

State of Wisconsin\Government Accountability Board

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JUDGE WILLIAM EICH
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor
Madison, Wisconsin
January 14, 2010
10 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Selected new Board Officers	1
B. Delegated Authority to Director and General Counsel	2
C. Conducted Legislative Panel on Early Voting Report	3
D. Approved an amended Ballot Access Report	4

Present: Judge Michael Brennan, Judge William Eich, Judge Gerald Nichol (by telephone), Judge Thomas Cane, Judge Thomas Barland (by telephone), and Judge Gordon Myse (by telephone).

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

A. Call to Order

Chairperson Brennan called the meeting to order at 10:01 a.m.

B. Director's Report of Appropriate Meeting Notice

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

C. Selection of Board Officers

The selection of Board Officers was done by lot. Chair Brennan drew the name of Judge Eich to be G.A.B Chair for 2010, and then, as immediate Past Chair, transferred the gavel to Chair Eich. Chair Eich then drew the names of Judge Myse to be G.A.B. Vice Chair and Judge Barland to be G.A.B. Secretary for 2010.

D. Approval of Minutes of Previous Meetings

MOTION: Approve the minutes of the December 17, 2009 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Barland. Motion carried unanimously.

E. Delegation of Certain Authority to the Director and General Counsel

MOTION: Delegate certain provisions of the Board's authority to the Director and General Counsel as set out on page 17 of the G.A.B. meeting materials of January 14, 2010. Moved by Myse, seconded by Nichol. Motion carried unanimously.

G. Election Administration – Ballot Access Report

(This item was taken out of order.)

Elections Division Administrator Nathaniel E. Robinson and Lead Election Specialist Diane Lowe presented a summary of ballot access issues that arose related to the 2010 Spring Election.

1. Appeal of David Gallo
(Presented by Shane Falk)

Staff Attorney Shane Falk made a presentation to the Board about Mr. Gallo's appeal of the decision by the clerk of the Kenosha Unified School District No. 1 to deny him ballot access due to tardiness of his ballot access documents.

Mr. Gallo appeared in person and with his attorney, Mr. David Halbrooks. Mr. Gallo made a presentation to the Board regarding the case. Mr. Gallo said that he is a plumber and first-time candidate for public office. He said he relied on information provided by the school district in written form and on its website, which said the deadline for filing was 5 p.m., Wednesday, January 6. He said he did not see an earlier newspaper story, which said the deadline was January 5, but rather only saw a newspaper article on January 6, 2010 that prompted him to make an inquiry with the clerk regarding the filing deadline. He said he had all his paperwork completed by January 4, but it was not filed until approximately 11:30 a.m. on Wednesday, January 6, 2010. Attorney Halbrooks argued that this was clerk error and that Mr. Gallo should not be penalized as he justifiably relied upon the clerk. The school district admitted the error in printed materials and on the web; however, argued that Mr. Gallo could have deduced the actual due date from more general language on the back of the nomination papers and that he had notice from a newspaper article prior to January 5, 2010.

Discussion. The Board considered whether the clerk should be estopped from asserting the filing deadline in light of Mr. Gallo's justifiable reliance on the clerk error.

MOTION: To order the School Board Clerk of the Kenosha Unified School District No. 1 to certify David Gallo to the ballot for the Spring Election, and that if the addition of Mr. Gallo to the ballot creates the need to hold a primary,

one shall be held. Moved by Judge Myse, seconded by Judge Nichol. Motion carried unanimously.

2. Discussion of Paul Reilly matter

(Presented by Michael Haas)

Staff Attorney Michael Haas made a presentation to the Board about an issue involving the election for Court of Appeals Judge, District 2. One of the candidates included his title on the nomination papers (Judge Paul F. Reilly). Reilly, a circuit court judge, was advised of this irregularity by staff before the filing deadline, and chose not to submit additional signatures. No timely challenge was filed, but after the Board materials packet was distributed, staff received correspondence about the issue and there was news media coverage. Mr. Haas advised the Board that the prohibition of the use of titles on nomination papers is directory, and not mandatory.

Judge Reilly, appeared by telephone.

Judge Myse said that in circulating nomination papers with the title “judge” on them, Judge Reilly runs the risk of misrepresenting himself as an incumbent Court of Appeals Judge. He said it is proper for the Board to take no action, but cautioned that had there been an objection, it would be difficult not to sustain and reject the nomination papers containing the title.

The Board took no action on the matter.

F. Legislative Panel on Board Early Voting Report and Recommendation

Elections Division Administrator Nathaniel E. Robinson advised the Board that staff had endeavored to assemble a Legislative Panel of the Chairs and Ranking Members of the Senate and Assembly committees which consider legislation related to elections for a discussion of the Early Voting Report. Unfortunately, scheduling conflicts had arisen, preventing participation of a full panel. He introduced the Honorable Jeff Smith, Chair of the Assembly Committee on Elections and Campaign Reform.

Representative Smith said he appreciated the invitation to participate in a roundtable discussion with the Board. He and members of the Board discussed a wide range of issues related to the Early Voting Report and election administration in Wisconsin. He said that he and Senator Spencer Coggs, chair of the Senate Committee on Labor, Elections and Urban Affairs, would take the lead on sponsoring any legislation that comes out of the Early Voting Report.

G. Election Administration – Ballot Access Report (continued)

3. Appeal of John O’Boyle

Elections Division Administrator Nathaniel E. Robinson reported to the Board that John O’Boyle was initially not recommended for ballot status because his ballot access documents arrived late at G.A.B. offices. Mr. O’Boyle, appearing in person, explained that he sent his ballot access documents by Express Mail from Ellsworth, on January 4, 2010. He provided documentation indicating the

package was delivered to the agency's post office box at 11 a.m. on January 5, 2010. He argued that denying him ballot status would deny voters in his community the option of voting for him.

Administrator Robinson said staff revised its recommendation after verifying materials submitted by Mr. O'Boyle had arrived at the G.A.B. post office box in a timely manner.

Discussion. The Board expressed concern regarding the delivery process of mail from the agency post office box.

MOTION: To grant ballot status to John O'Boyle for the Pierce County Circuit Court Judge election. Moved by Judge Cane, seconded by Judge Barland. Motion carried.

4. Appeal of John Daggett
(Presented by Michael Haas)

Staff Counsel Michael Haas reported to the Board that John Daggett, a candidate for Winnebago County Supervisor, appealed the decision of the Winnebago County Clerk to deny him ballot status because of insufficient signatures. Mr. Daggett submitted nomination papers with 51 signatures, but two of the signers were successfully challenged because they live outside the district, which left him with 49 valid signatures. Mr. Daggett asked the Board to grant him ballot status because the nomination papers include his signature as the circulator of those papers, which would give him 50 signatures. Mr. Daggett did not sign the nomination papers other than as a circulator.

Mr. Daggett did not appear at the meeting to press his appeal or present additional evidence.

Mr. Haas said signatures can not be added to a petition after it has been filed. He said the question before the Board is whether the Winnebago County Clerk violated the law or abused her discretion in not allowing Mr. Daggett's name to appear on the ballot. He said staff's recommendation is to deny the appeal.

MOTION: To sustain the Winnebago County Clerk's decision to grant the challenge to John Daggett's nomination papers and to deny him ballot status because of an insufficient number of signatures. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

5. Spring 2010 Election Ballot Status Report

MOTION: To approve the ballot status report, as amended to reflect the actions of the Board on ballot access issues. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

K. Director's Report

Kevin J. Kennedy informed the Board that the agency has been notified by the U.S. Election Assistance Commission that \$3.9 million in federal HAVA 2008-2009

Requirements Payments have been released to the State of Wisconsin. Additionally, \$1.2 million for Wisconsin has been appropriated for the 2010 federal budget.

L. Closed Session

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

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

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

Motion carried.

Hearing no objection, the Chairman called a recess at 11:55 a.m. The Board reconvened in closed session beginning at 12:05 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Litigation: Two pending matters considered.
- B. Investigations: One pending matter considered.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m. Tuesday, March 23 and 9:00 a.m. Wednesday, March 24, at the G.A.B. offices, 212 East Washington Avenue, Madison, Wisconsin.

January 14, 2010 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

January 19, 2010

January 14, 2010 Government Accountability Board meeting minutes certified by:

Judge Thomas Barland, Board Secretary

March 23, 2010