

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 300 Southeast

State Capitol

Madison, Wisconsin

November 11, 2008

9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Declined to reconsider a previous decision not to allow the use of blind trusts by state public officials.	3
B. Directed staff to develop a recommendation, including standards and uniform guidance, for local clerks to perform retroactive "HAVA Checks" for consideration no later than the January 2009 meeting.	3
C. Directed staff to promulgate amendment of GAB 1.28, pertaining to "issue ads" and the definition of "political purpose."	4
D. Reaffirmed three former Elections Board formal opinions and five administrative rules relating to training and selection of election officials, and duties and responsibilities of campaign treasurers.	4
E. Reaffirmed ten former Ethics Board formal opinions relating to local officials/gifts and meals and local officials/other issues, and held 35 formal opinions relating to local officials/conflicts of interest and local officials/gifts and meals for further review.	4

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

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, Shane Falk, Michael Haas, Sharrie Hauge, Ross Hein, Bart Jacque and Kyle Richmond

A. Call to order

Chairman Cane called the meeting to order at 9:35 a.m.

B. Director's Report of Appropriate Notice of Meeting

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

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the October 6, 2008, Government Accountability Board meeting. Moved by Nichol, seconded by Manian. Motion carried.

D. Public Hearing on Administrative Rules

1. GAB Chapter 4, Elections Observers
2. GAB Chapter 5, Ballot and Electronic Voting System Security

Director Kennedy and Ross Hein gave a summary of the two administrative rules.

Before moving to public comment, Judge Nichol requested to speak and congratulated the G.A.B. staff, Wisconsin's local election officials, and other state officials, including the Department of Administration management and staff, on a successful election on November 4, 2008. The other members of the Board concurred.

E. Public Comment

1. **Joe Mikolajczak**, New Berlin, appeared to comment about GAB Chapter 4, the election observer rule.
2. **Matt O'Neill**, representing the Democratic Party of Wisconsin, appeared to comment about GAB Chapter 4, the election observer rule.
3. **Paul Malischke**, Madison, appeared to comment about GAB Chapter 4, the election observer rule and distributed some suggestions for the Board's consideration.
4. **Robert Welch**, representing the Wisconsin Broadcasters Association, and **Thomas Fonfara**, representing the Wisconsin Newspaper Association, appeared to comment about GAB Chapter 4, the election observer rule.
5. **Paul Malischke**, representing Fair Elections Wisconsin, appeared to comment about GAB Chapter 5, ballot and electronic voting system security and distributed some suggestions for the Board's consideration.
6. **George K. Steil, Sr.**, representing Attorney General J.B. Van Hollen, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 26-39 of the G.A.B. meeting packet for the November 11, 2008 meeting.
7. **Donald K. Schott**, representing Justice Patience Roggensack, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 26-39 of the G.A.B. meeting packet for the November 11, 2008 meeting.

Hearing no objections, the Chairman called a recess at 11:25 a.m. and reconvened the meeting at 11:41 a.m.

8. **Bob Ohlsen**, Dane County Clerk, appeared to comment about GAB Chapter 4, the election observer rule, and on proposed action regarding retroactive “HAVA Checks.” Mr. Ohlsen urged the Board to delay commencement of retroactive HAVA checks until after the 2009 Spring Election. Materials related to the second topic can be found on a handout distributed to the Board at the G.A.B. meeting of November 11, 2008.
9. **Kim Bushey**, Walworth County Clerk, appeared to comment about proposed action regarding retroactive “HAVA Checks.” Ms. Bushey concurred with Mr. Ohlsen’s suggestion concerning the timing of retroactive “HAVA Checks”. Materials related to this topic can be found on a handout distributed to the Board at the G.A.B. meeting of November 11, 2008.
10. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment about the proposed administrative rule defining the scope of campaign finance regulation, GAB 1.28. Materials related to this topic can be found on pages 40-48 of the G.A.B. meeting packet for the November 11, 2008 meeting.

Hearing no objection, the Chairman took up Item G out of order.

G. Use of Blind Trusts by State Public Officials

Jonathan Becker summarized the issue for Board members.

MOTION: Allow the use of blind trusts, the requirements for which will be determined. Moved by Manian, seconded by Cane.

Roll call vote: Brennan:	No	Cane:	Aye
Eich:	No	Manian:	Aye
Myse:	No	Nichol:	No

Motion failed, 2-4.

F. Proposed Action Regarding Retroactive HAVA Checks

Nathaniel E. Robinson summarized the issue for Board members.

MOTION: Direct staff to develop a recommendation for consideration regarding guidance to be provided to local clerks for the implementation of retroactive HAVA checks. The Board will consider the recommendation at its January 2009 meeting. In order to ensure statewide consistency, the Board also reaffirms its direction to local clerks not to initiate retroactive HAVA checks until further action by the Board. Moved by Nichol, seconded by Myse.

MOTION: Amend the original motion to begin with “As directed at its August 27, 2008 meeting...” and insert “no later than” in the second sentence after the word

“recommendation” and strike the word “at.” Moved by Nichol, seconded by Brennan.
Motion to amend carried.

Original motion carried as amended.

The Chairman called a break for lunch at 1:00 p.m. and reconvened the meeting at 1:30 p.m.

H. Proposed Administrative Rule Defining the Scope of Campaign Finance Regulation, GAB 1.28.

Jonathan Becker summarized the alternative draft rules in the Board’s materials.

MOTION: Amend GAB 1.28 according to Proposed Rule (Alternative 1) as set out on pages 41-2 of the Board’s materials. Moved by Eich, seconded by Myse.

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

Motion carried, 6-0.

I. Review of Select Former State Elections Board Operating Procedures, Opinions and Rules Related to:

1. Training and Selecting Election Officials
2. Duties and Responsibilities of Campaign Treasurers

MOTION: Reaffirm Opinion El.Bd. 75-1 and Administrative Rules El.Bd 11.01, 11.02, 11.03, 11.04, and 11.05 relating to training and selection of election officials. Moved by Myse, seconded by Eich. Motion carried.

MOTION: Reaffirm Opinions El.Bd. 74-11 and El.Bd. 74-15 relating to duties and responsibilities of campaign treasurers. Moved by Myse, seconded by Nichol. Motion carried.

J. Review of Select Former State Ethics Board Operating Procedures, Opinions and Rules Related to:

1. Local Official – Conflicts of Interest
2. Local Officials – Acceptance of Items
3. Local Officials – Other

MOTION: Reaffirm 2003 Wis Eth Bd 16, 2002 Wis Eth Bd 7, 1997 Wis Eth Bd 15, 1992 Wis Eth Bd 17, 1992 Wis Eth Bd 9, 1992 Wis Eth Bd 8, 2006 Wis Eth Bd 01, 2003 Wis Eth Bd 13, 1999 Wis Eth Bd 1, 1998 Wis Eth Bd 16, and postpone action on 1993 Wis Eth Bd 8 and 1992 Wis Eth 31, and any items

pertaining to conflicts of interest. Moved by Nichol, seconded by Myse. Motion carried.

K. Director's Report

Elections Division Report

(Presented by Nathaniel E. Robinson)

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

A special report on the November 4 General and Presidential Election was also provided to the Board. Board members reiterated their praise for agency staff for a well-run problem-free election.

Judge Myse requested that a report be made on voting systems and security compliance monitoring for future elections, and that the election observer "Rules-at-a-Glance" brochure be rewritten. The other members of the Board concurred.

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)

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

Board members expressed their appreciation for G.A.B. staff members' work on the agency budget and plans to move, and especially thanked Sharrie Hauge for her effort on the budget.

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
Eich:	Aye	Manian:	Aye
Myse:	Aye	Nichol:	Aye

Motion carried.

Hearing no objection, the Chairman called a recess at 3:40 p.m. The Board reconvened in closed session beginning at 3:47 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: None considered.
- B. Investigations: Seventeen matters considered; 10 matters closed.

The meeting adjourned at 4:50 p.m.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Wednesday, December 17, 2008, in Room 150, Risser Justice Building, 120 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.

November 11, 2008 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

November 14, 2008

Date

November 11, 2008 Government Accountability Board meeting minutes certified by:

December 17, 2008

Judge Michael Brennan, Board Secretary

Date