



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: December 20, 2023

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Elections Commission
Milwaukee County Elections Commission

FROM: Wisconsin Elections Commission (WEC or Commission)

SUBJECT: Recent Advisory Opinions of the Commission

Introduction:

WEC staff and Commissioners have recently seen an influx of requests for advisory opinions. The agency now has a webpage devoted to the decisions of the six-member Commission in these matters. This communication is meant to direct your attention to that webpage, summarize the recent decisions of the Commission, and increase awareness of the processes. Please find the advisory opinion webpage at the following location:

<https://elections.wi.gov/advisory-opinions>.

Discussion:

Wisconsin Statute § 5.05(6a)(a)1. provides the following:

Any individual, either personally or on behalf of an organization or governmental body, may make a request of the commission in writing, electronically, or by telephone for a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of the commission a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the prospective appointee is or may become a party. The commission shall review a request for an advisory opinion and may issue a formal or informal written or electronic advisory opinion to the person making the request. Except as authorized or required for opinions specified in sub. (5s) (f), the commission's deliberations and actions upon such requests shall be in meetings not open to the public. A member of the commission may, by written request, require the commission to review an advisory opinion.

The Commission has historically received a low volume of advisory opinion requests, and as such, the agency's website had yet to incorporate a page devoted to these findings until this past summer. Clerks and election officials can expect correspondence from WEC staff any time an advisory opinion of the Commission is posted. The following is a summary of opinions that have been recently posted by the Commission:

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

- Recall of Officials Appointed to Constitutional, Elective Offices:
 - The Commission was asked to issue an advisory opinion on whether officials who were appointed to constitutional, elective offices can be recalled, and, if so, whether the officeholder in question would be subject to the one-year waiting period before the recall petition could be filed. In this case, the question related to the appointment of Wisconsin Secretary of State Godlewski to fill the vacancy created by the resignation of former Secretary of State La Follette. The Commission interpreted Article VIII, Section 12 of the Wisconsin Constitution and Section 9.10 of Wisconsin Statute to apply to individuals appointed to an elective office, and specifically to the elective office itself, thus allowing for the possible recall of the office holder. However, the Commission also interpreted the one-year recall waiting period to apply to individuals appointed to an elective office, with the one-year waiting period starting on the date of appointment in accordance with the procedures described in Wis. Stat. § 17.19(4).

- Electronic Signatures on Voter Registration Forms:
 - The Commission was asked to issue an advisory opinion on whether an electronic signature (e-signature) is a valid signature that must be accepted on an otherwise valid voter registration form. The Commission found that e-signatures must be accepted as valid signatures on otherwise valid voter registration forms unless and until directed otherwise by a court of law, or a reevaluation of this opinion becomes necessary due to a legislative change.

- Changes to, and Printing on, Commission Prescribed EL-122 Forms
 - The Commission was asked to issue an advisory opinion concerning three questions. First, whether a municipality could modify absentee ballot certificate templates, EL-122 forms, by removing the boxes found in the Step 1 field and printing directly onto the forms the voter information that would either be handwritten onto the forms or printed as a label from the Commission's WisVote system. Second, whether a municipality could alter the size of the EL-122 envelope that was prescribed by the Commission. Third, whether a municipality could affix a QR code to the top of a ballot form that was approved by the Commission to facilitate a municipality sending a voter the correct ballot style. The Commission opined that the voter information boxes within Step 1 of the EL-122 forms may be covered with a label printed from the Commission's WisVote system or removed and replaced with information printed directly into the Step 1 box consisting only of the information specified on the EL-122 forms or the information that would be printed on a label from the Commission's WisVote system. However, the Commission's opinion is that ballot forms approved by the Commission cannot be modified and that the uniform size of the EL-122 cannot be altered.

Questions:

If you have any questions, please contact the WEC Help Desk at elections@wi.gov, or 608-261-2028.