discussion.

L. Voting Systems Approval: Permit Upgrade of NASED Approved AutoMARK Firmware and Use with EAC Certified/GAB Approved ES&S Unity 3.2.0.0 Components

Staff Counsel Shane Falk and Election Specialist Ross Hein made an oral and written presentation regarding upgrading ballot-marking devices.

MOTION: Amend the December 17, 2009 approval of the ES&S 3.2.0.0 and related components to permit the use of NASED-qualified AutoMARKs in conjunction with the voting system components approved on December 17, 2009, provided the NASED qualified AutoMARKs are upgraded with the EAC-certified AutoMARK firmware v.1.3.2906. Further, staff recommends that this amendment permit an as-needed upgrade of NASED qualified AutoMARKs with hardware engineering change orders recently approved by the Director and General Counsel. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

M. Proposed 2011 G.A.B. Meeting Schedule

Director and General Counsel Kevin Kennedy discussed arrangements for upcoming meetings and briefed the Board on the proposed meeting schedule for 2011.

MOTION: To hold a regular meeting of the Board on September 13, 2010, instead of a teleconference meeting. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

MOTION: To waive the per diems for the August 9, 2010 meeting of the Board. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

MOTION: To accept the proposed 2011 meeting schedule, with the change of the March meeting to March 28 and 29. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

N. Director and General Counsel's Report

Elections Division Report – election administration

Written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed the data sharing arrangement between Wisconsin and Minnesota to identify possible cross-state voting.

Discussion.

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

Tommy E. Winkler Jr., assistant administrator in the Ethics Division, presented an oral and written report, which was included in the Board packet, including information about the Lobbying website, the Wisconsin Election Campaign Fund and a survey of Campaign Finance Information users.

Discussion.

Office of General Counsel Report – general administration

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

O. 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 Nichol, seconded by Judge Barland.

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

Motion carried.

Hearing no objection, Chairperson Myse called a recess at 3:15 p.m. The Board reconvened in closed session beginning at 3:23 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Requests for Advice: Two matters considered.
- B. Investigations and Enforcement: One pending matter considered; one investigation authorized.
- C. Litigation: Nine pending matters considered.

P. Reconvene into Open Session

The Board reconvened in open session at 5:42 p.m.

MOTION: To adjourn. Moved by Judge Deininger, seconded by Judge Barland. Motion carried unanimously.

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The next meeting of the Government Accountability Board is scheduled for Monday, September 13, 2010 in Madison, Wisconsin, beginning at 9:30 a.m. The location for the meeting has not been determined.

August 30, 2010 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

September 22, 2010

August 30, 2010 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

October 11, 2010