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Mr. Kevin J. Kennedy
Director and General Counsel
Government Accountability Board
212 East Washington Avenue, Third Floor
Madison, WI 53703

Dear Mr. Kennedy:

¶ 1. In your official capacity as Director and General Counsel of the State of Wisconsin Government Accountability Board (“the GAB”), you ask several questions about the applicability of Wisconsin’s open meetings law to the activities of the election canvassing boards. These boards are statutorily charged with examining election day records for completeness and accuracy and making official determinations and certifications of election results at the local, municipal, school district, county, and state levels.

¶ 2. Your primary inquiry asks, for each level of canvassing, whether the canvassing activities constitute a “meeting” of a “governmental body” subject to the open meetings law under Wis. Stat. § 19.82(1) and (2). Relatedly, you also ask whether the requirements of the open meetings law apply to the activities of permanent and temporary municipal employees who are hired by some larger municipalities for the purpose of conducting post-election administrative activities in preparation for the meetings of the municipal, school district, and county canvassing boards. Finally, for those canvassing activities that are a meeting of a governmental body, you ask to what extent such meetings are subject to a variety of specific open meetings requirements.

¶ 3. I conclude that canvassing boards are governmental bodies subject to the open meetings law—including the public notice, open session, and reasonable public access requirements—when they convene for the purpose of carrying out their statutory canvassing activities, but not when they are gathered only as individual inspectors fulfilling administrative duties. The state-level canvass conducted by the chairperson of GAB or the chairperson’s designee is not a meeting of a governmental body subject to the open meetings law. The open meetings law also does not apply to the activities of municipal staff employees, whether

permanent or temporary, who are conducting administrative activities. I further conclude that overlapping violations of the open meetings law and of election laws may be prosecuted under either or both bodies of law, with any possible conflicts between statutes being resolved in favor of the more specific provisions.

General Principles Governing the Applicability of the Open Meetings Law

¶ 4. The requirements of the open meetings law generally apply to “[e]very meeting of a governmental body.” Wis. Stat. § 19.83(1). In order to determine whether the activities of the canvassing boards at each level are subject to the open meetings law, it is necessary to examine whether each level of canvassing board is a “governmental body” and, if so, whether its canvassing activities constitute a “meeting.”

¶ 5. The open meetings statutes define a “governmental body” as “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order.” Wis. Stat. § 19.82(1). This definition contains two elements: (1) the body’s creation by constitution, statute, ordinance, rule or order; and (2) the form of “a state or local agency, board, commission, committee, council, department or public body corporate and politic.” *Id.* The use of the terms “agency,” “board,” “commission,” “committee,” “council,” “department,” and “body corporate and politic” all suggest that a governmental body must be a multi-member group that acts together as a collective unit to perform some common governmental purpose. *Id.*

¶ 6. If a canvassing board is determined to be a “governmental body,” it conducts a “meeting” subject to the open meetings law when its members convene “for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2). The use of the phrase “in the body” in that definition suggests that a meeting subject to the open meetings law must involve powers and duties that are vested in the body as a collective unit, rather than in the members of the body separately considered as individual government officials. *See* 57 Op. Att’y Gen. 213, 217-18 (1968) (concluding that earlier version of open meetings law applied to a group that has powers or duties vested in it by law, or delegated to it by law, when it acts formally as a body).

1. Local Canvassing Boards

¶ 7. Canvassing at the local or polling place level is governed by Wis. Stat. § 7.51, which charges the election inspectors at each polling place with conducting a canvass of that polling place immediately after the polls close on election day.

¶ 8. The election inspectors for each polling place are appointed by the governing body of the municipality where the polling place is located. Wis. Stat. § 7.30. Each polling place is required to have seven inspectors or, in specified circumstances, a greater or lesser number (but never fewer than three) determined by the governing body of the municipality. *Id.* The governing body of the municipality also may provide for different sets of inspectors to work at different times on election day and may appoint alternates to maintain adequate staffing at polling places. *Id.*

¶ 9. Election inspectors are appointed under a dominant political party system. The two political parties whose candidates for governor or president received the largest number of votes at the polling place in the previous general election may submit lists of nominees from which election inspectors are appointed, with the first-place party receiving one more inspector at that polling place than is received by the second-place party. Wis. Stat. § 7.30(2) and (4)(c). Election inspectors serve for two-year terms. Wis. Stat. § 7.30(6).

¶ 10. Election inspectors have numerous administrative duties staffing the polling place on election day, including setting up the polling place, preserving order, registering electors, recording electors, resolving challenges to electors, issuing ballots, monitoring voting equipment, and properly completing required forms. *See* Wis. Stat. § 7.37. Immediately after the close of voting on election day, the polling place remains open to the public and the election inspectors are then charged with performing the specific post-election canvassing duties set forth in Wis. Stat. § 7.51, which include reconciling voter lists, counting votes, preparing election returns, certifying certain election results, securing election materials, and delivering election materials to the municipal clerk. These canvassing activities must be conducted publicly and, with certain exceptions for absentee ballots, are to continue without adjournment until the canvass is completed and the return statement has been made. Wis. Stat. § 7.51(1).

¶ 11. Under the above facts, does a local canvassing board constitute a “governmental body” within the meaning of Wis. Stat. § 19.82(1)? In your letter of inquiry, you express the view that the term “Local Board of Canvassers” is only a

label appended to the election inspectors at each polling place who, in your view, act not as a collective body, but rather as an aggregate of individual election officials. In support of this view, you note that the term "Local Board of Canvassers" is set out only in the title of Wis. Stat. § 7.51 and is not defined or referenced elsewhere in the statutes. You also suggest that the canvassing duties under Wis. Stat. § 7.51 are not assigned to the election inspectors as a collective body, but rather are administrative duties assigned to them as a group of individual election officials. This conclusion, you suggest, is supported by the facts that different municipalities have different numbers of election inspectors serving a disparate number of polling places, that some individual polling places serve more than one ward and are staffed by more than one set of election inspectors, and that, in many municipalities, different election inspectors serve at different elections and the number of election inspectors may vary from one election to another.

¶ 12. I respectfully disagree with that view.

¶ 13. First, while it is true that the precise term "Local Board of Canvassers" is not used outside the title of Wis. Stat. § 7.51, Wis. Stat. § 7.37(12) provides that the election inspectors for each polling place "shall constitute the board of canvassers of their polling place and in that capacity shall perform the duties under s. 7.51." Titling section Wis. Stat. § 7.51 "Local Board of Canvassers" instead of "Board of Canvassers of the Polling Place" does not change the fact that the statutes substantively create a board at each polling place that is composed of specific officials and charged with performing the canvassing duties under Wis. Stat. § 7.51. These local canvassing boards thus are "created by . . . statute" within the meaning of Wis. Stat. § 19.82(1).

¶ 14. Second, the canvassing duties under Wis. Stat. § 7.51 are assigned to each local canvassing board as a collective body, not as a group of individual officials. While it is true that the composition of the local canvassing boards varies from one polling place to another, it is also true that each individual local canvassing board has a determinate size fixed by the municipal governing body and is composed of members serving definite terms of office. In addition, while it is true that some of the canvassing activities under Wis. Stat. § 7.51 are essentially ministerial in nature and have no necessary collective dimension, it is also true that Wis. Stat. § 7.51 assigns some of the most central and important canvassing functions to each local canvassing board as a collective body, rather than as a group of individual officials. Significant questions about how to treat two or more ballots that are folded together and about how to count a ballot that has not been properly

or clearly completed are decided by a majority vote of the election inspectors. Wis. Stat. § 7.51(2)(a) and (b).

¶ 15. These provisions for actions by majority vote of the election inspectors make it clear that central and important features of the canvassing functions under Wis. Stat. § 7.51 are assigned to the election inspectors not as individual officials, but as a collective body at each polling place. Each local canvassing board thus has the corporate character necessary for a “governmental body.”

¶ 16. Because the local canvassing boards are “created by . . . statute” and because their members act together as a collective unit to perform some common governmental purpose, I conclude that each such board is a “governmental body” within the meaning of Wis. Stat. § 19.82(1).

¶ 17. The next question is whether the post-election canvassing activities by the members of the local canvassing board—i.e., the election inspectors—constitute a “meeting” within the meaning of Wis. Stat. § 19.82(2).

¶ 18. The key consideration here is whether the inspectors, when acting under Wis. Stat. § 7.51, are exercising powers and duties that are vested in the local canvassing board as a body, rather than in the individual members. For the reasons already discussed, it is my conclusion that the conduct of local canvassing activities under Wis. Stat. § 7.51—in particular, the making of majority decisions regarding the handling of questionable ballots—constitutes the exercise of powers and duties that are assigned to each local canvassing board as a collective body, rather than as a group of individual officials. The post-election convening of election inspectors for the purpose of conducting the local canvass thus is a “meeting” within the meaning of Wis. Stat. § 19.82(2).

¶ 19. It does not follow, however, that *every* gathering of the election inspectors of a particular polling place constitutes a meeting of the local canvassing board. Election inspectors perform many administrative functions at the polling place throughout election day. Accordingly, there are likely to be frequent occasions when a sufficient number of inspectors will be gathered together in the polling place to constitute a quorum of the local canvassing board. Before the polls close, however, the inspectors are not exercising any powers vested in them as a body. Rather inspectors are performing administrative duties that are assigned to them as individual officials. See Wis. Stat. § 7.37.

¶ 20. This is equally true of activities performed under Wis. Stat. § 6.88(3), which authorizes election inspectors, during voting hours, to open absentee ballot envelopes and to verify compliance with certain procedural requirements for absentee voting. Absentee ballots opened pursuant to that provision are not counted or examined for voter intent during voting hours, but rather are placed in the appropriate ballot box without being examined by the inspectors. Wis. Stat. § 6.88(3)(b). After the polls close, the canvassing of those absentee ballots is completed along with all other ballots pursuant to Wis. Stat. § 7.51. Only then are the inspectors convened for the purpose of exercising the powers and duties vested in the local canvassing board as a body.¹ I conclude, therefore, that the gathering of election inspectors in a polling place constitutes a “meeting” of the local canvassing board only after the polls close and the canvassing under Wis. Stat. § 7.51 begins.

¶ 21. Based on all of the above considerations, I conclude that the canvassing activities conducted at the local polling place level pursuant to Wis. Stat. § 7.51 constitute a “meeting” of a “governmental body” and thus are subject to the requirements of the open meetings law.

2. Municipal Canvassing Boards

¶ 22. The duties of the municipal board of canvassers are to declare election results for municipal offices, to prepare statements showing the results of municipal elections and referenda, and to prepare statements after a primary certifying candidates who have been nominated for municipal office. Wis. Stat. § 7.53(2)(d).

¶ 23. The statutes create two different categories of municipal canvassing boards, depending on whether all wards in the municipality vote at a single polling place. Each has its own composition, rules, and procedures.

¶ 24. In municipalities with two or more wards that are not combined, the municipal board of canvassers is composed of the municipal clerk and two qualified electors of the municipality chosen by the clerk. Wis. Stat. § 7.53(2)(a). The municipal canvass may begin as soon as the board has received the returns from all polling places on election night and must begin no later than 9:00 a.m. on the

¹ A municipality also may elect to count absentee ballots in the manner provided for in Wis. Stat. § 7.52, in which case the municipality must establish a separate board of absentee ballot canvassers, pursuant to Wis. Stat. § 7.53(2m). Under the reasoning of this opinion, such boards of absentee ballot canvassers, where they exist, are governmental bodies subject to the open meetings law.

Monday after the election. Wis. Stat. §§ 7.515(6)(b) and 6.97(4). The board must also reconvene if necessary for the purpose of processing any outstanding absentee or provisional ballots or amending election returns. *Id.*

¶ 25. In a municipality with only a single polling place—i.e., a municipality with only a single ward or one in which all of the wards vote at a single polling place and results are combined—the election inspectors who conduct the post-election polling place canvass under Wis. Stat. § 7.51 also constitute the municipal board of canvassers. Wis. Stat. § 7.53(1)(a). When municipal offices or municipal referenda are on the ballot, the inspectors must conduct both the polling place canvass and the municipal canvass on election night. Wis. Stat. § 7.53(1)(a). They complete the canvass statement, certify the municipal election results, and officially determine the winners. *Id.* The municipal board must also subsequently reconvene if necessary for the purpose of processing absentee or provisional ballots or amending election returns. *Id.* If the election inspectors acting as the municipal board of canvassers are unavailable for any such subsequent meeting, then the municipal clerk may replace the inspectors with a three-member municipal canvassing board consisting of the clerk, the chief election inspector of the municipality's one polling place, and one other election inspector. Wis. Stat. § 7.53(1).

¶ 26. In my opinion, for both categories of municipality, the municipal board of canvassers is a “governmental body” within the meaning of Wis. Stat. § 19.82(1) and the convening of its members for the purpose of carrying out canvassing duties under Wis. Stat. § 7.53 is a “meeting” within the meaning of Wis. Stat. § 19.82(2). The reasons supporting this opinion are similar to those already discussed in connection with local canvassing boards.

¶ 27. First, the municipal board of canvassers in both categories of municipality is “created by . . . statute.” See Wis. Stat. § 7.53(1) (creating the board for municipalities with only one polling place) and (2) (creating the board for municipalities with two or more wards).

¶ 28. Second, the canvassing duties under Wis. Stat. § 7.53 are assigned to each municipal canvassing board as a collective body. This is readily apparent for boards in municipalities with two or more wards because, in those municipalities, the municipal canvassing board is a discrete body with its own statutory responsibilities under Wis. Stat. § 7.53(2). In municipalities with only a single polling place, the municipal canvassing board is not a discrete entity because it is composed of the same election inspectors who form the local canvassing board and

who also have various administrative duties at the polling place. Nonetheless, for the reasons already discussed with regard to local canvassing boards, I conclude that the canvassing activities assigned to those inspectors under Wis. Stat. § 7.53(1) are assigned to them in their collective capacity as the municipal canvassing board.

¶ 29. Because the municipal canvassing boards are “created by . . . statute” and because their members act together as a collective unit to perform a common governmental purpose, I conclude that each such board is a “governmental body” within the meaning of Wis. Stat. § 19.82(1).

¶ 30. Since a municipal canvassing board is a “governmental body,” I next consider whether the canvassing activities by the members of such a body constitute a “meeting” within the meaning of Wis. Stat. § 19.82(2).

¶ 31. For the discrete municipal canvassing boards in municipalities with two or more wards, it is readily apparent that any time such a discrete, statutorily created body convenes for the purpose of exercising the powers and duties vested in the body under Wis. Stat. § 7.53(2), that gathering will constitute a “meeting,” as defined in Wis. Stat. § 19.82(2).

¶ 32. For municipal canvassing boards in municipalities with a single polling place, the same election inspectors who compose the municipal canvassing board have additional duties: they compose the local canvassing board and they have various administrative duties in the polling place on election day. When the election inspectors in such a municipality convene for the purpose of exercising the specific powers and duties vested in the municipal canvassing board under Wis. Stat. § 7.53(1), that gathering is a “meeting” as defined in Wis. Stat. § 19.82(1). If they convene solely to exercise the powers and duties of the local canvassing board, that is a meeting of the local board, but not of the municipal board. If they gather to exercise the powers and duties of both the local and municipal boards, the gathering may be treated, for open meetings law purposes, as a joint meeting. But when the inspectors are gathered in the polling place solely to perform administrative duties that are assigned to them as individual officials under Wis. Stat. § 7.37, that gathering is not a “meeting” of a governmental body at all.

¶ 33. For all of these reasons, I conclude that the canvassing activities conducted at the municipal level pursuant to Wis. Stat. § 7.53 constitute a “meeting” of a “governmental body” and thus are subject to the requirements of the open meetings law.

3. School District and County Canvassing Boards

¶ 34. The analysis for school district and county canvassing boards is straightforward. School district canvassing boards are created and assigned their duties by Wis. Stat. § 7.53(3). County canvassing boards are created and assigned their duties by Wis. Stat. § 7.60. Both types of board are created by statute and their duties are assigned to them as boards, rather than as groups of individuals. Both, therefore, are “governmental bodies” as defined in Wis. Stat. § 19.82(1). When those bodies convene for the purpose of exercising the powers and duties vested in them by Wis. Stat. §§ 7.53(3) and 7.60, respectively, the gathering is a “meeting,” as defined in Wis. Stat. § 19.82(2). The canvassing activities conducted by school district and county canvassing boards, therefore, are meetings of governmental bodies subject to the requirements of the open meetings law.

4. State Canvass

¶ 35. Under Wis. Stat. § 7.70(3)(a), state-level canvassing activities are conducted by the chairperson of the GAB or by a designee of the chairperson. State-level canvassing duties are thus vested in a single election official, rather than in a collective body. The open meetings law defines “governmental body” using the terms “agency,” “board,” “commission,” “committee,” “council,” “department,” and “body corporate and politic,” suggesting that such a body must be a multi-member group. See Wis. Stat. § 19.82(1). A public office occupied by a single person, therefore, is not a governmental body subject to the open meetings law. See *Plourde v. Habegger*, 2006 WI App 147, 294 Wis. 2d 746, ¶¶ 12-14, 720 N.W.2d 130 (open meetings law does not apply to a governmental department with only a single member); 67 Op. Att’y Gen. 250 (1978) (open meetings law does not apply to the office of county coroner). Therefore, although the GAB chairperson or his or her designee is expressly required to “publicly canvass the returns,” Wis. Stat. § 7.70(3)(a), those canvassing activities are not subject to the separate requirements of the open meetings law.

¶ 36. As a matter of agency practice, public notice of the state-level canvass that conforms to the notice of requirements of Wis. Stat. § 19.84 is routinely given. Although that practice is not required by the open meetings law, it is a reasonable method of ensuring that the public is notified of the precise time and location of the state canvass and serves the important public interest in transparency and accessibility in elections.

5. Activities of Municipal Employees Organizing Election Materials

¶ 37. Finally, you ask whether the open meetings law applies to the activities of permanent and temporary municipal employees who are assigned by some large municipalities to organize election materials that have been delivered to the municipal clerk or to the municipal election commission, and to prepare those materials for the municipal canvass and for delivery to the county clerk or the county board of election commissioners pursuant to Wis. Stat. § 7.51(5)(b). Such municipal employees are administrative staff personnel and do not constitute a governmental body. Moreover, the purely administrative organizational duties they are performing are not statutorily vested in any collective body. For these reasons, it is my opinion that the activities of such municipal employees are not subject to the requirements of the open meetings law.

Applicability of Specific Open Meetings Requirements to Canvassing Boards

¶ 38. Because canvassing activities at the local, municipal, school district, and county levels are subject to the open meetings law, they are also subject to the specific statutory open meetings requirements.

1. Public Notice Requirements

¶ 39. First, for each level of canvassing board, you ask whether the board's meetings are subject to the specific public notice requirements of Wis. Stat. § 19.84 and, if so, who is responsible for ensuring compliance with those requirements.

¶ 40. Because meetings of local, municipal, school district, and county canvassing boards all are meetings of governmental bodies subject to the open meetings law, each such board must give notice to the public of each of its meetings. Wis. Stat. § 19.84(1)(b). This notice must be given at least 24 hours before the meeting begins unless, for good cause, it is impossible or impractical to give that much notice, in which case as little as two hours notice may be given. Wis. Stat. § 19.84(3). The notice must set forth the time, date, place, and subject matter of the meeting "in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2).

¶ 41. The public notice must be given through the board's presiding officer or the officer's designee. For local canvassing boards and for municipal canvassing

boards in municipalities with only one polling place, the presiding officer is the chief election inspector of the polling place in question. *See* Wis. Stat. §§ 7.30(6)(b), 7.37(12), 7.51, and 7.53(1). For all other municipal canvassing boards, the presiding officer is the municipal clerk. *See* Wis. Stat. § 7.53(2). For school district canvassing boards, the presiding officer is the school district clerk. *See* Wis. Stat. § 7.53(3)(a). For county canvassing boards, the presiding officer is the county clerk. *See* Wis. Stat. § 7.60(2).

¶ 42. The open meetings law does not require a governmental body to provide public notice by any particular method, but rather permits the body to use any method of giving notice that is “reasonably likely to apprise members of the public” of the requisite information. Wis. Stat. § 19.84(2). The election notice that every municipality or special purpose district must publish pursuant to Wis. Stat. § 10.01(2)(d), however, is insufficient to satisfy Wis. Stat. § 19.84(2). That notice, termed a “Type D” notice, gives polling place locations and hours and thus provides the locations and times at which election inspectors will be performing their duties at the polls. But it does not notify the public that a post-election meeting of the local canvassing board will take place after the close of the polls or describe the subject matter of that meeting.

¶ 43. The notice requirements of Wis. Stat. § 19.84 can be easily met for local canvassing boards, however, by simply adding a sentence to each Type D notice indicating that, immediately after the polls close, the election inspectors at each polling place will convene as the local canvassing board for the purpose of conducting the local canvass pursuant to Wis. Stat. § 7.51. Similarly, for municipalities with only one polling place, the Type D notice could also indicate that, after or jointly with the meeting of the local canvassing board, the election inspectors will convene as the municipal canvassing board for the purpose of conducting the municipal canvass pursuant to Wis. Stat. § 7.53(1). In order to ensure compliance with the notice requirements of the open meetings law, I recommend that the GAB advise all pertinent election officials that such information should be included in future Type D notices.

¶ 44. According to your letter of inquiry, the GAB already advises that all other meetings of canvassing boards at the various levels should be noticed pursuant to Wis. Stat. § 19.84. That practice should continue in accordance with this opinion.

2. Open Session Requirements

¶ 45. Second, for each level of canvassing board, you ask whether meetings must be held in “open session,” as defined in Wis. Stat. § 19.82(3) and whether it is ever permissible for such a meeting to go into closed session, pursuant to Wis. Stat. § 19.85.

¶ 46. The open meetings law generally requires that every meeting of a governmental body must be “reasonably accessible to members of the public” and “open to all citizens at all times.” Similarly, an “open session” is defined in Wis. Stat. § 19.82(3) as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.” Every meeting of a governmental body must initially be convened in “open session.” See Wis. Stat. §§ 19.83 and 19.85(1). All business of any kind, formal or informal, must be initiated, discussed, and acted upon in “open session,” unless a closed session is authorized by one of the exemptions set forth in Wis. Stat. § 19.85(1). See Wis. Stat. § 19.83. Accordingly, every meeting of a local, municipal, school district, or county canvassing board must begin in open session and must conduct all meeting business in open session unless a closed session is specifically authorized.

¶ 47. In light of the very limited and specialized powers and duties that are statutorily vested in canvassing boards, with one exception, none of the collective activities of such a board fall within any of the authorized purposes of a closed session under Wis. Stat. § 19.85(1)(a) through (i). Nothing in the Election Code² suggests that any portion of the canvassing process can be conducted behind closed doors. To the contrary, various Election Code provisions require election canvasses to be conducted publicly. See, e.g., Wis. Stat. §§ 7.51(1), 7.53(1)(a) and (2)(d), and 7.60(3).

¶ 48. The one exception relates to Wis. Stat. § 19.85(1)(g), which allows a governmental body to go into closed session for the purpose of “[c]onfering with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.” As noted in your letter of inquiry, there can be some circumstances in which the actions of a board of canvassers will be challenged in litigation and, in such circumstances, it may be necessary and appropriate for a canvassing board to consult in closed session with its legal counsel. In that type of situation, a closed session of the canvassing board under Wis. Stat. § 19.85(1)(g)

² Wisconsin’s Election Code is located in Wis. Stat. chs. 5 through 12.

would be permissible. A closed session for the limited purpose of consulting with legal counsel about pending or anticipated litigation would not include conducting any actual canvassing activities in closed session and thus would not violate the Election Code requirements that the canvasses be conducted publicly.

3. Access to Election Documents and Materials

¶ 49. Third, you ask to what extent any applicable openness requirements compel election officials to permit members of the public to inspect election documents or materials during a meeting of a local, municipal, school district, or county canvassing board.³ In order to respond to this question, it is necessary to consider the pertinent requirements of both the open meetings law and the Election Code, as well as general principles governing the proceedings of governmental bodies.

¶ 50. The open meetings law requires that all open session meetings of a governmental body must be “reasonably accessible to members of the public” and “open to all citizens at all times.” Wis. Stat. § 19.82(3). Absolute or total access is not required, as long as there are no systematic or arbitrary exclusions or restrictions. See *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 580, 494 N.W.2d 408 (1993). Parallel provisions of the Election Code require that the various levels of canvassing meetings must be conducted publicly. See Wis. Stat. §§ 7.51(1), 7.53(1)(a) and (2)(d), and 7.60(3). The Election Code does not further specify the meaning of “publicly.” In my opinion, courts would likely construe these open meetings and Election Code provisions together as providing that canvassing board meetings are both “reasonably accessible” and conducted “publicly” if members of the public are given a reasonable opportunity to meaningfully observe the proceedings.

¶ 51. Reasonable limits on public access to government meetings, however, are both necessary and permissible. The express legislative policy of the open meetings law is that “the public is entitled to the fullest and most complete information regarding the affairs of government *as is compatible with the conduct of governmental business.*” Wis. Stat. § 19.81(1) (emphasis added). The Election Code

³ You ask only about the effect of the open meetings law on the inspection of election documents or materials. Some requests to inspect such items may also give rise to questions under the public records law. This opinion responds only to the questions you ask and does not address any issues arising under the public records law.

provides that, at a polling place, the election inspectors have “full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of the votes. Wis. Stat. § 7.37(2). More generally, governmental bodies are held to have the inherent power to regulate their proceedings in any way that is reasonably necessary for the proper exercise of their authorized functions, to preserve necessary order and decorum, and to restrain any individual to the extent necessary to enable them to perform their public duties. See *Mason’s Manual of Legislative Procedure* §§ 2.1, 2.6, 19.1, 37.2, 575, and 805-07 (2000); *Robert’s Rules of Order* § 61 (10th ed. 2000); Alice Sturgis, *Standard Code of Parliamentary Procedure* 222-23 (4th ed. 2001). Considering all these provisions and principles together, I conclude that, while canvassing boards must provide the public a reasonable opportunity to meaningfully observe their meetings, they may impose reasonable limits on public access to the extent necessary to protect the effective and orderly conduct of the canvass.

¶ 52. The same principles of reasonableness govern the public’s opportunity to inspect election documents and materials at canvassing board meetings. In general, members of the public should be permitted to inspect election documents or materials to the extent that such inspection is reasonably necessary to afford the public an opportunity to meaningfully observe the proceedings and does not interfere with the orderly conduct of the canvass. Thus, canvassers must exercise reasonable discretion to determine the manner of public access to election documents and materials that is consistent with the orderly conduct of the canvass. This discretion is not unlimited, however. The Election Code specifically provides that members of the public are never permitted to inspect the confidential portion of a poll list and are prohibited from touching any election materials or equipment during the counting of votes at a polling place or at any central counting location. See Wis. Stat. §§ 5.87(1), 6.47, and 7.41(4). Such provisions specifically addressing access to particular documents and objects supersede any conflicting general standard under the open meetings law. See *Jones v. State*, 226 Wis. 2d 565, 576, 594 N.W.2d 738 (1999).

¶ 53. Similar principles also govern the public’s opportunity to record, film, or photograph a canvassing board meeting. The open meetings law requires that a governmental body must make a reasonable effort to accommodate anyone who wants to record, film, or photograph an open session meeting, as long as the activity does not interfere with the meeting. Wis. Stat. § 19.90. It is my understanding that the GAB similarly advises election officials that video and still photography is permitted during canvassing board meetings, as long as it does not disrupt or interfere with the official business of the meeting. I agree that members of the

public should be allowed to record, film, or photograph a canvassing meeting, as long as such activities are conducted in a reasonable fashion and do not interfere with the canvass.

4. Enforcement

¶ 54. Finally, you ask what are the permissible and appropriate enforcement procedures for a violation of any open meetings requirement that applies to a meeting of a canvassing board and that overlaps with a requirement of the Election Code.

¶ 55. With regard to the Election Code, as noted in your letter of inquiry, election officials are prohibited from intentionally violating any provision of Wis. Stat. chs. 5 to 12 or from willfully neglecting or refusing to perform any of the duties prescribed for them under those statutory chapters. Wis. Stat. § 12.13(2)(a) and (b)7. Violations of these Election Code requirements are enforced by the local district attorney. Wis. Stat. §§ 11.61(2) and 12.60(4). Penalties for violators range from civil forfeitures to felony incarceration. *See* Wis. Stat. §§ 11.61(1) and 12.60(1). In addition, under Wis. Stat. § 5.06, the GAB has the authority—upon its own motion or upon the sworn complaint of an elector—to review the actions of election officials for compliance with the law and to order an election official to conform his or her conduct to law. Finally, the Attorney General or a local district attorney may sue for injunctive relief or seek a writ of mandamus or a writ of prohibition whenever a violation of laws regulating the conduct of elections occurs or is proposed to occur. Wis. Stat. § 5.07.

¶ 56. With regard to the open meetings law, any member of a governmental body who knowingly attends a meeting of such body held in violation of that law or who otherwise violates a requirement of the law through some act or omission is subject to civil forfeitures. Wis. Stat. § 19.96. A court may also award such other legal or equitable relief as may be appropriate under the circumstances. *See* Wis. Stat. § 19.97(2). An action to enforce the open meetings law may be brought by the local district attorney upon the verified complaint of any person. Wis. Stat. § 19.97(1). If the district attorney refuses or otherwise fails to commence an enforcement action within twenty days after receiving a verified complaint, then the person making the complaint may bring an enforcement action on his or her relation in the name and on behalf of the State. Wis. Stat. § 19.97(4).

¶ 57. There may be circumstances in which particular conduct by an election official will violate requirements under both the Election Code and the open

meetings law. For example, a member of a canvassing board who knowingly attends an unauthorized closed session meeting of that board could also thereby be intentionally or willfully violating the Election Code requirement that the canvass be conducted publicly. In these kinds of circumstances, the question arises whether enforcement action is available under both the open meetings law and the Election Code, or whether one should prevail over the other.

¶ 58. "It is a cardinal rule of statutory construction that where two *conflicting* statutes apply to the same subject, the more specific controls." *Jones v. State*, 226 Wis. 2d at 576. But the above rule only applies where there is truly a conflict between the statutes. *Pritchard v. Madison Metro. Sch. Dist.*, 2001 WI App. 62, ¶ 15, 242 Wis. 2d 301, 625 N.W.2d 613. Conflicts between statutes are not favored and courts are required to harmonize statutes to avoid conflict when a reasonable interpretation permits. *Id.* That two statutes regulate the same event does not create a conflict. *Id.* Instead, a conflict occurs when there is no reasonable interpretation making it possible to comply with both statutes. *See id.*

¶ 59. It is not possible to predict all potential factual circumstances where the open meetings law and the Election Code could be violated. Suffice it to say, there are circumstances where the enforcement of the requirements of the open meetings law and of the Election Code would likely overlap without actually being in conflict. In such situations, it would be proper for enforcement action to proceed under either body of law or even under both. Whether to proceed and under what statutes is a matter left to the discretion of the official seeking to enforce the law.

Sincerely,



J.B. VAN HOLLEN
Attorney General