

State of Wisconsin
Before the Wisconsin Elections Commission

In re: Complaint No. EL 21-39 (Jay Stone v. Meagan Wolfe)

Response of Meagan Wolfe, Administrator of the Wisconsin Elections Commission

Background

Mr. Stone's complaint is about a letter issued to him on September 11, 2020 regarding a Section 5.06 complaint he filed on August 28, 2020 against the Mayors of Green Bay, Kenosha, Madison, Milwaukee, and Racine, the clerk/or acting clerk in the cities of Green Bay, Kenosha, Madison, and Racine and the Commissioners of the City of Milwaukee Election Commission, Stephanie Findley, Carmen Cabrera and Jess Ripp. The letter informed Mr. Stone that after review of his complaint pursuant to Wis. Admin. Code § EL 20.04(1), it was determined that his complaint was not in proper form and it did not state probable cause that a violation of an election law that the Commission has jurisdiction over had been violated. Based on that determination, the complaint was returned to Mr. Stone without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1) and (2).

Response

- 1) If Mr. Stone believed the decision issued on September 11, 2020 was incorrect, his recourse was to appeal that decision to circuit court.**

Filing a Section 5.06 complaint (EL 21-39) to in essence appeal the decision of a previously filed Section 5.06 complaint (EL 20-18) is not the proper procedure under Section 5.06(8). "Any election official or complainant aggrieved by an order issued under sub. (6) may appeal the decision of the commission to circuit court for the county where the official conducts business or the complainant resides no later than 30 days after issuance of the order." Wis. Stat. § 5.06(8).

The Commission should dismiss Mr. Stone's complaint for failing to follow the applicable statutory procedure for challenging the decision issued to him in September, 2020.

- 2) If Mr. Stone's complaint is proper, it was not filed promptly, and it is therefore untimely and should be dismissed.**

If the Commission believes Mr. Stone's complaint may proceed, it was clearly not filed timely and therefore it should be dismissed. "A complaint under this section shall be filed promptly so as not to prejudice the rights of any other party. 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). Mr. Stone's complaint does not involve nominations, qualifications of candidates or ballot preparation, so the 10-day

requirement does not apply, therefore his complaint is required to be filed promptly. Where a term is not defined, “statutory language is given its common, ordinary, and accepted meaning.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. A filing is understood to be “prompt” if it is done at once or without unreasonable delay. Mr. Stone did not file his most recent complaint until well over a year after he received the decision letter on September 11, 2021. The Commission has previously dismissed complaints that were not filed timely (See EL 20-12, *Herbst v. School District of Black Hawk*; EL 20-29, *Jackson v. Taylor*).

The Commission should dismiss Mr. Stone’s complaint for failing to file it promptly as required under Wis. Stat. § 5.06(3).

3) The explanation of why Mr. Stone’s complaint was not in proper form is accurate, and no false claims about Wisconsin Statute § 5.06(1) were made.

The letter issued to Mr. Stone on September 11, 2020 provides the full text of Wis. Stat. § 5.06(1). Mr. Stone is an elector of Pleasant Prairie. Mr. Stone’s Section 5.06 complaint was filed against election officials (municipal clerks and City of Milwaukee Election Commissioners) that do not serve him as required by the statute to be able to file a complaint against them. Mr. Stone incorrectly reads Wis. Stat. § 5.06 to expand the authority or service of a municipal clerk to electors that do not live in their municipality. By statute, a municipal clerk “has charge and supervision of elections and registrations in the municipality.” Wis. Stat. § 7.15(1). Municipal clerks are the election officials that serve the electors that reside in their municipality.

Mr. Stone’s Section 5.06 complaint was properly dismissed because he is an elector of Pleasant Prairie and his complaint was filed against the municipal clerks of Green Bay, Madison, Racine, Kenosha and the City of Milwaukee Election Commissioners who are election officials that do not serve him, which is a requirement for the Commission to consider a complaint under Wis. Stat. § 5.06(1). The Commission has previously dismissed complaints filed by electors against election officials that do not serve them as required by Wis. Stat. § 5.06(1) (See EL 20-19, *Krumberger, et al. v. Findley, et al.*, EL 20-20, *Guse v. City of Madison, et al.*).

The Commission should dismiss Mr. Stone’s current complaint as his original complaint was properly dismissed and returned to him.

4) Mr. Stone’s complaint did not allege violations of election law that the Commission has authority over to enforce or investigate, so it was properly dismissed and returned to Mr. Stone.

Section 5.06 of the Wisconsin statutes is the section that permits an elector to file a complaint with the Commission against an election official that serves them, but the Commission cannot determine if an election official violated an election law or abused his or her discretion in applying a law, if the complaint does not cite what law they are alleged to have violated or abused their discretion in applying. Simply stating that you’re filing a complaint under Section 5.06, but then not cite any election laws that the election official has been violated or abuse their

discretion is grounds for dismissal for failure to state probable cause. Wis. Admin. Code § EL 20.04(1).

I did not “deliberately” ignore probable cause stated in Mr. Stone’s complaint. Mr. Stone’s Section 5.06 complaint did not state probable cause. The Commission should dismiss Mr. Stone’s current Section 5.06 complaint as his original complaint was properly dismissed and returned to him.

- 5) Mr. Stone is correct that he made a mistake and filed a Section 5.06 complaint against the mayors of Green Bay, Milwaukee, Madison, Racine and Kenosha because they are not election officials.**

The letter informing Mr. Stone that his Section 5.06 complaint was dismissed because it was not in proper form and did not state probable cause should have also stated that his complaint was improper as filed against the mayors of those municipalities because it was filed against individuals that are not election officials. That was an oversight and was not deliberate as Mr. Stone states. It is unclear why I would deliberately omit an additional reason why Mr. Stone’s complaint was properly dismissed and returned to him. It was likely overlooked due to the other obvious stated reasons the complaint was improper.

- 6) Mr. Stone could not cure his complaint because he is not an elector in the City of Madison, City of Green Bay, City of Milwaukee, City of Racine or City of Kenosha as Section 5.06 requires him to be in order to file a complaint against an election official in those jurisdictions.**

The September 11, 2020 letter to Mr. Stone clearly stated that he could not cure the defect of his complaint because he does not reside in any of the municipalities served by the individuals named in the complaint. The letter properly informed Mr. Stone about curing defects in his complaint as required by Wis. Admin. Code § EL 20.04(2). Even if Mr. Stone would decide to move his residence and become an elector in one of these jurisdictions, the allegations in his original complaint were related to the acceptance of grant funds and the use of those funds for the November election. He was not an elector of any of those jurisdictions when the alleged offending conduct occurred, so a decision to move into a jurisdiction after the fact could not cure his Section 5.06 complaint.

Additionally, Mr. Stone is under the impression that I am required to review his complaint and conduct research to try and find election statutes that he should have included in his complaint that would support the allegation that his “facts” demonstrate that an election official did not comply with that law. That is clearly not my role in reviewing a complaint to determine if it is in proper form, was filed timely and stated probable cause. As discussed already, there were no options for Mr. Stone to cure his complaint because he is an elector in Pleasant Prairie, and his complaint was against election officials and mayors of jurisdictions other than Pleasant Prairie.

- 7) Mr. Stone’s remaining claims of an abuse of discretion are without merit, as his original complaint was properly dismissed and returned to him.**

For any and all additional allegations raised by Mr. Stone's complaint against me, those allegations are denied in whole. As described in great detail throughout this response, Mr. Stone's complaint in September 2020 was properly dismissed and returned to him. Therefore, the Commission should dismiss Mr. Stone's current Section 5.06 complaint for all of the reasons indicated above.

Conclusion

For all the reasons set forth above, I respectfully request that the Commission dismiss this complaint.

Verification

I, Meagan Wolfe, have read the foregoing Response and am familiar with its contents thereof. The facts set forth herein are true and correct based on my own personal knowledge and, to the extent any fact herein are based on information and belief, I believe such facts to be true.

Dated this 29th day of October, 2021.


Meagan Wolfe

Subscribed and sworn before me this 29th day
of October, 2021





Notary Public, Dane County, State of Wisconsin

My Commission expires: 01/03/2023 or is permanent.