



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 9

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ELECTION LAW REVIEW

FROM: Robert J. Conlin, *RJC* Senior Staff Attorney

RE: Proposal for Consolidation of City and County Election Functions

DATE: March 23, 2005

At the March 2, 2005 meeting of the Special Committee, the committee briefly discussed a proposal for the optional consolidation of city and county election functions. Staff pointed out that the proposal had been considered by the Joint Legislative Council's Special Committee on Election Process Review in 1996 and 1997 and noted that at the time, a number of concerns had been expressed about such a proposal. Primary among those concerns was the opinion of Jeff Kuesel, the Legislative Reference Bureau attorney with primary drafting responsibility in the election law area. Mr. Kuesel pointed out that a draft to effectuate such a proposal would likely be extensive and noted that a myriad of decisions would need to be made to make such a proposal operative.

Attached to this Memo is the memorandum from Mr. Kuesel, dated July 31, 1996 in which his concerns about a proposal for optional consolidation for city and county election functions are spelled out. For the most part, I believe his concerns are still timely, although, it is noted that the statutes now provide for at least one other intergovernmental sharing of election functions in addition to the three described in Mr. Kuesel's memorandum. 2003 Wisconsin Act 265 additionally authorized the consolidation of certain services regarding the statewide voter registration system.

It is suggested that if the committee is interested in pursuing an option regarding consolidation of city and county election functions along the broad terms that were discussed at the March 2nd committee meeting, considerable time be devoted to a full discussion of the necessary elements needed to effectuate the concept.

RJC:tlu

Attachment



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

ATTY. PETER J. DYKMAN
ACTING CHIEF

LAWRENCE S. BARISH
DIRECTOR OF REFERENCE AND LIBRARY

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

July 31, 1996

MEMORANDUM

To: Interested Persons

From: Jeffery T. Kuesel, Assistant Chief Counsel, (608) 266-6778 *JK*

Subject: Proposal for optional consolidation of city and county election functions.

The purpose of this memorandum is to discuss the potential for production of a bill draft to consolidate city and county election functions on an optional basis and certain attendant problems related thereto.

There are at least 3 instances in current law where intergovernmental sharing of election functions is authorized or required:

- (1) Whenever counties and municipalities or school districts are directed to publish identical election notices, they may consolidate the notices and apportion the cost of the consolidated notice between them. See s. 10.07, stats.
- (2) If a municipality employs an electronic voting system and a central counting location is established at the county seat, a municipal clerk may delegate to the county clerk the responsibility to supervise the municipal canvass. See s. 5.86 (1), stats.
- (3) Where voting machines or electronic voting systems are used, responsibility for ballot preparation, including the cost of preparation, lies with counties except that local governments must pay the proportionate cost of ballot preparation for their elections. See s. 5.68 (3), stats.

Apart from these cases, however, the responsibility for administration of elections, when not vested in the state, is generally vested by law in either the counties or municipalities.

Election functions interrelate to a considerable degree currently, for example, where county or municipal clerks or boards of canvassers are directed to notify each other or transmit materials to each other at certain points in the process. Any proposal would have to address who is to perform each function under what circumstances, what functions would be created or eliminated and how resulting costs would be

apportioned. In addition, because current law would not be changed for nonparticipating counties and cities, all statutes affected would have to be double drafted. There would be one version applying to participants and one version applying to nonparticipants.

Because there are many cities lying within more than one county (in 1990, there were 17 lying within 2 counties and 3 lying within 3 counties), any consolidation agreement would have to be approved, presumably upon identical terms, by all counties in which a city lies. Currently, the selection of voting systems is a municipal option. If a county entered into a consolidation agreement, the legislation would have to address whether a county could require all municipalities with which it enters into an agreement to use the same voting system, whether a city which lies within more than one county could be required to use different voting systems within each county in which it lies and who would pay for the costs of any conversion to the system of a county's choice.

It should be noted that there are some elections currently that involve only cities or portions of cities or only special purpose districts such as school districts. From a county's perspective, it would not be consolidating its functions in such an election because it has no functions currently.

The legislation would have to specify the approval mechanism for any consolidation agreement (for example, county or municipal ordinance) and any mechanism for withdrawal from such an agreement. The time frame before an election during which a new consolidation agreement could be entered into or an existing consolidation agreement could be withdrawn from would have to be specified.

You may wish to identify specific statutes under which identifiable cost savings could be realized that are not possible under current law and target those statutes for amendment. It occurs to me that in many cases, if the functions performed before consolidation remain the same after consolidation, they would continue to have the same cost. For example, a county would presumably be required to compensate election officials at roughly the same rate that a municipality now pays.

Currently, virtually all city employees who perform election functions also perform other functions. Is it reasonable to assume that these employees could be eliminated if they discontinued only their election functions? Conversely, is it reasonable to assume that county employees could take on additional election functions not now performed or would additional county employees or overtime costs be incurred in some cases? Presumably, there would be few if any county employees whose functions related exclusively to elections under a consolidated arrangement.

You may wish to examine the methods by which other states administer elections. Although I have not investigated this recently, it is my impression that municipal involvement with election administration in the United States is rare. The majority of states, the last time I checked, not only administered elections on the county level but administered them through county election commissions or boards, as we do in Milwaukee County. I would be surprised if you found any state that provided for elections to be administered on a city or county level at local option.

A comprehensive optional consolidation proposal could well involve a week's legal work and 100-150 pages of drafting. Without doubt, there would be greater flexibility to produce a draft addressing a limited number of specific statutes where optional consolidation might offer greater efficiency or cost savings for both cities and counties.

If you have any further questions regarding this matter, please let me know.

[JTK/Elect Fnctn]

JTK:drw