



Wisconsin Elections Commission

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May 18, 2021

James Sewell
917 West Lawn Avenue
Racine, WI 53405

Racine City Clerk
730 Washington Avenue
Racine, WI 53403

Sent via Email: sewellja@tds.net; Tara.Coolidge@cityofracine.org

Re: In the Matter of: James Sewell v. City of Racine Clerk et al. (Case No.: EL 21-08)

Dear Mr. Sewell and Ms. Coolidge:

This letter is in response to the verified complaint submitted by James Sewell (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by unidentified election inspectors overseen by the City of Racine Clerk during the 2020 Spring Election. The complaint alleges that Clerk Coolidge and the various elections inspectors (“Respondent(s)”) violated Mr. Sewell’s rights and committed a violation of Wis. Stat. § 5.85 when poll workers in several wards did not properly keep, mark, and separate original and duplicated ballots.

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, the City of Racine’s response, and all supporting documentation. 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 with relation to Wis. Stat. § 5.85. Specifically, the Commission has determined that the Respondent did not adequately name all Respondents, provide sufficient evidence to support his claim, or indicate with required specificity what is being alleged.

Complaint Allegations and Response

Mr. Sewell filed a complaint with the Commission pursuant to Wis. Stat. § 5.06 alleging that the City of Racine and its elections inspectors did not “properly keep, mark, and separate original and duplicated ballots.” The Complainant further alleges that eighty-one violations were found

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during the Racine Unified School District Referendum recount, and that others may exist beyond what is listed in the complaint (see below):

1. Racine Ward 1, 2 originals were found but the remakes weren't marked
2. Racine Ward 9, 11 duplicates found, but no originals
3. Racine Ward 12, 7 originals found but duplicates were not marked
4. Racine Ward 16, 24 remakes in log, only 2 matching original and duplicate were found
5. Racine Ward 20, 20 remakes in log, only 3 originals found
6. Racine Ward 21, 15 remakes in log, only 8 originals found
7. Racine Ward 24, 6 remakes in log, no originals found
8. Racine Ward 26, 2 duplicates weren't marked so can't compare
9. Racine Ward 30, 4 remakes in log, none marked
10. Racine Ward 31, 3 originals missing

The Respondent counters these allegations by noting several points of law:

1. No further detail is provided by the Complainant beyond general allegations that the poll workers in several wards did not properly keep, mark, and separate original duplicated ballots. The allegations are vague and factually insufficient.
2. The complaint does not allege any improper action by any person under the direction of the City of Racine Clerk because this was a school district referendum, and the canvassing/recount were under the jurisdiction of the Racine Unified District Board of Canvassers.
3. Where a school district referendum is held by the district, the school district clerk is responsible for processing the referendum, and the district's board of canvassers oversees the canvass and recount processes. As such, this action was improperly brought against the City of Racine Clerk and the city's elections inspectors.
4. The complaint was not timely filed with the Commission under Wis. Stat. § 5.06(3). The election was in April of 2020, a subsequent Racine County Circuit Court decision ruled in favor of the school district in July of 2020, and this complaint was not filed until January of 2021.

The Complainant notes the following in his final reply:

1. The allegations he raised do not relate specifically to canvass and recount activities, but rather to the actions of city officials during the election which were not fully uncovered until the recount process.
2. The Respondent's filing incorrectly asserts that the complaint was improperly filed against city officials and elections inspectors.
3. The issue of timeliness was not addressed in the Complainant's reply.

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. Sewell'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

Timeliness of the Complaint Filing

The timeliness provision of statute is designed to expedite processes related to ballot access challenges. It does not place a "statute of limitation" on other complaint types appropriately raised under Wis. Stat. § 5.06. The Commission does not otherwise take a position on timeliness in the instant matter and will proceed with the necessary analysis of the complaint. This leaves only a consideration of the sufficiency of the complaint, and an examination of whether the probable cause standard was met.

Alleged Wisconsin Statute § 5.85 Violations

Wisconsin Statute § 5.85 generally details processes and requirements for the receiving, counting, tallying, and return of ballots. The provisions found in this section of statute are broad, and deal with many administrative and procedural processes associated with election operations. The allegations found in the complaint are vague, hard to decipher, and provide no evidentiary support.

The Respondent asserts in a sworn response that the actions of local officials conformed to statutory requirements, and that, "The Complaint makes non-specific allegations regarding the actions of poll workers during the 'Spring 2020 General election.' However, no detail as to the alleged violations is provided."

Indeed, it is difficult to interpret what many of the allegations in the complaint are actually alleging. This issue is compounded by the fact that there was very little elaboration by the Complainant in the final reply and no supporting materials were provided (*e.g.* details of ballot deficiencies, photocopies, photographic evidence, witness affidavits, etc.).

It is further problematic that the Complainant attempts to incorporate unnamed election inspectors as respondents. Wisconsin Statute § 5.06 provides each respondent with a legal right to respond to the allegations being made against them. The complaint provides no such opportunity, because the unnamed Respondents are unable to be properly served notice of this complaint and respond accordingly. Moreover, it is those elections inspectors that likely possess the requisite first-hand knowledge of election operations in the wards at issue in the instant matter.

The Complainant was also a party to a Racine County Circuit Court case where the court reviewed a variety of alleged deficiencies pertaining to the electoral processes in the same election at issue here. *In re* Notice of Appeal of the Decision of the Racine Unified School District Board of Canvassers Regarding the School Funding Referendum, 2020CV001023 (Racine Cnty. Circuit Court 2020). The circuit court ruled in favor of the school district on each issue presented in that case, and the parties exhausted all avenues for appeal.

The Complainant now asks the Commission to investigate this matter in more detail. Wisconsin Statute § 5.06(1) provides:

Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. *The complaint 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. *The complaint may be accompanied by relevant supporting documents...* (emphasis added)

The Commission is empowered to potentially investigate a matter in more detail. Wis. Stat. § 5.06(4). However, this additional step demands that the Complainant has set forth some facts within their knowledge to show probable cause to believe a violation of law or abuse of discretion has or will occur, or at least that a violation/abuse may have occurred. The Complainant has not met that burden, and the Commission thus dismisses this complaint for failure to meet the required probable cause standard.

This matter is dismissed without prejudice. The Complainant may re-file, provided he sets forth sufficient evidence to clarify what specifically is being alleged and establish probable cause to believe a violation or abuse has occurred. Each Respondent must be properly identified to be incorporated into that complaint process. The Complainant also retains other rights provided by law, including an ability to petition the local district attorney to initiate an investigation into this matter, to request public records from local officials, and to appeal any negative public records decisions.

Commission Decision

Based upon the above review and analysis, the Commission finds that the complaint does not raise probable cause to believe that a violation of law or abuse of discretion has occurred under Wis. Stat. § 5.85.


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 H.M. Wolfe". The signature is written in a cursive style with a large initial 'M'.

Meagan Wolfe
Administrator

cc: Commission Members