

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS CANE
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KEVIN J. KENNEDY
Director and General Counsel

DATE: December 18, 2008

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

FROM: Nathaniel E. Robinson
Administrator Elections Division
Government Accountability Board

SUBJECT: Government Accountability Board's Ruling
Maintenance of Electronic Voting Records
Application of § 7.23 (1) (g), Wis. Stats.

I am writing to bring you up to date on the Government Accountability Board's December 17, 2008, ruling on how § 7.23 (1) (g), Wis. Stats., may be applied for maintaining electronic voting records.

Background: On October 30, 2008, we provided the following guidance and information to all Clerks:

1. For the November 4, 2008, General Election, all election vote returns and data MUST be maintained in original formats until further notice is provided by the G.A.B.
2. Staff counsels will attempt to ascertain legislative intent of § 7.23 (1) (g) and determine which electronic information is required to be transferred to disk or other recording medium prior to clearing or erasing the memory devices.
3. Consideration will be given to adding this issue to G.A.B.'s 2009 Legislative Agenda.

Staff counsel thoroughly researched this matter and presented a report to the Government Accountability Board's December 17, 2008, meeting. The detailed background briefing memorandum is attached for your information. Below is the Board's ruling on how § 7.23 (1) (g), Wis. Stats., may be applied for maintaining electronic voting records.

Since 1960, there has been a requirement to preserve election materials for 22 months following elections in which there was a Federal office on the ballot. The Wisconsin legislature adopted § 7.23(1)(g), Wis. Stats., to assist with these requirements. The sole purpose for these requirements is simply to preserve electronic election materials, along with hard copies of all other materials, for 22 months to permit Federal investigations and potentially prosecutions for voting and civil rights violations. These requirements have no relationship to the recount process and they also have no relationship to and do not derive from any HAVA requirements. These are requirements that have existed at the Federal level since 1960 and more recently at the State level since 1987.

Specific Direction to All Election Officials: Taking into consideration the delicate balance between the cost and the requirements of the State and Federal election material retention statutes, the Government Accountability Board adopted the following electronic data retention policies and specifically determined that these policies would meet the requirements of State and Federal data retention statutes:

For All Elections Until Legislative Changes May Occur:

1. For those election officials using electronic/computerized vote recording or tabulation equipment utilizing memory devices such as a PROM or other similar memory storage devices, the “data” that should be transferred and maintained electronically for 22 months pursuant to §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, is the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, plus the hard copy output from each detachable recording unit or compartment (memory device or PROM), i.e. results tape.

If there is no removable initial programming contained on the detachable recording unit or compartment (memory device or PROM), then the costs of simply retaining an electronic copy of the results tape is excessive. The Government Accountability Board staff may coordinate contact between local election officials and manufacturer and programming representatives to arrive at a uniform policy and escrow arrangement for programming, if necessary.

2. As an alternate way to comply with §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, election officials using electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices (memory devices or PROMs) or other similar storage devices may also retain the actual devices for the period of 22 months.
3. For those elections officials using both the Premier AccuVote OS and AccuVote TSX, the “data” that should be transferred and maintained electronically for 22 months pursuant to §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, is all election programming and materials from each device which can be downloaded to hard drive or disk before erasure and reprogramming.
4. For those elections officials who possess elections management software the “data” that should be transferred and maintained electronically for 22 months pursuant to §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, is the following: A) all election programming (programmable code,) and B) for each memory device programmed by election officials, the accumulation of election results will be incorporated into the election management system in order to obtain and retain aggregate election results. This programming and results data can be downloaded to hard drive or disk before erasure and reprogramming of the memory devices.

Questions or Concerns:

If you have questions or concerns regarding the required course of action, please contact Ross Hein, Election Administration Specialist, at 608/ 267-3666 or Ross.Hein@wi.gov, or you may contact Shane W. Falk, Staff Counsel, at 608/ 266-2094 or Shane.Falk@wi.gov. Thank you!

Attachment

cc: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board