



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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SENT VIA EMAIL (Anne.Sappenfield@legis.wisconsin.gov)

Anne Sappenfield, Director
Wisconsin Legislative Council

Dear Director Sappenfield:

The Wisconsin Department of Justice is representing the Wisconsin Elections Commission (WEC) in connection with the status of the WEC administrator. Late last week, the Senate Committee on Shared Revenue, Elections, and Consumer Protection scheduled a hearing for August 29, and included in its agenda is an item relating to the WEC administrator. To the extent that there is any unfounded doubt, I am writing to make clear that WEC has not appointed a new administrator, and there is no WEC administrator appointment before the Senate. This is not a close question under state law.

Wisconsin Stat. § 15.61(1)(b)1. provides that the WEC administrator “shall be appointed by a majority of the members of the commission.” And while a vote was taken on a new appointment of the current WEC administrator, Meagan Wolfe, at the WEC’s June 27 special meeting, only three of the commission’s six members voted in favor of the appointment; the remaining three members abstained. The vote therefore fell short of the required majority to reappoint and did not effectuate a new appointment of the WEC administrator.

There is no plausible legal argument to the contrary. The plain language of the pertinent statute requires that an administrator be appointed “by a majority of *the members* of the commission.” Wis. Stat. § 15.61(1)(b)1. (emphasis added). Absent a vacancy on the six-member commission, at least four members must agree for there to be a majority of the members of the commission—no matter how many members of the commission abstain or are not present for a vote.

Tellingly, the state legislature used a different standard for effectuating the *removal* of an administrator. Under Wis. Stat. § 15.61(1)(b)2., the removal of an administrator simply requires “a majority of all members of the commission *voting at a meeting of the commission* called for” the purpose of removal (emphasis added). That statute is not directly relevant here because the commission took no vote on removal

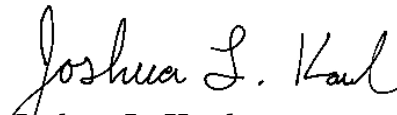
Anne Sappenfield, Director
August 23, 2023
Page 2

at the June 27 special meeting. However, the difference in the statutory language used to describe the type of majority needed to *appoint* an administrator (“a majority of the members”) and that used to describe the type of majority needed to *remove* an administrator (“a majority of all members . . . voting at a meeting”) shows that where the legislature wanted to allow the commission to act without necessarily requiring four or more members (absent a vacancy) to concur, the statutory text makes that clear.

Further, the Wisconsin Supreme Court has squarely held that a holdover appointee may legally remain in office following the expiration of the appointee’s term, and the expiration of the term does not create a vacancy in office. *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶¶ 24–25, 402 Wis. 2d 539, 976 N.W.2d 821. Administrator Wolfe is a lawful holdover in her position.

The Senate therefore has no current authority to confirm or reject the appointment of a WEC administrator. Instead of creating unnecessary confusion about whether Meagan Wolfe remains the WEC administrator—there is no question that she does—the Senate should remove consideration of the WEC administrator from the committee hearing scheduled for August 29.

Sincerely,



Joshua L. Kaul
Attorney General

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