
2011 GAB 03
MUNICIPAL COURTS

Facts

You have submitted a request for a formal opinion on behalf of two municipalities in a Judicial District. As stated in your correspondence, both municipalities elected municipal judges in April of 2011, but are now seeking to abolish their municipal courts pursuant to Wis. Stats. §755.01(2). The facts applicable to the nomination of each judge are slightly different. One municipality utilizes the nomination paper distribution method, but no potential candidates circulated nomination papers, and a new municipal judge was instead elected as a write-in candidate with five votes. In the other municipality, nomination is conducted by a caucus system. A candidate was nominated, filed a declaration of candidacy, and was placed on the election ballot. This candidate was then elected with a total of 74 votes. You indicate that one of the municipalities is postponing abolishment until the current judge's term has ended, but that the other municipality is seeking immediate abolishment of its municipal court, after the election and prior to the end of the current incumbent's term.

Question

You ask whether or not there is a specific time frame or date by which a municipality must accomplish abolishment of their municipal court pursuant to Wis. Stat. §755.01(2).

Discussion

Wis. Stats. §755.01(2) provides: "The governing body may by ordinance or bylaw abolish the municipal court as part of a consolidation under s. 66.0229 or at the end of any term for which the judge has been elected or appointed." Under Wis. Stats. §755.02, a municipal judge's term begins on May 1 of the year of the judge's election, and spans 4 years "unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s. 66.0101." Prior to the enactment of 2009 Act 402, the default term for a municipal judge was two years. A charter ordinance changing the term cannot take effect until the end of the current judge's term.

Pursuant to the above language in §755.01(2), Stats., it is clear that, except as part of a municipal consolidation, the effective date of abolishing a municipal court cannot occur until after the term has ended. The remaining questions are when must the municipality's action to abolish the court be completed and when is the effective date of that abolishment?

While individuals may declare their candidacies at any time, several dates are significant in triggering the official start of the Spring Election cycle for local candidates. Under Wis. Stats. §10.06 (3)(a), municipal clerks publish the Type A notice for a Spring Election on the fourth Tuesday of November preceding the Spring Election. Under Wis. Stats. §8.10 (2), candidates in municipalities using nomination papers may begin to circulate papers for offices to be filled at the Spring Election on December 1 and must file the nomination papers on the first Tuesday in January prior to the Spring Election. Pursuant to Wis. Stats. §8.05 (1), in towns and villages using the caucus system, the governing body determines the date of the caucus between December 1 and January 1, and the caucus must be held between the first and last Tuesdays in January.

It is the opinion of the Government Accountability Board (Board) that a municipality must complete action to abolish a municipal court prior to the time the Type A notice is published on the fourth Tuesday in November. The legislature established a specific election procedure in Wisconsin Statutes Chapters 5-10, beginning with publication of the Type A "Notice of Election." This notice informs the public and all potential candidates that an election is going to take place, the offices that will be voted upon and filled at the election, and the timetable

for candidates to circulate nomination papers and to file nomination papers. Even in the case of a caucus system, where nomination papers are not used, the Type A notice informs the public and potential candidates of the offices to be voted upon and filled at the Spring Election.

Candidates campaign for office in reliance on the official announcement in the Type A notice that the office will be on the ballot. Whether or not candidates initiate or conduct campaigns after that date, to abolish the office after the Type A notice has been published would compromise the integrity of the elections process by creating the perception that the governing body may be taking the action based on the particular candidates who are or are not pursuing the office.

In 2006, the State Elections Board addressed a similar issue in an informal opinion. The Board advised that the office of coroner should not be abolished after the date for filing nomination papers, to take effect at the end of the current term. The Board's reasoning also applies to your inquiry:

The Elections Board and its staff have a natural bias in favor of conducting elections for offices that have been noticed and for which nomination papers have been filed...The Board's staff does not believe that the legislature intended that an election for a publicly noticed office for which candidates have duly campaigned and qualified by nomination paper may be cancelled at any time after nomination papers have been filed or even after the first day for circulation of nomination papers.

The Elections Board staff applied similar reasoning in previous informal opinions issued in 1999 and 2001, finding that, in the absence of more specific statutory provisions, its interpretation more closely followed the edict in §5.01, Stats., to construe the statutes to "give effect to the will of the electors." In this way, the governing body eliminates any perception that it might attempt to manipulate the process and take an electoral decision away from the voters after the public has received notice that the office will be on the upcoming ballot.

The Board hereby adopts the S.E.B.'s reasoning, and further concludes that as of the date of publishing a Type A notice listing the office of municipal court judge, a municipality shall not take action to abolish a municipal court which is effective prior to the end of the term for the individual chosen at that election, whether as a registered or a write-in candidate. A municipality may adopt an ordinance to abolish a municipal court on or after a Type A notice has been published for that office; however, the effective date of the abolishment shall not occur prior to the end of the term of the individual that is elected at the Spring Election that follows the Type A notice.

The Board acknowledges that there are no appellate court decisions specifically addressing the facts in your request and that there may be facts which convince a court that an office could be abolished after the Type A notice is published, such as when the municipality has accomplished all but final passage of the ordinance to abolish the office. In the interests of certainty and uniform guidance, however, the Board believes it is more consistent with the legislative intent and also the better practice for municipalities to complete actions to abolish a municipal court prior to the Type A notice publication date, if the municipality intends to no longer elect the office at the Spring Election following the publication date of a Type A notice. Any action taken to abolish a municipal court after the publication date of the Type A notice shall not be effective until the end of the term for the office elected at the Spring Election following that Type A notice.

Advice

Based upon the above opinion, the Government Accountability Board advises:

- 1) Regarding the first municipality, the term of the write-in candidate elected in April of 2011 must be completed before abolishment of the office can become effective. The municipality may begin the action of abolishing the court, by ordinance or bylaw, which must be completed before the Type A Notice is published for the next Spring Election at which the office would be on the ballot.
- 2) Regarding the second municipality, any abolishment of the municipal court will not be effective until the end of the term of the municipal judge elected in April of 2011. The Village may begin the action of abolishing the court, by ordinance or bylaw, which must be completed before the Type A Notice is published for the next Spring Election at which the office is on the ballot.