



# Wisconsin Elections Commission

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**DATE:** August 1, 2024

**TO:** Wisconsin Municipal Clerks  
Wisconsin County Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** Wisconsin Elections Commission

**SUBJECT:** Application and Interpretation of Wis. Const. art. III, § 7(2)

**ATTACHMENTS:** Attorney General Opinion (OAG–01–24)

Two proposed amendments to the Wisconsin Constitution (“Constitution”) were included as referenda on the ballot at the April 2, 2024, Spring Election. Each referendum was passed by the voters of Wisconsin and ratified into the Constitution as follows:

- **Article III, § 7(1):** No state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for, accept, expend, or use any moneys or equipment in connection with the conduct of any primary, election, or referendum if the moneys or equipment are donated or granted by an individual or nongovernmental entity.
- **Article III, § 7(2):** No individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum. (“Subsection 2”)

Based upon subsequent feedback received by the Wisconsin Elections Commission (“Commission”), it became apparent that Wisconsin’s clerks and government officials had confidence in their ability to interpret and apply the first of those two amendments (*e.g.* § 7(1)). However, the Commission also received many questions and general concerns relating to Subsection 2. Similar feedback and questions were received by the Wisconsin Attorney General’s Office, including a request for an attorney general advisory opinion, and the subsequent opinion relating to Subsection 2 was published on June 25, 2024 (*See* attached). The Commission formally agreed with the attorney general’s analysis at its August 1, 2024, meeting, and the following communication reflects the Commission’s recommendations for interpreting and applying Subsection 2.

It is necessary to first define and apply the relevant terms used in Subsection 2. These definitions come from statute and from the attorney general opinion:

- **Election Official:** This term has the same meaning in Subsection 2 as it has in Wis. Stat. 5.02(4e). That provision states, “Election official’ means an individual who is charged with any duties relating to the conduct of an election.”

*Wisconsin Elections Commissioners*

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

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Administrator  
Meagan Wolfe

- See various examples of election officials in statute, including those specifically cited in the attorney general opinion.
- **Task in the conduct of any primary, election, or referendum:** Refers to work in directing or leading the administration of an election (*See Wis. Stats. §§ 5.02(4) and (16s)*). Subsection 2 does not apply to more ordinary circumstances in which an election official works with, or is assisted by, non-election officials in performing non-administrative election tasks. “Non-election officials” and “non-election tasks,” as they relate to the conduct of a primary, election, or referendum, are further explored below.
- **Non-Election Official:** A person who assists or performs duties that may be adjacent to the conduct of an election, but do not relate to administration of any task in the conduct of a primary, election, or referendum. Practically speaking, a non-election official is a person who is not directly performing duties related to candidate registration or filing officer duties, ballot access challenge or other election complaint processes, voter registration, special voting deputy activities, ballot processing, vote tabulation, or canvassing.
  - Examples include, but are not limited to, print vendors, ballot design vendors, voting equipment and/or software suppliers, IT security consultants, law enforcement personnel (including those transporting ballots or results data across locations), employees or volunteers assisting with mailings or other clerical work, and individuals working in or visiting a polling place that do not perform functions amounting to the administration of election tasks.

The attorney general opinion can be condensed to the following: *If there is a task in the conduct (administration) of any primary, election, or referendum, it must be performed by an election official. A non-election official may not perform substantive tasks in the conduct of any primary, election, or referendum.*

- **Examples of Constitutional Compliance and Non-Compliance**

- Balloting Activities
  - *Allowed:* A Special Voting Deputy facilitates absentee voting at a care facility, or the local clerk assists a resident who is a qualified elector in requesting an absentee ballot.
  - *Prohibited:* Any individual other than a clerk, deputy clerk, or another official with statutory authority to administer election tasks cannot perform absentee voting procedures.
  - *Note:* The law allows an assistor to perform certain functions on behalf of a disabled voter. Nothing in this memorandum is meant to imply that such assistance is prohibited.
- Election Day Activities
  - *Allowed:* A duly-appointed election inspector feeds absentee ballots into the city’s tabulator on Election Day; A voting equipment vendor performs public tests of new systems or is called to a polling place where a tabulator has significantly jammed to perform necessary maintenance.
  - *Prohibited:* The equipment vendor performs the necessary maintenance and then begins opening and tabulating actual voter’s absentee ballots to ensure it is working properly, rather than allowing the election inspectors to do so.
- Canvassing
  - *Allowed:* The local and county board of canvassers perform their statutory canvassing activities; Election officials hire a consultant to perform tasks that are not related to the conduct of any primary, election, or referendum.
  - *Prohibited:* The city hires a consultant to review and improve polling place and canvassing operations. The consultant then begins performing the canvassing functions and logging real election activities to show the board of canvass a better method.
- Election Adjacent Tasks
  - *Allowed:* The county’s designated print vendor provides ballot proofs to the clerks and subsequently prints copies of the approved template.
  - *Prohibited:* The print vendor mails ballots directly to voters.
- Voter Registration Note
  - Please review the following Commission materials for additional information on allowable non-election official voter registration activities:

- See “Voter Registration” section of the Election Administration Manual starting on Page 48. <https://elections.wi.gov/resources/manuals/election-administration-manual>
- See archived webpage “Online Voter Registration and the Elimination of Special Registration Deputies” <https://web.archive.org/web/20170114175233/http://elections.wi.gov/node/4837>
- See advisory opinion “Electronic Signature on Voter Registration Forms” <https://elections.wi.gov/advisory-opinions>

If you have additional questions, please email [elections@wi.gov](mailto:elections@wi.gov).