



Wisconsin Elections Commission

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February 4, 2022

Sandra Hynes
W9563 Aarback Rd.
Cambridge, WI 53523

Re: Wis. Stat. § 5.06 Complaint EL 22-06 (Hynes v. Dohner, et al.)

Dear Ms. Hynes:

I am in receipt of your Wis. Stat. § 5.06 complaint filed with the Wisconsin Elections Commission (WEC or Commission), received on January 25, 2022, against John Dohner Jr. – Chair of the Town Board of Sumner, Patty Achilli – Clerk of the Town of Sumner, and Lindsay Jilek – Supervisor II of the Town Board of Sumner. The administrative rules governing the WEC’s processing of complaints require that I review the complaint and determine within 10 business days whether the complaint is timely, is sufficient as to form, and states probable cause. Wis. Admin. Code § EL 20.04(1). I am writing to inform you that I have determined the complaint is not in proper form and does not state probable cause. The complaint names individuals who are not contemplated under Wis. Stat. § 5.06, and also fails to provide evidence of claims which the Commission could address under its statutory domain. Therefore, I am returning the complaint to you without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1)&(2). Below, I will explain the deficiencies as to form and probable cause and provide information about how these deficiencies may be cured.

Sufficiency as to Form

The form insufficiencies discussed here would not on their own be enough to warrant a return of your complaint under Wis. Stat. § 5.06(1)&(2). However, the WEC would only be able to consider the claims related to the Town of Sumner Clerk, Patty Achilli, because of Achilli’s status as an election official. A future Wis. Stat. § 5.06 complaint could name her as a respondent if the probable cause deficiencies described in the next section are addressed. John Dohner Jr. and Lindsay Jilek are not election officials under Wis. Stats. §§ 5.02(4e) and 5.06(1). Wis. Stat. § 5.02(4e) states: “‘Election official’ means an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.06(1) states:

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

Wisconsin Elections Commissioners

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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 Chair and Supervisor II of the Sumner Town Board are not “election officials” because they do not have any duties relating to the conduct of elections. Municipal governing bodies have limited responsibilities related to choosing polling places and election inspectors, but these limited responsibilities that do not extend to conducting elections cannot turn these municipal officials into election officials. The Town Chair and Supervisors play only a background role in ensuring that an election is able to be conducted by the appropriate officials.¹ Because these officials are not election officials, the WEC cannot consider their actions in the context of a Wis. Stat. § 5.06 complaint.

Sufficiency as to Probable Cause

The Wisconsin Elections Commission has authority over the enforcement of Wisconsin Statutes Chapters 5–10, and 12. Your complaint does not provide evidence that establishes probable cause of a violation of laws the Commission has authority to investigate. EL § 20.02(4) defines probable cause as, “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.” I will below address the issues of probable cause as they relate to each claim and each named respondent, as this information may be necessary should you seek to file a Wis. Stat. § 5.06 complaint against the Town of Sumner Clerk or another kind of action against the Town Chair or Supervisor II.

1. *The Town Board Chair neglected to nominate election officials to the governing body for the Town of Sumner for the two-year term of 2022 through 2023. Sec. 7.30(4)*

Wis. Stat. § 7.30(4)(a) states, in relevant part, that the:

board chairperson of each municipality shall nominate to the governing body no later than their last regular meeting in December of each odd-numbered year the necessary election officials for each polling place and any election officials required under s. 7.52 (1) (b).

The Town Board Agenda and Minutes attached to your complaint do not raise any suspicion that this required task failed to occur, and thus fails to state probable cause. The Agenda shows a list of 18 names presented to the governing body of the Town of Sumner. The statute cited does not detail how a board chairperson should carry out this task, leaving each municipality with some discretion as to the mechanics of this nomination. For the purposes of this complaint, the Commission sees a list of names on an official Agenda and a similar list of names on the draft Minutes, and it must draw the conclusion that these names were nominated to the governing authority by the Town Board Chair. This complaint did not state or provide evidence that these nominations represented less than the number of election officials required to operate each polling place and did not provide evidence that the nominations which appear to have occurred did not in fact occur and that the names appearing on the list in the Agenda were not nominations for election inspectors.

¹ It appears that Ms. Jilek is on the list of election inspectors at issue in this complaint. This list will be addressed more thoroughly in the next section, however, this complaint has not raised an issue regarding her appearance on this list but only regarding her role as a member of the Town Board, so she has not been considered in any role as an election inspector for the purposes of this complaint. A complaint regarding her role as an election inspector would be in proper form under Wis. Stat. § 5.06.

2. *The Town Board Chair did not call a vote of the Town Board on nominations or appointments of election officials for a two-year term 2022-2023. Sec. 7.30(4)*

Wis. Stat. § 7.30(4)(a), quoted above, does not state what action a governing body must take after the nomination has occurred, leaving such decisions to the discretion of the governing body. The attached documents do not show that the governing body took a vote on these nominations. However, as the statute does not require a vote of approval, the Commission could not find that the statute was violated or that an abuse of discretion occurred because of the lack of a vote on this topic. The Minutes show one name fewer than appeared on the Agenda, but those remaining 17 names appear, without anything contradicting this appearance, to be the election inspectors for the 2022–2023 term from which the municipal clerk may appoint and staff polling places in order to conduct elections. The complaint does not provide any evidence to suggest that these names are in any way fraudulent or insufficient.

3. *The Town Board Clerk did not properly prepare an agenda to indicate consideration of nominations or discussion and action on appointments of election officials for the two-year term 2022-2023. Sec. 7.15(1) and Sec. 60.33(2)(c), (11)*

Wis. Stat. § 7.15(1) does not discuss agenda items, the Commission does not possess any authority to hear complaints regarding Wis. Stat. 60.33(2)(c), (11), and, as discussed in 1. and 2., there does not appear to be any issue relating to the nomination of election inspectors for the 2022–2023 term. If the Town Clerk is in violation of an ordinance or statute regarding the Town Board Meeting Agenda, the Commission is not the proper authority to hear that claim. Regarding the nominations of election inspectors, it appears that the Town Board Chair carried out his nomination responsibilities in accordance with Wis. Stat. § 7.30(4)(a).

4. *The Town Clerk indicated only “all we need is to have a listing” when queried by the Town Board Chair. Sec. 7.30(4) (a meeting recording is available)*

Assuming that this quote is accurate, the Commission does not see probable cause that any violation or abuse of discretion occurred. The Town Board Chair nominated a list of individuals to be election inspectors for the 2022–2023 term, and a modified list appears in the draft Minutes. The complaint does not provide any evidence to suggest that these names are in any way fraudulent or insufficient.

5. *The Town Clerk delegated shared responsibility to Supervisor 2 to obtain the Oaths of Office from listed “poll workers” without appointment as a Chief Inspector. Sec. 70.30(5) (a meeting recording is available)*

Wis. Stat. 7.30(5) states:

Within 5 days after appointment of the election officials the municipal clerk shall give each appointee notice. The appointees shall file the official oath with the municipal clerk within 10 days after the mailing of the notice. Appointees to fill vacancies or any other election official who has not filed the oath, before receiving any ballots, shall sign the oath and return it to the municipal clerk. An inspector, after taking the oath, may administer any oath required to conduct an election.

The complaint does not state that the municipal clerk failed to give any appointee notice of appointment. The appointees have a duty to file the oath with the municipal clerk, but there is no requirement that anyone receiving those sworn oaths (available at this link: <https://elections.wi.gov/sites/elections/files/2019-01/EL-154%20Official%20Oath%20%28Rev.%202018-09%29Fillable.pdf>) on behalf of the municipal clerk for the purposes of filing them must be a chief election inspector.

6. *Supervisor 2 directed poll workers “to make an appointment with her or the clerk to take the oath”, while not an appointed Election Inspector. Sec. 7.30(5) (a meeting recording is available) Note: Not all “poll workers” were present at the meeting and, to my knowledge, only 3 of the 17 listed “poll workers” have current or past election training and certification. EL 12*

There is no requirement that the oath be administered by an election inspector. The sentence quoted above in 5., “[a]n inspector, after taking the oath, may administer any oath required to conduct an election,” refers to oaths that election inspectors are required to give under certain circumstances, such as those required under Wis. Stat. § 6.925. The oath that elections inspectors are required to take, which is provided in the link above, must be sworn before a notary or a person authorized to administer oaths. This complaint does not argue that the Supervisor II and Town Clerk are not notaries or are not authorized to administer oaths. Further, any such complaint would need to show that an election inspector attempted to file an oath that had not been properly sworn. This complaint does not make that claim.

7. *The Town Board Supervisor 2 did not query either the Chair or the Clerk on the necessity for nominations and appointments under State Statutes. Sec. 60.22(1)(2)*

The Commission does not administer Chapter 60 of the Wisconsin Statutes and cannot hear any claims resting on those provisions. However, as stated above, the Commission believes due to the attached documents that the Town of Sumner Board Chair did nominate, and the Town of Sumner does have election inspectors for the 2022–2023 term. This Complaint has not shown that any required process did not take place or that the Town of Sumner will not have election inspectors who are able to staff polling places during the upcoming elections.

8. *The Town Board Chair did not notice or call a Special Meeting of the Town Board to appoint election officials prior to the December 31, 2021 statutory deadline. 7.30(4)*

The Commission does not believe that any Special Meeting was required because it appears that election inspectors were nominated at the regular meeting on December 13. This complaint has not argued that the Town Clerk failed to subsequently appoint election inspectors from that list to be poll workers for the February Primary Election, nor has it argued that the Clerk failed to offer training as required by Wis. Stats. §§ 7.15(1)(e), 7.31, and 7.315(1).

Regarding the training reported by Clerk Achilli, the WEC has already sent a letter to the Town Board of Sumner stating that she has not reported any training hours for the previous term.

Conclusion

I am returning the complaint, without prejudice pursuant to Wis. Admin. Code § EL 20.04(2), as it is not sufficient as to form for two of the three named respondents and as to probable cause. As required by that provision, I have specified the defects in the complaint: form—improper parties identified; probable cause—does not provide evidence of a violation that WEC has authority to review. The probable cause

section described the defects and, where appropriate, gave suggestions about what kind of related issue the Commission would be able to hear in a complaint. Since the complaint is improper as to form and probable cause, the complaint has not been accepted as proper by the Commission under its administrative rules.

The Commission now considers this complaint matter closed.

Sincerely,

A handwritten signature in black ink that reads "Megan H.M. Wolfe". The signature is written in a cursive style with a large, stylized 'M' and 'W'.

Meagan Wolfe
Administrator
Wisconsin Elections Commission

cc: Members, Wisconsin Elections Commission