



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 21, 2011

I—01—11

Mr. Tony Kordus
Corporation Counsel
Shawano County
311 North Main Street
Shawano, WI 54166

Dear Mr. Kordus:

¶ 1. You request an informal opinion concerning the application of Wis. Stat. § 59.10(3) to two factual situations.

BACKGROUND

¶ 2. Your county board is in the process of preparing a decennial redistricting plan under Wis. Stat. § 59.10(3)(b) that is based upon 2010 census data. On March 1, 2011 an elector registered to file a petition to reduce the number of supervisory districts under Wis. Stat. § 59.10(3)(cm)2. You believe that a petition with a sufficient number of signatures to request a referendum will be filed with the county clerk in April 2011.

QUESTIONS PRESENTED AND BRIEF ANSWERS

¶ 3. You first ask, in effect, whether a petition may be circulated in 2011 and a referendum held pursuant to Wis. Stat. § 59.10(3)(cm)2. on that petition if the county board's decennial redistricting plan using 2010 census data is in effect for the spring election in 2012.

¶ 4. In my opinion, a petition may be circulated because the county board's decennial redistricting plan is not yet in effect. The county clerk may accept the petition, but should not put the redistricting plan requested by the petitioners on the April 2012 ballot if decennial redistricting has been completed in time for that election.

¶ 5. Your second question is whether an elector may circulate a petition to further reduce the number of supervisory districts after the spring 2012 election during the decade under Wis. Stat. § 59.10(3)(cm)2. if the county board's decennial redistricting plan under Wis. Stat. § 59.10(3)(b) using 2010 census data reduces the current number of supervisory districts.

¶ 6. In my opinion, the answer is yes. During the remainder of the decade following decennial redistricting, the number of supervisory districts may be reduced only once.

ANALYSIS

¶ 7. Your first question involves the prioritization of competing redistricting plans under Wis. Stat. §§ 59.10(3)(b) and 59.10(3)(cm)2. The county board must propose a tentative decennial redistricting plan “no later than July 1 following the year of each decennial census[.]” Wis. Stat. § 59.10(3)(b)1. A tentative decennial redistricting plan using 2010 census data therefore must be proposed by July 1, 2011. The board must hold a hearing on the tentative proposed plan, and then adopt a tentative plan. *Id.* Municipalities in the county must adjust their wards in response to the board’s tentative plan. Wis. Stat. § 59.10(3)(b)1. and 2. Within sixty days after the municipalities in the county adjust their wards, the board must hold another public hearing and then adopt a final decennial redistricting plan. Wis. Stat. § 59.10(3)(b)2. A certified copy of the final decennial redistricting plan must be filed with the secretary of state. Wis. Stat. § 59.10(3)(b)4. The decennial redistricting plan adopted under Wis. Stat. § 59.10(3)(b) using 2010 census data is to be in effect for the April 2012 election.

¶ 8. Wisconsin Stat. § 59.10(3)(cm) is entitled “*Changes during decade; reduction in size.*” Wisconsin Stat. § 59.10(3)(cm)1. permits the county board to reduce the number of supervisory districts during the decade. Wisconsin Stat. § 59.10(3)(cm)2. permits a reduction in the number of supervisory districts during the decade by petition and referendum. Wisconsin Stat. § 59.10(3)(cm)2. explicitly states that “the electors of a county may, by petition and referendum, decrease the number of supervisors at any time **after the first election is held following enactment of a decennial supervisory district plan** under par. (b).” The purpose of the statute is to permit circulation of a petition and referendum during the decade if there is dissatisfaction with the county board’s decennial redistricting plan for that decade. As explained above, the first election held following enactment of the decennial redistricting plan using 2010 census data is to occur in April 2012. A petition therefore may be circulated in 2011 because the board’s decennial redistricting plan is not yet in effect, but a referendum may not be held to reduce the number of supervisory districts if the county board’s decennial redistricting plan is in effect for the spring 2012 election.

¶ 9. Reinforcing this conclusion, Wis. Stat. § 59.10(3)(cm)2. provides that “[u]pon determination that a petition is sufficient . . . the county clerk shall call a referendum concurrently with the next spring or general election in the county that is held not earlier than 42 days after the determination is made.” The next such election following the receipt of a petition in April 2011 is the spring election in April 2012. That election is the first election at which the county board’s

decennial redistricting plan using 2010 census data is to be in effect.¹ The petition that is currently being circulated therefore cannot affect any supervisory election if decennial redistricting has been timely completed. The county clerk may accept the petition, but should not put the redistricting plan requested by the petitioners on the April 2012 ballot if decennial redistricting has been completed in time for that election.

¶ 10. Your second question is whether an elector may circulate a petition to further reduce the number of supervisory districts during the decade under Wis. Stat. § 59.10(3)(cm)2. if the county board's decennial redistricting plan under Wis. Stat. § 59.10(3)(b) using 2010 census data reduces the current number of supervisory districts. A decennial redistricting plan under Wis. Stat. § 59.10(3)(b) using 2010 census data may increase, decrease, or maintain the current number of supervisory districts. Even if the board's decennial redistricting plan using 2010 census data reduces the current number of supervisory districts, a subsequent further reduction in the number of supervisory districts during the decade is permissible by petition and referendum under Wis. Stat. § 59.10(3)(cm)2. Only one reduction in the number of supervisory districts may occur during the remainder of the decade following decennial redistricting, regardless of whether that reduction is made by the county board under Wis. Stat. § 59.10(3)(cm)1. or by petition and referendum under Wis. Stat. § 59.10(3)(cm)2. *See* Wis. Stat. § 59.10(3)(cm)3.: "If the number of supervisors in a county is decreased by the board or by petition under this paragraph, no further action may be taken by the board or by petition . . . until after enactment of the next decennial supervisory district plan by the board under par. (b)."

CONCLUSION

¶ 11. I therefore conclude that a petition may be circulated in 2011 but a referendum to reduce the number of supervisory districts may not subsequently be held on that petition pursuant to Wis. Stat. § 59.10(3)(cm)2. if the county board's decennial redistricting plan using 2010 census is in effect for the spring election in 2012. The county clerk may accept the petition, but should not put the redistricting plan requested by the petitioners on the April 2012 ballot if decennial redistricting has been completed in time for that election. I further conclude that after the spring 2012 election a petition may be circulated during the decade under Wis. Stat. § 59.10(3)(cm)2. to further reduce the number of supervisory districts even if the county board's decennial redistricting plan under Wis. Stat. § 59.10(3)(b) using 2010 census data reduces the current

¹Wisconsin Stat. § 59.10(3)(cm)4. also provides: "Any redistricting plan enacted under subd. 1. or 2. shall remain in effect until the effective date of any subsequent redistricting plan enacted under sub. (3)(c) or until the effective date of a redistricting plan subsequently enacted under par. (b)." The board's decennial redistricting plan therefore has primacy over any redistricting plan under Wis. Stat. § 59.10(3)(cm)1. or 2. that precedes the enactment of the decennial redistricting plan.

Mr. Tony A. Kordus
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number of supervisory districts. During the remainder of the decade following decennial redistricting, the number of supervisory districts may be reduced only once.

Sincerely,

A handwritten signature in blue ink, reading "J.B. Van Hollen". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

J.B. VAN HOLLEN
Attorney General

JBVH:FTC:cla