



Wisconsin Elections Commission

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September 18, 2024

Junior R. Gurgel
E8597A HY 136
Rock Springs, WI 53961

Sandra Meyer Swanson
100 E Broadway
Rock Springs, WI 53961

Sent via email: lgurgel@outlook.com, excelsiortownclerk@gmail.com

Re: In the Matter of Junior Gurgel v. Sandra Swanson (Case No.: EL 23-24)

Dear Mr. Gurgel and Clerk Swanson:

This letter is in response to the verified complaint submitted by Junior Gurgel (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Sandra Swanson (Respondent) concerning notice of the testing of automatic tabulating equipment. The Complainant alleges that proper notice was not given in violation of Wis. Stat. § 5.84.

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."

The Commission has reviewed the complaint, the response, and Mr. Gurgel's reply. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant has shown probable cause that a violation of law occurred with relation to Respondent's failure to provide proper notice under Wis. Stat. § 5.84.

Complaint Allegations and Responses

The Commission received a sworn complaint filed by Junior Gurgel on March 13, 2023, alleging that the Town of Excelsior Clerk Sandra Swanson failed to give the required notice regarding the testing of automatic tabulating equipment for the February 21, 2023, Spring Primary in the Town of Excelsior. On March 27, 2023, the Commission received a sworn response. The Commission then received an unsworn reply from the Complainant.

In the complaint, the Complainant alleges that, for the February 21 Spring Primary, no notice was given regarding the testing of automatic tabulating equipment in violation of Wis. Stat. § 5.84. The Complainant alleges that no notice was published in a newspaper, posted at the town hall, nor posted on the town website.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

In the response, the Respondent claims there was a public test of the equipment on February 9, 2023, and that notice was posted on the front door of the town hall but states that she is unaware if notice was posted on the town website. The Respondent also states that the town of Excelsior does not have an official newspaper and instead uses the City of Reedsburg's newspaper. Additionally, the response notes that the Town of Excelsior adopted a resolution in 2015 making the town hall the official physical location for posting legal notices as well as naming the town website as the official website for posting legal notices.

The unsworn reply asserts no notice was posted on the front door for the February testing.

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

Under Wis. Stat. §§ 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 the 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.

Commission Findings

Alleged Violation of Wis. Stats. § 5.84

Wis. Stat. § 5.84(1) provides the requirements for the testing of automatic tabulating equipment. Wis. Stat. § 5.84(1) states in relevant part:

Where any municipality employs an electronic voting system which utilizes automatic tabulating equipment, either at the polling place or at a central counting location, the municipal clerk shall, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures. **Public notice of the time and place of the test shall be given by the clerk at least 48 hours prior to the test by publication of a class 1 notice under Ch. 985 in one or more newspapers published within the municipality if a newspaper is published therein, otherwise in a newspaper of general circulation therein.**

The Complainant has presented sufficient evidence to support the allegation that insufficient notice was given to satisfy the requirements of Wis. Stat. § 5.84(1). Under that provision, public notice for the equipment test shall be given at least 48 hours in advance by publication of a class 1 notice under chapter 985 in a newspaper. However, towns that don't have their own newspaper can create an additional method for publication pursuant to Wis. Stat. § 985.02(2)(a). That additional method can include posting in at least one public place likely to give notice to person affected and placed electronically on the Town's internet site. Additionally, § 10.05 provides an additional option for posting for towns that don't have their own newspaper and directs to post three notices instead. The Commission doesn't view these provisions as necessarily in conflict—in actuality, they provide a suite of options for how municipalities may post sufficient notice of their public test of voting equipment if they don't have an official newspaper.

Regardless of which notice statute may apply, it appears as if the Respondent did not take sufficient action to comply with any of the provisions above. The parties appear to agree that no notice was published in the Reedsburg Independent, which is a newspaper that is not published in the Town but is circulated there. However, the Respondent asserts that the Town passed a resolution that created a permissible additional method of publication, and that she complied with that by posting notice in one physical location. The Respondent asserts that she does not know if notice was also posted to her Town's website. Since the Respondent cannot refute the Complainant's allegation that no notice was posted on the Town's website, the Commission cannot conclude that it was.

Commission Decision

Based upon the above review and analysis, the Commission finds probable cause that a violation of law occurred under Wis. Stat. § 5.84(1) based on the failure to publish sufficient notice for the public testing of automatic tabulating equipment for the February 21, 2023, election. The Commission hereby orders Sandra Swanson, during any future election, to publish notice regarding the testing of automatic tabulating equipment at least 48 hours prior to the test and in full accordance with either the general public notice chapter 985, or with the Commission's specific notice provision in § 10.05.

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