
In the Matter of:)	
)	
JoAnne Kloppenburg for Justice Campaign)	
)	
)	Findings and Order
and)	
)	Case No. 2011-GAB-04
Kathy Nickolaus, Clerk)	
Waukesha County)	

Pursuant to Wis. Stats. §§5.05(2m) and 5.06(6), and upon consideration of the submissions of the parties, the Wisconsin Government Accountability Board (hereinafter, the “Board”) hereby makes the following Findings and Order:

PROCEDURAL STATUS

On April 20, 2011, Melissa Mulliken, on behalf of the JoAnne Kloppenburg for Justice campaign (herinafter “Complainant”) filed a complaint against Waukesha County Clerk Kathy Nickolaus (herinafter “Respondent”), alleging that Clerk Nickolaus violated various Wisconsin election laws in carrying out her duties related to the 2011 Spring Election, held on April 5, 2011.

The Complaint specifically alleged that the Respondent violated §7.60(1), Wis. Stats., which requires each county clerk to “keep the clerk’s office open to receive reports from the ward inspectors and shall post all returns.” The Complaint further alleges that Clerk Nickolaus’ conduct violated several provisions of Chapter 12, Wis. Stats., prohibiting election fraud by an election official, as well as Chapter 946, Wis. Stats., prohibiting misconduct in office and tampering with public records.

The Board retained a special investigator, Attorney Timothy Verhoff, to complete an investigation and recommendations to the Board concerning the allegations in the complaint. Board staff also completed a review of the procedures used by Clerk Nickolaus to report election returns on Election Night and to conduct the county canvass. The conclusions and recommendations of the Board’s staff report, prepared by Elections Specialist Katie Mueller and dated September 12, 2011, as well as the investigative report completed by Attorney Verhoff, are adopted by the Board and are incorporated into these Findings and Order.

FINDINGS

- 1) Wisconsin Statute §7.60(1), Wis. Stats., states as follows:

7.60(1) County canvass. (1) KEEP OFFICE OPEN. On election night the county clerk shall keep the clerk's office open to receive reports from the ward inspectors and shall post all returns.

- 2) Based upon the investigative report completed on behalf of the Board by Attorney Timothy Verhoff, which is incorporated into these Findings in its entirety, the Board finds that Clerk Nickolaus failed to include the election returns received from the City of Brookfield in the unofficial results which she posted on the evening of the April 5, 2011 Election. The Respondent therefore failed to comply with the requirement of §7.60(1) to post all returns received from the wards in Waukesha County.
- 3) The Board finds that the Respondent's failure to comply with the law as described above was not intentional and no probable cause exists to believe that Clerk Nickolaus violated provisions of Chapter 12 or Chapter 946 of the Wisconsin Statutes as alleged in the Complaint.
- 4) The Board further finds that it is necessary to issue orders to the Respondent to assist in ensuring that the Respondent and Waukesha County election officials conform their conduct to the law with regard to processing the results of future elections.

ORDER

Pursuant to §5.06 (1), Wis. Stats., the Government Accountability Board issues this Order to County Clerk Kathy Nickolaus and to Waukesha County. Prior to the February 21, 2012 Spring Primary and to ensure accountability and transparency in future elections, the Board directs the Respondent and Waukesha County to complete the following actions:

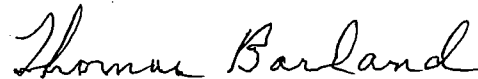
- 1) Develop written procedures for collecting reporting unit level election results from all Waukesha County municipalities after the polls close on Election Day.
- 2) Develop written procedures for posting reporting unit level election results for all offices on the ballot so the results are readily available to the public, candidates and the media as soon as practicable after receipt of the returns. These procedures should document a clear chain of responsibility involving more than one member of your staff to ensure election returns posted accurately reflect the returns received from the municipalities.
- 3) Develop written procedures for entering election returns into the G.A.B.'s Canvass Reporting System (CRS). These procedures should document a clear chain of responsibility involving more than one member of your staff to ensure election returns entered into CRS accurately reflect the returns received from the municipalities.

- 4) Develop written procedures for documenting the receipt of election returns, polling place records and ballots from municipalities
- 5) Develop written procedures for the conduct of the Waukesha County Canvass. These procedures should clearly delineate the tasks to be conducted by staff in your office and the members of the Waukesha County Board of Canvassers to ensure that the returns from the municipalities, including poll lists, inspectors' statements, chain of custody documentation, official tally sheets, and all ballots are inspected, reconciled and the official election results are properly documented for certification.
- 6) This written documentation shall be developed in consultation with the G.A.B. staff and completed no later than December 1, 2011 so the Board may review the documentation at its December 12, 2011 meeting.

Pursuant to §5.06(8), Wis. Stats., any party to this Order may appeal this Order to circuit court within 30 days of issuance of this Order.

Dated this 12th day of September, 2011.

Government Accountability Board



Judge Thomas Barland
Chair