

El. Bd. Op. 81-3 (Reaffirmed 6/9/08)

Summary:

An incumbent municipal clerk who is running for re-election should not be stationed at the polling place while ballots are being cast. This preserves the integrity of the election, removes the appearance of impropriety and eliminates the opportunity to violate the statutory prohibitions on electioneering. (Issued to Ms. Jesse McKinnon on June 18, 1981)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on June 9, 2008.

Opinion:

You have requested the Board to issue a formal opinion concerning the propriety of the presence of an incumbent municipal clerk who is running for re-election at the polling place on election day. You indicate that at a recent election the incumbent municipal clerk, who was running for re-election, stationed herself at the polling place where she mingled and visited with electors throughout the course of the day. You question whether this constitutes electioneering and is prohibited under Wisconsin law.

The municipal clerk has charge and supervision of all elections in the municipality. The clerk has a duty to systematically inspect and monitor the conduct of elections. §7.15(1)(e), Stats. However, a municipal clerk is not an election official and is prohibited from being one whenever the clerk is a candidate for re-election. §7.30 (2), Stats. No polling place official or individual may engage in electioneering at the polling place. §12.03(1), Stats. Electioneering is defined as any activity which is intended to influence voting at an election. §12.03(4), Stats. It is the opinion of the State Elections Board that while a municipal clerk may not necessarily be in violation of the prohibitions against electioneering by being stationed at a polling place, if the clerk is an incumbent seeking re-election, it tends to cast doubt on the regularity and conduct of the election.

Many of the responsibilities for conducting the election on election day at the polling place are specifically delegated to the inspectors. §7.37, Stats. A municipal clerk can adequately carry out his or her duties in supervising and monitoring elections without being stationed at the polling place on election day or without spending extended periods of time at the polling place.

When an incumbent candidate is at the polling place, electors may feel inhibited or pressured to vote in favor of that candidate. A candidate's presence constitutes a reminder of the candidacy and may influence voting. It is the Board's opinion that the potential to become involved in electioneering and the appearance of impropriety can best be mitigated by having an incumbent clerk, seeking reelection, refrain from being stationed at the polling place during the course of an election. The integrity of the election can be cast into question at the mere appearance of impropriety, even though none exists. Ultimately, if a complaint is lodged against a clerk, the charging authority, the appropriate district attorney, will make the decision whether the facts constitute a violation of §12.03, Stats.