

## **Wisconsin's Spring Election: Considerations for School Districts**

On April 2, 2020, Judge William Conley of the United States District Court for the Western District of Wisconsin issued an order that extended the deadline for the receipt of absentee ballots by municipal clerks to 4:00 p.m. on Monday, April 13, 2020. The Court followed up with an order prohibiting municipal clerks from disclosing either unofficial or official election results until after 4:00 p.m. on April 13, 2020. Other court orders and emergency declarations were issued by various courts and the Governor, all of which have been voided or vacated by higher courts.

Ultimately, the Spring Election was held on April 7, 2020. Electors voting by absentee ballot had to deliver it to a polling place no later than 8:00 p.m. on Election Day or, if mailed, the ballot must be postmarked no later than April 7th and be received by the voter's municipal clerk no later than 4:00 p.m. on April 13, 2020.

Subsequent to the issuance of Judge Conley's order, the Wisconsin Elections Commission ("WEC") issued a directive prohibiting municipal clerks from counting votes or conducting the municipal canvass until after 4:00 p.m. on April 13, 2020.

Under current Wisconsin law, municipal election inspectors must conduct their canvasses immediately after the polls close on Election Day. In municipalities with an absentee ballot canvassing board, that board must convene any time after the opening of the polls and no later than 10:00 p.m. on Election Day to canvass absentee ballots. Municipal clerks then have the obligation to turn over school district election materials to school districts no later than 4:00 p.m. on the date following the election, which would be April 8, 2020. This timeline is impossible given the current WEC directive to not count votes or conduct the canvas until after 4:00 p.m. on April 13, 2020.

By statute, school district canvassing boards must convene no later than 9:00 a.m. on the Tuesday following the election to canvass the returns for the school district. The school district canvassing board will have been selected on or before April 6, 2020 and will have signed their oaths of office. If the school district clerk is a candidate at the election, he or she will have selected two individuals to be members of the board of canvassers and those two persons will then have selected a third person to act as a member. If the school district clerk is not a candidate, he or she, together with two other persons selected by the clerk, will act as the school district canvassing board.

Because of the additional time for absentee ballots to be received and the delay in municipal canvassing, it is *unlikely* that school district canvassing boards will be required to meet by the existing statutory deadline as it is unrealistic to expect that municipal clerks will be able to deliver election materials to school district clerks by 9:00 a.m. on April 14, 2020.

To date, the WEC has not provided a deadline either for municipal clerks to deliver election materials to school districts or for the school district canvass to be complete. This is perfectly understandable as the WEC has had to contend with emergency declarations and court orders right up to the eve of the election. The WEC has stated, however, that it will provide guidance later this week on procedures for April 13, 2020, and thereafter.

The school district canvass has also been complicated by the very thing that has caused all of these issues in the first place—COVID-19. The "Safer at Home" order is still in effect, social distancing is still required, and school districts remain closed for instruction. Districts may also have canvassing board members who are reluctant to participate in

light of health concerns or who may just not be available at a later date.

Although there is no specific direction on the timing of the canvass or whether the canvass can be handled remotely or virtually, school districts are advised to be prepared for the following:

1. Municipal clerks will want to know when and where to deliver election materials. Districts should work with municipal clerks to arrange for delivery of those materials. Please remember that security is important and that, once received, materials should be placed in a secure location with limited access. As always, when materials are delivered, they should be in sealed containers (ballots in ballot bags/boxes if separate school district ballots; poll list, tally sheet, and statement of municipal canvassers in a sealed carrier envelope).
2. Districts must post a notice of their canvassing board meeting at least 24 hours before the meeting. The canvass must be conducted publicly, and it is not uncommon for candidates to attend. If virtual or remote meetings are allowed, it probably will be very important to make sure that the public cannot only hear but see what is occurring (i.e., that the poll list, tally sheet, and statement are in a sealed envelope, that the board is reviewing the required documents, etc.). Upon completion of the canvass, the board must prepare a written statement showing the numbers of votes cast for each person for each office and for and against each referendum question as well as a determination showing the names of the persons who are elected to the school board and the results of any referendum. Each statement and determination must be attested by each of the canvassers.
3. If a canvassing board member is unavailable, Wisconsin law does permit the clerk to appoint another individual to fill a temporary vacancy. It is important to remember that, should there be a recount, the same individuals who act as the canvassing board for the election will generally act as the canvassing board for the recount.
4. If the district is holding a building or bond referendum, the district should contact its bond counsel to address any concerns bond counsel may have regarding the canvass.
5. Districts are required to report referendum results to DPI “within 10 days after the referendum is held.” DPI has stated that due to current circumstances it will count the 10-day period from Monday, April 13. Therefore, referendum reports will not be due to DPI through the SAFR system until Thursday, April 23. However, DPI encourages districts to complete their reports as soon as possible. DPI will also follow up directly with districts for preliminary results on April 14.

The canvass does not end the school election process. Successful candidates must be provided with certificates of election by the school district clerk, recounts are a possibility, and school board members must sign oaths of office on or before April 27, 2020.

The Boardman Clark School Law Practice Group is available to answer questions related to election procedures, including those arising from the current pandemic.

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