

WISCONSIN ELECTIONS COMMISSION

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ADMINISTRATOR MICHAEL HAAS

Wisconsin Elections Commission
Wisconsin Elections Commission Offices
212 E. Washington Avenue, Third Floor
Madison, Wisconsin
10:00 a.m. Friday, October 14, 2016

Open Session Minutes

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Present: Commissioner Mark Thomsen, Commissioner Ann Jacobs, Commissioner Beverly Gill, Commissioner Julie Glancey, Commissioner Don Millis (all in person) and Commissioner Steve King (who joined the meeting by telephone)

Staff present: Michael Haas, Ross Hein, Nathan Judnic, Sharrie Hauge, Diane Lowe, Sarah Whitt, Jodi Kitts and Reid Magney

A. Call to Order

Chair Thomsen called the meeting to order at 10:10 a.m.

B. Director's Report of Appropriate Meeting Notice

Administrator Michael Haas informed the Commissioners that proper notice was given for the meeting.

E. Preparations for General Election

(This item was taken out of order.)

5. Photo ID and ID Petition Process Public Information Campaign – WEC Court Report

Chair Thomsen addressed the issue of the federal court order issued October 13 in the *One Wisconsin Institute* case regarding photo ID. He said that after commissioners discuss the order, he would entertain a motion that would comply with the order.

Administrator Haas briefed commissioners on details of the two-part order. The first part is more immediate, and involves communication about the Wisconsin Division of Motor Vehicles' ID Petition Process (IDPP), and carries a deadline of noon today. The second part of the order deals with DMV's long-term plans for IDPP.

C. Personal Appearances

Chair Thomsen asked for comments first about the issue of witness addresses on absentee ballot applications.

Mayor Tom Barrett of Milwaukee appeared regarding absentee witness addresses and asked the Commission to issue a directive to clerks that they shall try to ascertain missing address information contained in the witness address field on the absentee certificate envelope. He said there are hundreds of ballots that could be disallowed in Milwaukee.

Dane County Clerk Scott McDonell of Madison appeared regarding absentee witness addresses and echoed Mayor Barrett's comments.

Commissioners and Clerk McDonell discussed the issue.

Andrea Kaminski of Madison appeared on behalf of the League of Women Voters of Wisconsin and presented a letter objecting to the Commission's policy of requiring a complete witness address.

Neil Albrecht of Milwaukee appeared on behalf of the Milwaukee City Election Commission regarding absentee witness addresses and applauded the revised staff recommendation. He also discussed the ERIC postcard and other concerns regarding changes to state laws that may make it more difficult for some people to vote.

Commissioners and Mr. Albrecht discussed his concerns regarding the Electronic Registration Information Center (ERIC) mailing.

Paul Malischke of Madison appeared on his own behalf regarding absentee witness addresses and urged the Commission to consider the fact that statutes say absentee ballots without witness addresses may not be counted rather than shall not be counted.

Molly McGrath of Madison appeared on behalf of Vote Riders to discuss her organization's efforts to help people get photo IDs to vote. She urged the Commission to ask the Legislature for additional funds for photo ID outreach.

Commissioners and Ms. McGrath discussed procedures at the DMV for providing IDPP documents to people.

Clerk Beverly McCumber of the Town of Paris appeared regarding agenda item K and the recall petitions submitted to her which she vetted and decided to reject because she believed the reasons given for the recall are false.

Attorney Elaine Ekus appeared on behalf of the Town of Paris to discuss the recall petitions and the reasons they were rejected. She said there are two outstanding issues: whether the stated reason for a recall can be a misstatement of the law and whether the clerk has any role in reviewing the reason for a recall. She also discussed possible recall election deadlines and dates.

Joseph Kolnik of the Town of Paris appeared on his own behalf and stated that he signed the recall petitions and was not misled by the reason stated on the petition.

Administrator Haas directed commissioners to supplemental materials in their folders that came in as public comments regarding the absentee witness issue, the budget and international election observers.

D. Minutes of Previous Meetings

MOTION: Approve open session minutes of the June 30, 2016 meeting of the Wisconsin Election Commission as corrected. Moved by Commissioner Glancey, seconded by Commissioner Gill. Motion carried unanimously.

Chair Thomsen called a recess at 11:28 a.m. The Commission reconvened at 11:42 a.m.

E. Preparations for General Election

1. Local Election Official Training & Support

Administrator Haas made an oral presentation based on a written report starting on page 11 of the meeting materials regarding preparations for the election. He directed commissioners to an addendum to the memorandum containing a list of training sessions provided since early September.

2. Ballot Review and Printing

Lead Elections Specialist Diane Lowe briefed commissioners on a ballot printing error in which one candidate's name was misspelled.

Administrator Haas discussed the issue of voters using cameras at polling places and advice to clerks about how to respond to camera use at a polling place which does not cause a disruption. He also discussed “ballot selfies,” which are pictures of marked ballots posted on social media, and noted that laws against them in two states have recently been struck down in federal courts.

MOTION: Ask the Wisconsin Department of Justice for an opinion on the enforceability of the statute against showing another person one’s marked ballot. Moved by Commissioner Millis, seconded by Commissioner Jacobs. Motion carried unanimously.

3. WisVote Election Readiness

Administrator Haas briefed commissioners on recent updates to the WisVote system.

4. Voter Education and Outreach

Administrator Haas briefed commissioners on staff’s efforts to conduct outreach activities to voters, noting that approximately 2,500 people had used the MyVote system to make absentee ballot requests in the previous 48 hours, and that 20,000 voter registrations had been processed through the system since its launch in June.

5. Photo ID and ID Petition Process Public Information Campaign – WEC Court Report (continued)

Administrator Haas briefed commissioners on staff’s efforts to continue educating the public about the photo ID requirement and the IDPP process.

Commissioners and staff discussed at length the possible need for additional funds in the event the judge in the federal court case orders the state to do additional voter ID law advertising. Consensus of commissioners was that the agency does not have sufficient funds in its current budget to pay for a second statewide media campaign.

Commissioners discussed the wording of a motion.

MOTION: The Commission expresses its intent to comply with the federal court mandate. The Commission authorizes Michael Haas to work with Department of Justice on the phase II plan in compliance with the court's order. The Commission will have an in-person or telephone meeting to address any request for funds if that request requires the use of WEC money outside of the Commission’s budget. If it does not, the Commission does not need to meet. Moved by Commissioner Millis, seconded by Commissioner Glancey. Motion carried unanimously.

Commissioners discussed the DMV’s process for issuing IDPP documents.

Public Information Officer Reid Magney reported on estimates for the cost of a second statewide public information media campaign.

6. Political Campaigns and Election Observer Outreach

Administrator Haas briefed commissioners on staff's outreach efforts to the political parties and communication to them about rules for election observers.

7. Polling Place Accessibility Audits

Administrator Haas briefed commissioners on staff's plans to partner with Disability Rights Wisconsin for polling place accessibility audits this election which will extend the reach of the program.

8. Presidential Electors Nomination Meeting

Administrator Haas briefed commissioners on the Presidential Elector Nomination Meeting, held October 4 at the Capitol.

9. Election System Security & Emergency Readiness

Elections Supervisor Ross Hein made an oral presentation based on the written memorandum starting on page 11 of the meeting materials regarding cyber security and the election.

Commissioners and staff discussed the agency's efforts to ensure the security of election computer systems and prevent hacking, which includes cooperation with state and federal law enforcement officials.

K. Election Complaints – Town of Paris Recall Petitions

(This item was taken out of order.)

Staff Counsel Nathan Judnic made an oral presentation based on a written report starting on page 57 of the meeting materials regarding three identical § 5.06 complaints filed against three officials from Town of Paris regarding a recall petition. After reviewing the complaints, the conclusion of Commission staff is that Clerk McCumber improperly issued a Certificate of Insufficiency for the recall petitions filed against all three of the Town of Paris officials. The Commission staff determined that the Statement of Reason for Recall was present on all pages of the petition and that the reason was related to the town official's responsibilities as a town official. The Commission staff believes the Commission should order Clerk McCumber to issue a Certificate of Sufficiency in all three instances, which will in turn lead to the Town of Paris calling a recall election for all three officials. Due to the statutory requirement that the recall elections be held six weeks after being ordered, the elections would be held in late November.

Commissioners and staff discussed the substance of the staff's recommendation and procedures for ordering the recall election.

MOTIONS: The Commission approves the following motions, but modifies the findings in the order so nomination papers are not due the same week as the presidential election:

1) Pursuant to Wis. Stat. §§ 5.05(1)(e) and 5.06(6), and the inherent, general, and specific authority of the Wisconsin Elections Commission, and upon consideration of the submissions of the parties in this case, the Wisconsin Elections Commission approves and issues a “Findings and Order” in the matter of Kolnik v. McCumber (Kammerzelt), Case No. EL 16-84 consistent with the document presented at the October 14, 2016 meeting.

2) Pursuant to Wis. Stat. §§ 5.05(1)(e) and 5.06(6), and the inherent, general, and specific authority of the Wisconsin Elections Commission, and upon consideration of the submissions of the parties in this case, the Wisconsin Elections Commission approves and issues a “Findings and Order” in the matter of Kolnik v. McCumber (Gentz), Case No. EL 16-85 consistent with the document presented at the October 14, 2016 meeting.

3) Pursuant to Wis. Stat. §§ 5.05(1)(e) and 5.06(6), and the inherent, general, and specific authority of the Wisconsin Elections Commission, and upon consideration of the submissions of the parties in this case, the Wisconsin Elections Commission approves and issues a “Findings and Order” in the matter of Kolnik v. McCumber (Monson), Case No. EL 16-86 consistent with the document presented at the October 14, 2016 meeting.

Moved by Commissioner Millis, seconded by Commissioner King. Motion carried unanimously.

Chair Thomsen said he would entertain the recommended motion on page 60 of the meeting materials regarding the process for dealing with § 5.06 complaints. Commissioner Millis suggested that the motion be changed to include that any commission member may ask for a meeting to consider a complaint, rather than just the chair.

MOTION: Authorize the Commission Administrator to issue either Decision Letters or Findings and Orders regarding complaints filed pursuant to Wis. Stat. § 5.06 after consultation with and approval by the Commission Chair. Any member of the Commission may request that the entire Commission consider the complaint and draft decision and, if so, the matter shall be considered at the next Commission meeting. If the Administrator executes a decision based upon the Chair’s approval, the Administrator shall provide the decision to all Commission members after its issuance. Moved by Commissioner King.

Administrator Haas said he would still consult with the Chair, then circulate a decision to the members, who could weigh in if they wanted it to be heard by the entire commission.

Motion seconded by Commissioner Millis. Motion carried unanimously.

Chair Thomsen called a recess at 1:34 p.m. The Commission reconvened at 2:00 p.m.

N. Agency Budget Request

(This item was taken out of order.)

Chief Administrative Officer Sharrie Hauge made an oral presentation based on a written report starting on page 117 of the meeting materials regarding the agency's FY2017-2019 biennial budget request. The Commission approved motions regarding decision items at its August 2016 meeting regarding the budget. This presentation was for information only.

E. Preparations for General Election (continued)

10. Absentee Ballot Witness Address

Administrator Haas and Staff Counsel Judnic made an oral presentation based on a memorandum in the Commission's supplemental meeting materials regarding guidance to clerks regarding absentee ballot certificate envelopes that are missing a complete witness address. They discussed a recent change to statutes and staff's original guidance issued October 4, as well as subsequent consultations with the Wisconsin Department of Justice regarding interpretation of the statute. Staff recommends modifying the guidance to state that "local election officials may add the municipality to the witness certificate if they are able to reasonably ascertain the information from other information on the envelope, or other reliable extrinsic sources."

Commissioners and staff discussed the proposed changes. Commissioner Millis said he would support changing the word may to shall.

MOTION: To approve the following motions:

- 1) The Commission modifies the portions of the October 4, 2016 staff policy which requires the municipal clerk or executive director of the City of Milwaukee Election Commission to obtain the consent of the voter prior to adding a municipality to the witness certificate if the address is reasonably ascertainable from other information on the absentee ballot envelope, or other reliable extrinsic sources that are available. The clerk may, but is not required to, contact the voter if the clerk can reasonably ascertain the missing address information.
- 2) The Commission adopts the remainder of the October 4, 2016 staff policy, including the requirement that the witness address on an absentee ballot certificate contain at a minimum, a street number, street name and municipality for the certificate to be considered sufficient.
- 3) The Commission directs staff to modify the October 4, 2016 staff policy to remove the requirement that local election officials obtain consent prior to adding a municipality to the witness certificate and that local election officials may add the municipality to the witness certificate if they are able to reasonably ascertain the information from other information on the envelope, or other reliable extrinsic sources.

Moved by Commissioner Millis, seconded by Commissioner King.

Commissioner Glancey suggested amending the motion to include that any changes should be initialed by the clerk.

Commissioner Millis accepted Commissioner Glancey's friendly amendment, and Commissioner King seconded.

Motion carried unanimously.

F. Post-Election Voting Equipment Audit Procedures

Election Specialist Richard Rydecki made an oral presentation based on a written report starting on page 33 of the meeting materials regarding post-election voting equipment audits. Staff recommends the Commission adopt procedures for the audit as contained in the meeting materials.

MOTION: Adopt the 2016 Post-Election Audit Plan as detailed in the document titled Voting System Audit Requirements. Moved by Commissioner Jacobs, seconded by Commissioner Glancey. Motion carried unanimously.

G. Electronic Registration Information Center (ERIC) Initiative

WisVote Technical Lead Sarah Whitt and WisVote Specialist Jodi Kitts made an oral presentation based on a written report starting on page 45 of the meeting materials regarding voter registration postcards mailed to 1.23 million Wisconsin residents at a cost of \$210,557, which was a condition of the state joining ERIC.

Commissioners and staff discussed details of the mailing, as well as reasons that some postcard recipients were already registered to vote and issues that caused some voters and clerks. They also discussed list maintenance that will occur in 2017, before which staff will come back to the Commission with details.

H. Online Voter Registration Project

Ms. Whitt briefed the Commission on staff's efforts to build an online voter registration system and noted that they are still working out details of the system with the Wisconsin Department of Transportation.

I. Nomination Paper Review

Staff Counsel Nathan Judnic made an oral presentation based on a written report starting on page 49 of the meeting materials regarding the status of supplemental signatures on nomination papers filed by candidates in excess of the maximum number of signatures permitted in statutes. Questions recently arose about whether those supplemental signatures can be used to qualify for ballot status. Staff recommends continuing with past practice.

MOTION: Direct staff to continue to implement the established "supplemental signature" policy and procedures, permitting candidates to submit nomination paper signatures which exceed the statutory maximum limit, and to process and count those signatures, if valid, if the staff review

or a challenge results in the less than the minimum required number of valid signatures. Moved by Commissioner Jacobs, seconded by Commissioner Glancey. Motion carried unanimously.

J. Administrative Rules

Staff Counsel Judnic made a brief oral presentation based on a written report starting on page 55 of the meeting materials regarding the status of administrative rule promulgation. No action was required.

L. Delegation of Authority

Administrator Haas made an oral presentation based on a written memorandum provided in supplemental meeting materials regarding delegation of authority to the Administrator.

Commissioners and staff discussed past practices of delegation under the former Government Accountability Board.

MOTION: Pursuant to the Commission Administrator's role as agency head and the State's chief election official, the Wisconsin Elections Commission delegates the authority described below to its Administrator. In exercising all delegated authority, the Administrator is required to report, at the Commission meeting immediately following the delegated action, the specifics of the action taken, the basis for taking the action, and the outcome of that action.

1. The following authority is delegated to the Administrator subject to the requirement that before it is exercised, the Administrator consult with the Commission Chair to determine whether Commission members should be polled or a special meeting conducted before action is taken:

- To issue compliance review orders under the provisions of Wis. Stat. § 5.06;
- To certify and sign election related documents including candidate certifications, certificates of election, and certifications of election results on behalf of the Commission;
- To accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECOs) for systems previously approved for use in Wisconsin;
- To implement the Commission's determinations regarding sufficiency of nomination papers or qualifications of candidates;
- To communicate with litigation counsel representing the Commission in order to make timely necessary decisions regarding Commission litigation;
- To make a finding pursuant to Executive Order #50, Sec. IV(8), that a proposed administrative rule does not have an economic impact.
- To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), subject to the further provisions of this paragraph. The Administrator is required to request approval from the Commission for contracts involving a sum exceeding \$100,000, or for purchases from a statewide contract over \$100,000. The Administrator is required to request approval from the Commission prior to posting a Request for Proposal or Request for Bid. In addition, the Administrator

may enter into a sole source contract only after obtaining approval from Commission Chair and providing five days' prior notice to the Commission regardless of the dollar amount.

2. The following authority is delegated to the Administrator without the requirement for prior consultation with the Commission Chair before action is taken:

- To exempt municipalities from polling place accessibility requirements pursuant to the provisions of Wis. Stat. § 5.25(4)(a);
- To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of Wis. Stat. § 5.40(5m);
- To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of Wis. Stat. § 7.30(4)(e);
- To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), for contracts involving a sum not exceeding \$100,000, or for purchases from a statewide contract involving sums not exceeding \$100,000.

Moved by Commissioner Millis, seconded by Commissioner Jacobs. Motion carried unanimously.

Commissioners and staff discussed how often the Commission wishes to review the delegation of authority. By consensus, the Commission agreed to review it every 12 months.

M. Commission Staff Work Rules

Administrator Haas said the Ethics Commission is still working on similar rules, and he plans to bring them back to the Commission at the December meeting.

O. Management and Administrative Update

Administrator Haas made an oral presentation based on a written report starting on page 131 of the meeting materials regarding staff activities since the Commission's last meeting. He noted that the agency has five staff vacancies and has struggled to get a hiring process in place with the Department of Administration.

P. Per Diem Authorization

MOTION: Authorize one day per-diem for the meeting plus half a day for review of meeting materials. Moved by Commissioner Jacobs, seconded by Commissioner King. Motion carried unanimously.

Commissioner Thomsen noted that Commissioner Jacobs was subpoenaed to appear in court in the *One Wisconsin Institute* case, and should be compensated for her time.

MOTION: Authorize one half-day per diem for Commissioner Jacobs for her court appearance. Moved by Commissioner Glancey, seconded by Commissioner Gill. Motion carried. Commissioner Jacobs did not vote.

Q. Closed Session

Adjourn to closed session as required by statutes to confer with counsel concerning pending litigation; and to deliberate or negotiate the investing of public funds or conducting other specified public business whenever competitive or bargaining reasons require a closed session.

MOTION: Move to closed session pursuant to §§ 19.85(1)(g) and 19.85(1)(e) to confer with counsel concerning pending litigation, and to deliberate or negotiate the investing of public funds or conducting other specified public business whenever competitive or bargaining reasons require a closed session. Moved by Commissioner Millis, seconded by Commissioner Gill.

| | | | | |
|-----------------|---------|-----|----------|-----|
| Roll call vote: | Gill: | Aye | Glancey: | Aye |
| | King: | Aye | Jacobs: | Aye |
| | Millis: | Aye | Thomsen: | Aye |

Motion carried unanimously. The Commission convened in closed session at 3:40 p.m.

U. Adjourn

The Commission adjourned in closed session at 3:54 p.m.

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The next regular meeting of the Wisconsin Elections Commission is scheduled for Wednesday, December 14, 2016, at the commission's offices in Madison, Wisconsin beginning at 10:00 a.m.

October 14, 2016 Wisconsin Elections Commission meeting minutes prepared by:

Reid Magney, Public Information Officer

December 9, 2016

October 14, 2016 Wisconsin Elections Commission meeting minutes certified by:

Beverly Gill, Commission Secretary

December 14, 2016