

Lisa Subeck

STATE REPRESENTATIVE

To: Assembly Committee on Campaigns and Elections
From: Representative Lisa Subeck
Date: April 18, 2017
Subject: Testimony in support of Assembly Bill 85, relating to allowing a local public official to serve as an election official.

Chairwoman Bernier, and members of the Assembly Committee on Campaigns and Elections:

Thank you for the opportunity to testify on Assembly Bill 85, which would allow municipal 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 searching for new Chief Inspectors for last year's elections.

Under current law, a member of a municipality's governing body is prohibited to hold another office or position of employment within the city, village or town with three exemptions. One 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. Another 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 last exemption allows a city, village or town elected official to serve as a county supervisor. AB 85 would add serving as an election official to this list of exemptions.

AB 85 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. AB 85 is a common sense fix that would allow our local elected officials to once again work 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.

Thank you again for your time and attention to AB 85. I would be happy to answer any questions the committee might have.

78TH ASSEMBLY DISTRICT

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

**Assembly Committee on Campaigns and Elections
April 18, 2017**

**Room 300 Northeast, State Capitol
Public Hearing**

Assembly Bill 85

Chairperson Bernier and Committee Members:

Thank you for the opportunity to provide testimony on Assembly Bill 85. 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, and 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 AB 85 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 AB 85, 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 AB 85.

I would note that AB 85 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
Interim Administrator
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: Assembly Committee on Campaigns and Elections
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: April 18, 2017
Re: AB 85, Allowing a Local Public Official to Serve as an Election Official

The League of Wisconsin Municipalities supports AB 85, 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, a fairly recent opinion from the lawyers at our association concluded 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 an election official 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.

② Thank Representative Suberk - extending the invitation!
The Chairs

① Good Morning ^{or} Committee Members

Assembly

③ ~~Thank you~~ for the opportunity to speak before you today on Bill # 85. This is quite a day of celebration for me.

I am → Today at noon, I will be sworn in for a second 2 year term as Alderperson for District 1 of the Madison Common Council. My strong civic commitment was fueled by my service as an Election Official - specifically Chief Inspector. A position loved immensely.

I have served as Chief Inspector since 2006. That is 10 years. We ~~have~~ ^{have} a team that was phenomenal. Our charge, that every voter have a positive voting experience.

To my disappointment. I was told because I was an elected official I would no longer be eligible to serve. I continued to serve as an abundsman. I witness ^{ed} the clerks office rushing to put in place inexperienced ~~clerks~~ Chief Inspectors, while those of us with years of experience were not allowed to serve.

I am before you to ask that you right this unfair restriction. We serve as part of our commitment and compassion for civic service. Just as 5 of us will soon take the oath of office and be sworn in at Alders, to the Madison City Council. We would like the opportunity to serve again as Chief Inspectors. We bring years of experience through trial, error and being supported by the staff in the Clerk's Office to the morning when we announce Hear Ye Hear Ye, the Polling Location is Now Open. Please give us back that welcomed responsibility.

Answers
Any questions

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