

State of Wisconsin\Government Accountability Board

Post Office Box 2973
17 West Main Street, Suite 310
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: seb@seb.state.wi.us
<http://elections.state.wi.us>



KEVIN J. KENNEDY
Legal Counsel

MEMORANDUM

TO: Government Accountability Board Members
FROM: Kevin J. Kennedy, Legal Counsel
DATE: December 10, 2007 Meeting
SUBJECT: Delegation of Authority to Legal Counsel

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

Section 5.05 Government Accountability Board; Powers and Duties.

(1) . . .the Board may:

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

Before the passage of 2007 Wisconsin Act 1, the State Elections Board was authorized to delegate this authority along with other specified powers related to the conduct of investigations and enforcement actions to its executive director. Each January, the State Elections Board reviewed and renewed that authority. 2007 Wisconsin Act 1 removed the authorization for the Government Accountability Board to delegate authority to its chief administrative officer to issue a subpoena, apply for a search warrant or commence an action. Now the Board must specifically authorize these actions. Section 5.05 (1)(b), (2m)(c)4., 6.a., Wis. Stats.

Recommendation

Pursuant to S. 5.05 (1)(e), Wis. Stats., I recommend that the Board formally delegate the following quasi-judicial and litigative authority to the Legal Counsel:

- to intervene in actions under the provisions of S. 5.05(9), Wis. Stats.

- to issue compliance review orders under the provisions of S. 5.06, Wis. Stats.
- to exempt municipalities from polling place accessibility requirements pursuant to the provisions of s.5.25(4)(a), Stats.
- to exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of S. 5.40(5m), Wis. Stats.
- to authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of S. 7.30(4)(e), Wis. Stats.

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

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

The delegation continues beyond the calendar year until reviewed by the Board. This specific delegation should be reviewed each January by the Board or upon any transition in the position of Legal Counsel. The next scheduled review would be January 2009.