



SENATOR JANET BEWLEY

WISCONSIN STATE SENATE

To: Senate Committee on Elections and Utilities
From: Senator Janet Bewley
Date: October 12, 2017
Subject: Testimony in support of Senate Bill 66, relating to allowing a local public official to serve as an election official.

Good (morning/afternoon) Chairman LeMahieu and committee members Thank you for giving me the opportunity to testify in support of Senate Bill 66. I am proud to be working with Rep. Subeck on this legislation.

Over the years, many local elected officials in our cities, villages, and towns have served their communities by being election official on Election Day. In the district that I represent, Northwest Wisconsin, the towns and villages are so small that having public officials work the polls is very common

That is why that I feel strongly that this bill much pass. The League of Wisconsin Municipalities recently interpreted state law to read that is illegal for such local elected officials to work in polling locations. If SB 66 does not become law that means for my district at least, that many local small-town communities are going to be hard pressed to find sufficient staffing during the next election, hindering the citizens they serve from smoothly partaking in the democratic process we all hold dear.

Currently in state law, a local elected official cannot hold another office or position of employment within the city, town, or village with three exceptions. If they're a volunteer firefighter or first responder, serving as their county's supervisor, or if serving their community in a way that only a per diem is paid. SB 66 add a fourth exception, that of serving as an election official, to this list.

Both Representative Subeck and I understand the importance of the right to vote, and especially the right to vote free from intimidation. Therefore, SB 66 will prohibit an elected official from serving as an election official when his or her name on the ballot.

Who better to help run our elections than our local elected officials? They've served in the past and there have been no issues caused by their presence. This is a common sense reform that ensures are local elected can continue to legally do a job they've often held before and should continue to hold moving forward.

I want to thank all of you for your time and attention to this important issue, and I would be happy to answer any questions or concerns you may have.



25th Senate District

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Lisa Subeck

STATE REPRESENTATIVE

To: Senate Committee on Elections and Utilities
From: Representative Lisa Subeck
Date: October 12, 2017
Subject: Testimony in support of Senate Bill 66, relating to allowing a local public official to serve as an election official.

Chairman Lemahieu and members of the Senate Committee on Elections and Utilities:

Thank you for the opportunity to testify on Senate Bill 66, which would allow municipal elected officials to serve as election officials in their municipalities.

For many years, elected officials of cities, villages, and towns also served their communities as poll workers. Last year, the City of Madison and other municipalities received guidance from the League of Wisconsin Municipalities and their own city attorneys that this practice is actually prohibited under state statute. This new guidance left many municipalities without poll workers they normally relied upon to administer elections. In the City of Madison, four of our City Council members previously served as chief polling inspectors, leaving the Clerk scrambling for new Chief Inspectors shortly before Election Day.

Under current law, a member of a municipality's governing body is prohibited from holding another office or position of employment within the city, village or town with just three exemptions. One exemption allows an elected official to represent the governing body on city, village or town boards and commissions where no compensation other than a per diem, if one is paid to other board or commission members, is paid. A second exemption allows municipal officials to serve as volunteer fire fighters, emergency medical technicians, or first responders whose annual compensation, including fringe benefits, does not exceed \$15,000. The final exemption allows a city, village, or town elected official to serve as a County Board Supervisor. SB 66 would add service as an election official to the current list of exemptions.

To be clear, SB 66 does not remove the prohibition currently in place that prevents an elected official from serving as an election official where his or her name is on the ballot.

Elected officials are familiar with elections and the laws surrounding them. In the past, our municipal elected officials have served as some of our most knowledgeable and reliable poll workers. SB 66 is a common sense fix that would allow our local elected officials to once again serve at the polls in their communities. I am pleased that the bill has received bi-partisan support and also has the support of the Wisconsin League of Municipalities and the Wisconsin Towns Association. The Assembly Committee on Campaigns and Elections unanimously voted in favor of the bill.

Thank you again for your time and your consideration of Senate Bill 66. I would be happy to answer any questions.

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**Testimony of Michael Haas
Interim Administrator
Wisconsin Elections Commission**

**Senate Committee on Elections and Utilities
October 12, 2017**

**Room 411 South, State Capitol
Public Hearing**

Senate Bill 66

Chairperson LeMahieu and Committee Members:

Thank you for the opportunity to provide testimony on Senate Bill 66. The Wisconsin Elections Commission has not taken a position on this bill and I am testifying for information purposes only in my capacity as the Commission's Interim Administrator.

As you know, this bill would clarify that local elected officials may serve as election officials, including as election inspectors at the polls, except for local officials in first class cities. Municipal clerks commonly relied on local elected officials to work at the polls until the Government Accountability Board issued a formal advisory opinion last year in response to an inquiry from a municipal attorney. I have attached a copy of that advisory opinion.

While the election laws were silent regarding the ability of most elected officials to serve as election inspectors, the request for an advisory opinion required the G.A.B. to more closely analyze other legal restrictions, including provisions of Chapter 66, as well as the compatibility of office doctrine. That doctrine has been established by the courts, and provides that, in general, an individual may not hold two public offices, or a public office and a position within the same unit of government where one post is superior to the other, at least in the case of full-time employees of the municipality.

Election inspectors are appointed by municipal governing bodies for two-year terms. The G.A.B. concluded that the compatibility of office doctrine most likely prohibited a local elected official from serving as an election inspector because the elected office (alderperson, village board trustee, town board supervisor) is superior to the position of election inspector and the elected official may set the compensation rate of election inspectors. Enactment of SB 66 would clarify that the compatibility of office doctrine does not prevent local elected officials from serving as part-time election inspectors.

While the Elections Commission has not taken a position regarding SB 66, we are aware that many municipal clerks relied on local elected officials to serve as election inspectors prior to the G.A.B. issuing its advisory opinion. Clerks often relied on elected officials to help address a shortage of election inspectors, and would likely welcome the clarification provided by SB 66.

I would note that SB 66 would keep in place the current prohibition on election inspectors holding any other public office in the City of Milwaukee. It would also keep in place the prohibition on any elected official working as an election inspector if that individual is on the ballot.

Thank you for the opportunity to share our thoughts with you. As always, we would be glad to answer questions and work with you to address any questions or issues related to the bill.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Haas". The signature is written in a cursive style with a large initial "M".

Michael Haas
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Wisconsin Elections Commission
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2016 GAB 01
ELECTIONS – POLL WORKERS

You are a City Attorney. You have asked us whether an elected official of a city may serve as a city poll worker. There are several considerations that must be taken into account in answering this question, but the Board is of the opinion that the answer is "no." The considerations that lead to this answer are as follows:

1. As a general matter, appointment of poll workers is invested in the city council. Wis. Stat. § 66.0501(2) provides "Except as expressly authorized by statute, no member of a town, village or county board, or city council, during the term for which the member is elected, is eligible for any office or position . . . the selection to which is *vested* in, the board or council, but the member is eligible for any elective office." We understand this to mean a member of a city council may not serve as a poll worker because the selection of poll workers is vested in the city council. This statute does not apply to the Mayor.
2. Wis. Stat. § 7.30 (2)(a) provides that individuals selected to be election officials "may not be a candidate for any office to be voted for at an election at which they serve." We have always interpreted this prohibition to apply even if an individual is a candidate on the ballot at a different polling location because the individual is still a candidate to be voted for at the election.
3. Under the compatibility of office doctrine, the general rule is that an individual may not hold two public offices or an office and a position within the same unit of government where one post is superior to the other. *Otradovec v. City of Green Bay*, 118 Wis.2d 293 (Ct. App. 1984). *Otradovec* concerned a member of the Green Bay city council who was also a full-time employee of the city. A poll worker, of course, is not a full-time employee, so only a court can decide if the doctrine should apply in the case you have presented. But we note that Wis. Stat. § 66.0501(4) specifically provides that certain local part-time positions are deemed compatible with holding elective office. The omission of other positions suggests that those positions are incompatible. Poll worker is not one of the named positions. Thus, we believe it is problematic that an elected official of the city could also serve as a poll worker.



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To: Senate Committee on Elections and Utilities
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: October 12, 2017
Re: SB 66, Allowing a Local Public Official to Serve as an Election Official

The League of Wisconsin Municipalities supports SB 66, creating an exception to the common law doctrine of incompatibility by expressly allowing a person holding a local public office to be appointed to serve as an election official without having to vacate their public office. This bill, for example, would allow a village trustee or city council member to work as an election official on Election Day (unless they are a candidate for office).

Many local officials have been trained to work at the polls and had, in some cases for many years, served as election officials assisting municipal clerks at the polls. They viewed this as an extension of their civic duties. However, League lawyers have concluded that it was likely a violation of the common law doctrine of incompatibility of office for common council and village board members to also serve as election officials for their city or village. The general rule is that a governing body member cannot hold another municipal office or position unless it is specifically authorized by statute. This is because the governing body exercises control over such matters as the salaries, duties, and removal or discipline of most other municipal officers and employees.

Knowledgeable, experienced poll workers are a valuable asset for a community. This bill would allow knowledgeable, experienced people who just happen to also serve their communities as village trustees or council members to also serve as election officials.

We urge you to recommend passage of this sensible bill. Thanks for considering our comments.

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