

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: November 2, 2012

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Elections Commission
Milwaukee County Election Commission

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

SUBJECT: Response to Wisconsin Grassroots Network Letter of November 2, 2012

Several clerks have requested guidance regarding an email communication from the Wisconsin Grassroots Network. The email includes statements asserting and implying that the statutory procedures for machine counting of ballots may be unreliable or insecure, statements which the Government Accountability Board (G.A.B.) strongly disputes. While the G.A.B. appreciates the interest of citizens in the voting process, the G.A.B. offers the following guidance and directives in response to this communication:

1. Reminding Voters to Check the Voter-Verified Paper Audit Trail (VVPAT)

We recommend avoiding verbal instructions to voters as it tends to raise consistency issues. However, there is nothing intrinsically wrong with advising a voter to check the VVPAT. If you wish to provide instructions of this sort to voters, it is recommended that you do so by placing an instructional sign near the voting equipment rather than relying on verbal instructions.

2. Guarding Voting Equipment from Suspicious Individuals

Election officials should continue to rely on the draft voting equipment security rules of GAB 5. These rules can be found at: <http://gab.wi.gov/about/meetings/2009/october> as Item H of the open session materials. While these rules were never officially promulgated, the draft rules from 2009 continue to embody the Board's policies on ballot and voting equipment security. These provisions are also incorporated into the training materials provided by the Board to municipal clerks and chief election inspectors, namely the Election Administration and Election Day manuals.

Of particular note for Election Day are the following provisions of GAB 5.04:

- (1) Before any ballots are cast on any piece of voting equipment, the integrity of the tamper evident seals shall be verified by the chief election inspector verifying that the tamper evident seal serial number on the inspectors' statement matches the tamper-evident seal serial number contained on the electronic voting equipment. Any irregularity or discrepancy between the two numbers shall be reconciled before using the equipment.

- (3) After the polls have closed, election officials shall print a results report before breaking any seal on the equipment and before the removal of the memory device from any piece of voting equipment. If additional reports other than the results reports are required, these reports shall also be printed before breaking any seal on the equipment and before the removal of the memory device.
- (4) The chief election inspector shall compare the serial numbers of all security seals, then verify by initialing the inspectors' statement. Any additional seals used during the election shall also be recorded on the inspectors' statement.
- (7) If removal of the memory device is not required, the device may remain sealed in the voting equipment. The serial numbers of the security seals shall be verified and initialed on the inspectors' statement.

Physical security of the voting equipment is maintained by both verifying these tamper evident seals at the beginning and end of Election Day as well as by election officials maintaining watch over the voting equipment throughout the day. If you have any questions about voting equipment security procedures, please contact the Government Accountability Board for more information.

3. Allowing Observers to Hand-Count Votes on Election Night

The Wisconsin Grassroots Network also suggests that in municipalities which use optical scan voting equipment, observers should be allowed to visually inspect each ballot on Election Night as election inspectors sort through them to identify write-in votes. We do not believe that any provision of Wisconsin's election laws or Public Records Law requires that you accommodate this request on Election Night. In our opinion this unnecessarily impedes your election inspectors' ability to complete their post-election responsibilities.

Observers are certainly entitled to watch the process of canvassing ballots after the polls close, but they are not permitted to interfere with or disrupt the process. Wis. Stat. § 7.41. In the Board's opinion, election inspectors should focus on their specific statutory duties to canvass and secure ballots, and to forward results to the municipal clerk. If the request to view or photograph individual ballots will disrupt the canvassing process, distract inspectors from their duties, or delay completion of the process, we discourage inspectors from allowing such inspection of individual ballots on Election Night. We are expecting a typically large turnout for the Presidential Election and the public and media will be expecting election officials to provide accurate results as quickly as possible. Introducing new and unnecessary steps into the process may not be a wise decision at the end of a long day when inspectors need to focus on their tabulating duties.

4. Unexpected Results on the Voting Equipment Results Tape

Wisconsin election officials are required to reconcile on Election Night the total number of voters with the total number of ballots. Wis. Stat. § 7.51(2). If election officials find more ballots than voters, they are directed to examine the poll books for human error. If the error cannot be explained by an error in the poll books or an error made by the election officials, the inspectors would then follow the statutory draw down procedures to bring the number of ballots down to the level of voters recorded as voting at the election. Election officials are not required to conduct a detailed examination of the results tape for undervotes or other unexpected results.

5. Photographs of Ballot Bags

Election officials should continue to rely on the draft ballot security provisions of Wis. Stat. § 7.51(3) and the rules of GAB 5. These rules can be found at: <http://gab.wi.gov/about/meetings/2009/october> as Item H of the open session materials. While these draft rules were never officially promulgated, the rules from 2009 continue to embody the Board's policies on ballot security. These provisions are also incorporated into the training materials provided by the Board to municipal clerks and chief election inspectors, namely the Election Administration and Election Day manuals.

Of particular note for Election Day are the following provisions of GAB 5.01:

- (4) Within the requirements of Wis. Stat. § 7.51(3), the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container must be closed in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to the ballot container.
- (5) (a) Within the requirements of Wis. Stat. § 7.51(3) (a), a ballot container shall be considered “sealed” or “locked,” only if no ballot may be removed from or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container.
- (b) Ballot bags shall be sealed with a tamper-evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification attached to the bag. Serial numbers of the seals also shall be recorded on the inspectors’ statement. Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification.
- (6) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access to the container is limited only to the clerk of the election district, board of election commissioners, or to persons authorized by the clerk or the board of election commissioners, and access to which is not available to any other person.

After the polls have closed, restrictions on photography in the polling place are lifted. While photography of the ballot bags and containers are not required, neither are they prohibited. If you choose to make a record of the condition of your ballot bags and seals, you may do so.

Conclusion

An increasing number of organizations appear to be attempting to impose their own desired standards or procedures upon clerks and election inspectors, who should be confident that they are following the uniform procedures required under Wisconsin law. Though well-intentioned, these efforts may serve to create confusion and uncertainty among voters and election workers. Pursuant to Wis. Stat. § 5.05(1), only the Government Accountability Board is charged with the general authority and responsibility for the administration of Wisconsin election laws. The Board continues to advise election officials to consult and comply with the procedures required by Wisconsin Statutes and in accordance with the Board’s training and manuals, which have been developed with the input of local election officials

If you have any additional questions regarding the Wisconsin Grassroots Network communication, please contact the G.A.B. HelpDesk at (608) 261-2028 or by email at gabhhelpdesk@wi.gov.

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