

Dane County seeks clarity on definitions of ‘election official,’ ‘task’ to complying with constitutional amendments

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Washington High School in Milwaukee's Sherman Park neighborhood on the city's North Side saw steady turnout on Election Day, but no lines by mid-afternoon, according to poll workers Photo by David Wise, Nov. 3, 2020.

Dane County’s corporation counsel [has asked](#) Dem AG Josh Kaul for guidance on what constitutes an “election official” and a “task” when trying to implement new constitutional amendments voters approved in April.

Carlos Pabellón also argued “election official” should be defined by a law that states it’s “any individual who is charged with any duties related to the conduct of an election.” Otherwise, there’s the possibility that local clerks, their employees and others could be barred from running elections this fall.

Pabellón’s request last week for an attorney general’s opinion comes after voters approved two amendments during the April election. One barred the use of private funds to cover the public costs to administer an election. The second one restricts who may perform tasks in primaries, elections and referendums to “an election official designated by law.”



Pabellón noted that one section in state law defines an election official as someone “charged with any duties related to the conduct of an election.” If that sets the standard, “the issue of who is an election official is easily resolved,” and he argued that should be the controlling statute.

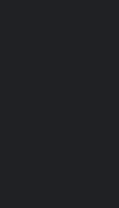
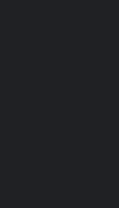
But he suggested a “literal and textual” interpretation of other statutes that refer specifically to special voting deputies who assist in nursing homes, chief inspectors and other positions would bar county and municipal clerks, their employees, and boards of canvass from conducting elections.

Pabellón also argued “task” should be construed “to apply only to those duties prescribed by statute regarding the conduct of elections.” Otherwise, he suggested, clerks could be barred from using commercial printers to produce ballots and county IT employees would be unable to maintain security functions for the system.

Pabellón noted GOP Sen. Eric Wimberger, one of the amendments’ co-authors, was quoted as saying there was a difference between work that prepares for an election vs. conducting one.

“The Legislature will have an opportunity to clarify its intent with the next legislative session,” Pabellón wrote. “In the meantime, county and municipal clerks need guidance in how to apply the language of the amendment.”

The Department of Justice has now opened a [public comment](#) period through May 13 on the request.

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We will review the legislative session and preview the November elections.

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