



Wisconsin Elections Commission

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September 24, 2024

Robert Rasmussen
200 W. Rainbow Ridge Dr., Apt. 910
Oak Creek, WI 53154

Catherine Roeske, City Clerk
8040 S. 6th Street
Oak Creek, WI 53154

Sent via email to: OldGuard15@aol.com; croeske@oakcreekwi.gov

Re: In the Matter of Robert Rasmussen v. City of Oak Creek (Case No.: EL 23-29)

Dear Mr. Rasmussen and Clerk Roeske:

This letter is in response to the verified complaint submitted by Robert Rasmussen (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Oak Creek City Clerk, Catherine Roeske (Respondent), concerning alleged failures to properly witness in person absentee ballots in violation of Wis. Stat. § 6.87(2).

The Commission has reviewed the complaint. No Response was filed by Clerk Roeske. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred.

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stats. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised in this complaint.

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.

Complaints “. . . 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.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

Wisconsin Elections Commissioners

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Meagan Wolfe

Complaint Allegation

The Complainant alleges that on March 31, 2023, during in person absentee voting, “the election inspector did not witness my signature as required by statute 6.87.” The Complainant also alleges that “the City of Oak Creek did not have witness signatures or addresses on the absentee ballot envelopes.” He also appears to assert that there were no witness signatures on the absentee envelopes generally. The Complainant states that he is therefore “challenging all absentee ballots contained in absentee ballot envelopes which do not contain a witness signature and/or address until a court can determine the legitimacy of the ballots.”

The Respondent had until April 24, 2023, to file a sworn written response to the complaint. No such response was received by the Commission.

Discussion

The Complainant is correct that Clerk Roeske or another election official was required to witness all in person absentee ballots cast, and all certificates should have contained both the witness’s signature and address per Wis. Stat. § 6.87(2). However, the facts set forth in the complaint lack enough clarity, specificity, and evidentiary support to establish probable cause that a violation of Wis. Stat. § 6.87(2) actually occurred.

The Complainant’s allegation that the election inspector did not witness his signature is unclear. He does not state which part of in person voting the clerk or election inspector failed to witness, or whether they failed to witness him voting his absentee ballot from start to finish. The lack of evidence in the administrative record is made even more difficult by the fact that the Respondent did not submit a response.

The claim that “the City of Oak Creek did not have witness signatures or addresses on the absentee ballot envelopes” in general is similarly unclear. The complaint does not specify whether the envelopes had been used or otherwise completed. Nor does the Complainant allege that the envelopes were sent to the polling place without witness signatures or addresses. Regardless, any allegation that multiple absentee ballots lacked signatures and addresses is not credible without further evidence. There is nothing in the sworn administrative record, such as ballot records, to support an allegation that multiple absentee ballots lacked completed certificate envelopes

While the Commission cannot conclude that the Complaint set forth sufficient facts to show probable cause that the Respondent violated the law or abused her discretion, the Commission will nevertheless provide an overview of a municipal clerk’s statutory responsibilities when witnessing absentee ballots during in person absentee voting.

The procedure for absentee voting and the certificate form is laid out in Wis. Stat. § 6.87. Per Wis. Stat. § 6.87(2):

The witness shall execute the following:

I, the undersigned witness, subject to the penalties of s. 12.60(1)(b), Wis. Stats., for false statements, certify that I am an adult U.S. citizen** and that the above statements are true and the voting procedure was executed as there stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the elector to vote for or against any candidate or measure.

...(Printed name)

...(Address)***

Signed

Under Wis. Stat. § 6.86(1)(b), “[t]he municipal clerk or an election official shall witness the certificate for any in-person absentee ballot cast.” This requires that the municipal clerk or election official both sign and print their name and provide their address in accordance with Wis. Stat. § 6.87(2).

Furthermore, page 78 of the Election Administration Manual for Wisconsin Municipal Clerks provides the following guidance for in person absentee requests:

The absentee ballot is marked by the absent voter, and sealed in an Absentee Ballot Certificate Envelope (EL-122). The Absentee Ballot Certificate Envelope (EL-122) is completed and signed by the absentee voter, and witnessed by the municipal clerk or designated staff. The witness must sign and print their name and provide their office or home address. Wis. Stat. § 6.86(1)(b).

The Commission, therefore, recommends that the clerk or election official complete the witness certification section in the presence of the voter to prevent any uncertainty or confusion as to whether the absentee voting process has been completed. However, no probable cause has been established to support the allegation that the Respondent’s actions constituted a violation of law or abuse of discretion.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause that a violation of law or abuse of discretion occurred under Wis. Stat. § 6.87(2). However, Clerk Roeske may wish to implement new compliance practices based on the statutory obligations detailed above.

Right to Appeal – Circuit Court

This letter constitutes the Commission’s resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission’s decision, please feel free to contact the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION