

# State of Wisconsin \ Government Accountability Board

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**DATE:** July 29, 2011

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

**FROM:** Nathaniel E. Robinson  
Elections Division Administrator  
Government Accountability Board

**SUBJECT:** WCEP Requests Regarding August Elections

Several clerks involved in the August recall elections have requested guidance regarding an email communication from Attorney Jim Mueller on behalf of Wisconsin Citizens for Election Protection (WCEP). 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 strongly disputes. Regarding the requests made by Attorney Mueller, the Board issues the following guidance and directives:

1. As indicated in our communication of July 7, 2011, municipalities over 7500 in population are required to tabulate ballots using electronic voting equipment unless a waiver is approved by the Government Accountability Board. The local governing body must approve a petition to seek a waiver allowing the use of paper ballots and voting booths for a specific election. Each waiver request is evaluated on a case-by-case basis.
2. Municipalities are directed not to complete or post the “Golden Ballot Award” document offered by WCEP at polling places. This document purports to confer an elevated level of recognition and certification to polling places which comply with procedures requested by WCEP which are not required by Wisconsin Statutes. WCEP indicates it will encourage voters to look for the “Golden Ballot Award” at polling places and to cast a write-in ballot if they do not observe that document.

Voters certainly have the option to cast write-in votes for any reason. However, the “Award” improperly simulates an official document implying that ballots cast at those locations are more secure and are more likely to be accurately counted than ballots at locations which do not display the “Award,” without any credible basis for making such a distinction. The “Award” also could be interpreted as describing the rights of a voter to a hand count. This is a recipe for unwarranted confusion and concern at the polling places. In addition, it may violate §12.035, Wis. Stats., which prohibits the posting of election-related material at the polling place, other than communications required under §5.25, Wis. Stats., or other documents approved by the Board.

3. Attorney Mueller's email makes a public records request which clerks should address in a timely manner, in consultation with their legal counsel if necessary. If documents exist containing the information requested, the request should be satisfied. If not, the clerk is not required to create a new document under the Public Records Law.
4. Attorney Mueller recommends specific methods of securing voted ballots and unused ballots. The Statutes do not prescribe a specific method of sealing ballot bags or containers holding cast ballots, other than by using a tamper-evident, serialized numbered seal. A ballot container is considered sealed if it is closed in such a manner that no ballot may be removed or added without visible evidence of interference or damage to the ballot container. The Statutes also do not require that unused ballots be sealed first in a separate bag, but municipalities may certainly do so if they wish.

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 steps required under Wisconsin law. Though well-intentioned, these efforts may serve to create confusion and uncertainty among voters and election workers. Pursuant to Sec. 5.05(1), Wis. Stats., 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.

If you have any additional questions regarding the WCEP request, please contact the G.A.B. HelpDesk at (608) 261-2028.

cc: Kevin J. Kennedy  
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