



# Wisconsin Elections Commission

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September 27, 2021

Steven Steinke  
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Birnawood, WI 54414

Deb Kessen  
N9246 Trout Lane  
Birnawood, WI 54414

Dennis Knaak  
W17184 County Rd. N  
Birnawood, WI 54414

**Sent via email to:** [Stelsteinke@hotmail.com](mailto:Stelsteinke@hotmail.com); [drcdeb@aol.com](mailto:drcdeb@aol.com); [knaakdennis@frontier.com](mailto:knaakdennis@frontier.com)

Re: In the Matter of: Steven Steinke v. Deb Kessen (Case No.: EL 21-26) and Steven Steinke v. Dennis Knaak (Case No.: EL 21-27)

Dear Mr. Steinke, Ms. Kessen, and Mr. Knaak:

This letter is a consolidated response to the verified complaints submitted by Steven Steinke (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which were filed in reply to actions taken by election officials during the April of 2021 Spring Election in the Town of Birnamwood. The complaint alleges that the Clerk Knaak and Election Inspector Deb Kessen (“Respondents”) violated Steinke and others’ rights under Wis. Stat. § 7.30(2)(a) when Respondent Kessen was allowed to serve as an election official while also being a ballot candidate. The Complainant also argues that Respondent Knaak violated state elections laws by allowing an even number of poll workers (*see* Wis. Stat. § 7.30(1)(a)) and authorizing individuals to serve as election inspectors despite being the spouses of ballot candidates. These matters have been consolidated into this single decision letter due to the significant overlap between the facts, allegations, and parties.

Complaints “...shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

The Commission has reviewed the complaint and the Town of Birnamwood’s response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the Respondents’ failures to comply with the requirements of Wis. Stat. § 7.30(1)(a) and (2)(a). The Commission also recommends that the Town of Birnamwood no longer allow spouses or immediately family members to serve as elections officials, as it may constitute a violation of other provisions of the law, but this issue does not raise probable cause to believe that a violation of Wisconsin Statutes Chapter 5-10 and 12 occurred.

*Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

*Administrator*  
Meagan Wolfe

### Complaint Allegations and Response

Mr. Steinke filed the now-consolidated complaints with the Commission pursuant to Wis. Stat. § 5.06 alleging that Town of Birnamwood officials violated applicable sections of Wisconsin Statutes, Chapter 7. Specifically, the complaint alleges that Respondent Kessen served as an election official while also being a ballot candidate in violation of Wis. Stat. § 7.30(2)(a). Additional complaints allege that Respondent Knaak violated Wis. Stat. § 7.30(2)(a) by allowing Respondent Kessen to serve this capacity, that Respondent Knaak allowed an even number of elections inspectors in violation of Wis. Stat. § 7.30(1)(a), and that he violated the “ethics code for Local Public Officials” by authorizing the spouses of two ballot candidates (including himself) to serve as elections inspectors.

Respondent Kessen filed a sworn response to the complaint, countering the allegations by noting that she did not serve as an election official, but rather as a registration clerk. Her contention is that this does not meet the definition of an election inspector, a position she has held when not a ballot candidate. Respondent Knaak joined in this argument to justify his allowance of Respondent Kessen in the polling place during the election. He added that Respondent Kessen did not sign any elections forms requiring a poll worker signatures, complete and sign other elections materials, fill out tally sheets, process voting machine slips, handle ballot bags, or reconcile poll books.

Clerk Knaak also filed a sworn response to the additional complaints, countering the allegations by noting that he utilized an odd number of poll workers (three) at the April election (*i.e.* Respondent Kessen was a registration clerk, the other three parties handled all the election inspector functions referenced above, etc.). Respondent Knaak acknowledged that two ballot candidates’ spouses, including his own wife, served as elections inspectors.

Clerk Knaak offered further defense, contending that the chief inspector’s husband was running for a town supervisor position that pays \$75.00 per monthly meeting, and that he was ultimately defeated by a wide margin. The clerk justifies the presence of his own wife by noting that he has been an unopposed candidate for town supervisor and clerk for many consecutive election cycles. No voters were turned away, or ballots challenged. All candidates won by large margins or ran unopposed. The response document also calls attention to the difficulty attracting elections inspectors, and the issues created when three of their seasoned officials need to recuse themselves during a single election, but the clerk concedes that even the optics of spouse-inspectors should have been considered in the current election climate.

### Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised by Mr. Steinke’s complaint.

The Commission’s role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

## Commission Findings

### *Election Notices*

Wisconsin Statute § 7.30(2)(a) provides in relevant part:

Only election officials appointed under this section or s. 6.875 may conduct an election. Except as otherwise provided in this paragraph and in ss. 7.15 (1) (k) and 7.52 (1) (b), each election official shall be a qualified elector of a county in which the municipality where the official serves is located, and each chief inspector shall be a qualified elector of the municipality in which the chief inspector serves. If no qualified candidate for chief inspector is available or if the chief inspector is appointed to fill a vacancy under par. (b), the person so appointed need not be a qualified elector of the municipality. If a municipal clerk or deputy clerk is appointed to fill a vacancy under par. (b), the clerk or deputy clerk need not be a resident of the county, but shall be a resident of the state. No more than 2 individuals holding the office of clerk or deputy clerk may serve without regard to county residency in any municipality at any election. **All officials appointed under this section shall be able to read and write the English language, be capable, and be of good understanding, and may not be a candidate for any office to be voted for at an election at which they serve.** An individual holding a local public office, as defined in s. 19.42 (7w), may be appointed to serve as an election official under this section without having to vacate the local public office. In 1st class cities, they may hold no public office other than notary public. Except as authorized under subs. (1) (b) and (4) (c), all inspectors shall be affiliated with one of the 2 recognized political parties which received the largest number of votes for president, or governor in nonpresidential general election years, in the ward or combination of wards served by the polling place at the last election. Excluding the inspector who may be appointed under sub. (1) (b), the party which received the largest number of votes is entitled to one more inspector than the party receiving the next largest number of votes at each polling place. Whenever 2 or more inspectors are required to perform a function within a polling place and both parties that are entitled to submit nominees have done so, the chief inspector shall assign, insofar as practicable, an equal number of inspectors from the nominees of each party. **(emphasis added)**

Additionally, Wis. Stat. § 7.30(1)(a) requires:

Except as authorized under par. (b), there shall be 7 inspectors for each polling place at each election. Except as authorized in par. (b), in municipalities where voting machines are used, the municipal governing body may reduce the number of inspectors to 5. A municipal governing body may provide for the appointment of additional inspectors whenever more than one voting machine is used or wards are combined under s. 5.15 (6) (b). A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of 2 or more sets of officials

to work at different times on election day, and may permit the municipal clerk or board of election commissioners to establish different working hours for different officials assigned to the same polling place. Alternate officials shall also be appointed in a number sufficient to maintain adequate staffing of polling places. **Except for inspectors who are appointed under par. (b) and officials who are appointed without regard to party affiliation under sub. (4) (c), additional officials shall be appointed in such a manner that the total number of officials is an odd number and the predominant party under sub. (2) is represented by one more official than the other party. (emphasis added)**

Finally, the Commission has published the following:

It is the opinion of the Commission that election inspectors may not serve at elections where they, their spouse, or immediate family member is a candidate on the ballot or under other circumstances where a candidate's success or failure to win election would affect the election inspector financially. There may be other laws that specifically prohibit certain individuals from serving as election inspectors. Clerks are encouraged to check with their local municipal attorney if they have any questions as to whether a given individual may serve. *Election Day Manual for Wisconsin Elections Officials* (September, 2020), at 8.

It is undisputed in the complaint and response materials that ballot candidates and spouses were performing duties in the Town of Birnamwood's polling place on election day. It is of no consequence that these parties served as a "registration clerk" or carried out other allegedly benign functions. The mere appearance of potential influence or electioneering becomes problematic under those circumstances. Of particular importance is that Wis. Stat. 5.02(4e) defines "election official" as "an individual who is charged with **any duties relating to the conduct of an election.**" (emphasis added) It is, therefore, a breach of the plainly stated requirements of Wis. Stat. § 7.30 to have ballot candidates working in the polling place on election day.

Given the broad statutory definition of "election official" cited above, it is also evident from the record that the town had an even number of elections inspectors (four), in contravention of statutory requirements. Moreover, the Commission has long maintained that spouses and family members should not serve as elections inspectors when there are financial considerations at stake in the election. This opinion is derived from longstanding ethical guidance, as well as a Wisconsin Attorney General opinion and municipal statutes prohibiting public officials and family members from financially benefiting from their office/position. That said, the Commission is only empowered to consider complaints pertaining to Wisconsin Statutes, Chapters 5-10 and 12. The "ethics code for Local Public Officials" cited by the Complainant is not under the jurisdiction of this body.

As such, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the Respondents' failures to comply with the requirements of Wis. Stat. § 7.30(1)(a) and (2)(a). The record supports a finding that ballot candidates did serve as elections officials in the polling place, and that included an even number of officials. The severity of this violation is minimally mitigated by

the conditions noted in Respondent Knaak's response (*e.g.* difficulty recruiting election inspectors, the void of experience when several parties recuse themselves, etc.). It is, however, ordered that Clerk Knaak and Town of Birnamwood officials must conform all future election activity to the requirements of Chapter 7 of the Wisconsin Statutes, as those requirements were not met in April of 2021. The Commission also recommends that the Town of Birnamwood no longer allow spouses or immediately family members to serve as elections officials, but this issue does not raise probable cause to believe that a violation of Wisconsin Statutes Chapter 5-10 and 12 occurred.

#### Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion has occurred with regard to the town's deficiencies in allowing ballot candidates to serve as elections inspectors and for employing four elections inspectors on election day. The Commission orders the Respondent to comply with all requirements contained in Chapter 7 of the Wisconsin Statutes when staffing the polling place in future town elections.

#### Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

COMMISSION

A handwritten signature in black ink that reads "Megan L.M. Wolfe". The signature is written in a cursive style with a large, looped 'M' and 'W'.

Meagan Wolfe  
Administrator

cc: Commission Members