

**El. Bd. Op. 94-1** (Reaffirmed 7/15/08)

**Summary:**

**A municipality using lever voting machines for an election that includes county, state or national offices or county or state referenda may collect, from the county, a proportionate share of the cost of preparing the ballot for those machines and for the cost of supplies, notices or other materials necessary in preparing or conducting the election, but is not entitled to reimbursement, from the county or state, for a share of the cost of technicians, messengers, tabulators or canvassers employed in that election unless the decision to employ was made by the county or state.**

**Allocation of the costs of an election between a municipality and a county depends on the nature of the cost and the type of election in which it is incurred.**

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on July 15, 2008.

**Opinion:**

You have requested that the State Elections Board issue an opinion pursuant to §5.05(6), Stats., regarding the payment of the costs of an election involving both city and county candidates.

The facts regarding which you have requested our opinion and upon which this opinion is based are as follows. Within the last three years, the City of Mauston has converted (from a punch card voting system) to a lever machine system of voting. In January of 1993, the City billed Juneau County \$7,876 for the county's share of election expenses for the Spring, Fall Primary, and General Elections in 1992. The expenses related to five categories described on the bill as follows: 1) Labor - Set-up machines; 2) Labor - Election officials; 3) Meals; 4) Publication costs; 5) Printing ballot strips. Relying upon advice from the Elections Board's Executive Director, the county paid only the costs of publication and printing ballot strips, (\$1,920).

In November, 1993, the city issued a revised billing in which the county's share for the 1992 elections was reduced to \$2,965.11, plus a credit, (\$1,920), for the previously paid costs of publication and printing ballot strips. The city added to the new billing the county's share for the costs of the 1993 election which was calculated to be \$1,007.90. The new billing assessed labor charges for: 1) Technicians to set up the machines; 2) Technicians to set up the ballot and tabulation; 3) Technicians to format the ballot; 4) Technician to do tally sheets; 5) Technician to do ballot layout; and 5) Inspectors to do tabulation. The 1993 billing also included \$48.99 for polling place notices. Neither the 1992 charge nor the 1993 charge includes separate billing for meals. The county has declined to pay any additional charges until it receives advice from the Board regarding which election costs incurred by a municipality are allocable to the county in which the municipality is located.

The broader question that is being posed to the Elections Board is how are the various costs incurred in conducting an election allocated among the various governmental units that participate in the election. More precisely, the parties are asking which, if any, of the election costs billed by the City of Mauston are payable by Juneau County. A separate question that may

go to the heart of the dispute between the city and the county is what type of service was performed under the various billing categories; i.e., what did setting up the machines entail; how does "set-up ballot and tabulation" differ from "ballot format" or "ballot layout"; and what kind of services does each describe. To resolve that question, the City of Mauston may have to provide more explanation of its billing, particularly in light of this opinion.

## Discussion

Responsibility for payment of the aggregate costs of elections is provided in two statutory sections: §§5.68 (Cost of elections) and 7.03 (Compensation of election officials and trainees). Those sections are too extensive to reprint here and are appended to this opinion. The critical portions of those statutes are as follows:

5.68 Cost of elections. (1) The cost of acquisition of ballot boxes and voting booths, voting machines or electronic voting systems and regular maintenance thereof shall be borne by the municipalities in which the boxes, booths, machines or systems are used.

(2) Except as otherwise expressly provided, all costs for ballots, supplies, notices and any other materials necessary in preparing or conducting any election shall be paid for by the county or municipality whose clerk or board of election commissioners is responsible for providing them. .... If ballots, supplies, notices or other materials are used for elections within more than one unit of local government, the costs shall be proportionately divided between the units of local government involved in the election. ....

(3) If voting machines are used or if an electronic voting system is used in which all candidates and referenda appear on the same ballot card, the ballots for all national, state and county offices and for county and state referenda shall be prepared and paid for by the county wherein they are used. If the voting machine or electronic voting system ballot includes a municipal or school, vocational, sewerage or sanitary district ballot, the costs of that portion of the ballot shall be reimbursed to the county or paid for by the municipality or district, ....

(4) The cost of compensation of election officials and trainees shall be borne in the manner provided in s.7.03.

7.03 Compensation of election officials and trainees. (1) (a) A reasonable daily compensation shall be paid to each inspector, voting machine custodian, automatic tabulating equipment technician, member of a board of canvassers, messenger and tabulator who is employed and performing duties under chs. 5 to 12. ....

(b) Except as provided in par.(bm), payment shall be made by the municipality in which the election is held, except that any technician, messenger, tabulator or member of the board of canvassers who is employed to perform services for the county shall be paid by the county and any messenger or tabulator who is employed to perform services for the state shall be paid by the board.

## 1. Compensation of election officials

The general rule regarding compensation of election officials, as set forth in §7.03(1)(b), Stats., is that "payment is made by the municipality in which the election is held." An exception is provided for any "technician, messenger, tabulator or member of the board of canvassers who is employed to perform services for the county", (and who is to be paid by the county); or any "messenger or tabulator who is employed to perform services for the state" (and who is to be paid by the state).

The Board's reading of the statute is that the term "employed to perform services for" means that either the county or the state has employed the technician, messenger, tabulator or canvasser or that the decision to employ a technician, a tabulator, messenger or canvasser was the county's or the state's. That term does not include technicians, messengers, tabulators or canvassers who perform services that benefit the county or state, but who have not been employed by the county or state. The legislature intended this provision to reach those circumstances in which the county or state has made the decision to employ, as can occur at central counting locations or during recounts. Here, the hiring decision was solely that of the City of Mauston.

The fact that technicians, tabulators or canvassers perform work with respect to ballots that include county or state candidates or referenda, or specifically tally votes for county or state offices or referenda, does not mean that a prorata share of their time is billable to the county or state. If the legislature had intended to provide a proration of election officials' time according to the time spent on county or state offices or referenda, it would have specifically provided for proration as it has done in §5.68, Stats., with respect to other election costs.

Because neither Juneau County nor the State of Wisconsin employed any election official to perform services for the county or the state, neither the county nor the state is responsible for paying a pro rata share of any city election official's time. None of the bill submitted by the City of Mauston is authorized by §7.03, Stats. More specifically, the city cannot bill Juneau County for inspectors' time under any circumstance and cannot bill the county for any other labor costs unless those costs are authorized by §5.68, Stats.

2. The costs of ballots, supplies, notices and other materials necessary in preparing or conducting an election. The general rule that has governed the allocation of costs of elections has been the first sentence of §5.68(2), Stats.: "all costs for ballots, supplies, and any other materials necessary in preparing or conducting any election shall be paid for by the county or municipality whose clerk ..... is responsible for providing them." With respect to ballot costs, the legislative history of s.5.68, stats., shows that municipalities paid for ballots for their own elections and counties paid for ballots for general elections, (which included only county, state and national offices, except when held in conjunction with a special election at the local level), and for ballots for county offices (including judicial ballots).

With the inception of voting machines a special exception was created for ballots for such machines, in §11.09(1)(b), Stats., (1963), (the predecessor to s.5.68(3), Stats.), which reads as follows:

11.09 Ballots for machine; samples, etc. (1)(a) ... (1963)

(b) When such ballots are to be used at a nonpartisan primary or election at which both local as well as judicial officers are to be nominated or elected, the cost of such printing shall be prorated proportionately as to space used, between the city, town, village and county involved. Such printing may be ordered by the local clerk with the knowledge and consent of the county clerk or in counties containing more than 500,000 residents, with the knowledge and consent of the county election commission.

Instead of one unit of government paying for one of the costs of elections, that cost was prorated between the units of government involved because voting machines necessitated combining units of government onto one ballot. The proration was proportionate as to the space used. Although that language, (requiring proration according to space used), has been abandoned, that method of proration is still recommended unless a better one is agreed upon.

Because voting machines were used in all of the subject elections, the successor to §11.09(1)(b), Stats., sub.(3) of §5.68, Stats., applies to the cost of preparing ballots. That statute provides that each municipality shall pay for its portion of the cost of the ballot and that the ballots for all national, state and county offices and for county and state referenda "shall be prepared and paid for by the county wherein they are used". Thus, preparation of the ballot for county, state and national offices and county and state referenda, and the costs thereof, were the responsibility of Juneau County.

In this matter, the ballots were not prepared by the county, but were prepared by the city pursuant to §7.15(2), Stats., which provides: "With the consent of the county clerk, municipalities may prepare their own ballots whenever voting machines or electronic voting systems are used in elections where candidates for both local offices and national, state or county offices appear on the ballot". The county says that it did not give its consent to the city preparing the ballots. But the county did not arrange to have the ballot set up on the voting machines, either. If Juneau County did not want the City of Mauston to set up the voting machines, the county's only alternative was to make the arrangements itself. By requiring municipalities to obtain the county clerk's consent to print ballots, the legislature did not intend to empower or enable counties to prevent those municipalities from using voting machines or electronic voting systems simply by withholding that consent. Neither has the legislature provided that a county's financial responsibility toward municipalities that use voting machines or electronic voting systems is limited to the cost of preparing paper ballots if those municipalities could have used paper ballots under §5.40, Stats.

Traditionally, the costs of preparing a voting machine for each election have been borne by the municipality providing the machine because §7.25, Stats., has specifically imposed on municipal clerks the responsibility for preparing voting machines for each election. But, in light of the Board's policy with respect to prorating the cost of programming electronic voting equipment for each election - a procedure that is analogous to preparing a voting machine - and the need for consistency in applying the same law to different voting systems, the Board finds that the costs of preparing the ballot in voting machines is included under §5.68(3), Stats., as a cost to be "proportionately divided between the units of local government involved in the election."

Therefore, those costs that were incurred by the City of Mauston for the preparation of ballots that included county, state or national offices may be prorated and collected from Juneau County. If the City of Mauston can show that the costs it has billed were necessary to preparation of a ballot that included county, state or national offices or county or state referenda, a prorata share can be collected from the county. Preparation of the ballot for a voting machine is not the same as preparation of a paper ballot. Preparation includes preparing the machine to read the ballot strip that contains the names of the candidates as well as the preparation of the ballot strip, itself. Preparation may include what the City of Mauston has described as "ballot set-up", "ballot format" and "ballot layout". Ballot preparation of a machine, however, does not include transporting the machine from storage to the polling place and the return trip to storage after the election.

In 1986, in 1985 Wisconsin Act 304, the legislature extended the pro rata treatment given to ballot costs to the election costs of supplies, notices or other materials used for elections within more than one unit of local government, providing, in §5.68(2), Stats., that "the costs shall be proportionately divided between the units of local government involved in the election". (A similar provision also exists in §10.07(1), Stats., governing the apportionment of the cost of combined notices.) Thus, the City of Mauston can collect a prorata share of "supplies, notices or other materials used for elections within more than one unit of local government." The critical language in §5.68(2), Stats., is "other materials". The expenses included in this proration are materials, not labor or services. Mauston's charge of \$48.99 for election notices is the type of material encompassed by this section, (and by s.10.07(1), Stats.), but its labor charges are not.

Lastly, it is clear under Sub.(1) of §5.68, Stats., that the "cost of acquisition and regular maintenance of voting machines shall be borne by the municipality in which the machines are used": in this case, the City of Mauston. Therefore, to the extent that any of Mauston's charges to Juneau County represented maintenance to the lever machines (or even amortization of cost of acquisition of voting machines), that charge would be improper and Juneau County would not have to pay it. For example, if the labor/technician charge to set-up machines was incurred as a part of machine maintenance rather than ballot preparation, that charge is borne by the city, not the county.

In summary, the labor or service charges assessed by the City of Mauston against Juneau County are collectable from the county only if they were part of ballot preparation. The city needs to provide further explanation in its billing clarifying the role of assessed labor/service charges in preparing the machine ballots. Although charges like "Technician - tabulation" and "Technician - tally sheets" appear to be outside of ballot preparation, the city should be given a chance to clarify those charges. That clarification or distillation may demonstrate that the real source of Juneau County's discontent is provoked by this exceedingly simple fact: however the proration of costs may be calculated among the various units of government, any pro rata share of a \$100,000 election will be more expensive than a pro rata share of a \$1,000 election.