

Election ballots are not a public record but tally sheets and canvasses are: ss.7.51(3)(a) and (4), 7.53(2)(d), 7.54, 9.01(1)(b) 3., 4., and 5m., 19.32(2), and 19.35(1)(a), Stats. (Issued to Dorothy Pacholczyk, May 21, 1987.)

You request a formal opinion whether ballots, tally sheets, and other tabulated records of the vote totals from the recent spring election are a public record open for inspection.

People voted for candidates and referenda on the ballot in Milwaukee County during the recent spring election. WITI-TV requested the Milwaukee County Board of Election Commissioners to allow the station, or its designees, to inspect ballots cast in several wards of Milwaukee, tally sheets, and other records of vote totals from the spring election.

The Board concludes that the ballots are not a public record open for inspection. The Board, however, concludes that the tally sheets and canvasses are a public record.

Section 19.35(1)(a), Stats., in part provides:

Except as otherwise provided by law, any requester has a right to inspect any record....

Section 19.32(2), Stats., in part defines record:

"Record" means any material on which written, drawn, printed,...or electromagnetic information is recorded or preserved regardless of physical form or characteristics, which has been created or is being kept by an authority....

A ballot cast at an election, tally sheet of the votes cast, and canvasses certifying the election result are records available for public inspection unless otherwise provided by law. The law clearly provides that the ballots are sealed and may not be opened except for a recount or in court.

Section 7.51(3)(a), Stats., regulates the ballots cast at the election. It provides:

The inspectors shall place together all ballots counted by them which relate to any national, state, or county office or any state, county, or vocational district referendum and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots together with any ballots marked "Defective" shall then be secured by the inspectors in the ballot container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The inspectors shall deliver the ballots to the municipal clerk in the container.

Section 7.54, Stats., regulates the handling of ballots after they have been sealed in the ballot bag after the election. This section provides:

In all contested election cases, the contesting parties have the right to have the ballots opened and to have all errors of the inspectors, either in counting or refusing to count any ballot, corrected by the board of canvassers or court deciding the contest. The ballots and related materials may be opened only in open session of the board of canvassers or in open court and in the presence of the official having custody of them.

When an election contest occurs, section 9.01(1)(b)3., 4., and 5m., Stats., establishes the procedures for handling the ballots at a recount. Subsection 3. in part provides:

They (the board of canvassers conducting the recount) shall then examine the container or bag containing the ballots to be certain it has not been tampered with, opened, or opened and resealed....

Subsection 4. in part provides:

When the container or bag has been checked, it shall be opened and the contents removed....

Subsection 5m. provides:

..., the recanvass shall be conducted in accordance with s.7.51.

Section 7.51(3)(a), Stats., requires the ballots to be sealed after they are counted.

The policy reason for keeping the ballots sealed and not open to public inspection, except when authorized as the ballots are counted at the election, as they are recounted in the presence of the candidates, and as they may be reviewed by a court, is to promote the integrity of the election process by assuring that competent and trained election officials handle the ballots under clearly established election procedures. Otherwise, persons acting without proper safeguards and without the relevant rules for handling and counting the ballots may undermine seriously the compelling public interest in establishing finality in the election process.

The law, however, does not establish limitations on the right to inspect the tally sheet. The tally sheet may be inspected.

Section 7.51(4), Stats., in part provides:

(a) When the canvass is complete, the inspectors shall publicly announce the results from the tally sheets....

(b) The chief inspector, or one of the inspectors appointed by him or her, immediately after the votes are tabulated or counted at each election, shall report the returns of the election to the municipal clerk...The clerk shall then make the returns public.

In addition the law does not limit the right to inspect the canvass. The canvass, too, may be inspected.

Section 7.53(2)(d), Stats., in part provides:

The municipal board of canvassers (in Milwaukee, the board of election commissioners) shall publicly canvass the returns of every municipal election.... The board of canvassers shall file each statement and determination of the office of the...board of election commissioners.

The policy reason for allowing the tally sheet and canvass open to public inspection is to promote the integrity of the election by promptly informing the public of the election results. Otherwise, persons acting in good faith may lose faith in the soundness and integrity of the election process.