

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: October 24, 2014

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

FROM: Michael Haas
Elections Division Administrator

SUBJECT: Canvass Boards and Open Meeting Requirements - Change in Type D Notice Required

This memorandum has been updated to clarify that, if a publication deadline has already passed for the Type D notice, the notice does not need to be re-published, but that any notices which are posted should be updated as described below.

On October 15, 2014, Attorney General J.B. Van Hollen issued a formal opinion in response to a request from the Government Accountability Board which addresses how the open meetings law applies to the activities of canvassing boards, from the local board of canvassers to the official state canvass. While there has historically been little distinction made between the role of election inspectors during voting hours and after the polls close, pursuant to Wis. Stat. §7.51, the inspectors constitute the local board of canvassers after the polls close and are charged with performing specific canvassing duties as a body. Please note that the Attorney General's guidance will require a change in the Type D notice.

The complete Opinion of the Attorney General is attached and can be found here: <http://www.doj.state.wi.us/sites/default/files/formal/OAG-05-14.pdf>. It concludes that meetings of the members of a local board of canvassers are governmental bodies subject to the Open Meetings Law when they convene to carry out statutory canvassing activities after the polls close, but not when they are working only as individual inspectors performing administrative duties during voting hours. In particular, the Opinion states the following:

- 1) While election inspectors make up the local canvassing board after the polls close, during voting hours the election inspectors are performing administrative duties as individuals, not as a collective body. Therefore, the activities of election inspectors while the polls are open are not a meeting of a governmental body that is subject to the Open Meetings Law.

- 2) After the polls close, the election inspectors act as the local board of canvassers and collectively perform tasks assigned to that body, such as reconciling poll lists, counting votes, preparing election returns, certifying certain election results, securing election materials, and delivering election materials to the municipal clerk. Thus, tasks performed after the polls close is a meeting of a governmental body subject to the Open Meetings Law.
- 3) If absentee ballots are canvassed by a separate board of absentee ballot canvassers, that process is considered a meeting of a governmental body subject to the Open Meetings Law.
- 4) Meetings of the municipal board of canvassers are also subject to the Open Meetings Law, including when reconvening for the purpose of processing provisional and late-arriving absentee ballots. Meetings of school district and county canvassing boards are also meetings of governmental bodies subject to the requirements of the Open Meetings Law.
- 5) Activities of permanent and temporary municipal employees assigned to organize election materials that have been delivered to the municipal clerk, and to prepare those materials for delivery to the county clerk are considered administrative activities and are not a meeting of a governmental body subject to the Open Meetings Law.

The Opinion of the Attorney General is consistent with guidance that the G.A.B. has previously issued, with the exception of the conclusion regarding the duties of election inspectors which meet as the local board of canvassers after the polls close on Election Night. For meetings of canvassing boards that are subject to the Open Meetings Law, the following requirements apply:

- 1) Public notice of the meeting must be given at least 24 hours before the meeting unless, for good cause, it is impossible or impractical to give that much notice, in which case as little as two hours' notice may be given. The municipal clerk is responsible for providing public notice for the local and municipal boards of canvassers as well as the meeting of the municipal board of absentee ballot canvassers; school district clerks are responsible for providing public notice for the county canvassing board; and county clerks are responsible for providing public notice for the county board of canvass.
- 2) For meetings of the local board of canvassers, the notice requirement may be met by adding a sentence to each Type D notice indicating that, immediately after the polls close, the election inspectors at each polling place will convene as the local canvassing board for the purpose of conducting local canvass pursuant to Wis. Stat. § 7.51.

When a municipal board of canvassers meets on Election Night in a municipality with only one polling place, the Type D notice should also

indicate that, after or jointly with the meeting of the local canvassing board, the election inspectors will convene as the municipal canvassing board for the purpose of conducting the municipal canvass pursuant to Wis. Stat. § 7.53(1).

Sample language to add to the Type D notice is attached. Any language typically used regarding accommodations for persons with disabilities at other public meetings should also be included.

Because the publication deadline for the Type D notice has already passed for some newspapers, the G.A.B. is advising that the notice does not need to be re-published, but that any notices which are posted should contain the revised language.

- 3) As with other governmental bodies, meetings of canvassing boards must be reasonably accessible to members of the public and open to all citizens at all times. The public is allowed to record, film, or photograph a canvassing meeting. Reasonable limits on public access are permitted to protect the effective and orderly conduct of the canvass. Members of the public are never permitted to inspect the confidential portion of a poll list and are prohibited from touching any election materials or equipment during the counting of the votes at a polling place or at any central counting location. Requests to view or copy election materials may be treated as public records requests in which a reasonable amount of time is permitted to produce documents. However, the G.A.B. encourages chief inspectors to print additional copies of the results tape if requested by a member of the public attending the meeting of the canvassing board on Election Night.
- 4) While the meeting of the local board of canvassers on Election Night is a bit different than most traditional meetings of governmental bodies (typically no agenda is printed and no minutes are approved, for instance), the G.A.B. advises that the chief inspector should announce the convening and adjournment of the meeting. If observers are present, it would also be helpful to describe in general terms what tasks the election inspectors are completing, although a step-by-step narrative is not required. Attached is sample language that may be incorporated into the start of the proceedings after the polls close.
- 5) Because meetings of canvass boards are subject to the Open Meetings Law, members of the public are not required to present a photo ID before attending the meeting. While the G.A.B.'s election observer rules for the 2014 General Election indicate that observers must present a photo ID, this provision is not to be enforced after the polls close or during other canvass board meetings. Observers are also not required to sign in as a condition of attending a public meeting. Election officials may enforce

other provisions of the observer rules, such as designating an observation area.

Please incorporate these requirements into your canvass board procedures. We also recommend that you share this information with your legal counsel who may provide additional guidance. Thank you for your attention to and compliance with the Attorney General's Opinion and with this guidance.

If you have any further questions regarding the above information or other issues that arise, please contact the G.A.B. Help Desk at (608) 261-2028, or gabhhelpdesk@wi.gov.

**LANGUAGE TO BE ADDED TO BOTTOM OF
TYPE D ELECTION NOTICES FOR LOCAL BOARD OF CANVASS**

At the close of voting on Election Day, pursuant to the provisions of Wis. Stat. § 19.84, the Election Inspectors at each polling place will convene as the Local Canvassing Board for the purpose of conducting the local canvass pursuant to Wis. Stat. §7.51. This meeting will be open to the public pursuant to Wis. Stat. §§ 19.81-89.

**LANGUAGE TO BE ADDED TO BOTTOM OF
TYPE D ELECTION NOTICES FOR
LOCAL AND MUNICIPAL BOARDS OF CANVASS**

At the close of voting on Election Day, pursuant to the provisions of Wis. Stat. § 19.84, the Election Inspectors will convene as a joint meeting of the Local Board of Canvassers and the Municipal Board of Canvassers for the purpose of conducting the local and municipal canvasses pursuant to Wis. Stat. §§7.51 and 7.53(1). This meeting will be open to the public pursuant to Wis. Stat. §§ 19.81-89.

**SAMPLE STATEMENT FOR CHIEF INSPECTOR TO RECITE
AT CLOSE OF VOTING ON ELECTION NIGHT**

The election polls are now closed. Pursuant to the provisions of Wis. Stat. §19.84, this body will now convene in open session as the Local Board of Canvassers [and as the Municipal Board of Canvassers, when applicable] under the provisions of the Wisconsin Open Meetings Law for the purpose of conducting the local [and municipal] canvass pursuant to Wis. Stat. §7.51.

Under the provisions of the Wisconsin Open Meetings Law, you will not be asked to sign in or to show identification. This meeting will be open to the public and will be reasonably accessible as required by the open meetings law. Under both the election law and the open meetings law, election inspectors have full authority to maintain order and to enforce obedience to their lawful commands during the election and canvass of the vote.