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MEMORANDUM

DATE: January 11, 2019

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Meagan Wolfe
Interim Administrator

Election Administration Team

SUBJECT: 2019 Spring Primary Issues Q & A

There will be no statewide primary election on February 19, 2019. However, many municipalities and school districts may have local primaries on February 19 to narrow down the field of candidates who will be on the April 2, 2019 Spring Election ballot. Commission staff has received several questions about the upcoming primary and provides the following information relating to these common questions. If you have any additional questions or require clarification, do not hesitate to contact the HelpDesk at elections@wi.gov or (608) 261-2028.

Registration

Q: What is the voter registration deadline? Is it the same for municipalities that do not have primaries as those that do?

A: Municipalities conducting a primary on February 19, 2019 will follow the normal registration deadlines as set out in statute. Qualified electors in an area conducting a primary will be able to register to vote online via MyVote or by mail until January 30, in the municipal clerk's office until February 15, or at their polling place on the day of the primary. If the municipality is not conducting a primary, qualified electors will still be able to register in January and February, via MyVote, by mail, or in the clerk's office.

Q: Does the clerk have to be available until the 5:00 p.m. in-person voter registration deadline on February 15?

A: Yes. Electors in municipalities with a primary have until 5:00 p.m. on February 15 to complete a voter registration application, and the clerk must be available. “Available” means the clerk’s office is open, or, at a minimum, they are able to timely accommodate anyone who calls. Municipal clerks must also be available Friday, February 15 to accommodate anyone who wishes to submit a Campaign Registration Statement (CF-1) and register as a write-in candidate for the Spring Primary prior to the 12:00 p.m. deadline.

Pre-Election: Primaries, Notices, Polling Places, Costs & Training

Q: If there is only one municipal office in which there could be a primary, and three candidates qualify for ballot placement in a “vote for 1” situation, is a primary still required? Can a municipal governing body pass an ordinance or resolution to bypass the primary, placing all three candidates on the April 2, 2019 ballot?

A: It depends. Below are the general guidelines on when a primary will or will not be held:

- A primary may never be held if the number of candidates is equal to or less than twice the number of seats to be filled.
- In county, town and school district offices, when the number of candidates granted ballot access is more than twice the number of seats to be filled, a primary is required.
- In cities and villages, a primary may not be conducted, unless the number of candidates exceeds twice the number of open positions and unless one of the following occurs:
 - The city or village has passed a charter ordinance requiring a primary if the number of candidates exceeds more than twice the number of positions to be filled. Clerks should consult with their municipal attorney to determine if such a charter ordinance is in effect and if so, the charter ordinance must be followed.
 - A primary is called by a majority of the municipality’s governing body, which can be done no later than three days after the nomination paper filing deadline.
 - Residents of the municipality petition for a primary within three days after the nomination paper filing deadline. (See Wis. Stat. § 8.11)

If there is no charter ordinance, no petition is filed, and the governing body does not decide on a primary, no primary will be held, and all ballot candidates would appear on the April ballot.

Q: May polling places be closed, combined, or moved for the primary only?

A: This has been a common question due to the expected lower turnout for the primary election.

For municipalities in which at least one municipal contest is on the ballot, Wis. Stat. § 5.25(3) applies regarding the establishment of any polling places 30 days before an election, by the municipal governing body, if a municipality wants to change or close polling places.

At an election where the ballots will contain only school district contests, slightly different criteria apply. Some school districts may choose to close polling places in certain municipalities, provided that the conditions listed below are met. In that case, the School Board may act to close the polling place in

a municipality and establish/combine it with either a different polling place within the municipality or in a neighboring municipality for purposes of the school primary. However, two items would need to be satisfied in order for that to be permitted. Per Wis. Stat. § 120.06(9):

If no state, county, municipal, or judicial election is held on the day of the school board election or referendum, the school board may select the polling places to be used. The election costs shall be charged as provided in ss. [5.68](#) and [7.03](#).

(b) The school board may not select a polling place to be closed under par. (a) if:

1. Ten percent or more of the electors voting in the last school board election voted at the polling place; or
2. The polling place is located in a municipality which is located entirely within the school district.

(c) The school board shall post a notice on the door of any polling place not selected indicating all polling places selected and open for voting.

In other words, a polling place can be closed and moved to a neighboring municipality only if the group of affected voters within the municipality constitutes less than 10% of voters who cast ballots in the last school district election *and* if the municipality is not located entirely within that school district. The percentage is calculated by dividing election participation of the affected polling place by the election participation of the whole school district in the last election at which a school district contest was on the ballot.

Q: If only a school district contest is on the ballot, can poll books be printed for each municipality that list only the voters in the school district?

A: A poll book will still need to be printed for each municipality in that school district and that poll book will only contain voters from that municipality who reside within that school district.

Q: What training is available for chief inspectors between now and February 19?

A: In 2018, Baseline Chief Inspector Training became available in the WEC Learning Center for all election inspectors who want to be qualified to serve as a Chief Inspector. There are currently no live webinars nor in-person Baseline Chief Inspector Trainings planned before the February primary. The online presentation is organized into seven sections and is approximately 1.5 hours in length. The Chief Inspector Self-Evaluation, comprised of 30 true and false and multiple-choice questions, is also required training for chief inspectors to gauge their comprehension of the materials and takes about 30 minutes to complete. There is no required grade or score for the self-evaluation and the results do not affect a chief inspector's appointment or ability to serve. The results of the self-evaluation do not have to be reported to the Commission. In order to re-certify for the 2020-2021 term, chief inspectors need to take a total of six hours of election training before December 31, 2019. The online Baseline Chief Inspector Training will count for two of the six required hours. To request a user name and password to enter the WEC Learning Center, please contact the WEC Help Desk at elections@wi.gov.

Write-ins and “Withdrawal” of Candidates

Q: Can a candidate “withdraw” so the municipality can avoid a primary, or for any other reason?

A: No. Once a candidate files their nomination paperwork and qualifies for ballot status, their name will appear on the ballot. The WEC considers a candidate physically providing their paperwork to the filing officer as properly filing to be reviewed by the filing officer for sufficiency. The candidate cannot withdraw after gaining ballot access, nor can they have their name removed from the ballot. As stated in statute, only in the case of death of the candidate can the name be removed from the ballot. The candidate can make a statement providing notice to the electors that they no longer wish to seek the office by election, but their name will still appear on the ballot. Should the candidate win the election, they may decline to hold that office. This creates a vacancy that is filled following the provisions of Ch. 17. (*See also Wis. Stat. 8.35*).

Q: May a person run as a write-in at the February 19 primary and, if receiving sufficient votes, have their name placed on the April 2 Spring Election ballot?

A: Yes. A write-in candidate who wins at a nonpartisan primary election has their name listed on the April ballot as long as they timely file a Declaration of Candidacy (EL-162) (within three days after notification of winning the primary) and their name was eligible for counting (*See [Counting Votes Manual](#)*, to determine whether a write-in candidate must be registered or not have their votes counted). Registering as a write-in requires filing of a Campaign Registration Statement (CF-1) by Noon on the Friday before the Election. (*See Wis. Stat. § 7.50(2)(em)*). Also, receipt of a registered write-in does not trigger a primary election – the number of ballot candidates must first be more than twice the number contests available to trigger a primary.

Election Day

Q: Can a candidate work as an election inspector, if they are unopposed on the ballot?

A: No. The Wisconsin Elections Commission has issued previous guidance stating that an election inspector may not serve at an election where they, their spouse, or immediate family member is a candidate on the ballot. This guidance still stands even if that candidate is running unopposed. (*See Ethics Code for Local Public Officials, Wis. Stat. § 19.59*).

Q: What poll list is used where polling places are closed/combined in a school district election and what election inspectors are used?

A: Where polling places from neighboring municipalities are combined, they will continue to use separate poll lists. The hosting municipality will supply all election inspectors and the same sets of inspectors may check in voters from different municipalities, as long as they are able to check in voters from separate poll lists, issue voter numbers, and issue ballots, without making mistakes. A municipality may want to increase the number of inspectors depending on the number of separate poll lists being used. While the same set of inspectors can be used for voters residing in neighboring municipalities at this single location, each voter will be given a ballot with their individual jurisdiction

marked according to the municipality where they reside, based on the separate poll and address lists provided for each set of voters. (*See Wis. Stat. § 6.79*). Another option for municipalities in the same county is for the hosting municipality to include one or more inspectors or registration officials from the guest municipality who may be more familiar with the voters and the voting area of that municipality. The host municipality may also wish to obtain a street directory and map from the guest municipality.

Costs & Cost Savings

Q: Who pays for the polling place in the event of closed/combined polling places?

A: It depends. (*See Cost of Election chart on pages 229-231 of the [Election Administration Manual](#)*) The polling place and inspector costs are borne by the municipality (even in the event that only school district contests are on the ballot), so the two municipalities would have to work together to determine any cost sharing. The school district would bear the costs of ballots and notices (see below). (*See also Wis. Stat. § 5.68*)

Q: Who is responsible for posting and paying for election notices if there are no county and/or no municipal offices on the ballot for the Spring Primary?

A: For the Type A, Type B and Type C notices the jurisdiction responsible for conducting the election is responsible for the notice costs, but the costs are shared between jurisdictions if they also have contests or referenda on the ballot for that election. The Type D and Type E notices are the responsibility of each municipality, but those costs can also be shared proportionately if the notice is combined with other jurisdictions (i.e. school districts, etc.). (*See Wis. Stat. § 5.68*). However, please note that if the county or municipal clerk does not publish notices for school district contests, the school district clerk is ultimately responsible for ensuring that those notices are published.

Q: Can a school district print its own ballots rather than the county printing them?

A: Yes. A school district can print its own hand-count paper ballots. It is not uncommon for the school district to print its own ballot in jurisdictions where hand count paper ballots are used.

Q: Can a school district ask the municipalities to hand count the ballots rather than pay to program the machines?

A: The district can ask, but it is ultimately up to the municipality. Also, keep in mind that any municipalities with a population over 7,500 *must* use electronic voting equipment unless the municipal governing body petitions the WEC for permission to not use voting equipment and the Commission grants the request. However, a municipality may elect to utilize paper ballots for that portion of their territory residing within the school district if the number of electors residing in that territory does not exceed 100 electors. (*See Wis. Stat. 5.40*).

Post-Election: Results Reporting & Materials Routing

Q: Does the county need to be available to report election night results if there are no county or state level offices on the ballot?

A: No. County clerks are not responsible for posting unofficial election night results for elections where the county does not conduct the official canvass. The county can, however, provide a link to a school district or municipal website where unofficial results will be posted on election night for those jurisdictions which will be conducting a Spring Primary. (*See Wis. Stat. § 7.60*)

Q: If only school district or municipal contests are on the ballot for the Spring Primary, does the county need to receive copies of the poll list and other election-related materials?

A: No. The county would only need to receive copies of the poll list and other related materials if it is required to conduct the canvass or has an agreement with the other jurisdictions to store materials following all elections. The school district or municipality is the party responsible for storing those materials in accordance with applicable deadlines. A municipality or school district may still need to provide a copy of the poll book if they rely on the county to record voter participation on their behalf in WisVote.