

From: "Liedl, Kimber" <Kimberly.Liedl@legis.wisconsin.gov>
Date: Friday, February 28, 2020 at 4:27 PM
To: AO Records <records@americanoversight.org>
Subject: [Ext]RE: Open Records Request (WI-20-0344)

This email is in response to your open records request dated February 26, 2020. Records responsive to your inquiry are attached.

Should you have any questions, please do not hesitate to contact me.

Kimber Liedl
Office of Senator Scott Fitzgerald
13th Senate District
(608) 266-5660

From: AO Records <records@americanoversight.org>
Sent: Wednesday, February 26, 2020 4:52 PM
To: Sen.Fitzgerald <Sen.Fitzgerald@legis.wisconsin.gov>
Subject: Open Records Request (WI-20-0344)

Dear Open Records Officer:

Please find attached a request for records under Wisconsin's open records laws.

Sincerely,

Vibha Kannan
Paralegal

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As previously discussed, the WEC Commissioners will be voting soon on this document (2018 Delegation of Authority to Administrator - attached below.), which gives a great deal of authority & latitude to the WEC Staff - probably at the Feb 27, 2020 WEC meeting. Fortunately, the Commissioners had agreed to review this Delegation of Authority every year. I am hoping one of the DEM Commissioners will go, along with the idea of a "Strong Commissioner led Commission" rather than a "Weak Commissioner Led Commissioner."

Notice also, that authority is given to the WEC Chair (without approval or consultation with the other Commissioners). Currently, a Republican is Chair, but the Chair changes to a Democrat in May or June of 2020.

Please review and give me a call with your thoughts on this - which items are OK to delegate and which items should be left the Commissioners to decide?

As you may know, should the Staff issue an opinion/policy under this authority, with which some Commissioners may disagree, it would take 4 out of 6 votes to overturn the Staff's recommendation.

If the Commissioners wished to make rule or policy and a 3/3 vote were to occur, the item would not be agreed to until 4 votes were obtained.

This first section is the current delegation of authority to the staff but requires "consultation" with the Commission Chair:

1. To issue compliance review orders under the provisions of Wis. Stat. 5.06;

Comment: These compliant review orders can be important and, I believe, should be reviewed by all commissioners.

2. To certify to sign election related documents including candidate certifications, certificates of election, and certifications of election results on behalf of the Commission;

Comment: Probably OK to expedite this process?

3. To accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECO's) for system previously approved for use in Wisconsin;

Comment: Probably OK?

4. To implement the Commission's determinations regarding sufficiency of nomination papers or qualifications of candidates;

Comment: Currently, the commission members are not made aware of the challenges to the Municipal Clerks, Milwaukee Election Commissions, other candidates, others. The commissioners would find out at the same time as the public, from the WEC opinion / determination. We were made aware of the situation in the Milwaukee County Executive race and the Milwaukee Mayor race - David King. The staff does not like thoughts or input from the commissioners on this subject. This is one very important area in which the commissioners must be involved from the start.

5. To communicate with litigation counsel representing the Commission in order to make timely necessary decisions regarding Commission litigation;

Comment: Here again, the commissioners need to be informed and involved in any commission litigation. Theoretically, the staff would not have had to make the commissioners aware of the existence of the WILL lawsuit - 230 thousand voters - until after the legal strategy was determined by the Staff and the DOJ.

6. To make a finding pursuant to Executive Order #50, Sec. IV(8), that a proposed administrative rule does not have an economic impact.

Comment: One example of this would be the two year extension from the required 30 days for the 234,000 voters and decide if they live at their original address. There was no such recommendation for the end of 2017 list and the registrations were deactivated with 30 days notice. Obviously, commissioners involvement is important.

7. To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. 5.05(2m), subject to the further provisions of this paragraph. The Administrator is required to request approval from the Commission for contracts involving a sum exceeding \$100,000, or for purchases from a statewide contract over \$100,000. The Administrator is required to request approval from the Commission prior to posting a Request for Proposal or Request for Bid. In addition, the Administrator may enter into a sole source contract only after obtaining approval from Commission Chair and providing five days' prior notice to the Commission regardless of the dollar amount.

Comment: I am open on this. Any thoughts?

Section 2 are the authorities delegated to the staff without the requirement of "Consolation" with the commission chair:

1. To exempt municipalities from polling place accessibility requirements pursuant to the provision of Wis. Stat. 5.25(4)(a);

Comment: Probably OK. Needs to be done on expedited basis - not many sites, apparently.

2. To exempt municipalities from the requirement of using voting machines or electronic voting systems pursuant to the provisions of Wis. Stat. 5.40(5m);

Comment: Probably OK For small elections where paper ballots would be authorized.

3. To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of Wis. Stat. 7.30(4)(e)

Comment: This relates to our appointed Republican Paid Election Judges and others. I would certainly want to have knowledge and provide input regarding as to what the problem is, etc. The non-appointment could be a purely partisan party issue.

4. To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. 5.05(2m), for contracts involving a sum not exceeding \$100,000, or for purchases from a statewide contract involving sums not exceeding \$100,000;

Comment: I am open on this?

5. To issue written informal advisory opinions pursuant to Wis. Stat. 5.05(6a) related to recurring issues or issues of first impression for which no formal advisory opinion has been issued;

Comments: This is very important and the commissioners should certainly be involved in this. Remember, it would take a 4/2 vote to overturn one of these advisory opinions. I would certainly like knowledge input before it is written and issued. It has just been pointed out to me that the Staff without any consultation has ruled , someone without proper registration documents cannot fill out a provisional ballot - possibly putting a hole into the argument that someone can register and vote on election day should one mistakenly be deactivated from the registration rolls. The staff says such requests are rare? But, seems like the Staff may generate its own need for advisory opinions.

Please review and call me with your thoughts at 414-276-6331.

Bob

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Bob Spindell
Chair, 4th Congressional District
Republican Party of WI
414 276 6331
CD4.Chairman@wisgop.info

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 JULIE M. GLANCEY
 ANN S. JACOBS
 JODI JENSEN
 DEAN KRUDSON
 MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the January 9, 2018 Commission Meeting
TO: Members, Wisconsin Elections Commission
FROM: Michael Haas, Interim Administrator
SUBJECT: Delegation of Authority to Administrator

At its October 14, 2016 meeting, the Elections Commission approved a Delegation of Authority document to clarify actions and decisions that the Administrator could implement without prior Commission action. The Delegation of Authority was intended to maintain and improve the agency's administrative efficiencies for routine decisions and transactions, and also required the Administrator to report actions to the Commission after the fact and, in some cases, to consult with the Chair prior to taking action. This memorandum recommends that the Commission continue to delegate the same authority regarding various agency responsibilities.

By statute, the Wisconsin Elections Commission has general authority over the state's election laws. In various provisions of the election laws, the Commission is given a series of specific powers in addition to its general authority. Pursuant to Wis. Stat. § 5.05(3g), the Administrator of the Commission serves as the State's chief election officer, and pursuant to Wis. Stat. § 5.05(3d), the Administrator shall perform such duties as the Commission assigns to him or her in the administration of the election laws. Both the State Elections Board and the Government Accountability Board delegated certain authority to their administrative heads in order to facilitate the agency's day-to-day management and to clarify the scope of staff's authority to act without prior specific approval of the oversight body. Given the nature of the Commission's oversight of the agency and its meeting schedule, the Delegation of Authority aims to permit the Administrator to effectively manage the daily responsibilities of the agency while maintaining the Commission's role in making policy determinations, setting agency priorities, and directing significant staff initiatives.

The Commission previously indicated that it wished to review the Delegation of Authority on an annual basis. The recommended Delegation of Authority below is identical to that approved by the Commission in October 2016, except for the last bullet point under Section 2, which was not previously included simply due to an oversight.

Recommendation

Consistent with the Delegation of Authority previously adopted by the Wisconsin Elections Commission, I recommend the Commission delegate the authority described below to the

Administrator, pursuant to the Administrator's role as agency head and chief state election official. In exercising all delegated authority, the Administrator should be required to report, at the Commission meeting immediately following the delegated action, the specifics of the action taken, the basis for taking the action, and the outcome of that action.

1. The following authority should be delegated to the Administrator subject to the requirement that before it is exercised, the Administrator consult with the Commission Chair to determine whether Commission members should be polled or a special meeting conducted before action is taken:
 - To issue compliance review orders under the provisions of Wis. Stat. § 5.06;
 - To certify and sign election related documents including candidate certifications, certificates of election, and certifications of election results on behalf of the Commission;
 - To accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECOs) for systems previously approved for use in Wisconsin;
 - To implement the Commission's determinations regarding sufficiency of nomination papers or qualifications of candidates;
 - To communicate with litigation counsel representing the Commission in order to make timely necessary decisions regarding Commission litigation;
 - To make a finding pursuant to Executive Order #50, Sec. IV(8), that a proposed administrative rule does not have an economic impact.
 - To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), subject to the further provisions of this paragraph. The Administrator is required to request approval from the Commission for contracts involving a sum exceeding \$100,000, or for purchases from a statewide contract over \$100,000. The Administrator is required to request approval from the Commission prior to posting a Request for Proposal or Request for Bid. In addition, the Administrator may enter into a sole source contract only after obtaining approval from Commission Chair and providing five days' prior notice to the Commission regardless of the dollar amount.
2. The following authority should be delegated to the Administrator without the requirement for prior consultation with the Commission Chair before action is taken:
 - To exempt municipalities from polling place accessibility requirements pursuant to the provisions of Wis. Stat. § 5.25(4)(a);
 - To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of Wis. Stat. § 5.40(5m);

- To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of Wis. Stat. § 7.30(4)(e);
- To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), for contracts involving a sum not exceeding \$100,000, or for purchases from a statewide contract involving sums not exceeding \$100,000.
- To issue written informal advisory opinions pursuant to Wis. Stat. §5.05(6a) related to recurring issues or issues of first impression for which no formal advisory opinion has been issued.

In making the above recommendations, I would note the following. Applications for exemption from accessibility requirements are rare and generally involve last minute construction issues. Permitting a municipality to use paper ballots instead of electronic voting equipment is a fairly routine decision that is predicated on unique circumstances such as the cost of programming electronic voting equipment when there is only one race on the ballot. Post-election certifications are generally administrative in nature, time sensitive and necessary to ensure an orderly transition of leadership following an election. These election-related certifications cannot be completed while a recount or litigation challenging a recount is pending. Wis. Stat. § 7.70 (5)(a). Regarding contract authority, agency purchases are governed by state procurement requirements, and very few contracts involve an amount exceeding \$100,000.

Finally, Wis. Stat. §5.05(6a) specifically permits the Commission to authorize the Administrator to issue informal written advisory opinions subject to any limitations the Commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the Commission or applicable statutes or case law. Requests for such informal advisory opinions are rare and the Administrator is required to review any such opinions issued at the next meeting of the Commission. The Commission may choose to issue a formal advisory opinion adopting or modifying the informal advisory opinion. If the Commission disagrees with an opinion issued by the Administrator, it may withdraw the opinion or request an opinion of the Attorney General.

A proposed motion is set out below.

Recommended Motion:

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

1. The following authority is delegated to the Administrator subject to the requirement that before it is exercised, the Administrator consult with the Commission Chair to determine

whether Commission members should be polled or a special meeting conducted before action is taken:

- To issue compliance review orders under the provisions of Wis. Stat. § 5.06;
 - To certify and sign election related documents including candidate certifications, certificates of election, and certifications of election results on behalf of the Commission;
 - To accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECOs) for systems previously approved for use in Wisconsin;
 - To implement the Commission's determinations regarding sufficiency of nomination papers or qualifications of candidates;
 - To communicate with litigation counsel representing the Commission in order to make timely necessary decisions regarding Commission litigation;
 - To make a finding pursuant to Executive Order #50, Sec. IV(8), that a proposed administrative rule does not have an economic impact.
 - To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), subject to the further provisions of this paragraph. The Administrator is required to request approval from the Commission for contracts involving a sum exceeding \$100,000, or for purchases from a statewide contract over \$100,000. The Administrator is required to request approval from the Commission prior to posting a Request for Proposal or Request for Bid. In addition, the Administrator may enter into a sole source contract only after obtaining approval from Commission Chair and providing five days' prior notice to the Commission regardless of the dollar amount.
2. The following authority is delegated to the Administrator without the requirement for prior consultation with the Commission Chair before action is taken:
- To exempt municipalities from polling place accessibility requirements pursuant to the provisions of Wis. Stat. § 5.25(4)(a);
 - To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of Wis. Stat. § 5.40(5m);
 - To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of Wis. Stat. § 7.30(4)(e);
 - To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), for contracts involving a sum not

exceeding \$100,000, or for purchases from a statewide contract involving sums not exceeding \$100,000.

- To issue written informal advisory opinions pursuant to Wis. Stat. §5.05(6a) related to recurring issues or issues of first impression for which no formal advisory opinion has been issued.

< Bob Spindell 1
4147917516



SMS/MMS

Tuesday, February 18, 2020



<Subject: Dan:>

Pls give me a call
[414-276-6331](tel:414-276-6331)

MMS
6:32 PM

Wednesday, February 26, 2020

Hi Bob, Dan from Fitz's office here. I read through the materials, I think you're on the right track with a lot of it, I don't have a lot of feedback.



7:04 PM

Lets see how the discussion goes tomorrow and go from there. Thanks again for keeping us in the loop, much appreciated



7:06 PM