



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 25, 2024

OAG-01-24

Mr. Carlos A. Pabellón
Dane County Corporation Counsel
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Dear Corporation Counsel Pabellón:

¶ 1. You seek an opinion about the meaning of Wis. Const. art. III, § 7(2), which was created through referendum at the April 2024 election following passage of joint resolutions by the Wisconsin Legislature. Article III, section 7(2) provides that “[n]o individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum.” I construe your request as asking two questions about the provision: (1) the meaning of “election official designated by law”; and (2) the meaning of “task in the conduct of any primary, election, or referendum.”

¶ 2. I conclude that “election official” has the same meaning in the new constitutional provision as it has in the statutes, *see* Wis. Stat. § 5.02(4e), and that a “task in the conduct of any primary, election, or referendum” refers to work in directing or leading the administration of an election. The legislative record shows that the provision was proposed in response to the perception that a local election official had lost control of the oversight of an election. Article III, section 7(2) does not apply to more ordinary circumstances in which an election official works with or is assisted by non-election officials in ensuring the proper administration of an election, such as work with vendors on the layout and printing of ballots, information technology personnel on software and hardware security, law enforcement personnel on ballot transport, or employees or volunteers assisting with mailings or other clerical work.

¶ 3. Your first question relates to the position that does the work described in Wis. Const. art. III, § 7(2): “an election official designated by law.” You ask whether “election official designated by law” is synonymous with “[e]lection official” as defined in Wis. Stat. § 5.02(4e). It is.

¶ 4. “The constitution means what its framers and the people approving of it have intended it to mean, and that intent is to be determined in light of the circumstances in which they were placed at the time.” *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶ 19, 295 Wis. 2d 1, 719 N.W.2d 408 (quoting *State ex rel. Bare v. Schinz*, 194 Wis. 397, 404, 216 N.W. 509 (1927)). In construing a provision of the constitution, courts examine three primary sources: “the plain meaning, the constitutional debates and practices of the time, and the earliest interpretations of the provision by the legislature, as manifested through the first legislative action following adoption.” *Id.*

¶ 5. The plain language of Wis. Const. art. III, § 7(2) answers your first question. That constitutional provision requires “election official[s] designated by law” to carry out the work described. Wis. Const. art. III, § 7(2). The provision does not create its own definition of “election official,” but simply defines the role by reference to other “law” that designates a position as an election official.

¶ 6. That law exists in Wisconsin statutes. The definitional section of the election statutes broadly defines “[e]lection official” as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). “Election” is defined to include public primaries, elections, and referenda. Wis. Stat. § 5.02(4), (16s).

¶ 7. Numerous officials are charged with “duties relating to the conduct of an election” within the meaning of Wis. Stat. § 5.02(4e). Among others, they include village clerks, who “perform any duties prescribed by law relative to elections,” Wis. Stat. § 61.25(1); municipal clerks, including city clerks, who have “charge and supervision of elections and registration in the municipality,” Wis. Stat. § 7.15(1); county clerks, who are designated as “the chief election officer[s] of the county,” Wis. Stat. § 59.23(2)(i); municipal and county boards of canvassers, Wis. Stat. §§ 7.53, 7.60, 9.01; and school district clerks, Wis. Stat. §§ 120.05(1)(b), 120.06(8).

¶ 8. Because the statutes impose “duties relating to the conduct of an election” on all these officials, they are “[e]lection official[s]” within the meaning of Wis. Stat. § 5.02(4e). And because they are thus each an “election official designated by law,” they are election officials within the meaning of Wis. Const. art. III, § 7(2).

¶ 9. You mention Wis. Stat. § 7.30, which states that “[o]nly election officials appointed under this section or s. 6.875 may conduct an election.”¹ Wis. Stat. § 7.30(2)(a). But Wis. Stat. § 7.30 regulates eligibility for and the appointment and tenure in office of specific election officials. *See, e.g.*, Wis. Stat. §§ 7.30(1) (specifying number of inspectors for each polling place), 7.30(2)(a) (specifying qualification of a chief inspector), 7.30(2)(am) (allowing 16- and 17-year-olds to serve as inspectors), 7.30(3) (providing for municipal clerk or director of the board of election commissioners to select tabulators). It does not negate the statutes empowering clerks and other election officials to run elections or create a competing definition of “election official” that is narrower than the definition in Wis. Stat. § 5.02(4e), and it does not change the meaning of “election official” in Wis. Const. art. III, § 7(2).

¶ 10. Your second question relates to the activities that Wis. Const. art. III, § 7(2) requires to be performed by election officials: “any task in the conduct of any primary, election, or referendum.” As you point out, the word “task” does not appear in Wisconsin’s elections statutes, and there are many non-election officials and entities that perform activities relating to an election, such as commercial printers who help lay out and create ballots; information technology staff responsible for the software and hardware security of the voter registration system and voting tabulation; vendors who provide technical guidance and troubleshooting regarding the equipment’s operation and maintenance; law enforcement personnel who transport sealed ballots to the office of the clerk; and designated employees or volunteers who are assigned to assist with absentee ballot mailings or other clerical work.

¶ 11. I conclude that Wis. Const. art. III, § 7(2) does not require such work to be performed by election officials. It also does not apply to activities that are distinct from *the administration* of an election, such as the kinds of efforts by non-election officials to encourage voting that commonly take place in connection with elections. Instead, Wis. Const. art. III, § 7(2) applies to activities in directing or leading the administration of the election.

¶ 12. To begin with, the legislative record associated with the adoption of this new provision of the Wisconsin Constitution supports a narrow interpretation of its scope. *See generally Dairyland Greyhound Park*, 295 Wis. 2d 1, ¶ 19 (constitutional debates are relevant to construing a constitutional provision). In written testimony, the lead author in the state senate of the joint resolutions that included then-proposed Wis. Const. art. III, § 7(2), State Senator Eric Wimberger, described

¹ Wisconsin Stat. § 6.875 discusses special voting deputies.

concerns regarding the conduct of the 2020 general election in the City of Green Bay, asserting in part:

[T]he City Clerk . . . found herself excluded from elections meetings by the “grant team.” Due to the stipulations of the grant [an outside consultant] orchestrated the fall election and acted as a city clerk would act, though paid by [the grantor], including managing staff and having access to ballots.²

¶ 13. While there is a dispute as to the circumstances of that situation, this context illustrates that the prohibition on having non-election officials “perform any task in the conduct of any primary, election, or referendum” was aimed at preventing election officials from losing control of the oversight of the administration of elections. There is no indication that Wis. Const. art. III, § 7(2) was intended to sweep much more broadly and change the way in which election officials work with or are assisted by non-election officials in the vast majority of jurisdictions.

¶ 14. The plain language of the amendment further supports the conclusion that its application is limited to activities in directing or leading the administration of an election. The word “task” must be read not in isolation, but rather in the context of the words around it. The Wisconsin Supreme Court has recognized that “terms in . . . constitutional provisions, should be construed to give effect ‘to each and every word, clause and sentence’ and ‘a construction that would result in any portion

² Wis. Legis. Council, Hearing Materials for 2023 Wis. S.J. Res. 78, Testimony of State Sen. Eric Wimberger, J. Comm. on Shared Revenue, Elections & Consumer Prot. and Assemb. Comm. on Campaigns & Elections, *Testimony on Senate Joint Resolution 78 Senate* (Oct. 24, 2023), https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2023/sjr78/sjr0078_2023_10_24.pdf; *accord* Wis. Legis. Council, Hearing Materials for 2021 Wis. S.J. Res. 101, Testimony of State Sen. Eric Wimberger, S. Comm. on Elections, Election Process Reform & Ethics, *Testimony on Senate Joint Resolution 101* (Feb. 7, 2022), https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sjr101/sjr0101_2022_02_07.pdf; *see also* Cosponsorship Memorandum from State Reps. August and Bodden and State Sen. Wimberger to All Wisconsin Legislators (Sept. 19, 2023), https://www.wheelerbilltracking.com/upload/files/lrb/doc_5409532596509ff713b6884.44232304.pdf (“In at least one case, private employees played a concerning role in the administration of the presidential election.”); Cosponsorship Memorandum Email from State Reps. August and Vorpapel and State Sen. Wimberger to All Wisconsin Legislators (Feb. 2, 2022 09:04 CST) (on file with the Wisconsin Department of Justice) (“In at least one instance, private individuals from [the grantor] played a concerning role in the administration of the election.”).

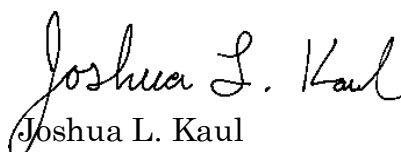
of a statute being superfluous should be avoided wherever possible.” *Wagner v. Milwaukee Cnty. Election Comm’n*, 2003 WI 103, ¶ 33, 263 Wis. 2d 709, 666 N.W.2d 816 (citation omitted).

¶ 15. In Wis. Const. art. III, § 7(2), the word “task” is limited by the prepositional phrase that follows it: “in the conduct of any primary, election, or referendum.” “[T]ask[s] in the conduct of . . . election[s]” refers to the work of conducting an election. Wis. Const. art. III, § 7(2). And the noun “conduct,” in this context, means “the act, manner, or process of carrying on: MANAGEMENT.”³ “Tasks in the conduct of an election” are thus not everything relating to the election more broadly, but activities in directing or leading the administration of the election.

CONCLUSION

¶ 16. In sum, I conclude that the meaning of “election official” is the same under Wis. Const. art. III, § 7(2) and Wis. Stat. § 5.02(4e) and that the work that Wis. Const. art. III, § 7(2) requires to be performed by election officials is work in directing or leading the administration of an election.

Sincerely,


Joshua L. Kaul
Attorney General

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³ *Conduct*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/conduct> (last visited June 20, 2024); *see also id.* (meanings of “conduct” when used as a transitive verb include “to direct or take part in the operation or management of,” “to direct the performance of,” and “to lead from a position of command”).