

RESPONSE IN THE MATTER OF COMPLAINT KNUDSON V. EVERS

The Complaint of Dean Knudson, Complainant

against

Tony Evers, Respondent

Wisconsin Elections Commission

Represented by

Deborah C. Meiners

DeWitt LLP

Two East Mifflin Street, Suite 600

Madison, WI 53703

February 5, 2021

1. I am in receipt of correspondence from Deborah Meiners dated December 22, 2020 regarding her decision to grant an extension for the Respondent to file his response to my complaint.
2. Respondent Evers is a state official under Wisconsin law serving as the Governor of the State of Wisconsin. Governor Evers has certain election related duties under s. 7.70(5) Wis. Stat. As such the statutory effect is to make Evers a state election official although in a limited capacity.
3. This complaint is filed under Wis. Stat. 5.06 with the intent to require that Governor Evers, and future Governors, conform their future conduct in compliance with state law.
4. Governor Evers claims that he is not an election official at all, hence not subject to Wis. Stat. Chapter 5 complaint procedures. I dispute that Governor Evers is not a state election official since statutes clearly give him a role in elections. Governor Evers is not however a local election official but instead a state election official.
5. Wisconsin Administrative Code as currently published states that Chapter EL 20 has been superseded by Wis.Stat. 5.05(2m) stating: "Chapter EL 20 has been superseded by s. 5.05 (2m), Wis. Stat., and is no longer effective, except for complaints alleging a violation of election laws by a local election official under s. 5.06, Wis. Stat." Respondent is not a local election official.
6. Wisconsin statutes must always supersede administrative procedures, administrative precedents, and the Wisconsin Administrative Code in cases where there exists a conflict.
7. I did not consent to the request by the Respondent for an extension of time to file a response.
8. The statute governing the general authority, powers and duties of the Wisconsin Elections Commission contains s. 5.05(2m)(c)2.a Wis.Stat. and which states: "Any person may file a complaint with the commission alleging a violation of chs. 5 to 10 or 12. No later than 5 days after receiving a complaint, the commission shall notify each person who or which the complaint

alleges committed such a violation. Before voting on whether to take any action regarding the complaint, other than to dismiss, the commission shall give each person receiving a notice under this subd. 2. a. an opportunity to demonstrate to the commission, in writing and within 15 days after receiving the notice, that the commission should take no action against the person on the basis of the complaint.”

9. The complaint does contain allegations of violation of Chapter 5 to 10 or 12 as covered by s. 5.05, however this complaint was filed under s. 5.06 instead because the remedy sought is future compliance rather than criminal penalty. Despite the fact that this complaint is filed under s. 5.06, Administrative Code Chapter EL 20 does not apply but instead the statutory procedure laid out in s. 5.05(2m)(c)2.a Wis.Stat. must govern consideration of the complaint.
10. Respondent failed to respond to the complaint within the 15 days allowed under s. s. 5.05(2m)(c)2.a Wis.Stat.
11. Ms. Meiner does not have legal authority to grant an extension of the time to file a response to this complaint.
12. No verified response was received within the 15 days allowed under law.
13. The failure to respond timely to the complaint means the response by the Respondent must be disregarded. The Respondent should be deemed to have admitted the allegations contained in the complaint.
14. Notwithstanding the foregoing arguments, and particularly if the Commission or any other court rejects the foregoing, I assert my right to have the following response entered into the record and considered by the Commission and any future court proceeding.
15. Respondent claims that s. 7.70(5)(b) stands alone and must be considered separate and unrelated to s. 7.70(5)(a) Wis. Stat.
16. I dispute this claim because the certificate of ascertainment sent by Evers, and by previous Governors, has included the signature of the Secretary of State as required in s. 7.70(5)(a). This action is in compliance with s. (a) and not required in s. (b).
17. Respondent claims that the statutory requirement in s. (a) to wait before issuing an election certificate until the time allowed for filing an appeal of a recount has passed does not apply to presidential elections. Wis. Stat. 7.70(5)(a) includes the language: “When a valid petition for recount is filed, the commission chairperson or the chairperson’s designee may not certify a nomination, and the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.”

