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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: REPRESENTATIVE JANEL BRANDTJEN

FROM: Brian Larson, Senior Staff Attorney, and Dan Schmidt, Deputy Director

RE: The Application of s. 13.45 (7), Stats., to a Data Request From the Assembly Committee on Campaigns and Elections to the Wisconsin Elections Commission

DATE: June 16, 2022

This memorandum responds to your question regarding a request from the Assembly Committee on Campaigns and Elections (“Elections Committee”) to the Wisconsin Elections Commission (WEC) for certain voter registration information relating to the Committee’s investigation into the administration of elections in Wisconsin (“voter registration data”). Specifically, you have asked whether [s. 6.36 \(6\), Stats.](#), and [s. EL 3.50, Wis. Adm. Code](#), require that a legislative committee pay a fee in order to receive voter registration data from WEC when the legislative committee is conducting authorized oversight and investigative activities. In short, our answer is no, a legislative committee does not need to pay a fee for data when conducting such activities, including when requesting information relating to a committee task under [s. 13.45 \(7\), Stats.](#) Our explanation follows.

## LEGISLATIVE AUTHORITY TO CONDUCT AGENCY OVERSIGHT AND INVESTIGATIVE ACTIVITIES

Both the U.S. Supreme Court and Wisconsin Supreme Court have recognized the inherent authority of the Legislature, including its committees, to oversee and investigate state agency activities in support of legislative functions. In *Goldman v. Members of the Select Senate Committee appointed pursuant to Senate Resolution Thirteen*, the U.S. District Court for the Western District of Wisconsin summarized its historical understanding of this authority. [[286 F. Supp. 35, 43 \(W.D. Wis. 1968\).](#)]

The issue in *Goldman* was an investigation into the University of Wisconsin (UW). On October 20, 1967, the Senate passed 1967 Senate Resolution 13, as amended by Senate Substitute Amendment 1 to Senate Resolution 13. It created a select committee “for the purpose of gathering the facts” relating to student demonstrations that had occurred on campus. The *Goldman* court affirmed and concluded that the Wisconsin Legislature has broad powers to investigate and oversee state agencies including the UW. It cited key passages in support of this principle from the Wisconsin Supreme Court and the U.S. Supreme Court, as follows:

The legislature has very broad discretionary power to investigate any subject respecting which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or perform any other act delegated to it by the fundamental law, state or national, and to proceed, with that end in view, by a duly authorized committee of one or both branches of the Legislature and to incur reasonably necessary

expenses, payable out of the public funds. *State ex rel. Rosenhein v. Frear*, 138 Wis. 173, 176-177, 119 N. W. 894, 895 (1909).

And:

The power...to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. *Watkins v. United States*, 354 U.S. 178, 187, 77 S.Ct. 1173, 1179 (1957).

[[286 F. Supp. 35, 43 \(W.D. Wis. 1968\)](#)].<sup>1</sup>

## COOPERATION OF STATE AGENCIES REQUIRED

To effectuate the oversight and investigative duties described above, the Wisconsin Legislature has enacted procedures under ch. 13, Stats., providing the body and its committees with access to relevant information. This includes [s. 13.45 \(7\), Stats.](#), which requires the cooperation of state agencies.<sup>2</sup> [Section 13.45 \(7\), Stats.](#), states:

**(7) Cooperation of state agencies.** The departments, officers and employees of Wisconsin state government, and the governing bodies of the political subdivisions of this state, shall assist legislative committees in the completion of their tasks. They shall provide legislative committees with ready access to any books, records or other information relating to such tasks. Upon request by legislative committees, and within the limits of existing appropriations, departments of state government shall supply such specialized staff assistance as a legislative committee may require.

Under this provision, among other requirements, if a legislative committee is engaged in a task and a state agency has information relating to that task, the agency must provide the committee with “ready access” to that information.<sup>3</sup>

## ANALYSIS

The Elections Committee has requested the voter registration data in connection with its investigation into the administration of elections in Wisconsin, pursuant to [Assembly Resolution 15](#). It is our understanding that the purpose of the requested data will be to contribute to the Elections Committee’s knowledge of the administration of elections in Wisconsin to enable it to consider potential

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<sup>1</sup> See also [McGrain v. Daugherty](#), 273 U.S. 135, 175 (1927) (“[A] legislative body cannot legislate wisely or effectively in the absence of information respecting conditions which the legislation is intended to affect or change.”).

<sup>2</sup> In addition to [s. 13.45 \(7\), Stats.](#), discussed above, see [s. 13.28, Stats.](#) (interpellation of officers); [s. 13.31, Stats.](#) (legislative subpoena); [s. 13.45 \(6\), Stats.](#) (examination of persons before committee); [s. 13.91 \(intro.\), Stats.](#) (facilities and data to Legislative Council staff); [s. 13.94 \(intro.\), Stats.](#) (books and records to Legislative Audit Bureau (LAB)); and [s. 13.95 \(intro.\), Stats.](#) (books and records to Legislative Fiscal Bureau), for examples of statutes providing access to information to assist with legislative oversight and investigative activities.

<sup>3</sup> It is noteworthy that the term “ready access” is used in [s. 13.45 \(7\), Stats.](#), as used throughout the statutes, it and its closely related term “readily accessible” appear to describe information or data that may be accessed as needed and without delay. [See, for example, [ss. 39.75 \(1\) \(a\) 3., 551.205 \(1\) \(c\), 49.498 \(8m\), 238.07 \(3\), and 968.27 \(14\), Stats.](#)]

modifications to current election laws. In its response, WEC indicated that [s. 6.36 \(6\) Stats.](#),<sup>4</sup> and the related administrative rule, [s. EL 3.50, Wis. Adm. Code](#),<sup>5</sup> require WEC to charge the Elections Committee a fee for the data and that “[t]here are no exceptions to this requirement for legislative committees under state law or administrative code.” Based on these statements, it appears that WEC is misreading the appropriate statutes governing this request.

First, the statute and administrative code provision cited by WEC are clearly limited to *public* records requests. The authorizing statute specifically states that the registration list “shall be open to public inspection under s. 19.35 (1),” which is a provision in Wisconsin’s Public Records Law. [See [ss. 19.31 to 19.39, Stats.](#)] The Elections Committee, as we understand, made its request under [s. 13.45 \(7\), Stats.](#), the aforementioned provision of the statutes which effectuates legislative oversight and investigative activities. As the purpose of the request is to assist in an oversight investigation, not to provide public inspection under the Public Records Law, a fee is neither appropriate nor authorized by statute.

Second, even assuming that [s. 6.36 \(1\) \(b\), Stats.](#), and [s. EL 3.50, Wis. Adm. Code](#), applied, the language of [s. 13.45 \(7\), Stats.](#), appears to direct that no fee be charged for legislative access, which may be construed as an exception. The term “ready access” is used to characterize how information is required to be provided under the statute. It confers a right to use the information on an immediate basis, without limitation.<sup>6</sup> The imposition of a fee, however, requires that a payment transaction occur prior to the provision of data. Such a condition does not appear to constitute “ready access” for the purposes of committee assistance and seems to directly contradict legislative oversight and investigative authority.

Finally, following WEC’s interpretation of the law would lead to a result in which a state agency, created by the Legislature, had been authorized, by the Legislature, to require the Legislature to pay a fee for conducting its core constitutional responsibilities. This result would clearly be contrary to legislative intent. WEC’s authority to assess a fee is limited to public requests, and the applicable statute compels WEC to provide “ready access” to the information, as described above.

## CONCLUSION

Legislative committees have clear authority to conduct investigations and oversee state agencies. The Elections Committee is engaged in the task of investigating the administration of elections in Wisconsin, which is clearly within its jurisdiction of authority. The Elections Committee has determined that WEC’s voter registration data will assist the Elections Committee in completing this task. Therefore, WEC is statutorily required to provide the Elections Committee with access to the requested voter registration data without charging a fee for public inspection, as provided under [s. 13.45 \(7\), Stats.](#)

Please let us know if we can provide any further assistance.

BL:DWS:ksm

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<sup>4</sup> [Section 6.36 \(1\) \(a\), \(b\) and \(6\), Stats.](#), respectively requires WEC to compile and maintain an official voter registration list, permit public inspection of the list under [s. 19.35 \(1\), Stats.](#), and establish a fee for that public inspection by administrative rule.

<sup>5</sup> [Section EL 3.50 \(4\), Wis. Adm. Code](#), requires a charge for electronic reports requested under [s. 6.36, Stats.](#) of a \$25 base fee per report; plus \$5 for the first 1,000 voter registration data records, or up to 1,000 voter registration data records; plus \$5 for each additional 1,000 voter registration data records, rounded to the nearest thousand; and a maximum charge for an electronic report of \$12,500.

<sup>6</sup> In contrast, the statute includes a limitation on the requirement to provide specialized staff assistance to assist a legislative committee in the completion of legislative tasks, in certain cases. Whereas the requirement to provide ready access to books, records, and other information applies in full, the requirement to provide specialized staff assistance applies only within the limits of existing appropriations. [[s. 13.45 \(7\), Stats.](#)]