



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

December 6, 2021

Robert Pellegrini
425 E. Capital Drive
Hartland, WI 53029

Darlene Igl
Village Clerk
210 Cottonwood Ave.
Hartland, WI 53029

Sent via email to: luke@will-law.org; darlenei@villageofhartland.com;
aem@piperschmidt.com; jmw@piperschmidt.com

Re: In the Matter of: Robert Pellegrini v. Darlene Igl (Case No.: EL 21-35)

Dear Mr. Pellegrini and Ms. Igl:

This letter is in response to the verified complaint submitted by Robert Pellegrini (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken and likely to be taken by Clerk Igl of the Village of Hartland (“Respondent”) concerning the use of drop boxes. The Complainant alleges that the use of drop boxes in the upcoming primary and general elections of 2022 would violate Wis. Stats. §§ 6.855, 6.87(4)(b)1, and 12.13(3)(n) pertaining respectively to alternate absentee ballot sites, absent voting procedure and election fraud.

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 and the Village of Hartland Clerk’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 with relation to Respondent’s use of drop boxes.

Complaint Allegations and Response

On June 28, 2021, Mr. Pellegrini filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06 alleging that Clerk Igl violated applicable sections of Wisconsin Statutes, Chapters 6 and 12.

The Complainant alleges that “Ms. Igl has allowed voters to cast absentee ballots in the Village of Hartland contrary to law” and asks “the Wisconsin Elections Commission [to] require her to conform her conduct to the law and restrain her from taking any action inconsistent with the

Commissioners

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

Administrator
Meagan Wolfe

law.” Specifically, the Complainant alleges that by allowing the use of “outdoor, unstaffed drop boxes . . . located outside the Village Hall and near the exit from the Library parking lot” for the return of absentee ballots, Respondent has violated:

1. Wis. Stat. § 6.87(4)(b)1, which states that the sealed envelope containing an elector’s marked absentee ballot “shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots”;
2. Wis. Stat. § 12.13(3)(n), which states that no person may “[r]eceive a ballot from or give a ballot to a person other than the election official in charge”;
3. and Wis. Stat. § 6.855, which details required procedures for a municipality designating “a site other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election.”

On July 8, 2021, Ms. Igl filed a sworn response with the Commission. The Respondent admits that she “allowed electors to return absentee ballots to secured outdoor drop boxes,” but denies the allegation that this action constitutes a statutory violation. The Respondent argues that “[v]oters who have returned their absentee ballots as directed by their municipal clerk have ‘delivered [them] in person, to the municipal clerk’ as directed by Wis. Stat. § 6.87(4)(b)1” and denies that placing a ballot in a drop box constitutes giving a ballot to a person other than the election official in charge. The Respondent alleges that all employees directed by her “to retrieve absentee ballots from drop boxes and return them to her office are her authorized representatives under Wis. Stat. § 5.02(10), election officials under Wis. Stat. § 5.02(4e), and permitted to receive and transmit absentee ballots under Wis. Stat. § 6.87(4)(b)1.” Lastly, the Respondent denies that Wis. Stat. § 6.855 is a relevant statute for a question concerning drop boxes, stating that the statute concerns “only [] in-person absentee voting, i.e. ‘early voting.’”

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. Pellegrini’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

First, the Commission finds that Wis. Stats. §§ 12.13(3)(n) and 6.855 are not germane to the legality of drop boxes.

Wis. Stat. § 12.13(3)(n) prohibits “[r]eceive[ing] a ballot from or give[ing] a ballot to *a person* other than the election official in charge” (emphasis added). The Commission does not here provide an exhaustive interpretation of Wis. Stat. § 12.13(3)(n), but finds that on a plain reading drop boxes are inanimate objects and thus fall outside the statute’s scope. Regardless, the ballot is being routed directly to the “election official in charge” via the duly approved and secure drop

box. This portion of statute is also better suited as the basis for a complaint against the elector returning the ballot as opposed to the election official authorizing the use of drop boxes. However, neither argument has merit because of the Respondent's uncontested statements that "individual employees of the Village directed by Igl to retrieve absentee ballots from drop boxes and return them to her office are . . . election officials under § 5.02(4e)," and that the drop boxes used were "secured." In sum, there is no allegation before the Commission that any person, by any means, gave any ballot to a person other than a statutorily-compliant election official.

Under Wis. Stat. § 6.855(1):

The governing body of a municipality may elect to designate a site other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election.

Wis. Stat. § 6.87(3)(a) provides further that: "[i]f the ballot is delivered to the elector at the clerk's office, or an alternate site under s. 6.855, the ballot shall be voted at the office or alternate site and may not be removed by the elector therefrom." These statutes refer to situations in which electors are not receiving their absentee ballots by mail, but rather receiving unsealed ballots and voting their ballots at the same location. The Complainant does not allege that electors received and voted ballots at drop box sites, but only that absentee ballots were placed in outdoor, unstaffed drop boxes. Because the Complainant does not allege that electors received ballots at any location or in any manner other than as provided by law, Wis. Stat. § 6.855 is not applicable.

Second, under Wis. Stat. § 6.87(4)(b)1, after an elector has marked an absentee ballot and sealed it within the return envelope, the envelope "shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots." The Complainant noted and the Commission is mindful that "the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse" and that Wis. Stat § 6.87(4)(b)1 must be "construed as mandatory." Wis. Stat. § 6.84. The Complainant did not allege that any ballots were not marked and sealed within return envelopes as required by Wis. Stat. § 6.87(4)(b)1 before they were put into the outdoor, unstaffed drop boxes. Further, the Complainant did not allege that the drop boxes were unsecure, and thus nothing contradicts the Respondent's statement that her authorized representatives, who were themselves election officials, retrieved the envelopes from the secured drop boxes and delivered them to her office.

Thus, the Commission considered whether a marked ballot within a sealed return envelope that has been placed into a drop box, which is later emptied by election officials who are a clerk's authorized representatives and then delivered to the clerk's office, violates Wis. Stat. § 6.87(4)(b)1's requirement that "[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots." The Commission does not find any violation within the above sequence. The Commission released a memo on August 19, 2020, stating that "[b]allot drop boxes and drop-off locations allow voters to deliver their ballots in person." Memorandum from Megan Wolfe, Administrator, & Richard Rydecki, Assistant Administrator, to All Wisconsin Election Officials, *Absentee Ballot Drop Box Information*, WISCONSIN ELECTIONS COMMISSION (Aug. 19, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Drop%20Box%20Final.pdf>. The memo detailed best practices for the use of drop boxes, including the use of secure, outdoor,

unstaffed drop boxes, and the WEC stands by its statements in that memo. The information in the memo was adapted from a resource developed by the U.S. Cybersecurity and Infrastructure Security Agency (“CISA”), Elections Infrastructure Government Coordinating Council, and Sector Coordinating Council’s Joint COVID Working Group. The working group’s resources provided clear standards by which the efficacy and security of ballot drop boxes are increased. In addition, the use of drop boxes for the return of ballots has become a commonly accepted practice in a significant majority of states.

Wis. Stat. § 6.87(4)(b)1 makes clear that a sealed envelope containing a marked ballot does not need to be mailed to the municipal clerk, defined by Wis. Stat. § 5.02(10) as “the city clerk, town clerk, village clerk and the executive director of the city election commission and their authorized representatives,” but may also be delivered “in person” to that clerk. “[I]n person” stands in contrast to “mailed,” and widens the options available to electors for returning ballots to their municipal clerk. The Respondent’s claim that ballots placed into drop boxes were returned to her by her authorized and statutorily-compliant representatives was not contested by the Complainant. After being deposited in a drop box, there is not anything between the marked ballots sealed within return envelopes and the municipal clerk but a secure inanimate object and her authorized representatives. Nothing within the statute prohibits such a situation or demands that sealed ballots be handed from one person directly to another person with no inanimate objects in between. Therefore, a marked ballot within a sealed return envelope that has been placed into a secure drop box as directed by the elector’s municipal clerk has been delivered in person to the municipal clerk.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause to believe that violation of law or abuse of discretion occurred under Wis. Stats. §§ 6.855, 6.87(4)(b)1, or 12.13(3)(n) regarding the Respondent’s use of unstaffed, outdoor drop boxes.

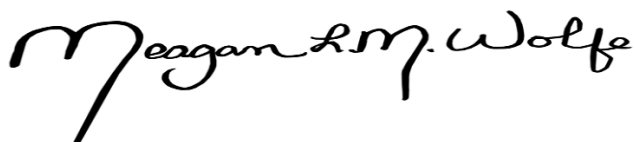
Right to Appeal – Circuit Court

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 "Meagan Wolfe". The signature is written in a cursive style with a large, looped initial "M".

Meagan Wolfe
Administrator

cc: Commission Members