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Wisconsin Department of Justice
Attn: Attorney General J.B. Van Hollen
P.O. Box 7857
Madison, WI 53707-7857
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Re: Request for an Informal Opinion

Dear Attorney General Van Hollen:

I have two questions, both of which pertain to Section 59.10(3) of the Wisconsin Statutes which governs county supervisory district plans, and a citizen's ability to petition for a referendum to reduce the size of a county board.

Question 1: What effect is a petition filed under Section 59.10(3)(cm)2 to be given that is received after the decennial census is conducted, but before the county board has adopted a new supervisory district plan under subsection 59.10(3)(b).

Facts, law and my analysis:

Facts:

In our case, an elector registered to file a petition under subsection (cm)2 on March 1, 2011, and will submit the petition under (cm)2 during April of 2011. This means the petition will be filed after the decennial census, but before the new supervisory district plan is adopted by the county board pursuant to subsection (b).

Law:

Subsection (b) requires a county board to prepare and adopt a supervisory district plan after receiving the federal decennial census numbers. Under subsection (b), the county board may lower the number of districts which in turn reduces the size of the county board.

Subsection (cm)1 provides that the county board may subsequently decrease the number of supervisors after enactment of the decennial supervisory district plan.

Subsection (cm)2 provides 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)."

Subsection (cm)3 provides that, if either the county board or a petition and referendum reduces the board size/number of districts during the decade, no further action may be taken until after the enactment of the next decennial supervisory district plan under subsection (b).

Analysis:

There are, I think, two possible answers concerning how to treat the petition. One could interpret Section 59.10(3) as holding that the petition is of no effect and cannot be validly filed until after the first election is held following enactment of the new decennial supervisory district plan under subsection (b) since the new decennial census has now been completed. This interpretation would give a county board the opportunity to perform its function in setting the new plan under subsection (b), and then allow an elector to file a petition if it disliked the plan after the first election is held in April of 2012.

On the other hand, one could hold that a literal reading of subsection (cm)2 and (cm)3 means that, back in 2001, a decennial supervisory district plan was enacted and, therefore, a petition could now be filed because it is in fact "following enactment of a decennial supervisory district plan under para. b", and thereby pre-empts a county board from acting under subsection (cm)3.

Overall, my conclusion is that the first answer above is the correct one. Section 59.10(3) appears to be created in order to allow a county board to create a supervisory district plan, and then to have the electors file a petition if they do not like the plan after the first election following adoption of the plan which is in April of 2012.

Additionally, this conclusion would seem to give meaning to the heading of subsection (cm) which notes that it pertains to "Changes during decade" (emphasis added), rather than not allowing a county board to create a new plan in the first place which would seem to render subsection (b) far less meaningful than intended.

Nonetheless, there is ambiguity in the statute and no case law or previous AG Opinion appears to address what the cutoff date is for the filing of a petition in the year when the census numbers are received which is also the year in which the county board is supposed to undertake to review a new supervisory plan after such census numbers are received pursuant to subsection (b).

Thus my question concerning the effect of a petition that is received in the year in which the new census is received but before a county board adopts a new supervisory plan.

Question 2: If, as part of the county board's duty to create a new supervisory district plan under subsection (b) the county board reduces the number of districts and thereby reduces the board size, does this prevent an elector from pursuing a petition under subsection (cm)2.

Analysis:

My interpretation is that a county board is obligated to create a supervisory district plan after every decennial census under subsection (b), and that such a plan, even if it reduces the number of districts and thereby reduces the number of board supervisors, does not take away an elector's right under subsection (cm)2 (or the county board's right under subsection (cm)1), to later reduce the size of the board. This is so because any change after the decennial supervisory plan would be a "change during decade" under subsection (cm) which is separate and apart from subsection (b).

My request:

It would be much appreciated to have an informal opinion answering these two questions on or before April 11, 2011.

If you have any questions, please let me know.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony A. Kordus". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tony A. Kordus
Corporation Counsel