

El. Bd. Op. 77-4 (Reaffirmed 6/9/08)

Summary:

Preparation and distribution of absentee ballot applications by candidates and others is permissible. State election law is not applicable to the question of whether such applications may be accepted by the municipal clerk if they carry political messages. §6.86, Stats. (Issued to Dan A. Ramsey, July 21, 1977)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on June 9, 2008.¹

Opinion:

You have submitted to the Board a sample of an application for absentee ballot carrying the disclaimer of a candidate. Apparently the application was prepared and distributed by the candidate's committee. You ask two questions: First, is it permissible for a candidate's committee to prepare and distribute applications for absentee ballots? Second, does the inclusion of a candidate's disclaimer on such applications preclude the clerk from accepting and filing them in his or her office?

To answer your first question, it is necessary to examine the statutory scheme for absentee voting. An absentee elector is generally defined in §6.85, Stats., as any otherwise qualified elector who expects to be unable to vote at the polling place because of absence from the municipality, sickness, handicap, physical disability or religious reasons.

To obtain an absentee ballot, the statutes require only that an absentee elector make written application. §6.86 (1), Stats. The statutes do not require any particular form to be used for application, nor do they require that an application form be obtained from the clerk. Also, the distribution of absentee applications outside the clerk's office and in a form other than that used in the clerk's office creates no greater potential for fraud than attends an application at the clerk's office. The real safeguards in the absentee voting process are the limitation on the distribution of absentee ballots to those making written application and the certificate affidavit which must be completed by the elector in the casting of each absentee ballot. §§6.86 and 6.87, Stats. Municipalities using voter registration have an additional safeguard, in that absentee ballot distribution is limited to registered electors. §6.20 (1), Stats.

Therefore, the preparation and distribution of absentee ballot applications outside the clerk's office is permissible. The next question is whether there is anything in the particular status of candidates which would prohibit them or their agents from the preparation and distribution of absentee ballot applications.

While a candidate is explicitly prohibited from participation in the voter's preparation of the absentee ballot and ballot envelope, §6.87 (7), Stats., such prohibition cannot be read to include the

¹ Section 6.85, Wis. Stats., was revised by 1999 Wisconsin Act 182 to define an absentee elector as "any otherwise qualified elector who for any reason is unable or unwilling to appear at the polling place in his or her ward."

preparation and distribution of applications for absentee ballots. The potential for fraud or improper influence present when the candidate takes part in the actual balloting process is not present when the candidate merely prepares and distributes ballot applications.

The Board concludes that it is permissible for a candidate or his agents to prepare and distribute absentee ballot applications.

You have asked whether a municipal clerk may accept and file absentee ballot applications which carry a candidate's disclaimer, as set out in §11.30 (2), Stats. Your concern arises from the belief that a disclaimer may itself constitute a political message, and the use for official purposes and filing of an application carrying such a message in the office of a public official may be improper.

State statutes prohibit certain political activity in state buildings and prohibit electioneering in or around a polling place on election day, §§11.36 and 12.03, Stats., but they do not deal with the propriety of political messages in offices of local government officials, such as municipal clerks. Nor do they preclude the official use of absentee ballot applications carrying political messages.

There may be local ordinances or statutes outside the election laws which cover this question. However, because state election laws are inapplicable, the Board has no authority to issue an opinion on this particular question. §5.05 (6), Stats.

The Board notes that the question can be avoided if the candidate or other person printing the applications does not include a political message. (§11.30 (2), Stats., would not require a disclaimer on an application which contains no political message.) Also, the applications could be printed with a detachable political message, which can be removed prior to delivery to the clerk.