

January 13, 2015

Joint Legislative Audit Bureau
22 East Mifflin Street Suite 500
Madison, WI 53703

Chair Persons Cowles, Kerkman, Committee members, Joint Legislative Audit Committee:

Thank you for the opportunity to address you today.

I come as the only Board member that has been here since the creation of this agency. I was appointed and confirmed under Act 1 2007 when the Government Accountability Board (GAB) was created in 2008. Thus I am in possession of the institutional memory of the agency from its inception to now.

GAB in 2008 was a new government agency which combined the responsibilities of the Election Board and the Ethics Board. Some of the challenges facing this new entity included new staff, some completely new to this area of government, appointment of reserve judges with little or no experience in the field of campaign finance, elections lobbying and ethics. For example, in nearly 17 years on the trial bench, I never encountered one case dealing with this area of law.

I did have some experience in the ethics areas when in private practice I served as a special prosecutor for the Ethics Board and prosecuted a State Senator and a member of the Board of Regents.

The initial task of the new Board was to hire its Director and General Counsel. Our choice, which was unanimous, was Kevin Kennedy. He serves at our pleasure. It was a wise choice because Kevin is nationally known in the areas of election law and campaign finance. He has hired a wonderful staff that is committed and dedicated and has done a superb job of operationalizing a new agency.

There was little time for orientation of the Board to its areas of responsibilities. Our immediate task was to review the administrative code and those provisions in areas of the Board's responsibilities. This task took the better part of 2-3 meetings. Then it was, as we used to say in the army OJT (on the job training).

Because of the pressure to make the agency operational, enough time might not have been spent on orientation of new members. I intend to raise this issue with the Board in a future meeting. The LAB audit never addresses this issue.

Another variable that handicapped the new agency was something totally outside its control. The original Act 1 provided for staggered terms of service of all six Board members. The Court of Appeals panel, which provides the Governor with three nominees to choose from, refused to re-nominate any existing Board member who was an applicant for the first five years of our existence. It would have benefited the agency if the original Board members who had been appointed for short terms, could have continued to serve while the agency was developing standards and processes. I am not advocating for permanent positions for the reserve judges, just consideration of some continuity at a critical time of development of the agency.

There has been criticism that the Board is beholden to the Director and his staff. That is just not true. Although the Board appreciates the staff and their dedication, the Board has been always informed and acts with proper oversight. Contacts with staff are daily by e-mail or telephone. Numerous times the Board has disagreed with staff recommendations and has acted independently of those recommendations.

Finally, it has been brought to the attention of the Legislative Audit Committee's attention the extraordinary number of additional issues the Board has encountered in its six years of existence: i.e. recounts, voter ID, recall elections, new legislation. This has impacted our operations, but the staff met the challenges very professionally. During the recalls, staff slept in their offices overnight in order to verify petition signatures which were well over one million on 15 recalls. Additionally, time to verify signatures was time limited.

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The LAB audit will be helpful to the Board and agency staff. The report basically says there are ways the GAB can improve operations. I agree. But, on balance, I do not find the report highly critical of GAB's operations re: campaign finances, training clerks and staff, lobbying and ethics. On balance, I believe we deserve a "B."

Sincerely,

Honorable Gerald C. Nichol
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