

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

David M. Baker
690 Happy Hollow Road
Kronenwetter, WI 54455

Complainant,

v.

Bobbi Birk-LaBarge
Clerk for the Village of Kronenwetter
1582 Kronenwetter Drive
Kronenwetter, WI 54455

Chris Voll
Board President for the Village of Kronenwetter
1582 Kronenwetter Drive
Kronenwetter, WI 54455

Kelly Coyle
Trustee for the Village of Kronenwetter
1582 Kronenwetter Drive
Kronenwetter, WI 54455

Chris Eiden
Trustee for the Village of Kronenwetter
1582 Kronenwetter Drive
Kronenwetter, WI 54455

Alex Vedvik
Trustee for the Village of Kronenwetter
1582 Kronenwetter Drive
Kronenwetter, WI 54455

Respondents.

COMPLAINANT'S REPLY

Complainant submits the following Reply in response to Respondent's Response (dated July 2nd, 2024), and in support of his Complaint:

Primary Argument

Respondents Voll, Vedvik, Coyle, and Eiden failed to file a valid Response to the present complaint (EL-24-68), per a July 18th, 2024 email from Attorney Jim Witecha, the Wisconsin Election Commission's (Commission) Chief Legal Counsel.

As a result, these four Respondents have not contested that they are "Election Officials" subject to a Wisconsin Stat. § 5.06 Commission Compliance Review and have not contested that they failed to follow the requirements of Wisconsin Stat. § 7.30(4).

Accordingly, Complainant requests that the Commission issue an order (1) finding that Respondents Voll, Vedvik, Coyle, and Eiden have violated Wis. Stat. § 7.30(4), and (2) ordering the Respondents to provide the relief requested in the "Prayer for Relief" section of the present Complaint insofar as the Commission determines that it is appropriate.

Secondary Argument

The Complainant filed the present Complaint based on the belief that a Compliance Review per Wisconsin Stat. § 5.06 would provide guidance relating to the facts and actions of the Respondents, with the intent that this would improve the election integrity of future Village elections. Providing summary judgment based on the Respondent's failure to file a proper response does not provide the Complainant or the Respondents with the benefit of the Commission's guidance.

Accordingly, the Complainant respectfully requests that the Commission conduct a full Wisconsin Stat. § 5.06 Compliance Review despite the fact that four Respondents failed to file a valid Response to the present Complaint.

Village Board Members as Respondents

The Respondent alleges that the "Village Board members are improper respondents to this WEC complaint". The question of whether or not Village Board members are proper Respondents is central to both the present Complaint and the Response. This question will be addressed before addressing the specific points of the Response.

State ex rel. Kalal v. Circuit Court of Dane County has reportedly been cited in over 800 published decisions of Wisconsin's appellate courts as a guide to statutory interpretation. *Kalal* is used as the guide to interpreting Wisconsin Stat. § 5.02(4e) in this section of the Reply.

The relevant Statute is Wisconsin Stat. § 5.02(4e), an "Election Official" means an individual who is charged with any duties relating to the conduct of an election."

From *Kalal in part*, ¶45 Thus, we have repeatedly held that statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry."

Furthermore in part, ¶47 The test for ambiguity generally keeps the focus on the statutory language: a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses.

It can be argued that the relevant Statute is ambiguous. Past precedent in the form of previous §5.06 Complaints and Commission decisions seem to support that the Statute is ambiguous, as will be discussed shortly.

From *Kalal in part*, ¶48 At this point in the interpretive analysis the cases will often recite the following: "If a statute is ambiguous, the reviewing court turns to the scope, history, context, and purpose of the statute.

From *Kalal in part*, ¶49 A statute's purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes—that is, from its context or the structure of the statute as a coherent whole.

It is certainly not inconsistent with the plain-meaning rule to consider the intrinsic context in which statutory language is used; a plain-meaning interpretation cannot contravene a textually or contextually manifest statutory purpose. (Emphasis Added)

Chapter 5 of the Wisconsin State Statutes clearly provides that the Commission is responsible for Chapters 5 to 10 and 12, other than laws relating to campaign financing. Wisconsin Stat. § 7.30 clearly falls within the range of 5 to 10 and is not related to campaign financing.

5.05 Elections commission; powers and duties.

(1) GENERAL AUTHORITY. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.

The Respondents use a narrow interpretation of Wisconsin Stat. § 5.02(4e) that excludes Governing Board members. Per the Response, this narrow definition only includes the Election Officials specifically named in the Commission's "*Election Administration Manual for Wis. Municipal Clerks*, p. 113 (Feb. 2024)." Use of this narrow definition contravenes Wisconsin Stat. § 5.05 that states that the Commission **shall** have the responsibility for the administration of the specified Statutes, **which includes** Wisconsin Stat. § 7.30.

A broader interpretation of Wisconsin Stat. § 5.02(4e) that includes all individuals who have duties **prescribed by Statute** within Statutes 5 to 10 and 12 removes the inconsistencies inherent with the narrow interpretation and provides a consistent and logical reading of Statutes 5 to 10 and 12. The broader interpretation results in treating Wisconsin Statutes Chapter 5 to 10 and 12 as a "coherent whole."

This broader interpretation is also consistent with the Commission's practice in evaluating Complaints in regards to evaluation of Complaints for Statutory Basis.

A typical "Return Letter" (disallowing the Complaint) may include text such as: Finally, your complaint also fails to "specify the statutory basis" for your allegations. Wis. Admin. Code EL § 20.03(3). You must cite specific provisions of chapters 5 through 10 and 12 that the intended respondent allegedly violated.

An individual who is a member of a Governing Body would only be subject to the Jurisdiction of the Commission for duties which are prescribed by Statute. There would be no "statutory basis" for Commission Jurisdiction for duties other than those prescribed by Statute.

The Complainant found 4 previous Complaints relevant to the "Election Official" question.

Decisions and actions by the Wisconsin Election Commission in some of the prior Complaints provide precedent that a member of a Municipal Governing Body is considered an "Election Official" whose actions are subject to a Wisconsin Stat. § 5.06 Compliance Review by the Wisconsin Election Commission.

In **EL 23–11**: Angela Schmeiser v. Lester Lewis, "a sworn Wisconsin Statute § 5.06 complaint" was filed against Lester Lewis, the Town of Molitor's Chairperson. As the Town Chairperson, Mr. Lewis was a member of the Town's governing Body.

Town Chairperson is not included in the list referenced of Election Officials referenced above. The Town Chairperson does not personally conduct the elections, just as the Respondent Village Board Members in the present Complaint do not personally conduct the election. Both the Town Chairperson and the Respondent Village Board members have duties **related to** the conduct of the Election and these duties are specified in the relevant Statutes.

From Page 2 of the Wisconsin Election Commission's EL 23–11 Decision letter, "the Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local **election officials**, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws." (Emphasis Added). Thus, the Wisconsin Election Commission's

Decision letter clearly indicated that a member of a Municipal governing Board can be considered an “Election Official” and can be properly named as an “Election Official” in a Complaint filed under Wisconsin Statute § 5.06. The local official participated in a Caucus, but it was not indicated that the local official had a direct role in the election itself.

In **EL 21-06**: In the second complaint of EL 21-06, the Complainant mentions the Village’s governing board in the text of the Complaint and names the Village President, Tim Clark, as a Respondent. It is notable that this second complaint concerns duties prescribed to the “governing body” by Wisconsin Statute § 8.05(1)(a). These duties are to be conducted in December, similar to the duties relevant to the present Complaint, and are not directly part of the actual election.

Wisconsin Statute § 8.05(1)(a) provides that:

When nomination papers are not used, there shall be a caucus to nominate candidates. The governing body shall between December 1 and January 1 decide the date of the caucus. The date of the caucus may be established between January 2 and January 21. When possible, preference should be given to having the caucus on January 21.

In this decision, the Commission treated the Village President as an Election Official subject to the Commission’s § 5.06 Jurisdiction and found that “For this reason, the Commission has determined that probable cause exists to believe that a violation of law or abuse of discretion has occurred in relation to the village’s efforts to set a caucus date.”

In **EL 22-30**, the Complainant names a city mayor as a Respondent.

In the decision letter, the Commission states - but the Commission has consistently interpreted the definition of “Election Official” found in Wis. Stat. § 5.02(4e) as not applicable to city mayors, for the purposes of an administrative Wis. Stat. § 5.06 complaint, unless that mayor directly assumed “duties relating to the conduct of an election.”

Although the Commission finds that the Mayor was not an Election Official for the purposes of the Complaint, the decision does include language which is at least partially consistent with the broader interpretation proposed above, in that it focuses on the statutory “charge” element. This “charge” element provides the basis for the “prescribed by Statute” element of the proposed broad interpretation.

In **EL 22-06**, the Complainant names a Town Clerk, a Town Chair, and a Town Supervisor as Respondents in a Complaint under Wis. Stat. § 7.30, which is of course the same Statute as in the present Complaint. In the Correspondence letter, the Commission finds that the Complaint is not in proper form and contains “deficiencies as to form and probable cause”.

Furthermore, the Commission states that - The Chair and Supervisor II of the Sumner Town Board are not “election officials” because they do not have any duties relating to the conduct of elections.

However, the Commission goes on to state - Your complaint does not provide evidence that establishes probable cause of a violation of laws the Commission has authority to investigate.

As a result, the Commission would have reached the same end point regardless of whether it used the broad or narrow interpretation of the definition of “Election Official”.

The analysis of these 4 prior Complaints indicate that Statute § 5.02(4e) is at least somewhat ambiguous. Again, use of the broader interpretation treats Wisconsin Statutes Chapter 5 to 10 and 12 as a “coherent whole,” The broad interpretation avoids the difficulties inherent with a finding that the Commission cannot fulfill the “responsibility for the administration of chs. 5 to 10” and 12 for all sections of the Statutes listed in Wisconsin Statute § 5.05.

In reference to Response document 3.1,

1. Page 1, ¶ 1. The Complainant agrees that the present Complaint and the recent WEC Complaint EL24-26 address some of the same issues at the same municipality. However, EL24-26 does not address all of the issues identified in the present Complaint and does not include 4 of the 5 Respondents named in the present Complaint.

2. Page 1, ¶ 2. The Complainant does not claim to know whether or not the overall nature of the Complaint is commonplace and does not believe that this is relevant to the present Complaint. The Complainant is not aware, and the Respondents do not identify, sections of the Statutes or Code that provides for an Election Official to disregard the Statutes if it is commonplace to do so.

Furthermore, the Respondents do not allege or provide evidence that the Commission has elected to not enforce the applicable Statutes in decisions rendered in valid Complaints in other jurisdictions.

3. Page 1, ¶ 3. The Complainant agrees that the question of whether or not Village Trustees and the Village President are “Election Officials” is a legal issue which must be addressed in the consideration of this Complaint.

4. Page 1, ¶ 4. Recitation of Wisconsin State Statute. No need for reply or discussion.

5. Page 2, ¶ 1. The Complainant agrees that the Summary of Election Officials in the Election Administration Manual for Wisconsin Municipal Clerks does not list elected members of governing bodies. However, the Manual does not state or imply that this is an exhaustive or complete list of Election Officials.

6. Page 2, ¶ 2. The Complainant does not object to the definition provided or to the statement that “persons conducting an election are the ones running it first-hand”.

7. Page 2, ¶ 3. The Complainant agrees that the Trustees and President, as members of the governing Body – the Village Board - do not conduct elections, but disagrees that this means that these individuals are not included in Wisconsin Statute § 5.02(4e). Wisconsin Statute § 5.02(4e) does not state that Election Officials are only those individuals who “conduct elections”, but explicitly includes any individual “who is charged with any duties **relating to** the conduct of an election.” (Emphasis added)

Certainly, the nomination and appointment of those individuals who actually conduct the election is a duty “relating to the conduct of an election”. It would be quite difficult to argue otherwise, and the Respondents do not even attempt to make this argument. Instead, they attempt to change the definition provided in Wisconsin Statute § 5.02(4e) to a definition under which they can make an argument that the Respondent Village Board members are not Election Officials.

The Complainant contends that the Village Board members are properly named as “Election Officials” under Wisconsin Statute § 5.02(4e). This contention is supported by the arguments provided earlier in this Reply.

The duties of the Respondent members of the governing body “relating to the conduct of an election” and the “...failure of the official to act with respect to any matter concerning ...” “... election administration or conduct of elections ...” is clearly detailed in the present Complaint and thus will not be repeated in this reply.

The Respondents do not address or dispute that they failed to discharge their duties in accordance with the Statute, but instead rely on their attempt to restate the definition of an “Election Official”, perhaps because of the strength of the evidence that they failed to follow the law.

8. Page 2, ¶ 4. The Complainant believes that the arguments in this paragraph are not relevant or conclusive to the present Complaint. The Trustees and President are paid for their service and the relevant duties are clearly listed in the Statutes, so there is no justification provided that additional pay or training would be required to properly fulfill these duties.

9. Page 2, ¶ 5. As detailed previously, WEC precedent already includes members of Governing Bodies as “Election Officials, so the current Complaint would not broaden the scope.

Two of the Village Trustees at the time of the December 11th, 2023 meeting were not re-elected and are no longer members of the Village Board and thus are no longer “Election Officials” subject to Wisconsin Statute § 5.06. The Complainant is not seeking any type of fine or punitive damages, so it did not seem to make sense to include these 2 Trustees in the present Complaint.

The recording of the meeting clearly indicates that Trustee Charneski was a) attempting to follow the Statute, b) was attempting to persuade his fellow Trustees to follow the Statute, and c) voted no on the Resolution. There is no evidence to suggest that Trustee Charneski took any action contrary to Wisconsin Statute § 7.30 and thus, in the Complainant's opinion, it would have been improper to include him as a Respondent.

10. Page 2, ¶ 6. This recitation does not seem relevant to the Complaint. Under Wis. Stat. § 5.06, "The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur." A discussion or thesis on Wisconsin's election system does not seem to be required to show probable cause.

11. Page 2, ¶ 7. This paragraph does not seem relevant to the Complaint. In addition, the paragraph makes a statement about paying politicians to run for re-election which is totally untethered from the present Complaint. It then calls this statement, which is drawn from thin air and appears to be a "straw man", "absurd and ethically invalid".

12. Page 2, ¶ 8. As detailed previously in this reply, the Complainant contends that it is the Respondents (or their Attorney) who are attempting to change the definition of "Elected Officials". As also detailed previously in this reply, there is WEC precedent for including members of a municipal governing body as "Election Officials" so the current Complaint is not necessarily a change from prior precedent.

The Complainant attempted to write the Complaint in a very factual manner, listing relevant Statutes and the details relating to the Complainant's belief that they were not properly followed. The Complainant did not intend to make any "ad hominem" attacks and believes that he was able to avoid any such attack or verbiage in the Complaint.

It is the Complainant's belief that the Respondents (or their Attorney) did not follow the same standard in drafting the Response. The text in this paragraph and that of Page 2, Paragraph 5 and Page 2, Paragraph 7 seem to be clear "ad hominem" attacks on the Complainant.

13. Page 2, ¶ 9. Under Wis. Stat. § 5.06 (3) "A complaint under this section shall be filed promptly so as not to prejudice the rights of any other party. In no case may a complaint relating to nominations, qualifications of candidates or ballot preparation **be filed later than 10 days after the complainant knew or should have known that a violation of law or abuse of discretion occurred** or was proposed to occur." (Emphasis Added)

Paragraph 8 of the present Complaint was included to show that the Complaint was filed in a timely manner. It was in no way reflective of the motivation for filing the Complaint, which was simply to maintain election integrity and restore public confidence in the Village's elections.

14. Page 3, Discussion of Attorney General Opinion.

“and there is law, including very recent law, showing that the named Village Board members are not election officials and thus are improper respondents”

Opinions of the Attorney General are not law. The Village Attorney does not point to any recently enacted law or court case that supports his assertion above.

Opinions of the Attorney General (OAG) typically provide guidance when confusion exists about the meaning of a statute and Wisconsin appellate courts have not yet definitively answered the question. **Wisconsin courts do not have any obligation to follow an interpretation provided by an OAG**, but they often do. As the Wisconsin Court of Appeals has written, "Well-reasoned attorney general's opinions have persuasive value when a court later addresses the meaning of the same statute." (Emphasis added) <https://www.doj.state.wi.us/opinions/ag-opinions>

Also, the text of the Constitutional Amendment is not a definition and does not match the text of the relevant Statute.

“No individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum.”

Wis. Const. art, III, § 7(2)

an “Election Official” means an individual who is charged with any duties relating to the conduct of an election.” Wisconsin Stat. § 5.02(4e),

15. Remainder of Response.

The Village Attorney expends considerable text attempting to justify the actions of the Village Board, including making claims that “the law is much more malleable as applied to the circumstances at the Village than is assumed by the Complainant” and that “The Complainant does not understand the statutes as applied to the circumstances at the Village”

The Complainant is neither an Attorney, nor an expert in Election Law and does not claim to be either.

The Complainant will depend on the Commission to sort through the remainder of the Response and determine to what extent the Law is malleable and to what extent, if any, the Respondents made a decision or took action “contrary to law”, or if any Respondent “has abused the discretion vested in him or her by law with respect to any such matter”.

By the Complainant,

David M. Baker, Dated this 24th day of July, 2024