



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

May 4, 2020

John H. Herbst
11875 White School Rd.
Gratiot, WI 53541

Sent via email to: johnhherbst@gmail.com

Re: Complaint Filed with Wisconsin Elections Commission

Dear Mr. Herbst:

I am in receipt of the complaint filed with the Wisconsin Elections Commission (“WEC” or “Commission”) on April 15, 2020 against the clerk that “was not available until the appropriate times.” The administrative rules governing the WEC’s processing of complaints require that I review the complaint and determine within 10 business days whether the complaint is timely, is sufficient as to form and states probable cause. Wis. Admin. Code § EL 20.04(1). I am writing to inform you that I have determined that the complaint is not timely and is not sufficient to form, and as a result, I am returning the complaint to you without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1) and (2).

Timeliness

Wis. Stat. § 5.06(3) requires that a complaint challenging the decision of an election official “shall be filed promptly so as not to prejudice the rights of any other party.” For complaints related to ballot decisions made by local election officials, the deadline for filing a complaint with the Commission is 10 days: “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.” Wis. Stat. § 5.06(3).

The deadline for filing ballot access documents for the 2020 Spring Election, was no later than “5 p.m. on the first Tuesday in January preceding the election” which was January 7, 2020. Wis. Stat. § 8.10(2)(a). On January 13, 2020, you reached out to the Commission by submitting an informal complaint through the Commission website stating essentially the same allegations as your recent formal complaint against a clerk, with no information as to who the clerk was or what jurisdiction or district this occurred in. On January 15, 2020, Commission staff reached out to you and informed you of the formal complaint process. The Commission did not receive a formal complaint from you regarding this until 3 months later – April 15, 2020. By that time, it was certainly too late to implement a remedy even if the Commission determined that the clerk did not comply with the election laws because ballots had been printed and the Spring Election had taken place. Your formal complaint was not filed timely.

Wisconsin Elections Commissioners

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

However, given the seriousness of the allegation – a clerk not being available to receive ballot access documents until the 5 p.m. deadline - the Commission staff has reached out to the Black Hawk School District to ensure that the clerk is aware of the statutory filing deadline, and the importance of being available to accept candidate filings until the statutory deadline passes.

Sufficiency as to Form

The complaint must also name the election official for which the allegation is being made. “The complaint shall state the name and last known post office address of the complainant and the respondent.” Wis. Admin. Code § EL 20.03(4). The complaint references the “clerk” but it fails to name the individual that you allege did not comply with the law. Additionally, while the Commission staff was able to conduct some online research and figure out that this was a complaint against the Black Hawk School District clerk, that information was not included in the complaint either. Without basic information such as the election official’s name, or the jurisdiction or district that is being complained about, your complaint is insufficient as to form.

Conclusion

In fairness to all parties who must comply with complaint deadlines established by the Legislature and the Administrative Code provisions established by the Commission, I am required to dismiss your complaint. I am returning your complaint as untimely and not sufficient to form, without prejudice pursuant to Wis. Admin. Code § EL 20.04(3). As required by that provision, I have specified the defects in the complaint (timeliness and form). As to the information which would be appropriate to cure the defect, unfortunately I am unaware of any such information that I can provide to cure the late filing of the complaint. While you could refile the complaint with proper form (name the clerk), that will not overcome the timeliness issue as discussed earlier. Your complaint is therefore dismissed.

The Commission now considers this matter closed.

Sincerely,

A handwritten signature in black ink that reads "Meagan H.M. Wolfe". The signature is written in a cursive, flowing style.

Meagan Wolfe
Administrator
Wisconsin Elections Commission

cc: Members, Wisconsin Elections Commission

Enclosure