

WISCONSIN ELECTIONS COMMISSION

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MEMORANDUM

DATE: For the October 14, 2016 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

SUBJECT: **AMENDED:** Absentee Certificate Envelopes: Missing or Insufficient Witness Address

The Commission staff met with representatives of the Wisconsin Department of Justice (DOJ) on Thursday, October 13, 2016, to discuss the previous staff guidance issued on the absentee certificate envelope which contained a missing or insufficient address. Due to the potential impact on a significant number of absentee ballots should a witness address not be contained on the certificate, Commission staff wanted to discuss the legal basis for the guidance, and decide if the staff guidance could be amended to allow more flexibility for local election officials in obtaining a sufficient witness certificate. We also discussed the timing of the written advice that was provided, and whether local election officials and voters were aware of the impact on their ballot should a witness address not be complete. Based on this conversation with the DOJ, the Commission staff believes it is appropriate to amend its previous recommendation on this topic, which had asked the Commission to leave the current policy unchanged.

DOJ has advised that a reasonable, defensible interpretation of the law would be to allow a local election official to add the municipality name to a witness certificate if the information could be reasonably ascertained by the official. Prior consent of the voter or witness would not be required, although contacting the voter or witness if possible to obtain the information could be helpful. The Commission staff is hopeful that allowing for this added flexibility, will alleviate the concerns of many local officials who have expressed concern that contacting and obtaining consent of the voter prior to making a change to certificate is infeasible, especially given the timeframes involved and the minimal contact information available for many voters.

The staff provides the following recommendations, which the Commission should consider as replacements to the previous recommendation contained in your supplemental materials and provided to you electronically earlier this week.

Staff Recommendations

- 1) The Commission modifies the portions of the October 4, 2016 staff policy which requires the municipal clerk or executive director of the City of Milwaukee Election Commission to obtain the consent of the voter prior to adding a municipality to the witness certificate if the address is reasonably ascertainable from other information on the absentee ballot envelope, or other reliable extrinsic sources that are available. The clerk may, but is not required to, contact the voter if the clerk can reasonably ascertain the missing address information.
- 2) The Commission adopts the remainder of the October 4, 2016 staff policy, including the requirement that the witness address on an absentee ballot certificate contain at a minimum, a street number, street name and municipality for the certificate to be considered sufficient.
- 3) The Commission directs staff to modify the October 4, 2016 staff policy to remove the requirement that local election officials obtain consent prior to adding a municipality to the witness certificate and that local election officials may add the municipality to the witness certificate if they are able to reasonably ascertain the information from other information on the envelope, or other reliable extrinsic sources.