

Amended Agenda Item F.

*In the Matter of Steve Peer  
and Boscobel Area School  
District, G.A.B. Case EL 15-8*



- 7) On April 14, 2015, the District, through counsel, responded to Mr. Peer's Complaint with a correspondence to the G.A.B. A copy of this correspondence is attached as "Exhibit C."
- 8) On April 20, 2015, Mr. Peer responded to the District's April 14, 2015, letter to the G.A.B. A copy of this correspondence is attached as "Exhibit D."
- 9) On April 22, 2015, the District, through counsel, responded to Mr. Peer's April 20, 2015, letter to the G.A.B. A copy of this correspondence is attached as "Exhibit E."

Jurisdiction of the Board:

- 10) In his Complaint, Mr. Peer alleged that the District Clerk acted contrary to law: "The Boscobel School District and clerk Barbara Puckett failed to comply with [Wis. ADMIN. CODE GAB, Ch. 2.]" Ex. B. WIS. STAT. §5.06(1) provides that an elector "may file a written sworn complaint with the board" when that elector "believes that a decision or action of [a local election] official or the failure of the official to act . . . is contrary to law, or the official has abused the discretion vested in him or her by law[.]" The Board has jurisdiction to review Mr. Peer's Complaint because he properly filed it in accordance with WIS. STAT. §5.06(1), and because the Clerk's issuance of the Certificate as to Sufficiency is a decision or action of a local election official.
- 11) In its response to Mr. Peer's Complaint, the District argues that the Board may not determine the validity of Mr. Peer's Petition because, the District argues, such authority is vested solely with the local election official. The District argues that "[t]he Complaint seeks to have GAB determine the sufficiency of the Petition; and to conclude that the Petition is sufficient[.]" that "[t]he District is of the opinion that GAB lacks jurisdiction for purposes of a 'de novo' determination of the 'sufficiency' of the referendum petition[.]" and that the Board's "sole function is to prescribe 'standards' consistent with applicable law, which are to be 'applied by all election officials and governing bodies in determining the validity of a petition. It is the election officials and governing body, not the GAB, that determines the validity of the petition." Ex. C, p. 3; Ex. E, p. 1 (emphases in original).

One of the Board's functions is to prescribe standards "to be used by all election officials and governing bodies in determining the validity of petitions[.]" and another is to resolve complaints alleging that an election official has acted "contrary to law, or the official has abused the discretion vested in him or her by law." WIS. STAT. §§5.06(1) and 8.40. WIS. STAT. §5.06(4) authorizes the Board to determine, whether a local election official has complied with the election laws or abused his or her discretion in administering the election laws. The Board has jurisdiction to determine whether the clerk acted contrary to law or abused her discretion, and the Board has such jurisdiction even though the Complaint did not explicitly allege that the clerk abused her discretion.

- 12) The District also argues that the Board does not have jurisdiction to review this matter because the Complaint does not explicitly allege that the clerk abused her discretion. Ex. C, p. 4. WIS. STAT. §5.06(4) authorizes the Board to determine, on its own motion, whether a local election official has complied with the election laws or abused his or her discretion in administering the election laws. The Board has jurisdiction in this

matter even though the Complaint did not specifically allege that the clerk abused her discretion.

- 13) Based upon Findings #10-12, the Board has jurisdiction to determine whether the District Clerk acted contrary to law or abused her discretion in issuing the Certificate as to Sufficiency of Mr. Peer's Petition.

Timeliness of the Complaint:

- 14) WIS. STAT. §5.06(3) provides that a "complaint . . . shall be filed promptly so as not to prejudice the rights of any other party." The District asserts that in between the date that Ms. Puckett signed the Certification as to Sufficiency (January 9, 2015) and the date that Mr. Peer filed his Complaint with the Board (February 9, 2015), that a minimum amount of time was expended on work in connection with borrowing money as contemplated in the Resolution. The District's financial advisor, Baird, spent between 30 and 40 hours preparing the District to borrow money.
- 15) The District did not provide the Certification as to Sufficiency to Mr. Peer until January 28, 2015, and Mr. Peer filed the Complaint 15 days later on February 9, 2015. This is the time period that the Board uses to determine if the District was unduly prejudiced by Mr. Peer's Complaint because Mr. Peer was not advised of the District's decision until January 28, 2015.
- 16) The District argues that Mr. Peer's Complaint is untimely under applicable GAB administrative rules, which provide that "[a]ny challenge to the *sufficiency* of a nomination paper shall be made by verified complaint[,] and that the "response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified." WIS. ADMIN. CODE GAB §2.07(2) (emphasis added). The District misreads that rule, which applies to challenges to the *sufficiency* of nomination papers, not to a complaint regarding the decision or action of a local election official. *See also* WIS. ADMIN. CODE GAB §2.07(3)(a). The Clerk already found Mr. Peer's Petition was *insufficient*. The three-day time limit for a response related to the nomination paper challenge process under WIS. ADMIN. CODE GAB §2.07(2)(b) is not applicable to Mr. Peer's Complaint.
- 17) Based upon Findings #14-16, the Board determines that Mr. Peer filed his Complaint timely. The District has not established that Mr. Peer did not prejudice the rights of the District by filing of the Complaint 15 days after the Clerk issued the Certificate as to Sufficiency.

The District Clerk Acted Contrary to the Law:

- 18) Chapter 67 of the Wisconsin Statutes governs Municipal Borrowing and Municipal Bonds. Generally, WIS. STAT. §67.12(12)(e)2. provides that if an elector files a petition with the school district with the requisite number of signatures within 30 days after publication of a Resolution, then the Resolution "shall not be effective unless adopted by a majority of the district electors voting at the referendum." The petition must conform to the requirements of WIS. STAT. §8.40, which is administered by the Board. *See* WIS. STAT. §§5.05(1), 67.12(12)(e)2.

- 19) WIS. STAT. §8.40 provides the requirements for a petition, as follows:

**WIS. STAT. §8.40(1):** In addition to any other requirements provided by law, each separate sheet of each petition for an election, including a referendum, shall have on the face at the top in boldface print the word "PETITION". Each signer of such a petition shall affix his or her signature to the petition, accompanied by his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. In addition, each signer shall legibly print his or her name in a space provided next to his or her signature. No signature is valid under this subsection unless the signer satisfies the requirements under this subsection.

**WIS. STAT. §8.40(2):** The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each separate sheet of each petition specified in sub. (1), stating that he or she personally circulated the petition and personally obtained each of the signatures; that the circulator knows that they are electors of the jurisdiction or district in which the petition is circulated; that the circulator knows that they signed the paper with full knowledge of its content; that the circulator knows their respective residences given; that the circulator knows that each signer signed on the date stated opposite his or her name; that the circulator is a qualified elector of this state, or if not a qualified elector of this state, that the circulator is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03, Wis. stats.; and that the circulator is aware that falsifying the certification is punishable under s. 12.13 (3) (a). The circulator shall indicate the date that he or she makes the certification next to his or her signature.

**WIS. STAT. §8.40(3):** The board shall, by rule, prescribe standards consistent with this chapter and s. 9.10 (2) to be used by all election officials and governing bodies in determining the validity of petitions for elections and signatures thereon.

- 20) The clerk's Certificate of Sufficiency states that the Petition was insufficient because "None of the referendum petition sheets offered for filing had a copy of the referendum resolution attached." Attaching the resolution to the petition sheets is not required under any applicable statute or rule. In contrast, WIS. STAT. §9.20(1) specifically states that a proposed ordinance or resolution must be attached to a direct legislation petition which is submitted to the filing officer.
- 21) WIS. ADMIN. CODE GAB §2.05 establishes standards to determine the validity of petitions. Neither Mr. Peer nor the District alleges that the signatures on the petition were insufficient for reasons under this rule. Instead, the clerk determined that the Petition was insufficient because Mr. Peer did not include a copy of the Resolution with the Petition upon filing. In its two subsequent responses to Mr. Peer, the District does not allege that any of the signatures are insufficient under this rule. *See* Exs. C and E.
- 22) If the clerk had determined that any of the signatures on Mr. Peer's Petition were insufficient, or that the Petition was insufficient for any other reason, then the clerk was required to provide Mr. Peer the opportunity to correct any insufficiency in accordance with WIS. ADMIN. CODE GAB §2.05(4), which provides that "errors in information contained in a nomination paper, committed by either a signor or a circulator, may be

corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper.” The clerk did not afford Mr. Peer this opportunity. Had she done so, Mr. Peer could have corrected the alleged insufficiency by submitting a copy of the proposed referendum question with the Petition.

- 23) The District argues that the Petition was insufficient because the Petition sought a referendum to be held pursuant to an inapplicable statute. *See* Ex. C, p. 2-3. The Petition states, “I, the undersigned, a qualified elector of the Boscobel Area School District, request that the attached resolution, without alteration, be referred to a vote of the electors pursuant to the provisions of §67.05(6a)(am)(1), Wis. Stats.” The Board of Education ordered the Resolution under WIS. STAT. §67.12(12), which provides that “[t]he referendum shall be called in a manner provided under s. 67.05(6a)[.]” WIS. STAT. §67.05(6a)(am)(1) provides the specific procedures for calling the referendum. Even though the Petition did not reference the specific statute used to order the Resolution, the Petition correctly cited the statute that describes the applicable referendum procedure. Given that the Petition circulated to electors included a copy of the District’s Resolution, the Petition provided signors with sufficient information to understand the purpose and effect of the referendum request,
- 24) WIS. ADMIN. CODE GAB §2.05(5) provides that where “any required item of information on a nomination paper [or petition] is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.” Even though the Petition did not reference the specific statute used to order the Resolution, the Petition substantially complied with the applicable law by referencing the statutory section governing the procedures for calling a referendum election.
- 25) Based upon Findings #18-24, the Board finds that the District clerk acted contrary to law when she determined that the Petition was insufficient, by incorrectly stating that the proposed referendum question was required to be attached to the Petition, and by not affording Mr. Peer the opportunity to correct the alleged insufficiency. The Board finds that applicable election laws do not require that the resolution or referendum question be attached to a petition submitted to the school district clerk pursuant to WIS. STAT. §§67.05(6a) or 67.12(12).

### ORDER

Based upon the above Findings, the Board orders that the Boscobel School District Board of Education shall promptly order its clerk to call a referendum in the manner provided under WIS. STAT. §67.05(6a), except that the question which appears on the ballot shall be “Shall the Boscobel Area School District borrow the sum of \$10,000,000.00 for energy efficiency projects and bus garage upgrade by issuing its general obligation promissory note under section 67.12(12) of the Wisconsin Statutes?”. The Board orders that the Resolution shall not be effective unless adopted by a majority of the district electors voting in a referendum called by the Board of Education in accordance with WIS. STAT. §§67.05(6a), 67.12(12).

Pursuant to WIS. STAT. §5.05(1)(e), the Board authorizes its Director and General Counsel to execute these Findings and Order.

**Pursuant to WIS. STAT. §5.06(8), parties may appeal this Order to circuit court within 30 days of issuance of the Order.**

Dated this [ ] day of April, 2015.

**GOVERNMENT ACCOUNTABILITY BOARD**

*Kevin J. Kennedy*

Kevin J. Kennedy  
Director and General Counsel

DRAFT

**EXHIBIT A**  
**NOTICE TO THE ELECTORS**  
**OF THE**  
**SCHOOL DISTRICT OF BOSCOBEL AREA SCHOOLS**  
**GRANT, RICHLAND AND CRAWFORD COUNTIES, WISCONSIN**

NOTICE IS HEREBY GIVEN that the School Board of the above-named School District, at a meeting duly called, noticed, held and conducted on November 18, 2014, adopted a resolution entitled:

**RESOLUTION AUTHORIZING THE BORROWING OF NOT TO EXCEED  
\$10,000,000; AND PROVIDING FOR THE ISSUANCE AND SALE OF  
GENERAL OBLIGATION PROMISSORY NOTES TO FINANCE  
ENERGY EFFICIENCY PROJECTS AND BUS GARAGE UPGRADE**

Said Resolution was adopted pursuant to the provisions of Section 67.12(12), Wisconsin Statutes to authorize a borrowing in an amount not to exceed \$10,000,000 for the public purpose of paying the cost of energy efficiency projects and bus garage upgrade (the "Project").

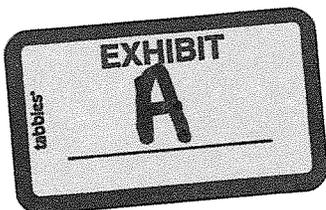
Copies of said Resolution are on file in the District office, located at 1110 Park Street, Boscobel, Wisconsin 53805 and may be inspected weekdays, except holidays, between the hours of 9:00 a.m. and 4:00 p.m.

Section 67.12(12)(e) 2, Wisconsin Statutes provides in part that a referendum is required on the question of this borrowing only if a petition is filed within 30 days after this publication signed by at least 7,500 District electors or 20% of the District electors voting for Governor at the last general election, whichever is the lesser. If no such petition is filed, then the Resolution shall be effective without a referendum.

Dated this 18th day of November, 2014.

BY THE ORDER OF THE SCHOOL BOARD  
Barbara Puckett, District Clerk

(Pub. 11/20/14)      WNAXLP



STATE OF WISCONSIN  
**GOVERNMENT ACCOUNTABILITY BOARD**

RECEIVED  
2015 FEB -9 AM 11:09  
GOVERNMENT  
ACCOUNTABILITY BOARD

COMPLAINT FORM

Please provide the following information about yourself:

Name Steve A Peer

Address 15694 Sand Hill Rd. Woodman, WI 53827

Telephone number 608-533-2751

E-mail \_\_\_\_\_

State of Wisconsin  
Before the Government Accountability Board

The Complaint of Steve A Peer, Complainant(s)

against Boscobel School Board, Respondent, whose  
address is 1110 Park St. Boscobel, WI 53805

This complaint is under ch. 2 (Insert the applicable sections of law  
in chs. 5 to 12, subchapter III of ch. 13, or subchapter III of ch. 19, if known)

I, Steve, allege that:

Sec Addendum  
Copies of Papers have been hand delivery to school Board  
members the night of last school Board meeting 2/6/2015  
is today's date.

Also three letters were presented to the School  
board earlier.



(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

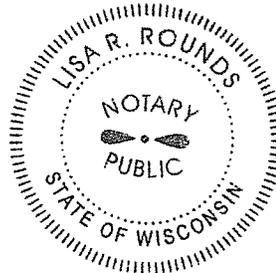
Date: 2/6/15 \_\_\_\_\_ Steve A. Paul  
Complainant's signature

I, Steve A. Paul, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Steve A. Paul  
Complainant's signature

STATE OF WISCONSIN )  
 )ss.  
County of Grant,  
(county of notarization)

Sworn to before me this 6 day of  
Feb, 2015.  
Lisa R. Rounds  
(Signature of person authorized to administer oaths)



My commission expires 11 Sept 2016, or is permanent.  
Notary Public or (official title if not notary)

(Note: A sworn statement is required for complaints regarding actions of local election officials, pursuant to §5.06, Stats, and regarding violations of the campaign finance laws under Chapter 11, Stats. Complaints regarding violations of other statutes under the Board's jurisdiction are not required to be notarized.)

**Please send this completed form to:**

By mail, to Wisconsin Government Accountability Board, P.O. Box 7984, Madison, WI 53707-7984; by fax, to 608-267-0500; or by email to gab@wi.gov.

**Complaints regarding actions of local election officials pursuant to §5.06, Stats. must also be mailed or personally served on the respondent, and the complainant must certify to that service in a cover letter to the Board filed with the complaint.**

I, Steve Peer, allege that:

This complaint is under G.A.B. Chapter 2. See attached.

The Boscobel School Board and clerk Barbara Puckett failed to comply with G.A.B. 2.05, 2.07, 2.09, and 2.11.

Timeline:

1. The Boscobel School Board held an informational meeting on Nov. 25, 2014, regarding their \$10 million resolution--see attached resolution.
2. The electorate had 30 days ( which in this case was a December 25, 2014 deadline) to file a petition to force a referendum with 263 signatures initially required which was determined by a school board employee.
3. On Dec. 18, 2014, I turned in 405 signatures on the petition to call for a referendum to the school board clerk, Barbara Puckett. The resolution (see attached) was on the clipboard at the time of signing.
4. On January 28, 2015, I was finally given a Certificate as to Sufficiency of a Petition by Steve Wacker, Director of Operations, signed by Barbara Puckett, school board clerk, dated January 9, 2015. See attached Certificate.
5. Barbara Puckett certified that the petition for a referendum was insufficient because none of the referendum petition sheets offered for filing had a copy of the referendum resolution attached.

I allege that Barbara Puckett violated and never complied with the following G.A.B. Chapter 2 statutes. According to the G.A.B. 2.09 (5) and 2.11 (1), "challenges to a petition whose filing would require a governing body (in this case the Boscobel School Board) to call a referendum election" are the same as the rules in G.A.B. 2.05 and 2.07, for determining the treatment and sufficiency of nomination papers.

1. G.A.B. 2.07 (2a) states that any challenge to the sufficiency of a petition shall be made by verified complaint, filed with the appropriate filing officer. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements. Any challenge to the sufficiency of a petition shall be filed within 3 days after the filing deadline for the petition. Barbara Puckett and the school board never followed any of these statutes as to method of challenge or timeliness. All challenges needed to be filed by December 28, 2014. None were filed that I know of. If they were, Barbara Puckett failed to follow G.A.B. 2.07 (2a) requirement of 24 hours to deliver the challenge complaint to me. I was not given three days, according to the G.A.B. statutes to correct any errors as I was not notified of any errors within the required three day period.
2. G.A.B. 2.11 (2a) The form of the complaint, the filing of the complaint, and the legal sufficiency of the complaint shall comply with the requirements of chapter G.A.B. 20. This was never done.
3. G.A.B. 2.07 (1) The filing officer shall apply the standards in statutes G.A.B. 2.05 to determine the sufficiency of a petition. G.A.B. 2.05 enumerates a list of requirements for the sufficiency of

a petition, but it doesn't state anywhere in G.A.B. 2.05 that the resolution must be attached to the petition when it is turned into the filing officer. The resolution was attached to the petition by the clip on the clipboard at the time of signing. Therefore, in light of this, for Barbara Puckett to determine and certify that the petition for referendum is insufficient is a gross miscarriage of G.A.B. chapter 2 and must be retracted, so the referendum can go forward. In fact, the opposite is stated in G.A.B. 2.05 (5). Where any required item of information is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law. Since there is no requirement in the statute 2.05 requiring the resolution to be attached at the time of submission of the petition to the clerk, I am in substantial compliance with the law.

4. 2.11 (2b) The complaint challenging a petition shall be in the physical possession of the filing officer within the time set by the statute or other law governing the petition being challenged or, if no time limit is specifically provided by statute or other law, within 10 days after the day that the petition is filed which in this case was December 18, 2014, meaning December 28, 2014, was the last day to challenge the petition.
5. G.A.B. 2.05 (4) Any information which appears on a petition is entitled to a presumption of validity and may be corrected by the circulator or signer. This was never done as there was no challenge to the petition or given to me.
6. G.A.B. 2.07 (3) a. The clerk failed to establish any evidence of insufficiency of the petition based on any statute.

I also request the G.A.B. to issue a protective order to prevent the Boscobel School Board from going forward with its \$10 million resolution in order to protect and preserve the constitutional rights of the taxpayers to exercise their choice at a referendum election.

Finally I would like to point out that the clerk's main job is to be objective in deciding the sufficiency of a petition and to follow the statutes exactly. When the clerk was quoted in the Boscobel Dial saying she threw out so many signatures she became the challenger and lost her neutral position to be a fair decider of petition sufficiency. The board chairman should have been the challenger. I would say she didn't really have the knowledge to correctly handle the petition. This led to many failures to follow the laws and the false claim of petition insufficiency.



To: The Boscobel School Board and Clerk Barb Puckett

From: Mr. Steve Peer

Subject: Challenge to Petition

Date: January 21, 2015

According to the Government Accountability Board 2.09, "challenges to a petition whose filing would require a governing body (in this case the Boscobel School Board, Boscobel, WI) to call a referendum election" are the same as the rules in G. A. B. 2.05 and 2.07, for determining the treatment and sufficiency of nomination papers.

Citing G.A.B. 2.07, any challenge to the sufficiency of a petition shall be made by verified complaint established by an affidavit, or other supporting evidence demonstrating the failure of the petition to comply with statutory or other legal requirements. Any challenge to a petition shall be presented in writing within three (3) calendar days of the filing deadline of the petition (in this case, December 25, 2014).

Since the burden of proof is on the challenger to establish any insufficiency in the petition and this was never done, nor did the clerk act in a timely manner according to the G.A.B. statutes of three days (or December 28, 2014), the petition is therefore valid and stands to cause a referendum.

To come back weeks later and change the number of "invalid" signatures on the petition is absurd and meaningless. The opportunity to challenge the petition has long since past. Therefore, to continue to go forward with a \$10 million resolution without a referendum only invites legal action.

Sincerely,

Mr. Steve Peer



AXLEY BRYNELSON, LLP

• • • • •

TIMOTHY D. FENNER  
(608) 283-6733  
tfenner@axley.com

April 14, 2015

VIA EMAIL

State of Wisconsin  
Government Accountability Board  
Attn: Matthew W. Giesfeldt, Staff Counsel  
Michael Hass, Elections Division Administrator  
P.O. Box 7984  
Madison, WI 53707-7984

RE: In Matter of: Steve A. Peer, Complainant, and Boscobel School District  
GAB Case No. EL15-8

Gentlemen:

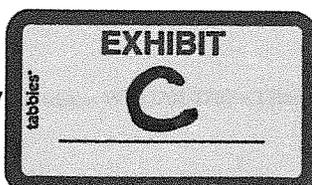
Please be advised that we represent the Boscobel School District (the "District"); and are in receipt of a copy of your letter of March 30, 2015, directed to the District. Please consider this letter to be a response to the Complaint of the Complainant, as well as the letter of March 30, 2015.

Complaint

The Complaint filed by Mr. Peer against that Barbara Puckett, Boscobel School District Clerk and the District is very unclear as to specific allegations of wrongdoing. One allegation is that the District was required to "challenge ... the sufficiency of a petition (for referendum) by ... filing a verified complaint with the Government Accountability Board ("GAB"). (See Allegation No. 1 to attachment to Complaint.) Another is that GAB 2.05 does not require "...that the resolution must be attached to the petition..." (Id. at Allegation No. 3.) Another is that the Clerk or District was required to file a verified complaint with GAB within 10 days after date of filing of the petition (Id. at Allegation No. 4.) Another allegation is that the Clerk failed "...to establish any evidence of insufficiency of the petition..." (Id. at Allegation No. 6). On its face, the Complaint is based upon the premise that (i) the District could only challenge the sufficiency of the petition for referendum by filing a complaint with the GAB and following the procedures in GAB 2 and 20, Wis. Admin. Code; (ii) GAB has "de novo" jurisdiction to determine the validity/sufficiency of the petition for referendum; and (iii) GAB has the authority to issue a "protective order" to prevent the contemplated borrowing. The premise is wrong.

Jurisdiction of GAB

The thrust of this response is to indicate that the District has no obligation to challenge the sufficiency of a petition for referendum by involving the jurisdiction of the GAB and that the



GAB does not have subject matter jurisdiction relative to determining the sufficiency of the petition for referendum.

The District has proceeded with respect to a contemplated bond issuance pursuant to the provisions of Sec. 67.12(12), Wis. Stats. In accordance with that statute, the District Board has adopted an initial borrowing resolution. A copy of the initial resolution is attached. Section 67.12(12)(e)2, Wis. Stats., provides that following adoption of the resolution, the District shall publish a notice of such adoption; and continues:

“If, within 30 days after publication ..., a petition conforming to the requests of s. 8.40 is filed with the school district clerk for a referendum on the resolution (signed by the requisite number of electors), then the resolution shall not be effective unless adopted by a majority of the district electors voting at the referendum.” (Emphasis added.)

The question that must appear on the ballot is: “Shall ... (name of district) borrow the sum of \$\_\_\_ for (state purpose) by issuing its general obligation promissory note (or notes) under Section 67.12(12) of the Wisconsin Statutes.” *Id.*

The Complainant filed a “Petition for Referendum” (the “Petition”) with the District Clerk. A copy of one of the petitions is attached. The Petition states: “I, the undersigned, a qualified elector of the (District) request that the attached resolution, without alteration, be referred to a vote of the electors pursuant to the provisions of Sec. 67.05(6a)(am)(1), Wis. Stats.” (Emphasis added.) On its face, the Petition was defective in two areas:

First, the borrowing described in the initial resolution that was adopted by the District Board provided for a Sec. 67.12(12), Wis. Stats., general promissory note borrowing. The Petition states that it seeks a referendum vote “...pursuant to the provisions of Sec. 67.05(6a)(am)(1), Wis. Stats.” A referendum on a Sec. 67.12(12)(12), Wis. Stats. borrowing is controlled by Sec. 67.12(12)(e) 2, Wis. Stats. – not by Sec. 67.05, Wis. Stats. The reference to Sec. 67.05, Wis Stats. suggests that the District was contemplating a general obligation “bond” borrowing, when in fact it was not. A Section 67.12(12), Wis. Stats. borrowing is different from a 67.05, Wis. Stats. borrowing in many respects (e.g., notes have a maximum 10 year term – bonds have up to a 20 year term). On its face, the Petition misrepresents the type of borrowing reflected in the initial resolution adopted by the District Board.

Second, the Petition specifically made reference to the “attached resolution.” However, no resolution was attached to the petition. The statute as cited in the Petition, i.e., Sec. 67.05(6a)(am)(1), Wis. Stats., provides that a referendum is required in the circumstances described therein if a petition is filed with the Clerk; and in such event: “The question submitted shall be whether the initial resolution shall or shall not be approved.” *Id.* That is a different

question than what is mandated to be on the ballot for a Sec. 67.12(12)(e)2, Wis. Stats. promissory note borrowing (i.e., “Shall (the District”) borrow the sum of \$\_\_\_\_\_ for (state purpose) by issuing is general obligation promissory note ... under 67.12(12) ... “Wis. Stats.”?). The failure to attach the initial resolution is fatal because it misrepresents to the persons signing the Petition, the true and correct nature of the contemplated borrowing by the District and the specific question that the electors are required to vote upon. Accordingly, the Clerk executed a Certificate as to Sufficiency under date of January 9, 2015, a copy of which is attached. The Clerk determined that the Petition was not sufficient for purposes of complying with applicable Wisconsin law.

The Complaint seeks to have GAB determine the sufficiency of the Petition; and to conclude that the Petition is sufficient. If so, the GAB is then requested to issue the requisite relief. This is not a situation where the Complaint challenges the discretion of the Clerk in determining the sufficiency of the Petition. It repeatedly asserts that the Clerk had to challenge such sufficiency by filing a verified complaint with the GAB; and having the GAB make such determination “de novo.” Indeed, no abuse of discretion is alleged in any respect. Without such allegations, the Complaint fails to state a cause of action.

Validity of Petition

It should be noted that the Petition must comply with the provisions of Sec. 8.40, Wis. Stats. Subsections (1) and (2) deal with specific requirements as to signature and to the circulator. Subsection (3) addresses the role of GAB. It provides:

“(3) The board shall, by rule, prescribe standards consistent with this chapter and s. 9.10(2) to be used by all election officials and governing bodies in determining the validity of petitions for elections and signatures thereon.” (Emphasis added).

The Complaint seeks to have GAB determine the validity of the Petition. However, GAB does not have the statutory authority to do so. The role of GAB is very clear. Its sole function is to prescribe “standards” consistent with applicable law, which are to be “applied by all election officials and governing bodies in determining the validity of” a petition. It is the election officials and governing body, not the GAB, that determines the validity of the petition. Without subject matter jurisdiction, the GAB has no authority to consider the Complaint, to conduct an investigation on the validity of the Petition, or to issue any order for relief.

Additional support for the foregoing is found in GAB 2, Wis. Admin. Code. An “election petition” is defined as including any petition for referendum. [See GAB 2.09(5): The section applies to any “...petition whose filing would require a governing body to call a referendum election...”] A challenge to an election petition is to be made in accordance with GAB 2.11(1), which provides:

“... the standards established in s. GAB 2.07 for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing requires a governing body to call a referendum election.” (Emphasis added.)

GAB 2.07(1) provides that:

“...the local filing officer shall review any verified Complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local filing officer under s. 8.07, Stats. The local filing officer shall apply the standards in GAB 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources or evidence under GAB 2.05(3).”

(Emphasis added.)

The cited language indicates that it is the “filing officer” who makes a determination as to the “sufficiency” of a petition for referendum. A filing officer is defined as “the school district clerk.” See Sec. 11.02(7), Wis. Stats. The GAB plays no role in determining the sufficiency of the Petition. That authority is vested exclusively in the filing officer.

Sec. 5.06(1), Wis. Stats., provides that GAB has jurisdiction to review a matter if the election “...official has abused the discretion vested in him or her by law with respect to such matter...” The Complaint makes no allegation that the District Clerk has abused her “discretion.” Indeed, that word is missing from the Complaint. Rather, the Complaint seeks a “de novo” review by GAB of the sufficiency of the Petition; and as such, it fails to state a viable cause of action.

#### The Complaint is Untimely

GAB 2.07(2)(b) provides that any challenge to a nomination paper is to be filed within three days after the filing deadline for the challenged nomination papers. This section is made applicable to petitions for referendum by virtue of GAB 2.11(1). The Clerk’s certification as to the insufficiency of the Petition was made on January 9, 2015. The Complaint was filed with GAB on or after February 9, 2015. In this case, the Complainants have challenged the Clerk’s determination 30 days after the date of that determination, far beyond the period of time authorized under the regulation. The Complaint should be dismissed as being untimely.

#### Procedure

Finally, we would like to respond to the March 30, 2015 letter from Attorney Giesfeldt. Mr. Giesfeldt request that a “sworn” written response to the Complaint be filed by April 14, 2015. Such a request is not proper; and is not in accordance with applicable administrative rules. GAB 20, Wis. Administrative Code relates to “Complaint procedures.” Once a verified Complaint has

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April 14, 2015  
Page 5

been filed with the GAB pursuant to GAB 20.03, the “director” is to determine whether or not the Complaint is timely, is sufficient, and states probable cause. See GAB 20.04(1). If the director determines that the standards are met, then the Complaint is assigned for investigation. See GAB 20.04(3). In connection with that assignment, a respondent is required to file a written verified answer within the time frame set forth therein. However, this procedure is not applicable to matters associated with challenging a petition for referendum pursuant to GAB 2.11, Wis. Administrative Code. GAB 2.11(2) deals with challenges to the sufficiency of a petition for referendum; and provides in relevant part:

“The form of the Complaint, the filing of the Complaint and the legal sufficiency of the Complaint shall comply with the requirements of ch. GAB 20; the procedure for resolving the Complaint, including filing deadlines, shall be governed by this section and not by ch. GAB 20.” (Emphasis added.)

It is clear that only the provisions of GAB 20.01, 20.02, 20.03 and the determination as to standards under GAB 20.04(1) are applicable to such a challenge under GAB 2.11. The provisions of GAB 20.04(3) and thereafter, deal with procedures (e.g., filing of sworn statement, ten day response time, etc.) that are not applicable due to the express language in GAB 2.11(2)(a), Wis. Administrative Code.

Accordingly, please consider this letter to be a Motion to Dismiss the Complaint for the reason that (i) it is untimely; (ii) it fails to state a claim upon which relief can be granted; and (iii) that the GAB lacks jurisdiction over the determination of the sufficiency/validity of the Petition.

Sincerely,

AXLEY BRYNELSON, LLP



Timothy D. Fenner

TDF:avr

Enclosures

cc: Eileen Brownlee  
Steve Wacker  
Brian G. Lanser

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE BORROWING OF NOT TO EXCEED  
\$10,000,000; AND PROVIDING FOR THE ISSUANCE AND SALE OF  
GENERAL OBLIGATION PROMISSORY NOTES TO FINANCE  
ENERGY EFFICIENCY PROJECTS AND BUS GARAGE UPGRADE

WHEREAS, it is necessary that funds be raised by the School District of Boscobel Area Schools, Grant, Richland and Crawford Counties, Wisconsin (the "District") for the public purpose of paying the cost of energy efficiency projects and bus garage upgrade (the "Project"), and there are insufficient funds on hand to pay said costs;

WHEREAS, the District hereby finds and determines that the Project is within the District's power to undertake and serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes; and

WHEREAS, school districts are authorized by the provisions of Section 67.12(12), Wisconsin Statutes to borrow money and to issue general obligation promissory notes for such public purposes.

NOW, THEREFORE, BE IT RESOLVED by the School Board of the District, that;

Section 1. Authorization of the Notes. For the purpose of paying the cost of the Project, there shall be borrowed pursuant to Section 67.12(12), Wisconsin Statutes, the principal sum of not to exceed TEN MILLION DOLLARS (\$10,000,000).

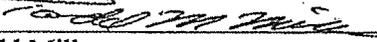
Section 2. Sale of the Notes. To evidence such indebtedness, the District President and District Clerk are hereby authorized, empowered and directed to make, execute, issue and sell for, on behalf of and in the name of the District, general obligation promissory notes aggregating the principal amount of not to exceed TEN MILLION DOLLARS (\$10,000,000) (the "Notes").

Section 3. Notice to Electors. Pursuant to Section 67.12(12)(e)2, Wisconsin Statutes, the District Clerk shall, within ten (10) days of adoption of this Resolution, cause public notice of such adoption to be given to the electors of the District by publishing a notice in the Boscobel Dial, the official newspaper of the District. The notice to electors shall be in substantially the form attached hereto as Exhibit A and incorporated herein by this reference (the "Notice").

Section 4. Award of the Notes. Following receipt of a purchase proposal specifying the terms of and interest rates on the Notes, the School Board shall consider taking further action to provide the details of the Notes and to levy a direct annual irrevocable tax to pay the principal of and interest on the Notes as required by law. Any such further action shall be subject to the condition that no petition for referendum on the question of the issuance of the Notes has been filed within thirty (30) days of publication of the Notice.

Section 5. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the School Board or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Adopted, approved and recorded November 18, 2014.

  
Todd Miller  
District President

ATTEST:

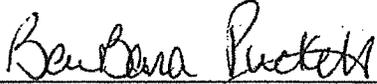
  
Barbara Puckett  
District Clerk

EXHIBIT A

NOTICE TO THE ELECTORS  
OF THE  
SCHOOL DISTRICT OF BOSCOBEL AREA SCHOOLS  
GRANT, RICHLAND AND CRAWFORD COUNTIES, WISCONSIN

NOTICE IS HEREBY GIVEN that the School Board of the above-named School District, at a meeting duly called, noticed, held and conducted on November 18, 2014, adopted a resolution entitled:

RESOLUTION AUTHORIZING THE BORROWING OF NOT TO EXCEED \$10,000,000;  
AND PROVIDING FOR THE ISSUANCE AND SALE OF  
GENERAL OBLIGATION PROMISSORY NOTES TO FINANCE  
ENERGY EFFICIENCY PROJECTS AND BUS GARAGE UPGRADE

Said Resolution was adopted pursuant to the provisions of Section 67.12(12), Wisconsin Statutes to authorize a borrowing in an amount not to exceed \$10,000,000 for the public purpose of paying the cost of energy efficiency projects and bus garage upgrade (the "Project").

Copies of said Resolution are on file in the District office, located at 1110 Park Street, Boscobel, Wisconsin 53805 and may be inspected weekdays, except holidays, between the hours of 9:00 a.m. and 4:00 p.m.

Section 67.12(12)(e)2, Wisconsin Statutes provides in part that a referendum is required on the question of this borrowing only if a petition is filed within 30 days after this publication signed by at least 7,500 District electors or 20% of the District electors voting for Governor at the last general election, whichever is the lesser. If no such petition is filed, then the Resolution shall be effective without a referendum.

Dated this 18th day of November, 2014.

BY THE ORDER OF THE  
SCHOOL BOARD

Barbara Puckett  
District Clerk

Published this 20 day of November, 2014 in the Boscobel Dial.



### PETITION FOR REFERENDUM

I, the undersigned, a qualified elector of the Boscobel Area School District, request that the attached resolution, without alteration, be referred to a vote of the electors pursuant to the provisions of §67.05(6a)(am)(1), Wis. Stats.

POST OFFICE ADDRESS WHEN DIFFERENT THAN MUNICIPALITY IS NOT SUFFICIENT. THE NAME OF THE MUNICIPALITY OF RESIDENCE MUST ALWAYS BE LISTED.				
SIGNATURES OF ELECTORS	PRINTED NAME OF ELECTORS	STREET & NUMBER OR RURAL ROUTE <small>Rural address must also include box or fire no.</small>	MUNICIPALITY OF RESIDENCE <small>Indicate City or Village</small>	DATE OF SIGNING
	Jami Wilburn	9178 County Rd C	Woodman	12/14
	David Grunderson	9178 County Rd C	Woodman	12/14
	Vicki Ward	15514 Sand Hill Rd	Woodman	12/14
	Eddie Ward	15514 Sand Hill Rd	Woodman	12/14
	Trudi Bray	116353 Waltz Lane	Boscobel	12/15
	Roger Bray Jr.	116353 Waltz Lane	Boscobel	12/15
	Latisha Bray	116353 Waltz Lane	Boscobel	12/16
	Joshua Bray	216989 Hwy 161	Boscobel	12/16
	Traci Edge	502 Park St.	Boscobel	12/16
	John Edge	502 Park St	Boscobel	12/16

**Certification of Circulator**

I, Vicki Ward certify: I reside at 15514 Sand Hill Rd Woodman  
(Name of circulator) (Circulator's residence - include number, street, and municipality)

I further certify I am either a qualified elector of Wisconsin, or a U.S. citizen, age 18 or older who, if I were a resident of this state, would not be disqualified from voting under Wis. Stat. § 6.03. I personally circulated this petition for direct legislation and personally obtained each of the signatures on this petition. I know that the signers are electors of the municipality listed above. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I know their respective residences given. I intend to support this petition. I am aware that falsifying this certification is punishable under § 12.13(8)(a), Wis. Stats.

12/18/14  
(Date)

Vicki Ward  
(Signature of circulator)

Susan Kellogg Susan Kellogg 15582 Hwy 161 S. Boscobel 12/16  
Lori Esters Lori Esters 412 E Bluff St. Boscobel 12/16  
Amee Salzgeber Amee Salzgeber 17985 Circle Dr Boscobel 12/16

April 20, 2015

**FAXED**

**RECEIVED**

2015 APR 21 AM 10:05

**GOVERNMENT  
ACCOUNTABILITY BOARD**

State of Wisconsin  
Government Accountability Board  
Attn: Matthew W. Giesfeldt, Staff Counsel  
Michael Hass, Elections Division Administrator  
P.O. Box 7984  
Madison, Wisconsin 53707-7984

RE: In the Matter of: Steve A Peer, Complainant, Boscobel School District  
GAB Case No. EL15-8

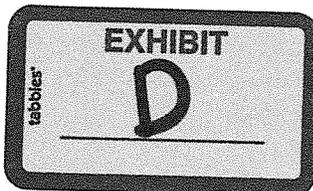
Gentlemen:

Thank you for requesting a response to the District's response. I am attempting to find an attorney to provide a more formal response, but for now I will provide this letter pending the outcome of that endeavor. I will respond to the three items requested in your letter of April 15, 2015.

First, whether the GAB has jurisdiction in this matter: Of course it does. If they won't enforce their own election Statutes who would follow them? Attorney Fenner is mistaken when he says GAB lacks jurisdiction in this matter. Sec. 5.06(1), Wis. Stats., provides GAB jurisdiction in this matter because the complaint is about the school board Clerk's violation and failure to comply with GAB 2.05, 2.07, 2.09, and 2.11. It's not that she so much abused her discretion, which she did, but that she went way beyond abuse of discretion and completely violated and failed to comply with and/or follow almost all GAB chapter 2 laws regarding the sufficiency of a petition.

The clerk failed to apply the standards in GAB chapter 2 to determine the sufficiency of a petition. Then she certified that the petition was insufficient because no copy of the resolution was attached to the petition at the time of filing. However, the resolution was attached to the petition at the time of signing by the clip on the clipboard. Over 40 copies of the resolution were made. The determination that the resolution must be attached at the time of filing is false. That requirement is not to be found in the Statutes. Therefore I allege that the Clerk (or the school board or its attorney) either invented the claim and/or made it up. The Clerk's motive, I allege, would be pressure from the school board to find something wrong with the petition, no matter what, even if the Clerk had to make it up. Wisconsin Statute 12.13(3)(a) Prohibited Acts Election Fraud states, no person may falsify any information with respect to a petition for a referendum. I believe that Wisconsin Statute 12.60 states that whoever violates 12.13(3)(a) is guilty of a Class I felony.

Second, whether the petition was valid: Of course it was valid. I had over the number of signatures required. No challenge to the sufficiency of the petition, proper or improper, was ever given to me within the allowed 10 days from the December 18, 2014 date of filing. This means all challenges after December 28, 2014 are untimely and invalid because they do not meet the statutory requirements. Therefore the petition still stands and a referendum must go forward. Two other important Chapter 2 lines regarding validity: 1. Any information which appears on a petition is entitled to the presumption of validity and may be corrected by the circulator or signer. 2. Where any required item of information is incomplete the filing officer (or school board clerk in this case) shall accept the information as complete if there has been substantial compliance with the law. Since there is no requirement anywhere in GAB



Chapter 2 that the resolution be attached at the time of submission of the petition to the clerk, I am in substantial compliance with the law. I don't think the same can be said about the clerk.

Another mistake that Attorney Fenner makes is that instead of rebutting and making a specific response to the 6 allegations as GAB directed (which would be hard because they're true) he twists them and misstates them. He says that I said (1) that the district had to file a verified complaint with GAB, (2) that the district could only challenge the sufficiency of the petition for referendum by filing a complaint with GAB, (3) that the Complaint seeks to have GAB to determine the sufficiency of the petition, and so on ad nauseum. I never said or even implied any of these in the complaint. I never asked GAB to look at the petition. I find this type of "spin" of the facts very frustrating.

Third, whether the complaint was filed timely. Of course it was. On page 4 attorney Fenner claims the complaint was filed February 9, 2015, 30 days after the January 9, 2015 Clerk's certification, far beyond the period of time authorized under the regulation. He quotes GAB 2.07(2)(b) "provides that any challenge to a nomination paper is to be filed within three days after the filing deadline for the challenged nomination papers." Again he twists this and makes another mistake by making a false conclusion regarding timeliness. GAB 2.07(2)(b) The exact Statute states, "The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified." There is a big difference in meaning between "any challenge to" and "the response to a challenge."

No challenge to the sufficiency of the petition was filed with the Clerk within 3 days after the filing deadline (which was December 25, 2014) meaning December 28, 2014 was the last day to file a challenge. Having not received any challenge I had nothing to respond to within 3 days. Of course it is obvious to most that this Statute that he quoted incorrectly has nothing to do with filing a complaint to the Government Accountability Board in a timely manner. How could a professional make such a mistake?

Please understand that I had no way to know that the Clerk had even signed a certificate of sufficiency, let alone the reason, as no one took responsibility to inform me. The Boscobel School District has been without a superintendent for the entire school year. However, last fall a third grade teacher was pulled from his teaching responsibilities and made acting superintendent even though he lacks the credentials and qualifications for such a position. He apparently lacks the ability and knowledge to correctly handle complex issues like the petition. I filed a freedom of information request and finally had to go into the office to ask for information about the petition. I was not given the certificate of sufficiency by the acting superintendent until January 28, 2015. So to prepare a complaint in early February was actually very timely. I also delivered 3 letters to the school board in January stating my allegations but they ignored them and never responded back to me about them.

In conclusion, Attorney Fenner fails to respond in his response to the key GAB request to "please include the basis for the Clerk's determination that the proposed referendum question is required to be attached to the petition when it is submitted to the Clerk." Yet he has the audacity to say on page 3 line 6, "The clerk determined that the Petition was not sufficient for purposes of complying with applicable Wisconsin law." Of course, it's hard to find the evidence of an applicable Wisconsin law when it doesn't exist. Otherwise, Mr. Fenner would have included it if there was such a law.

Finally, he says that my premise that the GAB has the authority to issue a "protective order" to prevent the contemplated borrowing is wrong. How absurd is that? Of course the GAB can issue a protective

order to prevent the Boscobel School Board from going forward with its \$10,000,000 resolution in order to protect and preserve the constitutional rights of the taxpayer to exercise their choice at a referendum election. The GAB can even order the School Board to hold a referendum because Wis. Stats. 67.05(6a)(am)(1) and 67.12(12)(e)2 both require a referendum if a petition is filed within 30 days. Which is exactly what happened!

Thank you for your time and attention in this matter.

On behalf of the citizen's right to choose committee,

Mr. Steve Peer

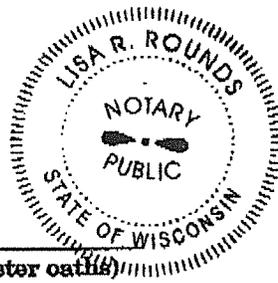
I, Steve Peer, being first duly sworn, on oath, state that I personally have read the above letter and that the above claims are true based on my personal knowledge of the matter.

Steve Peer Date 4/20/15

STATE OF WISCONSIN )  
County of Grant )ss.  
(county of notarization)

Sworn to before me this 21 day of  
April, 2015.

Lisa R. Rounds  
(Signature of person authorized to administer oaths)



My commission expires 9/11/16, or is permanent.  
Notary Public or (official title if not notary)

## BACKGROUND INFORMATION ADDENDUM

This will provide you with some context (there is a lot more) and background information on how the Boscobel School Board operates. The following points will illustrate the disturbing pattern of ineptness that shows a pattern of questionable decisions and disregard for the law.

1. The Boscobel School district is operating this school year without a credentialed Superintendent.
2. The acting Superintendent is unlicensed and untrained to be an administrator. He was a 3rd grade teacher in the Boscobel School District. Being a member of the "good old boy's network" was apparently his biggest asset in obtaining this promotion.
3. The Boscobel school board member who made the motion for the \$10,000,000 resolution was allegedly an illegal school board member. He resides in another school district. The illegal school board member allegedly falsified his declaration of candidacy papers twice (2012 and 2015). Unless of course the Boscobel School District doesn't require a declaration of candidacy paper or its members to reside in the district.
4. The resolution authorizing the borrowing of \$10,000,000 was approved on November 18, 2014 by the Boscobel School Board. The Wisconsin Department of Public Instruction in their Act 32 Revenue Limit Exemption requirements states (exact quote), "School boards of the school districts are required to pass a resolution with specified information between July 1 and November 1 in the school year in which a tax is to be levied for the expenditure and submit a copy of the resolution within 2 weeks of passage." It wasn't passed until 18 days after the deadline.
5. The borrowing described in the resolution that was adopted by the Boscobel School Board provided for a Sec. 67.12(12) Wis. Stats. general promissory notes borrowing. This misrepresents to the taxpayers the true and correct nature of the borrowing which will be by BONDS not promissory notes. Therefore Sec. 67.05(6a)(am)(1). Wis. Stats. on the petition is absolutely correct. In Section 67.12(12)(e)2, if the attorney would have quoted it completely, it refers to 67.05 and makes the exception for the question. If you would like confirmation on the type of loan that is anticipated, call the school and ask which type of loan application was filled out: promissory notes or bonds?
6. The School Board has allowed H&H to do hundreds of thousands of dollars of work before the ink was dry on a contract or loan.

cc: Eileen Brownlee  
Boscobel School Board c/o Steve Wacker  
Timothy Fenner  
Brian G. Lancer



AXLEY BRYNELSON, LLP

• • • • •

TIMOTHY D. FENNER  
(608) 283-6733  
tfenner@axley.com

April 22, 2015

VIA EMAIL

State of Wisconsin  
Government Accountability Board  
Attn: Matthew W. Giesfeldt, Staff Counsel  
Michael Hass, Elections Division Administrator  
P.O. Box 7984  
Madison, WI 53707-7984

RE: In Matter of: Steve A. Peer, Complainant, and Boscobel School District  
GAB Case No. EL15-8

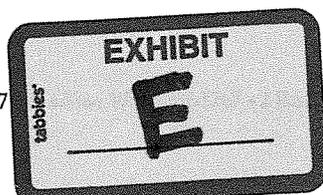
Gentlemen:

We have received a copy of the verified "reply," dated April 20, 2015 (the "Reply") from the Complainant, Mr. Steve Peer, in response to your letter of April 15, 2015. Because of the contents of that Reply, we must respond to some of the more outrageous and egregious assertions set forth therein.

#### Jurisdiction

Mr. Peer completely misses the mark in his discussion of jurisdiction. The District is of the opinion that GAB lacks jurisdiction for purposes of a "de novo" determination of the "sufficiency" of the referendum petition. Under Sec. 8.40, Wis. Stats. and GAB 2.07(1), it is the "local filing officer" (in this case, the District Clerk) that determines the sufficiency of the Petition. GAB does not make the initial determination as to sufficiency; and it does not have jurisdiction to make a "de novo" determination on that issue. As we noted in our response, GAB does have jurisdiction for purposes of determining whether or not the District Clerk has "abused the discretion vested in ... her by law..." with respect to ... "her determination as to "...the validity of the ..." subject Petition. See Secs. 5.06(1) and 8.40(3), Wis. Stats. GAB's jurisdiction extends only to a review of the official's exercise of discretion -- a different issue than a "de novo" determination of the sufficiency of the Petition.

Traditionally, a review of an administrative decision or the exercise of discretion on certain matters has been done by certiorari. In *State ex rel. Oelke v. Doepke*, 260 Wis. 493 (1952), the Supreme Court held that certiorari was the proper remedy to determine whether a county clerk acted within his jurisdiction in calling a referendum election on ordinances creating a reorganized school district under St. 1949, §40.303(14). Assuming this holding would be applied to the Clerk's determination in this case, then under Wisconsin common law, certiorari review is limited to (i) whether the official kept within his or her jurisdiction; (ii) whether the



official proceeded on a correct theory of law; (iii) whether the official's action was arbitrary, oppressive or unreasonable and represented the official's will and not his judgment; and (iv) whether evidence was such that the official might reasonably make the determination in question. *Webster v. Milwaukee County* (E.D. Wis. 2010), 731 F.Supp. 2d 837. Neither the Complaint nor the Reply specifically addresses these issues on review of a discretionary act.

Rather, Mr. Peer continues to assert that the District and Clerk "... completely violated and failed to comply with and/or follow almost all GAB chapter 2 laws regarding the sufficiency of the petition." (See Reply at par. 2.) This statement is based on the mistaken premise that the only way the sufficiency of the Petition can be challenged is for the Clerk to file a verified complaint with GAB and then follow the procedures in GAB 2, Wis. Admin. Code. (See Complaint and Reply.) This premise assumes that GAB has "de novo" jurisdiction to determine such sufficiency; and completely ignores the mandates of Sec. 8.40(3) and GAB 2.07(1), which requires the "election officials" determine the sufficiency of the Petition.

#### Validity of Petition

With respect to Mr. Peer's second point dealing with the validity of the Petition itself, he notes that he had the requisite number of signatures. The District has not challenged the sufficiency of the Petition based upon the number of signatures. Sufficiency is not determined solely on the basis of signatures. Mr. Peer conveniently chooses to ignore the fatal defects that are inherent in the Petition. The first is that the initial borrowing resolution was not attached to the Petition even though the Petition itself expressly indicates that it is an attachment. The second defect is that the Petition refers to a Sec. 67.05, Wis. Stats. borrowing when, in fact, the District was not proceeding under that statute at all. It was proceeding under Sec. 67.12(12), Wis. Stats. These two defects render the Petition to be insufficient for purposes of applicable law. Indeed, the Petition affirmatively misstates (or perhaps "misrepresents") the contemplated municipal financing; and by omitting the initial resolution as an attachment, conceals the true nature of the contemplated financing. These are material and significant deficiencies that cannot be ignored. Mr. Peer's attempts to get around these defects by arguing that anything appearing on a petition "...is entitled to the presumption of validity..." and that the filing officer must "... accept the information as complete if there has been substantial compliance with the law." Whatever presumption existed is rebutted by simply looking at the initial resolution as well as at the Petition. Without attaching the initial resolution, the Petition expressly misrepresents to those signing the Petition, the type of borrowing that the District was contemplating in connection with the project. Such a misrepresentation overcomes any presumption of validity. The act of circulating such a petition which materially misrepresents the type of borrowing contemplated for this project is egregious; and is a misrepresentation that simply cannot be allowed to stand.

April 22, 2015

Page 3

The Complaint is Untimely

As to the issue of timely filing, the administrative rules speak for themselves. GAB 2.11, Wis. Admin. Code specifically provides that "... the standards established in GAB 2.07 for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with Sec. 8.40, Wis. Stats., including ...any other petition whose filing requires a governing body to call a referendum election." (Emphasis added.) Turning to GAB 2.07 (2)(a), wherever the words "sufficiency of nomination papers" appears, one must substitute in this case the phrase "discretion of the filing officer in determining the sufficiency of an election petition." Again, the only jurisdictional authority of GA is whether or not the Clerk "abused her discretion" in determining the Petition's sufficiency. Since GAB's review is to be focused on abuse of discretion, then GAB 2.07(2)(a) must be applied in this procedural context. In so doing, GAB 2.07(2)(a) must be read to provide: "Any challenge to the (filing officer's discretion) shall be made by verified complaint, filed with the appropriate filing officer..." The rule continues: "Any challenge to the (filing officer's discretion) shall be filed within 3 calendar days after (the filing officer's determination)." It is clear that a person challenging the discretion of the filing officer who made the determination as to the sufficiency of a petition for referendum, must do so by verified complaint filed within three calendar days after the date of the determination. In order for this to make any sense given the context in which this case arose, it is apparent that the Complainant should have filed the Complaint within three days after the Clerk made the certification. It was not. Rather, the Complaint was filed more than thirty days after the Clerk's certification. The challenge is not timely.

We urge GAB staff to review this matter; and summarily dismiss the Complaint for failing to comply with applicable provisions of Wisconsin law. The Complainant seeks to have GAB make a de novo determination as to the sufficiency of the petition; and moreover, the Complainant has failed to meet his burden of proof that the Clerk has abused her discretion, given the material deficiencies appearing on the face of the Petition.

Sincerely,

AXLEY BRYNELSON, LLP



Timothy D. Fenner

TDF:avr

cc: Eileen Brownlee  
Steve Wacker  
Brian G. Lanser