

State of Wisconsin\Government Accountability Board

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JUDGE WILLIAM EICH
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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: March 18, 2010

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

FROM: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

SUBJECT: Voter Initiated Photo I.D. Requirement

Background

The Government Accountability Board (G.A.B.) has received inquiries regarding an optional "Photo ID" requirement at the request of any elector. In addition, at least one clerk has provided the G.A.B. with an "ID REQUIRED NOTATION on State Voter Registration List" card, which purports to assert that the signor agrees to have the clerk alter SVRS to include the notation "ID REQUIRED" on the poll list. This card purports to assert that the signor agrees to be required to produce a "photo ID" before receiving a ballot.

Discussion

Pursuant to Sec. 5.05(1), Wis. Stats., only the Government Accountability Board is charged with the general authority and responsibility for the administration of Chapters 5-12 of the Wisconsin Statutes. This authority to administer elections includes ch. 6, Subchapter II, Wis. Stats., involving registration and poll lists. Furthermore, Sec. 5.05(15), Wis. Stats., grants specific authority to the G.A.B. and only to the G.A.B. for the design and maintenance of the official registration list under Sec. 6.36, Wis. Stats. This specific grant of authority permits the G.A.B. to require any municipality to adhere to procedures established by the G.A.B. for proper maintenance of the list.

Under current law, the only time the notation "ID Required" will appear on a poll list is for a first-time registrant who has registered by mail without proof of residence. This is found in Sec. 6.34(2), Wis. Stats. The notation on the poll book is to alert the inspectors that some form of "identifying document" must be provided by the elector. The types of acceptable "identifying documents" are found in Sec. 6.34(3), Wis. Stats., one of which is a driver's license, but that is not the exclusive "identifying document" that may be used as proof of residence.

The Statewide Voter Registration System (SVRS) is structured specifically to treat this type of Sec. 6.34(2), Wis. Stats., registration in this manner. The "ID Required" notation on the polls is, in practice, how election officials enforce Sec. 6.34(2), Wis. Stats. There is one single purpose for this "ID Required" notation in the left column of a poll list, for first time registrants who registered by mail, but have not yet provided proof of residence. Once the elector provides an identifying document to establish proof of residence, the inspectors

note it and the clerk closes that request item in SVRS. Once closed, it will not appear again, as the statute has been fulfilled.

There is nothing in the current statutes that specifically authorizes a clerk to use SVRS in the fashion requested by these “ID REQUIRED NOTATION on State Voter Registration List” cards. In fact, using this “ID Required” notation in SVRS for such a purpose would dramatically alter the ability to identify electors who truly must establish proof of residence. Uniformity is required in this situation to avoid municipal, county, or state exposure to equal protection or other lawsuits.

At present, neither G.A.B. policy nor state statutes require photo identification, or any type of identification, each election for registered voters. Neither clerks nor electors, though well-intended as they may be, may circumvent the statutes or G.A.B. policy by requesting an “ID REQUIRED” notation on a poll list. In addition, SVRS does not provide a way to specifically address such a request. While SB-350 and AB-814 were introduced in the Legislature, which do address the optional voter identification requirement, neither has actually passed the Legislature. Until such a measure becomes law, the State statutes and G.A.B. policy remain in effect. Reviewing these bills, one begins to appreciate just how many statute sections would need to be revised to accommodate optional voter identification for each election. It would also require a retooling of SVRS to accommodate that function.

Summary

Currently, the law does not authorize nor require optional voter identification for each and every election, once an elector is properly registered. The law is as described above, and the “ID Required” notation in SVRS is used only to enforce the requirements of Sec. 6.34(2), Wis. Stats., nothing more. The purpose of the “ID Required” notation is singular in nature. Pursuant to the authority granted to the G.A.B. and its resultant policy on this issue, clerks shall not honor any “ID REQUIRED NOTATION on State Voter Registration List” card or any other such request.

In responding to these requests from electors, clerks may inform electors of the G.A.B. policy and may also rely upon Secs. 5.35(5) and 7.37(2), Wis. Stats., which provide the clerks and inspectors with authority to preserve order at the polls and keep electors free from interference or distractions, if necessary. It is the responsibility of the G.A.B. to apply the election statutes and election administration rules and regulations uniformly and consistently throughout the state. As such, the “ID Required” notation on poll lists is restricted to those electors that may be subject to Sec. 6.34(2), Wis. Stats., and no others. To use it in any other fashion is a violation of State statutes and G.A.B. policy and therefore, expressly prohibited.

For questions about this clarification, please contact Staff Counsel Shane Falk at (608) 266-2094, or at Shane.Falk@wi.gov. Thank you.

cc: Kevin J. Kennedy
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