



Wisconsin Elections Commission

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March 25, 2021

Jason Nickolai
W2241 Wood Street
White Lake, WI 54491

White Lake School District
405 Bissell Street
White Lake, WI 54491

Sent via email to:

jason_nickolai@yahoo.com; wlhs@whitelake.k12.wi.us; gboldig@whitelake.k12.wi.us

Re: In the Matter of: Jason Nickolai v. White Lake School District
Case No. EL 21-10

Dear Mr. Nickolai and Ms. Butterfield-Boldig,

This letter is in response to the verified complaint submitted by Jason Nickolai to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by officials from the White Lake School District during the school board candidate nomination process. The complaint alleges that the officials unlawfully denied Mr. Nickolai’s ballot access.

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/reply and White Lake School District’s response. The Commission provides the following analysis and decision. In short, the Commission finds that the complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred. The declaration of candidacy paperwork was improperly filed because of a missing notarization, and the respondents did not fail to perform any required duties that would have alleviated the complainant’s burden of submitting completed nomination papers.

Complaint Allegations and Response

Mr. Nickolai filed a complaint with the Commission pursuant to Wis. Stat. § 5.06 alleging that White Lake School District officials violated applicable sections of Wisconsin Statutes relating to declaration of candidacy acceptance and ballot access when those officials refused to grant the complainant ballot access because the submitted declaration of candidacy paperwork lacked notarization. The complainant’s submissions state that he left the declaration of candidacy with an office staff member before the deadline for submission on January 5, 2021 at 5:00pm. The

Commissioners

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

Administrator
Meagan Wolfe

complainant further provides that the respondents contacted him on January 20, 2021, asking that he come back and pick up the documents, have the materials notarized, and return them to the school office. The complainant believed that this was done with an understanding that his nomination would be accepted. On February 1, 2021, the respondents informed the complainant that his declaration of candidacy was being rejected. Finally, it is alleged that the respondents never properly reviewed and notified the complainant of the deficiencies with his declaration of candidacy, and that they had an official qualified to administer oaths on site that could have assisted him.

The respondents contend that the complainant arrived at the office at approximately 4:50pm on the day of the nomination paper deadline with the unnotarized, and thus legally insufficient, declaration of candidacy. Mr. Nickolai only slightly disputes this and claims he arrived at 4:35pm on the day of the nomination paper deadline. The reply also indicates that a school official verbally indicated to Mr. Nickolai that she believed the form needed to be notarized, but she accepted the form as presented with the understanding that she would inquire about a need for notarization. The district declined to certify the complainant's declaration of candidacy after consulting with legal counsel, the school district clerk, and the Wisconsin Elections Commission.

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 by Mr. Nickolai's 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

Sufficiency of Declaration of Candidacy Papers

Wisconsin Statute § 8.21 provides the following:

- (1) Each candidate, except a candidate for presidential elector under s. 8.20 (2) (d), shall file a declaration of candidacy, no later than the latest time provided for filing nomination papers under s. 8.10 (2) (a), 8.15 (1), 8.20 (8) (a) or 8.50 (3) (a), or the time provided under s. 8.16 (2) or 8.35 (2) (c). A candidate shall file the declaration with the officer or agency with which nomination papers are filed for the office that the candidate seeks, or if nomination papers are not required, with the clerk or board of election commissioners of the jurisdiction in which the candidate seeks office.
- (2) The declaration of candidacy shall be sworn to before any officer authorized to administer oaths...

This statute clearly directs that the potential candidate must ensure the complete filings are timely submitted by the deadline (in this case by January 5, 2021, at 5pm). The declaration of candidacy must also be sworn before any officer authorized to administer oaths (*See Wis. Stat. §*

887.01). Without being notarized or otherwise properly sworn, the submission is insufficient. In this instance, the document was brought to the appropriate office prior to the nomination paper deadline, but with very little time to allow for potential correction of deficiencies. The missing notarization was fatal to the legal sufficiency of the complainant's documentation.

Complainant argues that the respondents were not timely with information or the request to fix this insufficiency. This argument is of no consequence to the decision in the instant matter. "Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements." Wis. Admin. Code § EL 2.05(1). This provision largely applies to nomination papers, but it is reasonable to apply the same requirements to ancillary nomination forms like the declaration of candidacy. Additionally, filing officers are only required to perform an initial review for facial sufficiency, and when circumstances and time permit, the filing officer may try to ascertain the correctness and sufficiency of information. Wis. Admin. Code § EL 2.05(3). The respondents had no affirmative duty to make an immediate finding as to the validity of complainant's declaration of candidacy form, and the late submission by the complainant dictates that he should not have anticipated an on-the-spot sufficiency determination. Timely correction of the deficiency may have still been impossible, even if the filing officer had given a firm ruling on the deficiency in that moment.

The parties both agree that the complainant arrived prior to the submission deadline. "In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline..." Wis. Admin. Code § EL 2.05(2). The Commission has previously opined that a party may still submit nomination papers and other required nomination documentation like the declaration of candidacy if the party is in the presence of the filing officer prior to the deadline (*e.g.* they are waiting in line to formally transfer physical possession). However, that submission requirement/allowance is wholly dependent on the legal sufficiency of the materials.

As discussed above, the complainant lacked the required notarization, and that renders the required documentation legally insufficient. In this case, the complainant arrived earlier than necessary, but left very little time for correction or discussion of potential deficiencies. Respondents also had no affirmative obligation to make a sufficiency determination in the moment. Incomplete nomination materials are not considered to be timely or completely submitted. The Commission thereby determines that the complainant has not met the burden of proof that there is probable cause to believe the filing officer at White Lake School District acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Commission Decision

Based upon the above review and analysis, the Commission finds that the complaints do not raise probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. All claims are hereby dismissed.


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 me.

Sincerely,

COMMISSION

A handwritten signature in black ink that reads "Megan L.M. Wolfe". The signature is written in a cursive style with a large, prominent 'M' at the beginning.

Meagan Wolfe
Administrator

cc: Commission Members