

# State of Wisconsin \ Government Accountability Board

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## MEMORANDUM

**DATE:** February 4, 2015

**TO:** Wisconsin County Clerks  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** Michael Haas  
Elections Division Administrator

**SUBJECT:** Election Inspector Service at Election Where A Candidate's Success or Failure May Affect the Inspector Financially

### Summary

A common question which arises around elections, especially local elections, is whether an election inspector may work at an election where a family member is a candidate on the ballot. Due to a recent formal opinion issued by the Attorney General, the Government Accountability Board (G.A.B.) has revisited this issue and the Board approved updated guidance at its meeting of January 13, 2015. The Board has concluded that the Ethics Code for Local Public Officials prohibits an election inspector from working at a specific election under circumstances in which a candidate's success or failure to win election would affect the inspector financially, including if a candidate is a spouse or immediate family member of the election inspector.

### Background

In October 2014, the Attorney General issued a formal opinion concluding that local boards of canvassers are subject to the requirements of the Open Meetings Law. The local board of canvassers convenes after the polls close as a governmental unit and consists of some or all of the election inspectors working at the polling place. Election inspectors (and therefore members of the local board of canvassers) are appointed by the municipal governing body for a specified term of two years.

While the duties of election inspectors during Election Day may be described as administrative or ministerial, the local board of canvassers acts as a body and may be required to exercise some judgment or discretion in the processing of ballots and tallying of results. Therefore, inspectors who also serve as members of the local board of canvassers qualify as local public officials who are subject to the Code of Ethics in Chapter 19 of the Wisconsin Statutes. *See Wis. Stat. §19.41(7w)(c), (7x).*

Previously, when assessing whether an election inspector should serve at an election where a family member was on the ballot, G.A.B. staff had focused on the election laws and the inspector's ability to be impartial, as well as the appearance of impartiality. The Attorney General's opinion prompted the Board to reconsider its guidance in light of the provisions of the Ethics Code for Local Public Officials.

Local public officials are subject to the provisions of Wis. Stat. §19.59, including the following relevant restrictions:

***19.59 Code of ethics for local government officials, employees and candidates***

***(1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family. . . .***

***(c) Except as otherwise provided in par. (d), no local public official may:***

***1. Take any official action substantially affecting a matter in which the official, a member of his or immediate family, or an organization with which the official is associated has a substantial financial interest.***

***2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.***

In the Ethics Code, "immediate family member" includes an individual's spouse and an individual's relative by marriage or children who receive, directly or indirectly, more than one-half of their support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support. *Wis. Stat. §19.42(7)*.

Inspectors who serve as members of the local board of canvassers are charged with duties to determine the intent of electors who have not clearly marked ballots, and to determine whether a ballot should be counted. These tasks may involve the use of their own judgment and discretion, and may also affect the election or defeat of candidates on the ballot. Given that local elected officials receive some compensation for their service, it appears that the Ethics Code would require an election inspector to refrain from taking any discretionary action or casting a vote as a member of the canvass board which would potentially affect the ability of a spouse or other immediate family member to win an election and receive a financial gain or substantial benefit.

In the Board's opinion, therefore, an election inspector, particularly when acting as a member of the local board of canvassers, may be put in a position of violating Wis. Stat. §19.59 by either:

1. Using his or her public position to obtain financial gain for their own private benefit or the private benefit of a spouse or other immediate family member, or
2. Taking an official action affecting a matter in which the official or immediate family member has a substantial financial interest, or

3. Using his or her public position in a way that produces or assists in producing a substantial benefit for the inspector or an immediate family member.

Furthermore, under certain circumstances a potential conflict of interest likely arises if the inspector's relationship with the candidate is not as a spouse or immediate family member, but simply someone who shares the same household, or involves other circumstances in which the financial interests are intertwined. In that case, if the ability of the candidate to earn compensation through being elected to the public office affects the inspector's finances (by reducing rent or other household costs, for instance), the use of the public office of election inspector would provide a financial gain to the inspector irrespective of the family relationship between the inspector and the candidate.

To avoid a violation of the Ethics Code, local public officials may recuse themselves from the specific action or decision which poses a conflict of interest. That is likely to be an impractical solution in many cases because recusal of one election inspector would result in a two-member board of canvassers that may be unable to resolve disputed ballots. In addition, the inspector who may possess the conflict of interest would be unable to act with regard to any ballots cast for the office being sought by the immediate family member, and by the time a potential conflict situation arises, it would likely be too late to replace the inspector with another individual who could serve on the local board of canvassers.

### Conclusion

For these reasons, it is the opinion of the Board that election inspectors may not serve at elections where their spouse or immediate family member is a candidate on the ballot, or under other circumstances where a candidate's success or failure to win election would affect the election inspector financially. While the inspector's service as a member of the local board of canvassers does not in itself necessarily violate the Ethics Code, as a practical matter it would be difficult to remedy an actual or perceived conflict of interest on Election Day or Election Night. The prudent approach is to not permit election inspectors to work as members of the local board of canvassers or as election inspectors in the event that they are a spouse or immediate family member of a candidate on the ballot, or under circumstances in which the candidate's success or failure to win election would affect the inspector financially.

Please keep in mind that violations of the Ethics Code for Local Public Officials are enforced by local district attorneys. Therefore this opinion is advisory and is not binding on district attorneys who are responsible for making determinations based upon individual facts and circumstances.

If you have any questions regarding this guidance, please contact G.A.B. Help Desk at [gabhhelpdesk@wi.gov](mailto:gabhhelpdesk@wi.gov) or (608) 261-2028.