

Meeting of the Board

Tuesday, November 11, 2008

9:30 A.M.

Room 300, Southeast

State Capitol Building

Madison, Wisconsin

Amended Agenda

Open Session

Tuesday, November 11, 2008

9:30 A.M.

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- A. Call to order.**
- B. Director's report of appropriate notice of meeting.**
- C. Approval of minutes of previous meeting.** **1**
- D. Public hearing on administrative rules.** **7**
1. GAB Chapter 4, Election Observers
2. GAB Chapter 5, Ballot and Electronic Voting System Security
- See accompanying minutes
- E. Public comment.**
- Break*
- F. Proposed Action Regarding Retroactive HAVA Checks**
- G. Use of blind trusts by state public officials.** **26**
- H. Proposed administrative rule defining scope campaign finance regulation, GAB 1.28.** **40**
- I. Review of select former State Elections Board operating procedures, opinions and rules related to:** **49**
1. Training and Selecting Election Officials
2. Duties and Responsibilities of Campaign Treasurers
- J. Review of select former State Ethics Board operating procedures, opinions and guidelines related to:** **53**
1. Local Officials - Conflicts of Interest
2. Local Officials - Acceptance of Items
3. Local Officials - Other

K. Director's Report.

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Elections Division Report – election administration and SVRS

Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine

Office of General Counsel Report – general administration and orders

L. Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees pursuant to the following statutes:

- | | |
|--------------------------------|---|
| 5.05 (6a) and
19.85 (1) (h) | [The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session], |
| 19.85 (1) (g) | [The Board may confer with legal counsel concerning litigation strategy], |
| 19.851 | [The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session], |

The Government Accountability Board has scheduled its next meeting for Wednesday, December 17, 2008 at the Risser Justice Center, Room 150, 120 Martin Luther King Jr. Boulevard, Madison, Wisconsin beginning at 9:30 a.m.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
Room 150, Risser Justice Building
120 Martin Luther King, Jr. Boulevard
Madison, Wisconsin
October 6, 2008
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved two and denied two applications for WECF grants.	3
B. Declined to permit the use of blind trusts by state public officials.	4
C. Decided to act on proposed rule on definition of "political purposes" at its November 2008 meeting.	4
D. Requested that staff draft a policy on communications about investigations for review at its December meeting.	4
E. Reaffirmed five former Elections Board formal opinions and two administrative rules relating to conduits.	4
F. Reaffirmed twelve former Elections Board formal opinions and two administrative rules relating to corporations and PACs, declined to affirm one formal opinion relating to corporations and PACs., and held one formal opinion relating to corporations and PACs for further review.	4
G. Reaffirmed two former Elections Board formal opinions relating to earmarking.	4
H. Reaffirmed one former Elections Board formal opinion relating to joint fundraising.	4
I. Approved 2009-2011 biennial budget request.	5

Present: Judge Thomas Cane, Judge Michael Brennan, Judge Victor Manian, Judge Gordon Myse, Judge Gerald Nichol

Absent: Judge William Eich

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, Rich Bohringer, George Dunst, Sharrie Hauge, Ross Hein and Kyle Richmond

A. Call to order

Chairman Cane called the meeting to order at 9:33 a.m.

B. Director's confirmation of appropriate notice of meeting

The G.A.B. Director informed the Board that a proper notice of meeting was given for the meeting.

C. Approval of Minutes of Previous Meeting.

MOTION: Approve the minutes of the August 27 and 28, 2008, Government Accountability Board meeting. Moved by Nichol, seconded by Manian. Motion carried.

D. Public Comment

1. **Mary Wilson**, League of Women Voters of United State president, appeared to comment about election preparations in the United States and in Wisconsin.
2. **Barbara Burton**, Waukesha, appeared to comment about voter fraud in Wisconsin and the role of the G.A.B.
3. **Ardis Cerney**, Pewaukee, appeared to comment about voter fraud in Wisconsin and the role of the G.A.B.
4. **Mary Ann Hanson**, Brookfield, appeared to comment about voter fraud in Wisconsin and the role of the G.A.B.
5. **Nancy Priebe**, Pewaukee, appeared to comment about entertainment being presented in voting areas during the November 4, 2008, election.
6. **Andrea Kaminski**, League of Women Voters of Wisconsin, appeared to comment about a Milwaukee Police Department report on the 2004 election.
7. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment about the staff memo to the Board about GAB 1.28 relating to the definition of "political purposes." Materials related to this topic can be found on page 18 of the G.A.B. meeting packet for the October 6, 2008 meeting.
8. **Mike Wittenwyler**, Association of Wisconsin Lobbyists, appeared to comment about the staff memo to the Board about GAB 1.28 relating to the definition of "political purposes." Materials related to this topic can be found on page 18 of the G.A.B. meeting packet for the October 6, 2008 meeting.
9. **Jay Heck**, Common Cause in Wisconsin, appeared to comment about the staff memo to the Board about GAB 1.28 relating to the definition of "political purposes." Materials related to this topic can be found on page 18 of the G.A.B. meeting packet for the October 6, 2008 meeting.

10. **John Washburn**, Germantown, appear to comment about the application of § 7.23 Stats. – Maintenance of Electronic Voting Records. Materials related to this topic were presented to the Board by a memorandum at the meeting.

Hearing no objections, the Chairman called a recess at 11:25 a.m. and reconvened the meeting at 11:45 a.m.

E. Wisconsin Election Campaign Fund Grants
(presented by Jonathan Becker and Richard Bohringer)

1. **Justin Krueger**

MOTION: Approve WECF grant to Krueger. Moved by Nichol, seconded by Manian. Motion carried. Board members agreed to permit Mr. Krueger to use contributions received after primary in order to qualify, because of his contention that staff failed adequately to communicate requirements.

The Chairman requested that the record show that the decision to make the grant was based on individual circumstances and that this approval is not to be viewed as a precedent.

2. **Corrine Weismueller**

MOTION: Deny WECF grant to Wiesmueller . Moved by Myse, seconded by Nichol. Motion carried.

3. **Shirl LaBarre**

MOTION: Deny WECF grant to LaBarre. Moved by Myse, seconded by Brennan. Motion carried.

4. **Kent Muschinske**

MOTION: Approve WECF grant to Muschinske. Moved by Myse, seconded by Nichol. Motion carried.

F. My Vote Performs

The Board reviewed plans with Pegi Taylor for performance art to be presented at selected polling places in Milwaukee during the November 4, 2008 election. The Board took no action.

Hearing no objections, the Chairman called a recess at 12:55 p.m. and reconvened the meeting at 1:29 p.m.

G. Blind Trusts

MOTION: Decline to permit state public officials to be relieved of statutory financial reporting requirements by establishing a blind trust, and require disclosure of all investments by officials who have established a blind trust in their next report, due the April 30, 2009. Moved by Nichol, seconded by Myse.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Manian:	Aye	Myse:	Aye
	Nichol:	Aye		

Motion carried, 5-0.

H. Proposed Administrative Rule Relating to Definition of “Political Purposes”

MOTION: Direct staff to incorporate the suggestions offered by Mr. McCabe and submit a proposed draft for review at the November 11, 2008 Board meeting. Moved by Myse, seconded by Manian.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Manian:	Aye	Myse:	Aye
	Nichol:	Aye		

Motion carried, 5-0.

I. Policy on Communications about Investigations

By consensus, the Board requested that staff draft a policy on communications about investigations for its review at its December 2008 meeting.

J. Review of Select Former Elections Board Administrative Rules, Operating Procedures and Formal Opinions Related to:

1. Conduits
2. Corporations and Political Action Committees (PACs)
3. Earmarking
4. Joint Fundraising

MOTION: Approve staff recommendations for reaffirmation of all opinions and administrative rules, with the exception of ElBd Op 74-18 which should be not be reaffirmed, and ElBd Op 77-8, which should be held for further staff review. Moved by Myse, seconded by Brennan. Motion carried.

K. Application of § 7.23 Stats. – Maintenance of Electronic Voting Records

The Board took no action.

L. Elections Division Report

(presented by Nathaniel E. Robinson)

Report received for information purposes only. The Board took no action.

Ethics & Accountability Division Report

(presented by Jonathan Becker)

Report received for information purposes only. The Board took no action.

Office of the General Counsel Report

(presented by Kevin J. Kennedy and Sharrie Hauge)

MOTION: Approve 2009-2011 biennial budget request. Moved by Myse, seconded by Nichol. Motion carried.

K. Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation:

MOTION: Move to closed session pursuant to Sections 5.05(6a), 19.85(1) (c), (g), (h), and 19.851 Wis. Stats., to consider written requests for advisory opinions, the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation;. Moved by Nichol, seconded by Manian.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Manian:	Aye	Myse:	Aye
	Nichol:	Aye		

Motion carried.

Hearing no objection, the Chairman called a recess at 3:10 p.m. The Board reconvened in closed session beginning at 3:23 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: Three items considered.
- B. Investigations: Fourteen items considered; ten items closed.

The meeting adjourned at 6:02 p.m.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Tuesday, November 11, 2008, in Room 201 Southeast of the State Capitol, Madison, Wisconsin.

October 6, 2008 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

October 20, 2008

Date

October 6, 2008 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

Date

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For November 11, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Public Hearing on Proposed Administrative Rules relating to Election Observers, GAB Chapter 4, and Ballot and Electronic Voting System Security, GAB Chapter 5

A public hearing has been scheduled on two sets of administrative rules adopted by the Government Accountability Board. The first set of rules are emergency rules currently in effect regulating the conduct of election observers. A public hearing is required when an agency adopts emergency administrative rules. §227.24 (4), Wis Stats. The second set of rules are permanent rules delineating procedures to ensure the security of ballots and electronic voting equipment. A public hearing is required for administrative rules when a petition is received from 25 natural persons who will be affected by the rule. §227.16 (10)(e), Wis. Stats.

The purpose of the hearing is to enable the Board to receive additional input from the public on the proposed rules. The Board may choose to modify the rules based on the input received from the public at the hearing.

The conduct of the hearing is specified in §227.18, Wis. Stats. The Board shall explain the purpose of the hearing and describe how testimony will be received. At the beginning of the hearing, the Board shall present a summary of the factual information on which the rule is based, including information from advisory committees, informal conferences and consultations. Each interested person shall be afforded the opportunity to present facts views or arguments in writing and orally. The agency is also required to keep a record of the hearing.

Copies of the public hearing notices for the proposed rules accompany this memorandum. A brief description of the background of the rules is set out below.

GAB Chapter 4 – Election Observers

This set of rules was adopted by the Board at its August 27, 2008 meeting. The Board directed the staff promulgate the rules as emergency rules so the rules would be in effect for the November 4, 2008 election. The Board's motion also directed the promulgation of the rules as permanent rules. The staff memorandum presenting the proposed rules for the Board's consideration is set out beginning at page 40 of the August 27, 2008 Government Accountability Board Meeting materials.

The rules were developed by staff and vetted through a committee of county clerks, municipal clerks and representatives of groups that station observers at the polling place. Public comment was provided on the proposed rules at the August 27, 2008 Board meeting. The rules were published as emergency rules on September 26, 2008. They will remain in effect until February 23, 2009.

The staff has received one objection to the proposed rules. This objection was raised by Joe Mikolajczak, who objected to the 6 foot rule limiting how close an observer may be stationed. Mr. Mikolajczak contacted our office through his state senator to discuss his concerns. A copy of my letter to Mr. Mikolajczak accompanies this memorandum. Mr. Mikolajczak also petitioned the Waukesha County District Attorney seeking action under §5.08, Wis. Stats., to halt the implementation of the rule with respect to the 6 foot rule.

I have discussed Mr. Mikolajczak's concerns with the Waukesha County District Attorney and Bruce Landgraff in the Milwaukee District Attorney's office along with Senator Jauch, Co-Chair of the Legislative Joint Committee for the Review of Administrative Rules.

GAB Chapter 5 – Ballot and Electronic Voting System Security

This set of rules was adopted by the Board at its May 5, 2008 meeting. The Board directed the staff promulgate the rules. The staff memorandum presenting the proposed rules for the Board's consideration is set out beginning at page 10 of the May 5, 2008 Government Accountability Board Meeting materials. The rules were developed by staff and vetted through a committee of county and municipal clerks. Public comment was provided on the proposed rules at the May 5, 2008 Board meeting.

The rules have been submitted to the Legislative Reference Bureau for review. A report has been returned to the agency with suggested drafting modifications.

Paul Malischke submitted a petition for a public hearing on the proposed rules. The Board may not proceed with promulgation of the rules until after the conduct of the hearing.

Notice of Hearing

Government Accountability Board

NOTICE IS HEREBY GIVEN that pursuant to sections 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting section 7.41, Stats., the Government Accountability Board will hold a public hearing to consider adoption of an emergency rule to repeal and recreate Chapter GAB 4, Wis. Adm. Code, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Hearing Information

The hearing will be held:

Date: November 11, 2008

Time: 9:30 a.m.

Location: Government Accountability Board Office
7 West Main Street
Madison, Wisconsin

Analysis Prepared by the Government Accountability Board

Statute interpreted

Section 7.41, Stats.

Statutory authority

Sections 5.05 (1) (f), 5.93 and 227.11 (2) (a), Stats.

Explanation of agency authority

This rule repeals Chapter GAB 4, Observers, which interprets s. 7.41 of the Wisconsin Statutes, as amended by 2005 Wisconsin Act 451. This rule recreates Chapter GAB 4, Election observers, interpreting s. 7.41 of the Wisconsin Statutes – Public’s right to access. The board is empowered by s. 7.41 (5), Stats., to promulgate rules consistent with the supervisory authority of a chief inspector at any polling place on election day, regarding the proper conduct of individuals exercising the right under s. 7.41, Stats., to readily observe all public aspects of the voting process in an election. Existing Chapter GAB 4 (formerly Chapter ElBd 4), was adopted to implement s. 7.39, Stats., relating to the appointment of election observers at polling places in a municipality. Subsequent to the enactment of s.7.39, Stats., the legislature enacted a much broader statute, s.7.41, Stats., that expanded the class of persons who may observe the proceedings at a polling place to include “any member of the public.” Because any member of the public has the right to observe merely by being present, appointment as an observer was no longer necessary, thereby rendering s. 7.39, Stats., obsolete and necessitating its repeal. Consequently, the legislature repealed s. 7.39, Stats., in 1999 Wisconsin Act 182. In 2005 Act

451, the Wisconsin Legislature expanded the number of locations at which observers had the right to observe to include “the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process.” The Government Accountability Board now needs to promulgate a new rule implementing the new, amended s. 7.41, Stats., by setting forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, for the purpose of observing all public aspects of an election, including voting, and the counting and canvassing of ballots.

Related statute or rule

Sections 5.35 (5), 7.37 (2) and 12.13 (3) (x), Stats., relating to maintaining order at the polling place, and other locations where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.

Plain language analysis

This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.

Comparison with federal regulations

Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.

Comparison with rules in adjacent states

The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.

Summary of factual data and analytical methodologies

Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board’s and Elections Board’s rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board.

Analysis and supporting documents used to determine effect on small business

Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.

Small Business Impact

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Agency Contact Person

Michael Haas
Staff Counsel, Government Accountability Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973
Phone 608-266-2094

Submission of Written Comments

Comments may be submitted to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

Text of Proposed Rule

SECTION 1. Chapter GAB 4, Observers, is repealed.

SECTION 2. Chapter GAB 4, Election Observers, is recreated to read:

Election Observers

GAB 4.01 Observers at the polling place.

(1) In this chapter:

- (a) “Board” means the Government Accountability Board.
- (b) “Chief inspector” means the chief inspector at a polling place, under s. 7.30 (6) (b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.
- (d) “Communications media” has the meaning given in s. 11.01(5), Stats.
- (e) “Electioneering” has the meaning given in s. 12.03 (4), Stats.

(f) “Member of the public” means any individual who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.

(g) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

(2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors’ Statement, EB–104. The chief inspector shall provide the observer with a name tag supplied by the board which reads “Election Observer.” Observers shall wear this name tag at all times when they are inside the polling place.

(3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.

(6) Observers shall comply with the chief inspector’s lawful commands or shall be subject to removal from the polling place.

(7) All of the observers’ questions and challenges shall be directed to the chief inspector.

(8) Upon receiving a challenge to a voter’s ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm. Code. The challenge shall be recorded on the Challenge Documentation Form, EB–104c.

(9) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting, the chief inspector shall warn the offending observer(s) that such conduct shall cease or the observer shall have to leave the polling place

(10) If, after receiving the warning provided in sub. 9, the offending observer does not cease the offending conduct, the chief inspector shall order the offending observer to depart the polling place. If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.

(11) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(12) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.35 (4) and 6.79 (6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35 (5) Stats. Observers shall not be permitted to make a photocopy or take photographs of the poll lists on election-day.

(13) Observers shall not be permitted to handle an original version of any official election document.

(14) Observers shall not engage in electioneering as defined in s.12.03, Stats. If an observer violates s. 12.03, Stats., the chief inspector shall issue a warning under sub. 9 and, if the conduct continues, shall order the offending observer to depart the polling place or suffer removal under sub. 10.

(15) Observers shall not use a cellular telephone or other wireless communication device inside the voting area to make voice calls. Such use shall result in a warning under sub. 9 and, if the conduct continues, shall result in removal under sub. 10. Text messaging and other non-audible uses of such a device are permissible.

(16) Observers shall not engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. Such conversation constitutes electioneering under s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(17) The restrictions on voter contact under sub. 16 shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and provided that the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(18) Observers shall not wear any clothing or buttons having the name or likeness of a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process. Wearing such apparel at the polling place constitutes a violation of s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the observer refuses to comply with the chief inspector's order, shall result in removal under sub. 10.

(19) Observers may not use any video or still cameras inside the polling place while the polls are open for voting. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(20) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

GAB 4.02 Observers at the municipal clerk's office.

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.

(4) All of the observers' questions shall be directed to the clerk.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10). (6) Observers may not use any video or still camera inside the clerk's office.

GAB 4.03 Observers at the central counting location.

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the clerk.

GAB 4.04 Observers at absentee ballot canvass.

(1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.

(6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

GAB 4.05 Observers at absentee voting locations described in s. 6.875, Stats.

(1) One observer from each of the two political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall not be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

GAB 4.06 Observers at a recount.

(1) Pursuant to s. 9.01 (1) (b) 11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

GAB 4.07 Communications media observers.

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.

(2) Communications media observers shall be permitted to use video and still cameras provided there is no objection from the chief inspector or a voter who may be photographed and the

cameras are not used in a manner that allows the observer to see or record how an elector has voted.

GAB 4.08 Polling Place Accessibility Assessments.

- (1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25 (4) (a), Stats.
- (2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.
- (3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.
- (6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

Notice of Hearing Government Accountability Board CR 08–078

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1)(f) and 227.11 (2) (a), Stats., and pursuant to a written request from Paul Malischke and more than 35 other electors of Wisconsin, the Government Accountability Board will hold a public hearing to consider adoption of a rule to repeal and recreate Chapter GAB 5, Wis. Adm. Code, relating to ballot security.

Hearing Information

The public hearing will be held at the time and location shown below.

Date and Time Location

November 11, 2008 at 9:30 a.m. Board's offices
201 W. Washington Avenue Madison

Analysis Prepared by the Government Accountability Board

Statutes interpreted

Sections 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01, Stats

Statutory authority

Sections 5.05 (1) (f), 5.93 and 227.11 (2) (a).

Explanation of agency authority

The Government Accountability Board's rule on ballot security, under ss.7.23 and 7.51, Stats., has become outdated because of advances in technology and because of heightened administrative and public concerns about ballot security in light of recent security and chain-of-custody problems in elections both in Wisconsin and in other states. To address those concerns and to update ballot security in Wisconsin, the Board proposes to repeal and recreate chapter GAB 5, the ballot security rule.

Related statute or rule

Sections 5.66, 5.85, 5.86, 5.87, 5.90, 7.10, 7.15, 7.24, 7.37, 7.53, 9.01, and 12.13, Stats.

Plain language analysis

The proposed rule provides the requirements for maintaining the security of ballots that are cast at an election and maintaining the integrity of the tabulation of those ballots in the canvass of an election.

Comparison with federal regulations

Federal law does not apply to the preparation, printing, or security of ballots. Federal law does require that materials, including ballots, relating to any election in which a federal office is on the ballot, must be preserved for not fewer than 22 months.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota all statutorily require that after ballots have been counted, they shall be secured in a sealed envelope or other container in such a manner that no ballot may be removed without breaking the seal on that container. The ballots and other election documents in those sealed containers are returned to the custody of the local election official who will hold them until they may be destroyed under state and federal law. Generally, unlike Wisconsin's rule, the law in all four states provides for the retention of unused ballots until destruction of all ballots is authorized by state and federal law.

Summary of factual data and analytical methodologies

Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.

Small Business Impact

The creation of this rule will have no effect on small business, nor any economic impact.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Submission of Written Comments

Written comments should be sent to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; email: elections.state.wi.us. The deadline for submitting written comments that will be included in the rulemaking record is November 18, 2008.

Agency Contact Person

George A. Dunst, Staff Counsel
Government Accountability Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973
Phone: 608-266-0136
Email: george.dunst@wisconsin.gov

Text of Proposed Rules

SECTION 1. Chapter GAB 5 is repealed and recreated to read:

Chapter GAB 5

Ballot and Electronic Voting System Security GAB 5.01 Ballot security.

(1) In this section:

(a) “Board” means the government accountability board.

(b) “Certificate of performance compliance” means the document provided by voting equipment vendors certifying that the equipment complies with the performance requirements of s. 5.91, Stats.

(c) “Chain-of-custody” means the recorded movement and location of election ballots from the time of delivery of the ballots to the municipal clerk or board of election commissioners until the destruction of the ballots is authorized under s. 7.23, Stats.

(d) “Custodian” means the election official who is authorized by chs. 5 to 12 to take possession and control of the ballots from the time of delivery of the ballots to the clerk or board of election commissioners until destruction of the ballots is authorized under s. 7.23, Stats.

(e) “Electronic voting system” has the meaning given in s.5.02 (4m), Stats.

(f) “Firmware” means the computer software stored in read-only memory or programmable read-only memory. (g) “Modem” means a device for transmitting data between two computers over telephone or other communication lines.

(h) “Results report” means the print-out of voting data by a piece of electronic voting equipment.

(i) “Software” has the meaning given in s. 5.905 (1), Stats.

(2) Within the requirements of s. 7.51 (3), Stats., the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container must be closed in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to the ballot container.

(3) Within the requirements of s. 7.51 (3) (a), Stats., a ballot container shall be considered “sealed” or “locked,” only if no voted ballot may be removed from or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container. Ballot bags shall be sealed with a tamper-evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification (EB-101) attached to the bag. Serial numbers of the seals also shall be recorded on the Inspectors’ Statement (EB-104). Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification (EB-101).

(4) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access to the container is limited only to the clerk of the election district, board of election commissioners, or to persons authorized by the clerk or the board of election commissioners, and access to which is not available to any other person.

(5) Whenever the custodian is required to open the ballot container and unseal the ballots as part of a central count proceeding under s. 5.86, Stats., board of canvass proceeding under Ch. 7, Stats., audit of electronic voting equipment after an election under s. 7.08 (6), Stats., recount or

an appeal of a recount under s. 9.01, Stats., or as part of a public records request under s. 19.35, Stats., before opening the container the custodian shall record in the minutes of the proceeding whether the container is sealed and shall record the serialized number of the seal. The custodian shall make a record of the entry and of the ballot review. Upon completion of the review, the custodian shall re-secure them in the manner provided in s. 7.51, Stats., unless destruction is authorized under s. 7.23, Stats.

(6) Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.

(7) At the time of a recount, the serial numbers on the seals of the ballot container shall be compared with the serial numbers written on the signed ballot container certification (EB-101). All containers shall be compared in a recount. The ward numbers and the results of the serial number verification shall be recorded in the minutes of the recount.

(8) The municipal clerk or board of election commissioners shall securely maintain all ballots from the time of receipt from the printer or county clerk through delivery to the polling place.

5.02 General electronic voting system security procedures.

(1) These procedures apply to all electronic tabulating voting equipment memory devices, including prom packs, memory cards, or any other removable memory devices that can be programmed or functioned to store and transfer ballot images or tabulation data.

(2) Throughout the life of the electronic voting system, the municipal or county clerk shall maintain control of all memory devices in a secure manner at all times. With the agreement of the municipal clerk or board of election commissioners, the county clerk or county board of election commissioners may store memory devices in a secure location. The municipal clerk or board of election commissioners shall secure all keys to the electronic voting equipment.

(3) For each election, there shall be a separate, written chain-of-custody record for each programmed memory device used with an electronic voting system. Each transfer shall be logged in the written chain-of-custody record.

(4) Each programmed memory device shall have or be assigned a unique and permanent serial number. If the memory device does not have a permanent serial number affixed by the manufacturer, a clerk shall, if possible, affix to the device a serial number or unique identifier.

(5) The municipality shall use controlled, serialized seals that are tamper-evident and resistant to accidental breakage along with a written record of all seals and associated serial numbers.

(6) For each election, the municipal clerk shall record on the Inspectors' Statement (EB-104), which memory devices and which serialized tamper-evident seals are assigned to particular voting stations or units.

5.03 Pre-election procedures.

(1) The clerk who has possession of the electronic voting systems or memory devices shall ensure that the equipment and memory devices have been secured properly since the previous election.

(2) Memory devices shall be programmed to print a list of the software and firmware versions of the electronic voting system on each beginning-of-election-day zero report under s. 5.84 (2), Stats. For electronic voting systems that cannot accommodate this requirement, the software and firmware information shall be recorded from the system start-up screen, either by municipal or county staff during th pre-election testing under s. 5.84 (1), Stats., or by election inspectors on Election Day under s. 5.84 (2), Stats.

(3) The records for the pre-election test under s. 5.84, Stats., pre-recount test under s. 5.90, Stats., and Election Day reports under ss. 7.51 and 7.53, Stats., must be maintained by the appropriate clerk or board of election commissioners.

(4) Except when necessary to program, test, or operate the electronic voting and/or programming equipment, any point by which access can be gained to the system controls must be closed and locked or secured with a tamper-evident seal that can be tracked using a unique and permanent serial number. The appropriate clerk shall maintain a written record of the serial numbers required by this subsection.

(5) After a memory device is programmed, tested, and delivered to the municipal clerk for the election, it shall be immediately and continuously maintained in a secure location with controlled access limited only to users authorized by the clerk or board of election commissioners. Upon insertion of a memory device into its assigned unit, it shall be sealed against unauthorized access with a serialized, tamper-evident seal that can be tracked using a unique and permanent serial number. The municipal clerk or board of election commissioners shall record the serial numbers on the Inspectors' Statement (EB-104).

(6) When applicable, for each election the municipal or county clerk or board of election commissioners shall obtain a signed "Certificate of Performance Compliance: MemoryDevice Security" from each voting equipment manufacturer that provides programming services or memory devices to the municipality or county.

(7) The municipality shall take reasonable precautions to ensure the security of the equipment between the time it leaves the possession of the clerk or board of election commissioners to be delivered to the polling place, and the time the chief inspector assumes possession at the polling place on Election Day.

5.04 Election-day procedures.

(1) Before any ballots are cast on any piece of voting equipment, the integrity of the tamper-evident seals shall be verified by the chief election inspector verifying that the tamper-evident seal serial number on the Inspectors' Statement (EB-104) matches the tamper-evident seal serial number contained on the electronic voting equipment. Any irregularity or discrepancy between the two numbers shall be reconciled before using the equipment

(2) After the polls have opened, ballot removal from an optical scan machine or paper roll removal or replacement on a direct recording electronic (DRE) machine shall be conducted with at least two election inspectors (or other sworn election team members appointed by the municipal clerk or board of election commissioners) present. The removal process, the names of the election inspectors or sworn election team members, and the time of removal must be recorded on the Inspectors' Statement (EB-104).

(3) After the polls have closed, election officials shall print a results report before breaking any seal on the equipment and before the removal of the memory device from any piece of voting equipment. If additional reports other than the results reports are required, these reports shall also be printed before breaking any seal on the equipment and before the removal of the memory device.

(4) The chief election inspector shall compare the serial numbers of all security seals, then verify by initialing the Inspectors' Statement (EB-104). Any additional seals used during the election must also be recorded on the Inspectors' Statement (EB-104).

(5) The memory device shall be secured in a separate, Tamper-evident sealed container or envelope by the chief election inspector. The memory devices shall be promptly returned to the municipal or county clerk or board of election commissioners.

(6) If vote results are transmitted by modem, the municipal clerk or board of election commissioners may access the memory device for transmission of those results, but shall reseal the memory device in a secured envelope or container.

(7) If removal of the memory device is not required, the device may remain sealed in the voting equipment. The serial numbers of the security seals shall be verified and initialed on the Inspectors' Statement (EB-104).

5.05 Post election procedures.

(1) After each election, the clerk or board of election commissioners responsible for storing the voting equipment shall conduct an inspection to ensure all system access points are closed, locked, and secured.

(2) At each post-election meeting of the municipal board of canvassers, the members shall verify that the tamper-evident serial numbers from the voting equipment have been recorded on five Inspectors' Statements (EB-104) or 10% (whichever is greater) of the total statements, and have been initialed by the Chief Election Inspector. The county board of canvassers shall verify ten

Inspectors' Statements. All Inspectors' Statements (EB-104) shall be verified by the appropriate board of canvassers in a recount. Proper documentation shall be maintained.

5.15 Alternate security procedures

- (1) The Government Accountability Board recognizes the need for flexibility when implementing these procedures, and acknowledges that alternative means may be used to achieve and ensure an acceptable level of electronic voting equipment security.
- (2) The Board will consider requests from counties to implement alternative security procedures.
 - (a) The county clerk, or the municipal clerk or board of election commissioners through the county clerk or county board of election commissioners, shall submit a written request to implement alternative security procedures to the Board's director and general counsel.
 - (b) The request shall describe the proposed security procedures in detail and include any documentation such as logs, flow charts, and certification forms.
 - (c) The director and general counsel may approve the use of alternative security procedures for one election cycle.
 - (d) The Board shall review the director and general counsel's approval of any alternative security procedures and may authorize continued use of those procedures.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

October 21, 2008

Joe Mikolajczak
3355 S. Russel Court
New Berlin, WI 53151

Subject: Election Observer Rule

Dear Mr. Mikolajczak:

Thank you for taking the time to share your concerns about the emergency rule promulgated by the Government Accountability Board regulating the conduct of election observers. GAB Chapter 4. You stated that the six foot restriction impedes your right to view the names on the poll lists, which you believe you are entitled to see under state law that permits any member of the public to observe the public aspects of the voting process. §7.41, Wis Stats.

I advised you, my interpretation of Section 7.41 does not require an observer be positioned at the polling place so that the observer is able to see the names of voters on the poll list. The rule does permit an observer to view the poll list as long as doing so does not interfere with or distract voters. GAB 4.01 (12), Wis. Admin. Code.

The administrative rules are in place for the November 4, 2008 election as emergency rules. The Government Accountability Board will hold a public hearing on the rules at its November 11, 2008 meeting. The meeting will be held on Tuesday, November 11, 2008, beginning at 9:30 a.m. in Room 201 Southeast of the State Capitol, Madison, Wisconsin. I encourage you to attend and share your thoughts. If you would like to put your concerns in writing please get them to me by Monday, November 3, 2008. I would like to ensure the Board has the opportunity to hear your views.

The Legislature will also review the proposed permanent rules. I will be happy to keep you apprised of that process. If you need any additional information, please contact me.

Government Accountability Board

Kevin J. Kennedy
Director and General Counsel

C: Senator Mary Lazich

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Quarles & Brady LLP
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November 3, 2008

Wisconsin Government Accountability Board
P.O. Box 2973
17 West Main Street, Suite 310
Madison, WI 53701

Members of the Board:

I represent Wisconsin Supreme Court Justice Patience D. Roggensack. I am writing in response to the Board's October 6, 2008 decision regarding blind trusts. On behalf of Justice Roggensack I would like to supply the Board with some additional information on this issue, particularly as it applies to Justice Roggensack. It appears the Board did not have this information when it considered this issue at its October 6 meeting.

For the reasons set forth below, we believe that the Board's decision, which would require Justice Roggensack to first learn of, and then disclose, the holdings of the blind trusts established by her and her husband would be, under the circumstances, extremely unfair to Justice Roggensack and her husband, and contrary to the public policy the Board is attempting to promote. Therefore, we ask that the Board reconsider its decision.

Facts Regarding The Patience D. Roggensack Blind Trust.

Justice Roggensack first became a public official when she was elected to the Wisconsin Court of Appeals in 1996. The election was in April of that year, and her term commenced on August 1, 1996. Prior to assuming her role as a Court of Appeals justice, Justice Roggensack conferred with the administrator of the State of Wisconsin Ethics Board, Roth Judd, about establishing a blind trust. Justice Roggensack wanted to establish a blind trust because she owned some publicly traded stocks in an individual retirement account which she had established before she was elected to the Court of Appeals. Justice Roggensack did not want to stop being invested in the stock market, but she also wanted to be able to fulfill her judicial duties as fully as possible, and to minimize the number of times when she might need to recuse herself from judicial cases. Placing the retirement account into a blind trust, with an independent investment advisor making all of the investment decisions and not telling Justice Roggensack about those decisions, was a way for Justice Roggensack to remain invested in the stock market, but at the same time shield herself from having any knowledge of the particular stocks held in the account. The Ethics Board advised Justice Roggensack that if, as a result of the creation and operation of

the blind trust, she did not have knowledge of the particular investments in the trust, she would not have to discover that information each year and then list those investments on her Statement of Financial Interests forms. Instead, it would be sufficient to simply disclose the blind trust.

Based on those discussions, in July, 1996, Justice Roggensack created the Patience D. Roggensack Blind Trust (the "Justice Roggensack Blind Trust") and placed her retirement account holdings (then consisting of ten publicly traded stocks) into that trust. Pursuant to the terms of the trust document, since July, 1996, all investment decisions regarding the assets of the Justice Roggensack Blind Trust have been made by professional investment advisors affiliated with a large, nationally known brokerage firm. Justice Roggensack has not been consulted about, nor informed of, these investment decisions. In fact, under the terms of the Justice Roggensack Blind Trust, the investment advisor is specifically prohibited from disclosing to Justice Roggensack, or her husband, what assets are held in the Trust. Justice Roggensack is entitled to receive statements from the investment advisor informing her of the Trust's aggregate income, and the aggregate dollar amount of any capital gains or losses, so that she can report that information for income tax purposes. These reports do not provide Justice Roggensack with information regarding what investments have been sold, and what investments remain, in the Trust. (In practice, Justice Roggensack does not actually receive these reports, she has them sent directly to the professional who prepares her tax returns.)

In 1999, the Ethics Board asked Justice Roggensack for some additional information regarding the Justice Roggensack Blind Trust. In response to that request, Justice Roggensack provided the Ethics Board with a copy of the Trust document, and with a listing of the ten specific stocks that were held in her retirement account at the time it was transferred into the Blind Trust. The Ethics Board never raised any further questions about the Blind Trust and, as is explained more fully later, it specifically approved her Statement of Economic Interests forms, which have always listed the Justice Roggensack Blind Trust but not the specific investments in the trust.

Facts Regarding The George Roggensack Blind Trust.

Justice Roggensack is married to George Roggensack. They have been married for 46 years. After Dr. Roggensack retired from medical practice with Madison Radiologists, S.C. ("MRSC") had the option of withdrawing his retirement funds from MRSC's retirement plan and rolling those funds over into individual retirement accounts, or maintaining those funds within the plan. Before any decision was made, Justice Roggensack consulted with the Ethics Board about the possibility of Dr. Roggensack also creating a blind trust, similar to the Justice Roggensack Blind Trust, which could then be used to hold investments "rolled over" from the retirement plan of MRSC. Again, Justice Roggensack wanted to allow her husband to have his retirement account invested in the stock market, but also did not want to create conflict of interests that might require her to recuse herself from cases before the court.

In response to this consultation, the Ethics Board confirmed that it was permissible to use a blind trust for this purpose. As part of that consultation, the Ethics Board specifically reviewed Justice Roggensack's 2006 Statement of Economic Interests form which, like all of her previous forms, listed her blind trust but not the specific assets held in that trust, and informed Justice Roggensack that there were no omissions or deficiencies with the form. The Ethics Board also provided Justice Roggensack with information to assist in structuring a blind trust for Dr. Roggensack, including references to model trust agreements and federal regulations on blind trusts.

In reliance upon the advice received from the Ethics Board, Dr. Roggensack and Justice Roggensack decided that Dr. Roggensack would elect to withdraw his retirement funds from MRSC's plan and have those assets placed in a blind trust (the "Dr. Roggensack Blind Trust"). In order to make this process as transparent as possible, and to comply with the advice from the Ethics Board, the Roggensacks structured the transfer so that the Statement of Economic Interests form Justice Roggensack filed in March, 2007 (for the year ended December 31, 2006) listed each and every asset distributed from the retirement fund and then later placed into the Dr. Roggensack Blind Trust. This consisted of one hundred and three different publicly traded common stocks, and bonds from eleven different corporate or government issuers. All of these stocks and bonds are listed on Justice Roggensack's Statement of Economic Interests for 2006.

The Dr. Roggensack Blind Trust is structured in much the same way as the Justice Roggensack Blind Trust. The investment decisions for the Dr. Roggensack Blind Trust are made by professional investment advisors with a recognized brokerage firm. (The investment advisors and the brokerage firm are different than those for the Justice Roggensack Trust.) Neither Dr. Roggensack nor Justice Roggensack have been consulted about, nor informed of, any investment decisions since the Dr. Roggensack Blind Trust was created. As with the Justice Roggensack Blind Trust, the terms of the Dr. Roggensack Blind Trust specifically prohibit the investment advisor from disclosing to either Dr. Roggensack or Justice Roggensack what assets are held in the Trust. For tax purposes, Dr. Roggensack is informed of the Trust's income, and the aggregate dollar amount any capital gains or losses, but he receives no information regarding what stocks or bonds remain in the portfolio, and which have been sold.

Justice Roggensack's Financial Disclosure Forms.

As a public official, Justice Roggensack is required to file, on an annual basis, a Statement of Economic Interests. She has always done so. These statements disclose the blind trusts, but do not list the assets held by those blind trusts.¹ This is because Justice Roggensack does not know what assets are held by the trusts, and the trust documents prohibit those who do know from telling her. By signing the Statement of Economic Interests, Justice Roggensack affirms, under oath, that she is disclosing her investments "to the best of [her] knowledge,

¹ The Roggensacks also have certain real estate and partnership holdings. These are not held in the blind trusts and are fully disclosed in the Statement of Economic Interests forms.

information and belief". This is a true statement, and we are not aware of any basis to question the truthfulness of Justice Roggensack's affirmation that she does not know what is in the blind trusts. All she knows is what she and her husband placed into them when they were created - and that information has been publicly disclosed.

As we understand it, in order to comply with the Board's October 6, 2008 decision, Justice Roggensack will be required to find out which specific stocks and bonds are held in the blind trusts, and then list those investments on her Statement of Economic Interests form. In order to do this, she and her husband have to amend their trust documents to permit such disclosures to be made to them. If this is done, then a question will arise as to whether Justice Roggensack will need to recuse herself from any matter in which one of the parties is a company or entity in which she or her husband holds stock or a bond, - exactly the result Justice Roggensack seeks to avoid.

Public Policy Issues Regarding Blind Trusts

Whether or not to allow blind trusts is a public policy issue. Like many thorny public policy issues, resolving it requires consideration and balancing of several competing interests. In the 1970s, the federal government took a comprehensive look at blind trusts in connection with a review of federal ethical standards, and ultimately decided to allow blind trusts under certain conditions. As Congress recognized when it studied this issue, there are several policy reasons to allow blind trusts. These include the fact that blind trusts may encourage certain people to serve as public officials when they might otherwise decline to serve, blind trusts relieve government officials from making day to day investment decisions that may conflict or even interfere with their public duties, and that blind trusts can, in many circumstances, play an important role in reducing the appearance of conflict of interest. S. Rep. No. 95-639, at 4-5 (1978). One Congressional committee studying this issue acknowledged that there are potential problems with blind trusts, but noted that these problems "appear[] to be a direct result of an absence of formal standards as well as a lack of meaningful, regular supervision, and control." *Id.* at 7. This congressional committee further concluded that "blind trusts, if properly defined and monitored, are one useful means of avoiding potential conflicts of interest or the appearance of such conflicts [and that] the blind trust mechanism should be available to those who wish to use it." *Id.* at 12. At least 37 states, as well as the District of Columbia and the Virgin Islands, apparently share the federal government's view, and have statutes or regulations recognizing blind trusts.²

One of the issues that blind trusts can help to address is the need for public officials who are aware of their investments to recuse themselves from making decisions in matters when at least the appearance of a conflict of interest arises because the public official knows of his or her investments. As Senator Robert Dole observed, "In certain cases disclosure creates, rather than

² Source: Blind Trusts Offer Clients Customized Wealth Planning, 30 Est. Plan. 319, 2003 WL 21518807

solves, a conflict of interest problem.” *Public Officials Integrity Act of 1977, Blind Trusts and Other Conflicts of Interest Matters: Hearings Before the S. Comm. on Governmental Affairs on S.555, 95th Cong. 216 (1977)* (statement of Hon. Robert Dole, a U.S. Senator from the State of Kansas).

This is, as mentioned above, exactly the issue Justice Roggensack was attempting to address in her decision to place assets in a blind trust. Her concern on this issue is shared by others. Recently, editorial writers from two national publications, representing different political viewpoints, both advocate that justices should be required to put their financial holdings into blind trusts in order to minimize situations where justices are required to recuse themselves from cases. These two editorials, one from the New York Times and the other from the Christian Science Monitor, are attached as Exhibits A and B.

Requiring Justice Roggensack To Learn Of And Then Disclose The Investments In Her Blind Trust Would Not Advance The Public Policy The Board Is Seeking To Promote, And Would Have Other Harmful Effects.

As we understand it, the public policy the board is attempting to promote is to allow the public to have information about a public official’s assets and sources of income so that the public can make judgments about any conflicts of interest a public official might have when that official acts on a matter. This is certainly a laudable goal and one that Justice Roggensack fully supports. However, to achieve that goal it is only necessary to make sure that the public knows what the public official knows, not to force the public official to find out information that the public official truly does not know.

The blind trusts established by Justice Roggensack and her husband are perfect examples of this. Both Justice Roggensack and the members of the public know what stocks and bonds were placed in those blind trust when they were established. Both Justice Roggensack and the public also know that in the intervening years the investment advisors responsible for the trusts have had full discretion to sell any or all of those stocks and bonds, and to reinvest the proceeds and dividends in other stocks or bonds.

Justice Roggensack’s view is that if one of the companies whose stock was placed into one of the blind trusts were to have a legal case pending before the Wisconsin Supreme Court, it is hard to imagine how she could be said to have a conflict of interest. There simply is no particular likelihood that the blind trust still owns that stock. Moreover, there is a possibility that the blind trust now owns stock in a company that has a legal interest that is adverse to the company whose stock was placed in the trust. Therefore, Justice Roggensack believes that it simply makes no sense for her to even attempt to determine what impact the court’s decision would have on her investment portfolio - which is exactly the reason why she established the blind trust. However, the important point for this Board to consider is not whether it agrees with Justice Roggensack’s analysis - it is that the public has exactly the same amount of information

on which to base an analysis of this issue as Justice Roggensack has. In other words, prohibiting Justice Roggensack from having a blind trust would do nothing to correct any imbalance of information between the public and a public official - it would only give them both more information than they currently have.

This additional information comes at a price, however. If Justice Roggensack is forced to find out what investments are held in her blind trust and her husband's blind trust, there is a possibility that she may need to recuse herself from many more cases coming before the court for consideration. For example, she may find out that one of the blind trusts recently purchased stock in a company that has a case pending before the court. Currently, there is no arguable basis for requiring her to recuse herself from the case - but if the Board's decision remains, there will be. It is not in the public interest to artificially expand the number of cases in which public officials need to recuse themselves.

In the longer term, banning the use of blind trusts may also discourage individuals who happen to have significant stock holdings (or are married to individuals who happen to have significant stock holdings) from becoming involved in public service. This also is not in the public interest.

Finally, specifically with respect to Justice Roggensack's situation, enforcing the Board's prior order creates an injustice. As set forth above, before Dr. Roggensack decided to withdraw his retirement funds in 2006, Justice Roggensack sought advice from the Ethics Board. She was specifically told that the way she had been reporting her own blind trust was appropriate, and she was given information about how to establish a blind trust for her husband. Had Justice Roggensack been told that blind trusts were not permissible, she and her husband would have acted differently. They made significant estate planning decisions, in good faith, based on advice they obtained from the appropriate officials of Wisconsin state government. Those decisions cannot be undone. It would be unfair to apply a decision reversing a long standing agency interpretation allowing blind trusts retroactively to Justice Roggensack.

Conclusion

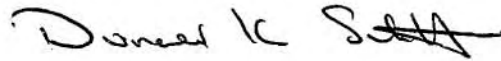
Justice Roggensack fully appreciates the many and difficult tasks that are confronting the Board at this time, and understands that a decision simply banning the use of blind trusts in all circumstances is a tempting response to a complex problem. However, we do not believe that a decision totally banning blind trusts and applying that decision retroactively, appropriately takes into account the fact that Justice Roggensack and her husband have structured their financial affairs in reliance upon advice given to them in the past by the Ethics Board. We also believe that requiring Justice Roggensack to find out which particular stocks and bonds are in the blind trusts, and to disclose those stocks and bonds on her Statement of Economic Interests forms, will create potential conflicts of interests, but will not further the public policy interests the Board is seeking to achieve, because the public already knows everything about these blind trusts that

Wisconsin Government Accountability Board
November 3, 2008
Page 7

Justice Roggensack knows. For these reasons, we ask that the Board reconsider its prior decision, at least to the extent that decision would be applied retroactively to Justice Roggensack.

Very truly yours,

QUARLES & BRADY LLP

A handwritten signature in black ink, appearing to read "Donald K. Schott". The signature is stylized and written in a cursive-like font.

Donald K. Schott

DKS:ls4

The New York Times

The Board

A Blog by the Editorial Writers of The New York Times

JANUARY 16, 2008, 4:39 PM

Sorry, The Judges Own Too Much Oil Company Stock to Hear Your Case

By THE EDITORIAL BOARD

Big corporations have been winning more than their share of victories lately in Congress and in the courts. But the California Supreme Court may have just brought things to a new low. It turns out that it does not have enough justices without financial interests in oil companies to do their job of meting out justice.

Braxton Berkley, who worked on military planes at a Lockheed Martin plant, sued for injuries that he suffered as a result of exposure to toxic chemicals. When he appealed his case, the California Supreme Court rejected it — but not because he didn't have a good legal claim. It turned out that four of the seven justices were conflicted out because they held stock in oil companies that provided some of the chemicals at issue in the case.

It's a crazy — and unacceptable — way to run a court. The justices should be required to put their financial holdings in a blind trust. Instead, California requires judges to follow their investments so they can recuse themselves in cases where there is a conflict.

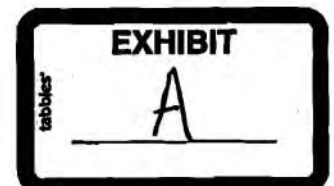
California Chief Justice Ron George said, according to the Associated Press, that it was “a very unusual situation and I hope it doesn't recur.”

Mr. Berkley, who says many of his friends died as a result of the toxic chemicals, said “It's unfair and I am very disgusted with the courts.”

California needs to change its rules about judges' investments. But as long as they are in place, we would like to see the justices put their money in Treasury bills or certificates of deposit.

There would be a lot fewer cases in which they would need to recuse themselves. And if the rate of return is lower than with stocks, it might just give them a little more in common with little-guy plaintiffs like Mr. Berkley who come before them seeking justice.

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Blind trusts will improve blind justice in the high court

They could help avoid judicial conflicts of interest.

By David A. Ridenour

from the June 25, 2008 edition

Washington - For justice to be blind, the nine justices of the US Supreme Court need to have blind trusts.

An embarrassing situation arose in May when the high court affirmed a US Court of Appeals ruling permitting a landmark \$400 billion lawsuit, American Isuzu Motors v. Ntsebeza, to proceed because four Supreme Court justices had conflicts of interest involving the plaintiff companies and had to recuse themselves from the case.

The result was a setback to dozens of multinational corporations being sued in federal court for allegedly aiding and abetting South Africa's apartheid regime because they did business there when its abhorrent system of racial segregation was in place.

In addition to Isuzu Motors, the companies include such well-known giants as Ford, JPMorgan Chase, Honeywell International, General Electric, and 3M.

If the suit eventually prevails, it could threaten America's currently fragile economy by opening the door to lawsuits against other US firms that operated in countries whose rulers imposed unjust sanctions against their citizens.

The US, British, German, Swiss, and South African governments had urged the Supreme Court to accept the case and overturn the lower court's ruling.

South Africa feared that a victory by the plaintiffs' lawyers would dry up desperately needed foreign investment and hurt the ongoing effort for racial reconciliation.

Indeed, South African President Thabo Mbeki – Nelson Mandela's handpicked successor – called the lawsuit a clear example of "judicial imperialism."

The Bush administration, in its brief, argued that the lawsuit "would interfere with the ability of the US government to employ the full range of foreign policy options" when interacting with regimes the US would like to influence to adopt democratic reforms.

It said such policies "would be greatly undermined" if the corporations that invest or operate in a foreign country are subjected to lawsuits more properly aimed at the offending regimes themselves.



msn video

The Justice Department contends that current US tort law allows suits against the South African government, but not against US and foreign companies doing business there when the repressive policies were in place.

The personal injury lawyers filing the suit appear likely to receive the lion's share of any damage awards in the case.

They charge that the companies are guilty of helping support apartheid merely because they did business in South Africa during the 46 years its legalized system of racial segregation was in place – an accusation the current black-majority government of the country strongly refutes. To the contrary, many US firms fought for racial equality in South Africa as signatories to the Sullivan Principles, a code of conduct committing firms not only to practice equal employment, but to commit significant resources to improve the housing, training, and education for South Africa's black population.

In 1986, although foreign-owned firms accounted for just 2.8 percent of the companies doing business in South Africa, they were responsible for 20 percent of all corporate spending on education, training, and community development in the country.

And US firms openly defied apartheid laws. A May 1987 report in *The New York Times* noted, for example, that 77 US companies operating in South Africa were settling nonwhite managers and executives in white-only neighborhoods in defiance of the law.

Incredibly, if the plaintiffs eventually win, the 20 million black South Africans still living who suffered under apartheid could get as little as 50 cents in compensation. The lawyers, meanwhile, stand to pocket millions.

As South Africa's leading business newspaper, *Business Day* of Johannesburg, recently noted: "The only redistribution of wealth ever likely to result is from shareholders to lawyers. There has been plenty of that already. There will be more."

Yet this harmful lawsuit is going forward because of judicial conflicts of interest that could have been avoided but weren't. Four recusals left the Supreme Court short of the required six-justice quorum – thwarting an expected decision that almost certainly would have overruled a deeply flawed lower-court action that allowed the litigation to proceed.

Three of the four declined to involve themselves in the case because they own shares in some of the defendant companies. All could have participated if their stock holdings had been placed in a blind trust or even mutual funds when they took the bench.

The fourth had an unavoidable conflict – his son works for a defendant in the case.

Although the number of Supreme Court cases affected by investment-linked recusals is unknown because justices seldom explain their reasons for bowing out, several high-profile cases this year proceeded without nine justices for this reason. Perhaps the most notable is *Warner-Lambert v. Kent*, which yielded a 4-to-4 split decision.

Anytime a justice is disqualified due to a financial conflict of interest, it increases the likelihood of split decisions, creating uncertainty in the law.

Congress passed a law two years ago that makes it easier for federal judges to divest themselves of holdings creating conflicts of interest by allowing them to sell these assets without incurring capital gains taxes, but it isn't enough. Justices are unlikely to divest when it is a bad time to sell or the divestiture would create as many appearance problems as it resolves.

For the justice system to work with certainty, the president and the senate should require Supreme Court nominees to place their assets in blind trusts as a condition of serving.

• *David A. Ridenour is vice president of the National Center for Public Policy Research, a nonpartisan conservative think tank on Capitol Hill.*

Find this article at:

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

November 3, 2008

James R. Troupis
Michael, Best & Friedrich LLP
1 South Pinckney Street, Suite 700
PO Box 1806
Madison, WI 53701-1806

Subject: Review of Blind Trust Policies

Dear Mr. Troupis:

It is my understanding you represent Annette Ziegler with respect to the use of a blind trust to shield her from possible conflicts of interest in her role as a state public official. Your practices on the use of blind trusts were developed in conjunction with the former State Ethics Board staff.

The Government Accountability Board is charged with reviewing the guidelines, opinions and rules of the former State Ethics Board as part of the implementation of the law creating the agency. 2007 Wisconsin Act 1, Section 209 (3).

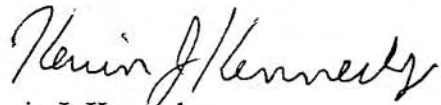
At its meeting of October 6, 2008, the Government Accountability Board considered whether to initiate a rulemaking proceeding to address if, and under what conditions, a blind trust may relieve a state public official of the financial reporting requirements of §§19.43 and 19.44, *Wisconsin Statutes*. The Board initially adopted the position that blind trusts are not authorized under state law and do not reflect the policy of disclosure of the financial holdings of state public officials that is at the heart of the code of ethics for state public officials.

The Board determined not to initiate a rulemaking proceeding and not to permit an official to exclude economic interests held in a blind trust from the official's annual statement. For an official who currently has assets in a blind trust, the Board will allow the official until the next financial report is due (April 30, 2009) to report such interests. The Board did not have the benefit of the input of representatives of the four individuals who have used blind trusts in reliance on advice from the former State Ethics Board in making its initial decision.

I have included staff's memorandum and recommendation to the Board on this issue. If you would like to convey your thoughts to the Board, I invite you do so in writing or in person at the Board's next meeting scheduled for November 11, 2008 in Madison. The Board would like to hear from representatives of the public officials affected by its initial determination.

Please contact Jonathan Becker at 608-267-0647 or jonathan.becker@wi.gov, if you have any questions about this issue. On behalf of the Board, I look forward to hearing your thoughts and suggestions.

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel

C: Jonathan Becker

Enclosure G.A.B. Staff Memorandum, October 6, 2008 Meeting

State of Wisconsin\Government Accountability Board

Ethics & Accountability Division
44 East Mifflin, Ste. 601
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Phone (608) 266-8123
Fax (608) 264-9319
E-mail: ethics@ethics.state.wi.us



KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For October 6, 2008 meeting
TO: Members, Wisconsin Government Accountability Board
FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability
SUBJECT: Blind trusts

From time to time, state public officials have established blind trusts. Currently, three officials – Supreme Court Justices Patience Roggensack and Annette Ziegler and Attorney General J.B. Van Hollen -- have established blind trusts. They have done so for the putative purpose of shielding themselves from conflict of interest situations on the theory that if one does not know that one has a financial interest in a matter, one cannot be influenced by that interest. As the federal rule on blind trusts notes, “It was envisioned that the use of those trusts by Government employees would reduce the real and apparent conflicts of interest between the financial interests held by those employees . . . and their official responsibilities.” The effect of having a blind trust presumably means that an official no longer need report financial interests as required by statute.

The Ethics Code for State Public Officials, §19.43, *Wisconsin Statutes*, requires annual financial disclosure of an official’s investments. Wisconsin law contains no provision for an official to establish a blind trust and not disclose trust holdings. The Ethics Board permitted blind trusts, but never promulgated any rules or policies governing them. Section 19.43 (8), *Wisconsin Statutes*, provides:

19.43(8) On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may . . . waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on that individual or that the . . . waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the . . . waiver.

This provision could be read to give the Board authority to recognize blind trusts and to waive the disclosure of financial interests in a blind trust if specified conditions are met. The Board could proceed to promulgate an administrative rule that grants a waiver to those who establish a blind trust in accordance to specified provisions. Alternatively, the Board could determine that establishing a blind trust does not relieve an official from reporting the interests held in the trust – effectively prohibiting their use.

If the Board were to promulgate a rule in this area, I believe the rule should contain the following provisions: (1) that the official file with the Board the trust instrument creating the blind trust; (2) that an official continue to identify the assets placed in each trust until notified by the trustee that the asset has been sold or its value is less than \$5,000; (3) that the trustee of each trust be an

identified financial institution independent of the official and the official's family; (4) that only publicly traded or widely-held investments be placed in the blind trust; and (5) that the only communications that pass between the official and the trustee be in writing and be limited to the trustee's written report, with a copy to the Government Accountability Board, of the sale of an asset and any written summary required for tax purposes. Otherwise, the Board should direct that an official continue to identify all reportable assets regardless of whether they are held by the official directly or in a trust.

On the whole, I recommend against permitting blind trusts. I think blind trusts can do as much to undermine citizen confidence in government officials as enhance it, because such trusts simply hide assets from public view with no absolute assurance of hiding them from the official's view. The public is entitled to know the financial holdings of an official and the official's immediate family, as the statute requires. Placing assets in a blind trust does not mean an official somehow no longer knows what is in the trust – that is especially true of investments in closely-held entities or in real estate. If an official is concerned that holding certain assets may cause a conflict of interest, the official should shed those interests.

If the Board takes the recommended approach, the Board should permit a reasonable period of time for those officials who have already established a blind trust to revoke the trusts and re-order their affairs to enable them to report all financial interests. I suggest that the Board give officials until the end of the year to file amended Statements of Economic Interests.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For November 11, 2008 Board meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability

SUBJECT: Proposed issue ad rule

Accompanying this memo are four alternative administrative rules to define “political purpose” to include so-called issue ads. The alternatives differ only in (3) (b). Alternative 1 reflects the Brennan Center’s suggested rule at this time. Alternative 2 is somewhat more expansive and reflects some of my thinking. Alternative 3 reflects George Dunst’s proposal. Alternative 4 is based on the Federal Election Commission’s rule, 11 CFR §114.15.

In viewing these proposals, it is important to keep in mind Justice Roberts’ language in *Wisconsin Right to Life*:

In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL 's three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

The challenge is in trying to draft a rule that will pass constitutional muster and at the same time actually have a real effect in subjecting to regulation those ads that are subject to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. My Alternative 2 seems somewhat broader than Alternatives 1 or 3. Alternative 4 takes the approach of offering a safe harbor for communications not considered express advocacy.

Proposed rule (Alternative 1)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) “Political committee” means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) “Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) “Contributions for political purposes” means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure related and recordkeeping related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication for a political purpose.

(3) A communication is for a “political purpose” if it:

(a) Contains ~~containing~~ terms such as the following or their functional equivalents with reference to a clearly identified candidate ~~that expressly advocates the election or defeat of that candidate and that~~ unambiguously relates to the campaign of that candidate:

1. “Vote for;”
2. “Elect;”
3. “Support;”
4. “Cast your ballot for;”
5. “Smith for Assembly;”
6. “Vote against;”

7. "Defeat;" or
8. "Reject."

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate's position or stance on issues; or
3. Supports or condemns to that candidate's public record.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

Proposed rule (Alternative 2)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) “Political committee” means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) “Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) “Contributions for political purposes” means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure related and recordkeeping related~~ requirements of ch. 11, Stats., ~~only~~ when they:

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6. “Vote against;”

7. "Defeat;"
8. "Reject;" or

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Refers to that candidate's position or stance on issues;
3. Refers to that candidate's public record;
4. Refers to that candidate's supporters or opponents; or
5. Refers to campaign communications disseminated by or on behalf of that candidate or that candidate's opponents.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

Proposed rule (Alternative 3)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) “Political committee” means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) “Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) “Contributions for political purposes” means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

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1. The communication does not focus on a legislative issue, take a position on that issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter;
2. The communication mentions an election, candidacy, political party, or challenger; [and/or?]
3. The communication takes a position on a candidate's character, qualifications, or fitness for office.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation "ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

Proposed rule (Alternative 4)

Amend GAB 1.28 to read:

GAB 1.28 Scope of regulated activity; election of candidates. (1)

Definitions. As used in this rule:

(a) “Political committee” means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) “Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) “Contributions for political purposes” means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for political purposes ~~the purpose of expressly advocating the election or defeat of an identified candidate.~~

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3. “Support;”
4. “Cast your ballot for;”
5. “Smith for Assembly;”
6. “Vote against;”

7. “Defeat;” or
8. “Reject.”

(b) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

(c) A communication is not for a political purpose if it is not made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election or if it does not include a reference to or depiction of a clearly identified candidate or if it:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;
2. Does not take a position on any candidate’s or officeholder’s character, qualifications, or fitness for office; and
3. Either:
 - (i) Focuses on a legislative, executive or judicial matter or issue; and
 - (A) Urges a candidate to take a particular position or action with respect to the matter or issue, or
 - (B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or
 - (ii) Proposes a commercial transaction, such as purchase of a book, video, or other product or service, such as attendance (for a fee) at a film exhibition or other event.

(d) A communication includes indicia of express advocacy if it:

- (i) Mentions any election, candidacy, political party, opposing candidate, or voting by the general public; or
- (ii) Takes a position on any candidate’s or officeholder’s character, qualifications, or fitness for office.

(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) or (2) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

(The intent of this rule will be to subject to regulation “ads that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The impact will be to prohibit the use of corporate money for such ads and to require registration of those paying for such ads and the reporting of related expenditures. It would have applied to the Supreme Court ads whose transcripts were furnished to the Board at its last meeting.)

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For November 11, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Administrative Rules and Formal Opinions of the State Elections Board Relating to Training and Selection of Election Officials, Duties and Responsibilities of Campaign Treasurers

This memorandum presents 5 administrative rules and 3 formal opinions of the former State Elections Board presently in effect relating to training and selection of election officials, duties and responsibilities of campaign treasurers.

1. Training and Selection of Election Officials (1 formal opinion, 5 Administrative Rules)

Opinion El.Bd. 75-1

Votes cast for an independent candidate cannot be considered to have been cast for a political party for purposes of applying sec 7.30, Stats. (Issued to Eldon L. Hoel, January 8, 1975)

This opinion provides that votes cast for an independent candidate for Governor or President do not invest a political party with the ability to nominate poll workers. Current law authorizes the two political parties receiving the most votes in a ward or combination of wards to nominate poll workers to work at the polling place serving those wards.

Independent candidates may appear on the ballot with a statement of principle that aligns them with a political party that has not qualified for ballot status. The opinion takes the position the law permitting the two parties receiving the most votes at a polling place to nominate poll workers applies to parties with ballot status, not to political parties that have not received sufficient votes on a statewide basis to qualify for a separate primary ballot.

The opinion accurately reflects current law and represents sound public policy.

Staff recommends the Board reaffirm formal opinion: ElBd Op 75-1,

Administrative Rules

Chapter GAB 11, Training and Certification of Election Inspectors

ElBd 11.01 Certification requirement (1) At each polling place in each municipality in Wisconsin, there shall be a chief election inspector, under s.7.30(6)(b), Stats., who shall be certified by the government accountability board pursuant to s.7.31, Stats.

(2) Certification and maintenance of certification of chief election inspectors shall follow the standards set forth in this chapter.

(3) A record of each individual that has been certified by the government accountability board as a chief election inspector for a municipality, under the standards established by this chapter, shall be maintained by the municipality's clerk or board of election commissioners.

ElBd 11.02 Qualification (1) Individuals who have been, or will be, appointed chief election inspector, pursuant to s.7.30(6)(b), Stats., shall be certified by the government accountability board.

(2) Before they may be certified as a chief election inspector, applicants shall complete an initial training course conducted under the direction of the government accountability board staff.

(3) Each chief election inspector's certificate shall expire at the end of the term for which that inspector has been appointed unless the certificate has been renewed before expiration. A chief election inspector's certificate may be revoked by the municipal clerk when the inspector is removed from office pursuant to the provisions of s.7.30(6)(c), Stats.

ElBd 11.03 Certification maintenance. (1) To maintain certification as a chief election inspector, an individual shall, during the individual's term of office, attend at least 6 hours of training approved for certification by the government accountability board's director.

(2) Compliance with the approved training required by sub.(1) may consist of attendance at any combination of the following chief election inspector certification-training courses that have been approved by the government accountability board's director:

- a) An approved training course for chief election inspectors conducted under the direction of the government accountability board's staff.
- b) An approved training course for chief election inspectors conducted by the government accountability board's staff at a meeting of the Wisconsin County Clerks Association, Wisconsin Municipal Clerks Association, Wisconsin Towns Association or the League of Wisconsin Municipalities.
- c) An approved training course for chief election inspectors conducted by the government accountability board's staff through the University of Wisconsin Extension Local Government Center WISLINE Series.
- d) An approved training course for chief election inspectors conducted by a municipal clerk or municipal board of election commissioners pursuant to s.7.15(1)(e), Stats.

- e) An approved training course for chief election inspectors at a regional or national conference of a professional organization that serves election officials.
- f) Any other chief election inspector certification-training course that has been approved by the government accountability board's director.

(3) To maintain certification, an individual shall provide to the municipal clerk or municipal board of election commissioners satisfactory proof of completion of an approved certification-training course for chief election inspectors, listing a description of the approved training event, including the date and location of the approved training.

(4) If an individual demonstrates to the clerk or municipal board of election commissioners that he or she has met the maintenance of certification requirements of sub.(1), the clerk or board of election commissioners may renew the certification for the individual's succeeding term.

EIBd 11.04 Election day responsibilities. (1) On election day, the chief election inspector shall state on the inspectors' statement, Form EB-104, that the chief election inspector holds a current certification.

(2) Immediately following each election, the municipal clerk or director of the municipal board of election commissioners shall deliver a copy of the inspectors' statement, Form EB-104, pursuant to the provisions of s.7.51, Stats.

(3) Immediately following each election, the municipal clerk or director of the municipal board of election commissioners shall review each inspectors' statement to ensure compliance with sub.(1) and compliance with s.7.51, Stats.

EIBd 11.05 Certification waiver. In the event of an emergency, after notice to, and approval by, the government accountability board, the municipal clerk or director of a municipal board of election commissioners may use a non-certified chief inspector at a specified polling place, for that election only, if, because of the emergency, a certified chief election inspector is not available to serve that polling place.

Staff recommends the Board reaffirm the administrative rules, and authorize the Director and General Counsel to approve the use of a non-certified chief inspector in the case of an emergency. The Director and General Counsel shall include such approval in his report to the Board at the G.A.B. meeting following the election

2. **Duties and Responsibilities of Campaign Treasurers:** (2 formal opinions - ElBd. Op. 74-11, ElBd. Op. 74-15)

Opinion El.Bd. 74-11

A political party treasurer may be appointed by a candidate as his campaign treasurer. Separate bank accounts must be maintained so that a candidate's funds are not intermingled with the party treasury. (Issued to Thomas S. Sliak, August 23, 1974)

This opinion addresses a unique situation presented by a county party. The county party wanted to provide a single treasurer to serve as the campaign treasurer for all candidates in the county who agreed. Based on the agreement between the party and the candidate, all expenditures would have to be approved by the party. The State Elections Board approved the arrangement subject to the caveats the candidate was still responsible for all campaign activity on the candidate's behalf and separate accounts for each candidate and the party had to be maintained.

The staff has not seen a similar arrangement in recent memory, although it is not unusual for one person to serve as a treasurer for more than one political committee. To the extent this opinion provides direction for a single person serving as a treasurer for more than one committee, it should be reaffirmed.

Opinion El.Bd. 74-15

A campaign treasurer holds the power to return residual contributions to donors, in whole or in part, after a campaign has been completed. (Issued to Ervin C. Marquardt, September 25, 1974)

This opinion discusses the return of political contributions to the contributor and describes the associated reporting requirements in the event a campaign contribution is returned. The opinion accurately reflects current law and represents sound public policy.

Staff recommends the Board reaffirm formal opinions: ElBd Op 74-11 and ElBd Op 74-15

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For November 11, 2008 meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability

SUBJECT: Review of Ethics Board opinions and guidelines concerning code of ethics for local officials

There are 44 opinions concerning application of the Code of Ethics for Local Public Officials for the Government Accountability Board to review. Of these, 32 opinions address local officials' conflicts of interest, 8 opinions address local officials' acceptance of gifts, and 4 opinions address miscellaneous issues. In addition, there are two Guidelines addressed to local officials.

Subject to any comments that might be received, I recommend that the Board reaffirm each opinion and the two Guidelines. I think the most significant opinions are:

- 2007 Wis Eth Bd 09
- 2003 Wis Eth Bd 17
- 2002 Wis Eth Bd 02
- 1997 Wis Eth Bd 06
- 1996 Wis Eth Bd 09
- 1994 Wis Eth Bd 05
- 1992 Wis Eth Bd 22

To access a .pdf copy of the full opinion, click on the blue text or call us for a paper copy.

For November 11, 2008 meeting of the Board:

Local officials – conflicts of interest

LOCAL OFFICIALS – DISQUALIFICATION..... [2007 Wis Eth Bd 9](#)

The Ethics Board advises:

1. If a matter before a town board, is reasonably likely to have more than a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD ABSTAIN from discussion, deliberation, and votes on that matter.
2. If a matter before a town board will have no effect or only a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD PARTICIPATE; and
3. If reasonable people cannot reasonably foresee the effect of a board of supervisors’ action on a supervisor’s financial interests or disagree about whether the effect will be positive or negative or will be substantial or insignificant then the supervisor’s financial interest is too speculative to deny the supervisor’s participation in related discussion, deliberation, and votes, and the supervisor SHOULD PARTICIPATE UNLESS, in the supervisor’s judgment, to do so would undermine public confidence in the decision or in government.

LOCAL CODE [2005 Wis Eth Bd 04](#)

The Ethics Board advises:

1. A school board member, who is a retiree of the district, should not take any vote on the budget if resolution of the matter is likely to affect the level of health insurance premiums the school district will contribute to retirees.
2. The school board member may vote on a budget matter if any effect on the member’s health benefits is remote and speculative.
3. Application of these principles depends on the facts. A local school board attorney is in a better position to resolve this factual issue than are we.

LOCAL CODE – DISQUALIFICATION [2005 Wis Eth Bd 2](#)

The Ethics Board advises:

1. That the retired teacher who is a member of the school district’s board of education should not vote on the resolution that would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy if that is likely to affect the health benefits the member receives; but
2. That the retired teacher who is a member of the school district’s board of education may vote on the resolution if its effect on the member’s health benefits is remote and speculative.

LOCAL CODE [2004 Wis Eth Bd 05](#)

A member of a county board who serves as a trustee of the county’s nursing home facility, whose mother is a resident of the facility, should not use her position to obtain anything of substantial value or a substantial benefit for the official personally or for a member of the official’s immediate family. Whether that will, or is likely to occur, is a question of fact that the Ethics Board cannot resolve. If a matter comes before the nursing home board that would have a financial effect on the supervisor or the supervisor’s immediate family, then she should abstain from participation in the matter. If her need to recuse herself becomes so frequent as to impede her ability to contribute to the nursing home board, then the better alternative is that another individual take her place.

LOCAL CODE – DISQUALIFICATION [2003 Wis Eth Bd 17](#)

The Ethics Board advises that a member of the Village’s governing board may participate in the consideration or decision about improvements the village will make to the village’s sewage system and the financing of those improvements as follows:

1. If the sewer improvement does not personally and substantially benefit the property interest of a village trustee, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement’s cost will be met.
2. If the sewer improvement personally and substantially benefits the property interest of a village trustee, but the improvement also confers a substantial benefit on all or a sizeable portion of the village’s property owners, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement’s cost will be met.
3. If the sewer improvement produces a substantial or personal benefit to the trustee’s property interest that is not common to all or a sizeable portion of the village’s property owners, but the village assesses the improvements’ costs to the property owners who are the beneficiaries of the improvement, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement’s cost will be met.
4. If the sewer improvement produces a substantial or personal benefit to the trustee’s property interest that is not common to all or at least to a sizeable portion of the village’s property owners, and the village assesses the improvements’ costs to all of the village’s property owners or at least to property owners who do not benefit from the improvements ordered, the trustee should not participate in discussions and actions that have as their goal the transfer of the costs of the sewer improvements to the trustee’s property to others in the village.

LOCAL CODE – DISQUALIFICATION [2003 Wis Eth Bd 9](#)

The Ethics Board advises:

That a special purpose district reconsider its vote because a commissioner who voted to distribute a large monetary refund to original members of the district would be a recipient of that sum. In any new vote on the same proposal, the commissioner who would receive the distribution should abstain from any participation in discussion, debate, or vote.

LOCAL CODE – DISQUALIFICATION [2003 Wis Eth Bd 8](#)

The Ethics Board advises that a town chair should not simultaneously participate in Town decisions concerning services provided to the Town by a company owned by the same individual that owns the company of which the town chair is an employee.

LOCAL CODE [2002 Wis Eth Bd 5](#)

The Ethics Board advises:

The effect of building a public facility on the value of an official’s adjacent property is a factual one. The factual assessment is important but is not one we can make. In the absence of anything other than conjecture about that effect, public policy favors a public official’s exercise of official duties. But the official, at his or her discretion, may abstain from participation if the official believes participation is likely to undermine citizen confidence in the county’s government. Therefore:

1. If building the public facility on adjacent property will, or is reasonably likely to have a financial effect on the official’s land, the official should abstain from participation in the decision.

2. In the absence of any financial effect, the official should participate; and
3. If the effect is conjectural or attenuated, the official should participate unless, in the official's judgment, to do so would undermine public confidence in the decision or in government.

LOCAL CODE – DISQUALIFICATION [2002 Wis Eth Bd 4](#)

The Ethics Board advises:

If a county's contract with a union will provide a significant precedent for a union contract in which a county board supervisor has a personal financial interest, then the supervisor should not participate in negotiations, discussions or votes on the former. If the effect of the county's contract on the contract covering the supervisor is merely conjectural or inconsequential, the supervisor may participate in decisions concerning that contract.

LOCAL OFFICIALS – DISQUALIFICATION..... [2002 Wis Eth Bd 2](#)

The Ethics Board advises that :

1. Under §19.59, Wisconsin Statutes, the village trustee whose property abuts the property that is the subject of the company's rezoning petition, and who is an employee of the company, should not participate in discussion, debate, or votes on the petition;
2. Section 19.59, Wisconsin Statutes, is unlikely to restrict the village trustee who is an employee of a company that sells supplies to the company seeking the rezoning to vote on the petition; and
3. Section 19.59, Wisconsin Statutes, is unlikely to restrict the village trustee who owns a company that, in the past, has done business with the company seeking the rezoning to vote on the petition.

LOCAL CODE – DISQUALIFICATION [2002 Wis Eth Bd 1](#)

The Ethics Board advises:

1. As long as the effect of teacher contract negotiations on the salary and benefits provided to school principals is uncertain and conjectural, §19.59 does not restrict a school board member whose spouse is a principal to participate in negotiations with the teachers' union. Resolution of the issue requires a determination of fact that cannot be made in an opinion. A school district's attorney is in a better position to ascertain this fact.
2. A school board and superintendent should amend the superintendent's employment contract to remove a provision that ties the superintendent's salary increases to increases provided to district administrators.

LOCAL CODE – DISQUALIFICATION [2001 Wis Eth Bd 1](#)

The Ethics Board advises: (1) that local governmental officials should not accept free or discounted admission to events at a facility owned by the local governmental unit; (2) that, except as just stated, statutes administered by the Ethics Board are not an obstacle to the facility's oversight authority using, for the conduct of official business, a conference room that looks out on events; (3) that a local governmental official may not use the conference room for a non-governmental purpose unless the use of private rooms, or admission to private rooms, is for sale to the general public for the pertinent event, and then only under the same terms and conditions available to the public; and (4) that statutes administered by the Ethics Board are not an obstacle to the local governmental unit's making the conference room available to charitable organizations; however, a local governmental official should not use his or her position to arrange for use of the conference room by an organization of which the official is an officer, director, or authorized representative or agent. Because the room is a public facility, other laws may govern the room's use.

LOCAL CODE – DISQUALIFICATION 2000 Wis Eth Bd 4

The Ethics Board advises that in the case of a local official who has been elected to serve on the board of directors of a municipal mutual insurance corporation by a government approved process, to represent the local government’s interests on the board, §19.59, *Wisconsin Statutes*, does not bar the official from participating in the local government’s consideration, discussion, or votes to award a contract to or change government policy to permit the purchase of services from the corporation.

LOCAL CODE – DISQUALIFICATION 2000 Wis Eth Bd 2

The Ethics Board advises that:

In the case of a county board supervisor who has been selected as a member of an insurance company’s board of directors by the company’s organizer, the supervisor should not participate in county board consideration, discussion, or votes to award a contract to the company or to change county policy to permit the purchase of services from the company.

LOCAL CODE – DISQUALIFICATION 2000 Wis Eth Bd 1

The Ethics Board advises (1) that a county board supervisor not participate in discussions or votes about litigation strategy or whether or not the county should sue a business with which the supervisor is associated and should absent himself or herself from that portion of a meeting at which the matter is discussed; (2) that §19.59 is not an impediment to a county supervisor’s participation in decisions affecting the liability of a municipality of which the supervisor is an elected official, but considerations of incompatibility of office, which may be addressed by the Attorney General, may speak to abstention; and (3) that §19.59 is not an impediment to a county supervisor’s participation in decisions affecting the financial interests of a child’s spouse, unless the child's family either receives one-half of their support from the supervisor or furnishes one-half of the supervisor’s support, but considerations of the appearance of impropriety may lead the supervisor to abstain.

LOCAL CODE – DISQUALIFICATION 1999 Wis Eth Bd 3

A village trustee should not participate in the discussion, consideration, or vote on a proposal to ban or regulate a business activity in the village in which the trustee is engaged unless the trustee can demonstrate that the trustee's official actions will not result in a substantial financial gain, or avoidance of a substantial financial loss, for the trustee's business.

LOCAL CODE 1998 Wis Eth Bd 4

The Ethics Board advises that, under §19.59, *Wisconsin Statutes*, a county board supervisor should not simultaneously be a member of a county task force established to recommend the feasibility of the county’s building a proposed facility and hold an interest or option to purchase an interest in a company seeking to operate that facility if it is built.

LOCAL CODE 1998 Wis Eth Bd 1

The Ethics Board advises:

that a member of a municipality’s governing body who lives in an unsewered subdivision may, consistent with §19.59, *Wisconsin Statutes*, participate in a decision whether to require the extension of water and sewer service to all existing and future development in the municipality.

LOCAL CODE – DISQUALIFICATION 1997 Wis Eth Bd 6

The Ethics Board advises that a school board member whose spouse is employed as a teacher by the school district:

- (1) not participate in negotiations, discussions, or votes on the teachers’ contract;
- (2) may vote on the district’s budget if the school board has already entered into a contract that establishes teachers’ salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits;
- (3) not participate in negotiations, discussions, or votes on the terms of another union’s contract if it will affect the terms of the teachers’ contract in other than an inconsequential manner;
- (4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a school board member’s spouse obtaining a substantial benefit or anything of substantial value from such decision;
- (5) may participate in decisions affecting class size, teaching hours, other general school district policy decisions if the effect on the school board member’s spouse does not differ materially from the effect on other teachers.

The Ethics Board advises that a school board member who is covered by the school district’s health benefits plan not participate in consideration of the terms of that plan or the award of the district’s health benefits contract.

LOCAL CODE – DISQUALIFICATION 1996 Wis Eth Bd 13

A member of a local unit of government’s legislative body should not simultaneously serve, in a private capacity, as an officer or director of a tourism organization and participate in discussions or votes to establish a room tax to support the organization financially.

A member of a local unit of government’s legislative body who is a director of a tourism organization generally should not participate in a decision concerning room tax receipts if the decision could substantially affect the level of receipts earmarked for the organization. If decisions on these issues are presented to the legislative body in the form of an ordinance or ordinance amendment, then a member of that body who also serves on the board of the tourism organization should not act in a way that aids the organization of which he or she is a director.

LOCAL CODE – DISQUALIFICATION 1996 Wis Eth Bd 12

A member of a local unit of government’s legislative body should not simultaneously serve, in a private capacity, as an officer or director of the tourism organization and participate, in a governmental capacity, in discussions or votes to establish a room tax to support the organization financially.

A member of a local unit of government’s legislative body to whose business the tourism organization will furnish a substantial benefit through the use of room tax revenues should not participate in discussions or votes to establish a room tax.

LOCAL CODE – DISQUALIFICATION 1996 Wis Eth Bd 10

A city council member who is a retired city employee and who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts.

A city council member whose child participates in the city’s health insurance program, and who either provides more than one-half of the official’s support or

receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts.

A city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance.

LOCAL CODE – DISQUALIFICATION [1996 Wis Eth Bd 9](#)

The Ethics Board advises that §19.59, *Wisconsin Statutes*, does not bar a local government official (1) from acting in a matter concerning another body politic with which the official is associated or (2) from acting in a matter that could affect the financial interests of an organization to whose board of directors the local governmental unit has appointed the official pursuant to statute, ordinance, or resolution to represent the interests of the local government.

A local government official may not simultaneously be an officer or director of a private organization (in a capacity other than as a representative of the local governmental unit's interests) and (a) take official action substantially affecting the organization or (b) use his or her public office to produce a substantial benefit for the organization.

LOCAL CODE – DISQUALIFICATION [1994 Wis Eth Bd 7](#)

A town board member should not as a matter of policy, participate in the town's consideration of a landfill expansion as long as the member derives financial benefit from his or her spouse's employment by a company owned by the individual owning the controlling interest in the landfill operator. A town board member may participate in such a decision without restriction from laws administered by the Ethics Board where the town board member's child is so employed and the member's child neither supports nor derives support from the town board member.

LOCAL CODE – DISQUALIFICATION [1994 Wis Eth Bd 6](#)

The Ethics Board advises that a member of the governing body of a local government unit should not participate in any labor issues in which a union is involved or that could affect the union's interests while the member's law firm simultaneously represents that union.

LOCAL CODE – DISQUALIFICATION [1994 Wis Eth Bd 6 Supplemental](#)

A member of the governing body of a local governmental unit should not participate (1) in labor issues in which a union that is a client of the member's law firm, or one of that union's members, is a party or (2) in labor matters involving other unions that could have a precedential effect on issues affecting the client. The board member may participate in other policy matters as long as those matters have no more than an incidental effect on the union and its members.

LOCAL CODE – DISQUALIFICATION [1994 Wis Eth Bd 5](#)

The Ethics Board advises that two city council members should not participate in any official discussions, consideration, or vote concerning a city's lease or purchase of a building while each simultaneously derives income from a business that itself has, or from a business whose principal owner has, a direct financial stake in the outcome of the city's decision.

LOCAL CODE – DISQUALIFICATION 1994 Wis Eth Bd 4

The Ethics Board advises that a member of a city council that is a negotiator for a labor union in other municipalities should not participate in any official discussions or vote on the Union's contract with the city on whose council the member serves; should not use any information not available to the public, derived from the council member's holding public office, to benefit the Union in other municipalities; and should not be present during closed sessions in which labor negotiations with the Union are being discussed.

LOCAL CODE – DISQUALIFICATION 1992 Wis Eth Bd 28

A village engineer should not act in an official capacity with respect to the review of plans the engineer has prepared in a private capacity or submitted by developers with which the village engineer is associated.

LOCAL CODE – DISQUALIFICATION 1992 Wis Eth Bd 22

A village board member should not participate in official discussions, deliberations and votes with respect to legislation (that is, ordinances and the like) affecting his or her real estate interests except to the extent that the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board member's private interests is neither significantly greater nor less than upon other interests affected by the act.

The village board member ought not to participate in quasi-judicial deliberations or decision-making such as actions on permits, licenses, rezoning of specific parcels, and the like affecting the member's interests or competing real estate interests.

In those instances in which the member should refrain from votes, the member should also refrain from discussion and deliberations and ask that the minutes reflect that the member has withdrawn.

LOCAL OFFICIALS – DISQUALIFICATION 1992 Wis Eth Bd 20

The Ethics Board recommends that a village board member not participate in official discussions, deliberations, and votes with respect to legislation affecting his or her business unless the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board members' private interest is neither significantly greater nor less than upon other interests affected by the act.

The village board member ought not to participate in quasi-judicial deliberations or decisionmaking affecting his or her own business or competing businesses.

LOCAL OFFICIALS – DISQUALIFICATION 1992 Wis Eth Bd 12

Members of local landfill negotiating committees or other local officials, whose financial interests are likely to be affected by negotiations concerning a landfill expansion, should not participate in those negotiations or any decisions to ratify an agreement reached through those negotiations.

LOCAL OFFICIALS – DISQUALIFICATION 1992 Wis Eth Bd 10

A local public official is not disqualified from participating in the award of a contract to a business simply because that business is involved in an unrelated joint venture with the official's employer.

Local officials – gifts and meals

LOCAL CODE –

INFLUENCING OFFICIAL JUDGMENT [2003 Wis Eth Bd 16](#)

The Ethics Board recommends that an official who is a member of a city’s plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.

LOCAL OFFICIALS [2002 Wis Eth Bd 7](#)

If a member of a village board participated in the village’s decision to hire him to supervise a village project, then he should return the checks he has received and not accept any payment for the services he has provided. If the member of the village board abstained from participating in the village’s earlier decision, then §19.59, Wisconsin Statutes, permits him to accept payment for the services he has provided.

LOCAL CODE – GIFTS..... [1997 Wis Eth Bd 15](#)

The Ethics Board advises:

An official of a school district who receives a gift from foreign dignitaries visiting the district should treat the gift as given to the school district. The school district may retain, sell or otherwise dispose of the item in accordance with the school district’s policies and interests. This can include selling the item to an official of the district.

LOCAL CODE – MEALS, LODGING,

TRAVEL AND ENTERTAINMENT [1993 Wis Eth Bd 8](#)

A law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm.

LOCAL CODE –

INFLUENCING OFFICIAL JUDGMENT [1992 Wis Eth Bd 31](#)

A vendor should not sponsor a river cruise for local public officials attending a convention if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the vendor’s goods.

LOCAL OFFICIALS – IMPROPER USE OF OFFICE..... [1992 Wis Eth Bd 17](#)

A law firm should not purchase meals for officials of the local units of government the firm represents (nor should a local public official accept) unless, and only to the extent that, the local government would otherwise bear the official’s expense and the governmental units’ obligation to bear the expense is expressly authorized by, and in accordance with, established written criteria.

LOCAL OFFICIALS – MEALS, LODGING,

TRAVEL AND ENTERTAINMENT [1992 Wis Eth Bd 8](#)

A local public official may attend a breakfast meeting sponsored by a private firm at a convention if the official’s local governmental unit would otherwise pay the cost.

LOCAL OFFICIALS – MEALS, LODGING,

TRAVEL AND ENTERTAINMENT [1992 Wis Eth Bd 8](#)

A local official should not permit another to pay the official’s costs of a golf outing to which the official has been invited because of holding an official position.

Local officials – miscellaneous

LOCAL CODE [2006 Wis Eth Bd 01](#)

Whether a member of a school board may serve as an unpaid coach in the school district is primarily a question of compatibility of offices. Generally, the Ethics Code prohibits a member of a school board to use his or her position to obtain a position as an employee in, or a contract with, the school district.

LOCAL CODE [2003 Wis Eth Bd 13](#)

The person or persons on whose behalf a town attorney sought the Ethics Board’s advice are entitled to keep the Board’s opinion confidential. Whether the attorney directed the letter to the Ethics Board on half of the Town, or on behalf of the Town’s chair, is a question of fact the Board cannot resolve.

LOCAL CODE – JURISDICTION [1999 Wis Eth Bd 1](#)

Except in the uncommon instance in which the teacher's appointment is for a specified term or at the pleasure of the appointing authority, a public school teacher is not a local public official covered by §19.59, *Wisconsin Statutes*.

In an instance in which a teacher is a local public official, the teacher should consult with the school district's legal counsel to review the specific circumstances to determine whether §19.59 restricts participation in a program open to teachers whose benefits include lodging and meals in connection with a training seminar in another state, the provision of certain equipment, reimbursement for released time (with prior approval), expense reimbursement for presentations (with prior approval), and lodging and meals in connection with an annual reunion.

LOCAL CODE – JURISDICTION [1998 Wis Eth Bd 16](#)

The Ethics Board advises that §19.59, *Wisconsin Statutes*, does not empower a county to amend its ethics code to require officials and employees whose duties involve oversight, regulation, or reporting with respect to campaigns for county office to identify the campaigns in which the official or employee is involved, together with a description of the involvement.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 11, 2008, Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by:
Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: Elections Division Activities

Elections Administration Update

A report of relevant highlights of the November 4, General Election will be provided at the November 11, 2008, Board Meeting.

Introduction

Since your October 6, 2008, meeting, the Elections Division has been in a state of high readiness. We focused on working closely with our core local elections partners (1,923 county and municipal clerks), and educating the general public (getting them prepared), by promulgating public service and informational message through the media.

As we collaborate with our partners, constituents and stakeholders, we are confident that Wisconsin is prepared and ready to honor its long-time tradition on November 4, 2008, General Election Day, of conducting and ensuring an open, fair and transparent election.

Summary of Elections Division's November 4 General Election Preparation Activities

Collaboration with Clerks, Partners, Customers and Stakeholders

- Wisconsin Association of School Superintendent Assistants
- Wisconsin County Clerks Association
- Wisconsin Municipal Clerks Association
- League of Women Voters of Wisconsin

- Wisconsin Towns Association
- Governor Doyle, his Chief of Staff and Chief Legal Counsel
- Secretary of the Department of Administration (DOA)
- DOA's Division Administrator for Enterprise Technology

- Office of State Employment Relations
- Collaborated with Wisconsin 16 Largest-Employing Companies
- Department of Military Affairs
- Key Administrative Staff of Wisconsin Emergency Management

- Various Community Groups
- The Wisconsin Attorney General's Management Staff
- U. S. Department of Justice
- Milwaukee County District Attorney's Assistant District Attorneys
- Wisconsin Department of Transportation
- U. S. Election Assistance Commission

Training Seminars for Local Election Officials

- Statewide Registration Deputies
- Municipal Clerks
- Chief Inspectors (Persons in-charge of Polling Places)
- SVRS

High Public Interests

1. Absentee Voting -- The total 2004 absentee vote statewide was 364,639. A preliminary review of absentee voting trends in select municipalities indicates the State's 2008 absentee votes could increase by as much as 50% over 2004.

As of Monday, November 3, an examination of absentee voter data for select municipalities in Brown, Dane, Milwaukee and Waukesha counties shows at least an overall 50% increase over 2004. Milwaukee County alone already has an 84% jump over 2004.

The 2004 and 2008 absentee voter data for the City Madison and the City of Milwaukee, Madison's numbers increased by 34% and Milwaukee's by 130% respectively over 2004.

350,649 absentee ballots had been issued as of Friday, October 31. However, this sampling does not include absentee voter information from six of the State's 20 largest municipalities, including Green Bay, Kenosha, Sheboygan, Franklin, Fond du Lac, and Greenfield. However, if this trend continues, absentee ballots issued in 2008 will likely increase by at least 50% over 2004.

Based on feedback from our local election partners regarding significant in-person absentee voting, as well as our review of media coverage and our monitoring activity in our Statewide Voter Registration System (SVRS), if the public perceives a high interest in Tuesday's election, the analysis of absentee voting in our four largest counties and two most populous municipalities confirms these perceptions.

2. Issues Generating the Greatest Response 64

Given the unprecedented number of voters requesting to cast absentee ballots, local election officials are stressed, frustrated and quite literally, overwhelmed. For example, the City of Milwaukee experienced up to three thousands in-person voters a day, mostly to cast absentee ballots. The City of Madison voters stood in-line for up to two hours waiting to cast absentee ballots. Other municipalities had similar experiences.

The Elections Division has received and responded to thousands of telephone calls and email messages from the general public (voters and concerned citizens) and county and municipal clerks. Examples are:

- The perception of widespread voter fraud;
- The confusion between early voting and absentee balloting;
- Lots of concern expressed by voters not receiving absentee ballots after making requests;
- Voting Absentee in Person, and then Receiving an Absentee Ballot in the Mail;

- The overwhelming large crowds of voters standing in line to cast absentee ballots;
- Handicapped voters who were not being able to vote on equipped voting systems;
- No provision made to accommodate handicapped voters who waited in line for long periods of time;
- Concerns from the public about municipal clerks closing offices to the public and not allowing residents to cast absentee ballots;

- Voters' attire at the Polling Place;
- The Emergency Observer Rules;
- HAVA-Checks: Authority of Clerks and Municipalities to conduct checks prior to August 6, 2008;
- Impact of the Attorney General's law suit and/or the impact of its dismissal (G.A.B. future actions for dealing with pre-August 6 HAVA-Checks;

- "Straight party" Voting Misinformation and Confusion;
- UOCAVA voter concerns from USDOJ. UOCAVA = Uniformed & Overseas Citizens Absentee Voting Act;
- Dealing with FWABs and FPCAs from military & overseas voters. FWAB = Federal Write-In Absentee Ballot and FPCA = Federal Post Card Application
- "ID required" noted by some voters name on Poll Lists when it should not have been; and,
- For voters registering for first time, in the Milwaukee area, allegedly, some workers told voters who had driver's license but not with them, they could use the last four digits of their social security account number.

National and International Interest in Wisconsin's November 4, 2008 General Election

Since early August, national and international interests in how Wisconsin has been preparing for the November 4, 2008, General Election were evident.

1. Federal Election Observers

- On August 6, 2008, we met with (telephonically) and advised a team from Federal Government Accountability Office (GAO) on which polling places in Southeastern

Wisconsin to prepare pre-test its draft an evaluation tool for assessing compliance with Federal accessibility requirements.

On Tuesday, September 9, the day of the fall Partisan Primary in Wisconsin, select polling places in Southeastern Wisconsin were visited and the accessibility instrument was used in preparation for broad use throughout the nation on November 4, General Election Day in America.

- Starting mid-afternoon, September 8 and continuing throughout September 9, September 9, 2008, Partisan Primary three senior management team members from the U. S. Election Assistance Commission (EAC), led by the Executive Director of the Commission, visited Wisconsin. Although the purpose of this visit was multi-faceted, one of the main objectives was to hear and see first-hand Wisconsin's elections uniqueness, best election practices, and observe how Wisconsin (G.A.B. staff and our 1,923 local election officials) was preparing for the November 4, 2008, General Election.

The EAC staff visit generated media attention and that served to help underscore the importance of Wisconsin -- highly regarded as a likely swing state -- getting ready and being prepared for the November 4 General Election.

2. International Election Observers

- The Organization for Security and Cooperation in Europe (OSCE) and the Office for Democratic Institutions and Human Rights (ODIHR) deployed international observers in 40 states around the nation. Wisconsin hosted and met with two of its members: One member (Hendrik Buurman) resides in Germany (a school teacher), and one member (Assem Beisenbayeva) resides in Kazakhstan (a government employee).
- A third international person (Yasuyuki Ebata) was a political diplomat from the Embassy of Japan. Mr. Ebata was not part of the aforementioned international organization. He visited because his government is interested in the election process and attitude of Wisconsinites towards the upcoming November 4, General Election. Mr. Ebata is the Second Secretary of the Political and Science Section, for Disarmament and Nonproliferation for the Japanese Government.
- A fourth international observer was supposed to be a Mr. Ethelbert Ossia, of the Nigerian Independent Election Commission in Rivers). Mr. Ossia was also not affiliated with the aforementioned international organization. He was going to observe our November 4 General Election and meet with some of our local 1,923 election officials State. Mr. Ossia had to reschedule due to a conflict but does plan to visit Wisconsin sometime in early 2009.

Key Metrics

Training, technical assistance and public information/education initiatives with our customers, constituents and partners continued.

Training and Technical Assistance Details

See Attachment #1

Public Education and Information

See Attachment #2

Other Noteworthy Activities

1. Staff spent a considerable amount of time responding to questions and concerns expressed about the lawsuit that was filed by the Wisconsin Attorney General against the Government Accountability Board.
2. G.A.B. staff spent a considerable amount of time responding to media's open records requests and subpoenas by the Milwaukee County District Attorney.
3. Waiting for feedback from the U.S. Election Commission regarding our Certification and Application for an additional \$2.1 million Federal HAVA formula dollars due Wisconsin.

30-day Forecast

1. Get through the November 4, General Election.
2. Complete the November 4, 2008, General Election Canvass Process.
3. Commence planning for conducting a post-2008 election cycle assessment on our election administration business practices.
4. Continue to manage implementation process of our \$2 million data grant.
5. Start planning for 2009: Identify needs and develop a planning process.

Statewide Voter Registration System Update

Barbara A. Hansen, SVRS Project Director

Introduction

The following Statewide Voter Registration System (SVRS) activities took place since the October 6 meeting of the Government Accountability Board:

Summary of Major Activities Leading-up to the November 4, 2008, General Election

2. Election Support – The SVRS team provided support to Wisconsin's 1,923 County and Municipal Clerks to close out the September Partisan Primary and prepare for the November 4 Presidential and General Election, to ensure smooth election processes. SVRS staff also worked with clerks to assure data quality and poll book integrity. SVRS staff presented at various meetings of the Wisconsin Municipal Clerks Association, Wisconsin County Clerks Conference and the Wisconsin Towns Association.
3. Handling EB-131 Voter Registration Forms – G.A.B. has received thousands of voter registration (EB 131) forms through the mail and from Special Registration Deputies. Approximately 24,000 voter registration forms were received by G.A.B. in October and forwarded to clerks.

In addition, staff has forwarded numerous Absentee Ballot Application Forms from voters who mistakenly sent the forms to G.A.B. instead of their municipal clerk.

4. New Limited Term Employee (LTE) Data Entry Staff – 10 new temporary staff were hired to perform data entry duties. These LTEs work primarily on new voter registrations applications received by the G.A.B., processing cancellations for voters who have moved out of state, and entering date of birth information in response to the G.A.B. Default Date of Birth mailing.

During mid-October, 20 workers from a temporary agency assisted in sorting and mailing voter application forms. Additionally, at least 6 staff from other state agencies, including the Department of Administration and the Governor’s office, volunteered to help with the opening, sorting, looking up correct municipalities and mailing to make sure that clerks received the proper forms to enter before printing poll books. Over 2,400 packets of mail were sent to clerks throughout the state during the month of October.

5. SVRS Data Requests – G.A.B. received a number of requests to purchase data from the Statewide Voter Registration System. It is normal to see an increase in types of requests close to a major election event. 15 data requests have been processed since October 1, for a total of \$23,680.

Considerable staff time was spent responding to subpoenas for voter data from the Milwaukee County District Attorney’s office investigating allegations of voter registration fraud.

6. Extended Customer Service Hours -- Since mid-October 2008, we extended operation hours during the purpose of providing added support to clerks preparing for the November election. Weekday hours were increased to 8:00 p.m. In addition, clerks were able to call on Saturdays from 8:00 a.m. to noon. On November 1, the extended hours were from 8:00 a.m. to 3:00 p.m. Almost all the calls on November 1 were about “Where do I go to vote,” and “Can I vote early?”
7. 2008 Election Customer Service Response Center – We created a 2008 Election Customer Service Response Center in which our G.A.B. Help Desk will be the nerve center of the operation. The Help Desk acts as a call center for G.A.B. and handles hundreds of call ranging from “Where do I vote?” to handling technical calls from users about SVRS.

Starting Monday, November 3, 2008, our 2008 Election Customer Service Response Center will be open and fully staff from 7:00 a.m. until 10:00 p.m. to accommodate calls from the public and election officials. Additionally, our DET technical partners will be on standby to immediately assist with any SVRS and related computer infrastructure glitches.

Noteworthy Statistics

The following are some relevant statistics from SVRS as of October 29, 2008:

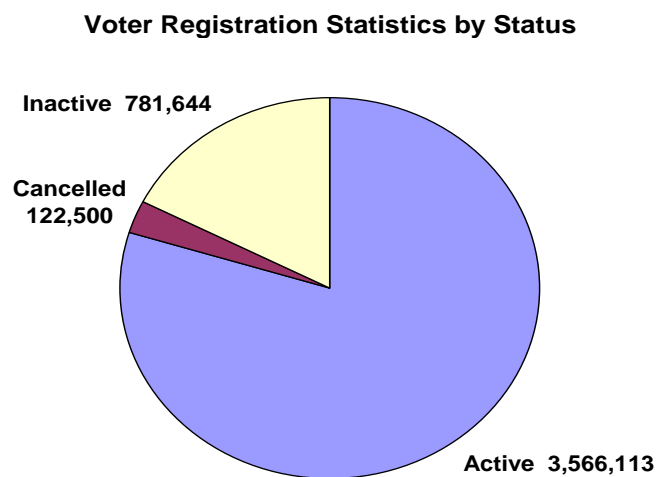
- 238,190 -- Total HAVA Checks run in SVRS since August 6, 2008.
- 176,104 – Total HAVA Checks run in the month in October.
- 147,168 or 84% of the October total were HAVA Check on Driver License validations.
- 129,578 or 88% matched with Driver License records and 17,590 or 12% did not match.
- 28,936 or 16% of the total HAVA Check were Last 4 Digits of Social Security Number validations.
- 24,752 or 86% of the Social Security Number validations passed the HAVA Check and 4,184 or 14% did not match.
- Overall, 154,330 or 88% of the total HAVA Checks passed, and 21,774 or 12% did not match.

Preparation for the November 4 Election Statistics

- 211,472 - Total requests for absentee ballots tracked in SVRS for November election (from October 1 to October 30). Note: Not all municipal clerks use SVRS to track their absentee ballot requests.
- 2,693 – Number of poll books printed from SVRS for the November Election to date.

Voter Registration Statistics

The chart below shows the registration type and the number of new registrations in SVRS.



Total Number of Registration Records in SVRS = 4,470,257

NOTE: An Active Voter is one whose name will appear on the poll list. A Cancelled Voter is one who will not become active again, e.g. deceased person. An Inactive Voter is one who may become active again, e.g. convicted felon. (As of October 30, 2008)

5. Acknowledgement

We especially wish to thank DOA Secretary Michael Morgan and DET Division Administrator, Oskar Anderson and his staff -- our strong and dependable technical partners -- for making sure our technological needs relating to the reliable functioning of our Statewide Voter Registration System (SVRS) are met during the critical time leading up to, during and after the November 4, General Election.

Action Items

No action is required of the Board at this time.

ATTACHMENT #1

GAB Election Division’s Training Initiatives
(10/06/2008 - 10/31/2008)

Training Type	Description	Class Duration	Target Audience	Number of Classes (10/06/2008 - 10/31/2008)	Number of Students (10/06/2008 - 10/31/2008)
SVRS ‘Initial’ Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	3 classes conducted in Madison, West Allis and Rice Lake. Additional classes scheduled on an “as needed” basis.	36
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	Ongoing, self-directed training is available online.
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years.	3 hours	1851 Municipal clerks; other staff.	2 classes conducted in Stevens Point and Madison.	17
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	26 classes conducted in locations across the state.	400
Special Registration Deputy	2005 Wisconsin Act 451 allows a qualified elector of Wisconsin to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open voter registration.	2 hours	Qualified electors in Wisconsin.	9 classes conducted before the close of registration on October 15 in Ashland, Hudson, Two Rivers (2), Tomahawk, Milwaukee (2) and Burlington (2)	125

ATTACHMENT #1

GAB Election Division's Training Initiatives
(10/06/2008 - 10/31/2008)

Training Type	Description	Class Duration	Target Audience	Number of Classes (10/06/2008 - 10/31/2008)	Number of Students (10/06/2008 - 10/31/2008)
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	October 15, 2008: Important Points to Remember for the November Election; October 29, 2008: Training for Election Day Officials/Election Day Activities	200 - 800 per class
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in date entry; reliers are also able to access the site upon request.
Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
October 6 – November 3, 2008**

Topic	Message	Media	Audience	Follow-up Activities
Wisconsin's elections preparedness.	The state and local clerks are ready for the general election.	Nat Robinson interview on Wisconsin Eye state government TV network: 10/6/08	State cable access TV viewers.	Mailed program copies to state PEG channels, county clerks and major municipal clerks in Wisconsin.
G.A.B. policy on 'HAVA Check,' challenges to voters, Wisconsin Eye interview DVD, WBETS lessons.	Updates on pre-election and Election Day issues for local election officials.	<i>Election Update:</i> 10/10/08	Municipal and county clerks.	Posted to the website.
Various General Election topics.	Things the G.A.B. is doing to get ready for elections.	Kevin Kennedy interview with WIBA radio, Madison: 10/22/08	Madison radio listeners.	
"Accountability Board Sets Guidelines for Election Observers"	Wisconsin has a new rule for election observers.	News release: 10/24/08	General public, voters, Legislature, candidates, news media.	Rule, brochure and form posted to the website.
"Election Officials are Prepared for Election Day – Are You?"	Four things voters can do to be ready for the general election.	News release: 10/28/08	General public, news media.	
Various General Election topics.	Things the G.A.B. is doing to get ready for elections.	Kevin Kennedy interview with Ben Merens of WPR: 10/29/08	State WPR listeners.	
Wisconsin's elections preparedness.	Wisconsin is ready for the general election.	Kevin Kennedy interview with Wisconsin Public Radio: 10/29/08	State WPR listeners.	
Wisconsin's elections preparedness.	Wisconsin is ready for the general election.	Kevin Kennedy meeting with Milwaukee Journal Sentinel editorial board: 10/30/08	Journal Sentinel readers.	

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
October 6 – November 3, 2008**

Wisconsin's elections preparedness.	Wisconsin is ready for the general election.	Kevin Kennedy interview on "Upfront with Mike Gouche": 10/30/08	State Sunday TV viewers in five markets.	
"Top 10 Things a Wisconsin Voter Should Know for Election Day"	Ten key points to remember for voting.	News release: 10/31/08	General public, news media.	
VPA change, emergency election planning, challenges to voters, polling place notes	Be ready for surprises on Election Day, and remember recent decisions of the Board.	<i>Election Update</i> for Election Day: 10/31/08	Municipal and county clerks.	Posted to the website and mailed to clerks without e-mail.
Wisconsin's elections preparedness.	Wisconsin is ready for the general election.	Background briefing for Madison reporters with Kevin Kennedy: 10/31/08	Wisconsin news media.	Sent 11-piece packet of Election Day materials to news media listservs.
"Remember the Four Ps on Tuesday"	Participate, be prepared, be patient, be persistent.	News release: 11/3/08	General public, news media.	
"Last Minute Tips for Wisconsin Voters"	Remember what you have to do on Election Day.	News release: 11/3/08	General public, news media.	
Election observer rule for Election Day.	Why the new rule is important.	Kevin Kennedy interview with WKOW TV, Madison: 11/3/08	WKOW TV viewers.	

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KEVIN J. KENNEDY
Director & General Counsel

MEMORANDUM

DATE: November 11, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Activities

Campaign Finance Program

Richard Bohringer, Tracey Porter and Dennis Morvak, Campaign Finance Auditors

Fall Pre-Election Report

As of 8:00 a.m. on November 6th, 273 personal campaign committees have filed their fall pre-election finance report. Twenty-six committees failed to file the Fall Pre-Election campaign finance report. The committees were sent a failure to file letter on October 31 asking that they submit the report by Friday, November 7. Please see the attached document for a listing of the committees that failed to file.

Audits

Fifteen committees were placed on "R" status, Requesting Termination. The committees on "R" status are no longer required to file campaign finance reports, however, they are required to be available to answer questions and resolve any violations prior to termination being granted.

January Continuing 2009 Report

Filing notices for the January Continuing reports will be sent out to the committees the week of December 15, 2008. All committees required to file the January Continuing report must have the reports submitted to the GAB by February 2, 2009.

Other Activities

The audit staff is continuing work on data conversion and registration updates into the new campaign finance information system. Staff is also continuing to enter transactions and upload reports into the system from the Pre-Election reporting period.

Communications are being drafted to inform the committees of available training in November, December, and January. These sessions will give the committees the information necessary to work within the new campaign finance information system. Version 1.0 of the database was released and available to the public November 6, 2008. We will continue to work with our vendor to make needed updates in future releases.

Action Items

No action is required of the Board at this time.

Contract Sunshine Update Tommy Winkler, Ethics Specialist

INTRODUCTION

Wisconsin's Contract Sunshine Act (2005 Act 410) calls for the creation and maintenance of an Internet site at which anyone may access information about every state contract, purchase, and solicitation of bids or proposals that involves an annual expenditure of \$10,000 or more. *Wisconsin Statutes* direct the Wisconsin Government Accountability Board to create and maintain this site. In enacting the Contract Sunshine Act, the Legislature's intention was to enhance citizens' confidence in the State's procurement process by providing a one-stop Internet location where citizens, the press, vendors, and others can learn about current procurement activities. The legislature intended that the Act provide potential vendors of goods and services with ready access to information about the State's purchases and confirm that the State's procurement programs are operating fairly and efficiently.

KEY MEASUREMENTS

None

MILESTONES

Government Accountability Board staff completed a user acceptance testing and review process for the new version of the Contract Sunshine application back in May 2008. Staff also solicited feedback on the new version of the application from procurement officials at DOA. Due to staffing issues and other agency priorities related to multiple report filing deadlines at the end of July, the Government Accountability Board staff assigned to this project has had other tasks to attend to. Significant work on the Contract Sunshine program has been put on hold until these other items are completed.

LOOK AHEAD

Government Accountability Board staff plans to this fall meet with DOA staff in order to finalize the previously solicited feedback on the new version of the application. After receiving this feedback, GAB staff will meet with personnel from Sundial in order to implement the final changes to the application and release the updated version of the website. GAB staff will meet with DOA personnel to train procurement staff in reporting information using the updated version of the program. After completing this training, correspondence will be sent to all agencies communicating the changes made to current version of the application; the updated version of the application will be released for all agencies to use. It is staff's goal to have all agencies required to report information to the GAB under the Contract Sunshine law do so using the new website by the end of 2008.

ACTION ITEMS

None.

Financial Disclosure Update
Tommy Winkler, Ethics Specialist

INTRODUCTION

State officials and candidates file Statements of Economic Interests under Chapter 19 of Wisconsin Statutes. These statements are filed on an annual basis with the Government Accountability Board, and they are open for public inspection at the time they are filed. A statement identifies a filer's, and his or her immediate family's, employers, investments, real estate, commercial clients, and creditors. The idea is to identify which businesses and individuals an official is tied to financially. The focus is on identifying a filer's financial relationships, not on identifying the individual's wealth. This information is entered into an online index that is managed by Government Accountability Board staff.

KEY MEASUREMENTS

- 178** The number of positions up for election in the spring of 2009 that are required to file a Statement of Economic Interests with the Government Accountability Board under Chapter 19, Wisconsin Statutes.

- 2317** The number of state public officials, active and inactive, who have a filed a 2008 Statement of Economic Interests with the Government Accountability Board as of November 5, 2008. All state public officials identified in Chapter 19, Wisconsin Statutes are required to file a statement with the G.A.B. within 21 days of assuming the position.

- 34** The number of State of Wisconsin Investment Board members who filed a Quarterly Transaction report that is filed with the Government Accountability Board. These reports are completed to ensure an absence of any conflict of interests between the Investment Board member's investment decisions on behalf of the State of Wisconsin and their personal financial interests. They were due on or before October 31, 2008.

MILESTONES

Government Accountability Board staff updated the Statement of Economic Interests filing form and filing instructions that state public officials required to file a statement will use to fulfill the 2009 requirement. These forms will be mailed to approximately 2200 state public officials beginning in late December and ending in early March. Staff has also prepared the spring 2009 timeline for communicating with those candidates running for office who are required to file a statement with the Board by January 9, 2009 in order for their name to appear on the spring primary ballot. A webpage containing filing instructions, deadlines, and relevant forms is also completed and will be made available to the public via the Ethics and Accountability Division website at the end of this month.

Government Accountability board staff also processed 34 Quarterly Transaction reports filed by State of Wisconsin Investment Board members. Investment Board members are required to complete and file this report on or before October 31, 2008. Copies of these reports are sent to the Legislative Audit Bureau for review.

LOOK AHEAD

Government Accountability Board staff will continue preparations for the 2009 annual filing and Spring 2009 election. Final changes to the 2009 filing form and updates in the database application are going to be made and reviewed by staff in September and made by October in order to provide adequate time to construct and mail the necessary materials to potential candidates/filers in the upcoming calendar year. Due to the

uncertainty of our agency's exact time frame for moving into our new location, staff will have all Statements of Economic Interests sent to the post office box currently used by the Government Accountability Board. A business process for ensuring that statements are received by the appropriate staff member will be defined and approved in the next few weeks.

Additionally, staff will continue to work with SunDial Software Corporation on changes to the Eye on Financial Relationships website application in order to improve efficiency in reporting information to the online index. A major part of the proposed enhancement to the website is allowing filers the ability to file their Statements of Economic Interests online. Staff is working to transition to online filing of Statements of Economic Interests for the 2010 filing year.

ACTION ITEMS

None.

Lobbying Update

Barton Jacque, Ethics Specialist

Introduction

Wisconsin has some of the most structured lobbying laws in the country. Lobbyists and organizations that employ lobbyists are governed under Chapter 13 of the *Wisconsin* Statutes. They are required to complete a Statement of Lobbying Activities and Expense Report every 6 months. The report for January – June is due July 31 and the report for July – December is due January 31. They are also required to report within 15 days of lobbying on a specific legislative and administrative proposal and topic.

In addition to the Statement of Lobbying Activity and Expense Reports managed by our agency, all state agencies are required to file Legislative Liaison reports to the Government Accountability Board (the 'Board') every 6 months. Key staff and agency officials who are authorized to affect legislation and administrative rule-making notify the Board of their annual salary and the percentage of time spent on lobbying matters.

Key Metrics

- 785** The number of principal lobbying organizations registered with the Government Accountability Board.
- 699** The number of lobbyists registered to lobby on behalf of one organization.
- 144** The number of lobbyists registered to lobby on behalf of more than one organization.
- 1,787** The number of individual authorizations of lobbyists representing a principal organization.

Noteworthy Activities

We recorded data on those registered lobbyists who provided illegal campaign contributions and administered a forfeiture based on the severity of the offense. To date we have collected \$2,484. In addition

we collected \$400 in penalties from lobbyists who failed to provide proper notification on their lobbying efforts.

Looking Ahead

We are currently preparing for the upcoming 2009-2010 legislative session. Any individual wishing to lobby and any organization that intends to hire a lobbyist in Wisconsin will be required to obtain a license and register with the Board consistent with §13.61 thru 13.75.

Action Items:

No action is required of the Board at this time.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 10 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Special Assistant to the Director

SUBJECT: Administrative Activities

Agency Operations

Introduction

This has been an extremely busy time. The primary administrative focus has been on election preparedness, presentations, space planning, and staff recruitment.

Noteworthy Activities

1. Space Planning

The Department of Administration Secretary, the Governor and the Mullins Group signed the lease for space at 212 East Washington Avenue for the Government Accountability Board. The lease term is scheduled to begin on the latter of December 15, 2008 or when approvals for the Occupancy Permit is obtained and will end on December 31, 2018.

A bid for refurbished furniture for the space was posted in mid-October. On October 30, six bids were received. Department of Administration Facilities staff are currently evaluating the bid proposals. Simultaneously, G.A.B. staff are working on our Voice Data Wiring needs for the location and working with DOA Facilities' staff and the new landlords on the tenant improvement plans for building out the space.

Staff are working diligently on preparing for the move and have put together a move team to determine what needs to be done for a successful transition.

2. Staffing

Attorney Positions

The hiring process has been completed for the two-attorney positions.

Michael Haas began his appointment on October 13. Mike brings a wealth of experience to the position. Mike has 13 years experience as a municipal attorney, advising 3 municipalities (Edgerton, Milton and Stoughton) on election related issues. He has run a statewide campaign on behalf of a candidate for Governor and was a candidate for state public office on two occasions. He also advises the Stoughton City Ethics Commission.

Shane Falk began his appointment on October 27. He also brings a wealth of experience to the position. Shane has 12 years experience as a litigation attorney in Wausau and Madison. He served on the State Elections Board for almost 3 years including service on the SVRS Steering Committee. He also has published an article on BCRA, the Bipartisan Campaign Reform Act of 2002.

EAC Data Collection Grant Positions

We hired two of five positions allocated for the EAC Data Collection Grant. David Meicher began his appointment on October 13 as an Accountant. Kate Schleitwiler began her appointment on October 13 as an Office Operations Associate.

LTE's

In preparation for the fall election we hired ten-data entry specialist LTE's to enter voter registration applications into the SVRS system.

Temporary Services Staff

Due to the volume of voter registration cards, we hired 23 clerical assistants from a Temporary Services agency to process voter registration cards prior to the Election. The temporary staff worked for approximately one-week processing over 10,000 voter registration applications. They opened the forms, sorted them by county, looked them up in VPA, sorted them by municipality and mailed the applications to the appropriate municipality.

4. Presentations

On October 7 and 8, 2008, I participated in round table discussions in the Village of Warrens and the City of Hudson with municipal clerks about preparations for the Fall elections and developing an agenda for future collaboration. This is part of a series of district meetings organized by the Wisconsin Municipal Clerks Association (WMCA) and the Elections Division. Nat Robinson and I along with David Buerger, Ross Hein, Logan Dixon, Dotti Milner and Nate Judnic are sharing duties as part of a set of three-person agency teams to exchange ideas with WMCA members to improve the level of cooperation and support between the Division and municipal clerks.

On October 16, 2008, I briefed Governor Doyle and top staff on election preparedness for the November 4, 2008 election. The Governor's office arranged for clerical and public information support from the Department of Administration. Nat Robinson and I provided a similar briefing for the Department of Administration's Secretary Morgan on October 20, 2008. Our focus was coordinating use of state employees as poll workers and ensuring DOA was prepared to provide the required technical support for the Statewide Voter Registration System. On October 23, 2008, I made a presentation to the Assembly Committee on Elections and Constitutional Law on preparations for the November 4, 2008 election. On October 28, 2008, Nat and I also met with the Wisconsin Emergency Management to review disaster preparedness protocol for the November 4, 2008 election.

On October 17, 2008, Mike Haas and I met with Assistant Attorneys General Chris Blythe and Jennifer Lattis to discuss Election Day and post election litigation planning. I also met with Kevin Potter, the DOJ Director of Legal Services, on October 31, 2008, to discuss communication arrangements in the event of Election Day litigation.

I have been participating in a series of media interviews to add voice and physical presence to the messages crafted by agency staff to communicate to the public on key election issues. This included interviews on October 22, 29, 30, 31 and November 3, 2008. On October 30, 2008, I met with the Milwaukee Journal Sentinel Editorial Board.

The upcoming election has dominated the attention focused on the agency. This included meetings with a series of foreign visitors. On October 27, 2008, Jon Becker and I met with a group of 20 visitors from the Middle East and Northern Africa. This visit was arranged by the Aspin Center at Marquette University. The Organization for Security and Cooperation in Europe has sent a large contingent of observers to the United States. An observer from Germany and one from Kazakhstan were assigned to Wisconsin. Nat and I met with them on October 29, 2008 to provide an overview of election administration in Wisconsin as well as to assist them with arrangements for their observations. On October 31, 2008, we also met with an observer from Japan. On Election Day, I met with a group of observers from Bosnia-Herzegovina, Finland, Germany, Latvia, Macedonia, Morocco, Poland, Saudi Arabia and the United Kingdom in Milwaukee through a program set up by the U.S. State Department.

Looking Ahead

In the next month, we will be working diligently to complete the follow up from the November 4th election. We anticipate the largest turnout in Wisconsin history. Considerable attention has been focused on agency preparation. The election will be followed by the official canvass process, which will likely include several recounts. The Elections Division staff will organize the conduct of the presidential electors meeting to cast the official vote for president and vice-president on December 15, 2008.

The agency is also preparing for a transition to new quarters, where we will all be in one location. This will greatly improve our customer service and agency efficiency. As the year ends, staff will be preparing for a presentation for the State Bar of Wisconsin focusing on the Government Accountability Board following its first full year.

I will also participating in the Council on Governmental Ethics Laws (COGEL) Annual Conference in Chicago. In addition to organizing two panel presentations, I have been informed I will be recognized by COGEL with its Outstanding Service Award for 2008.

Action Items

No action items.