

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: January 11, 2012

To: Kevin Kennedy
Director and General Counsel
Government Accountability Board

From: Lewis Beilin
Assistant Attorney General

Subject: Deadlines applicable to recall petitions registered on November 15, 2011

What follows is a summary of the Department of Justice's analysis of two recall-related issues. I am providing this analysis so that you can provide it to members of the public who may have questions. Because this communication is not intended to be kept confidential, no privilege or right of confidentiality has been waived.

1. If a petitioner registers to circulate a recall petition on November 15, 2011, by what date must the petition be offered for filing in order to comply with the 60-day time limit in Wis. Stat. s. 9.10?

Wis. Stat. § 9.10(2) provides that “the last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration.”

Petitions to recall certain state elected officials were registered on November 15, 2011. (*See, e.g.,* <http://www.jsonline.com/blogs/news/133889118.html>). The 60th day commencing after November 15 is January 14, 2012, which is a Saturday.¹ The question is therefore: when must these petitions be offered for filing in order to comply with section 9.10(2)?

The answer is: by 5 p.m., Tuesday, January 17, 2012. The computation of time in section 9.10 is governed by Wis. Stat. § 990.001, and the relevant portion of that statute provides as follows:

(4)(c) When the last day within which a proceeding is to be had or taken or an act done, which consists of any payment to or the service upon or **the filing with any officer**, agent, agency, department or division of the state or of any county, city, village, town, school district or other subdivision of the state, of any money, return, statement, report,

¹ Under a plain reading of section 9.10(2), the first day in the 60 day period to be counted would be November 16, 2011, because that is the first day “commencing after [the date of] registration.” Accordingly, the “60th day commencing after [the date of] registration” is January 14, 2012. *See also* Wis. Stat. § 990.001(4)(a) (“The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; . . .”)

notice **or other document**, falls on a Saturday and the duly established official office hours of such officer, agent, agency, department or division to which such payment is to be made or upon which such service is to be made or with which such return, statement, report, notice or other document is required to be filed, do not include any office hours thereof on such Saturday, **said proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.**

The “duly established official office hours” of the GAB (the “agency” charged with accepting for filing a statewide recall petition) appear to be Monday through Friday, 7:45 a.m. to 4:30 p.m. (*See* <http://gab.wi.gov/contact>). If the “duly established official office hours” do not include Saturday hours, section 990.001(4)(c) provides that the “act may be done” (here, the offering for filing of the recall petition) on the next succeeding day that is not a Sunday or a legal holiday.

Monday January 16, 2012 is the Martin Luther King, Jr. holiday. The statute therefore pushes the deadline back to Tuesday the 17, 2012.

2. If a petitioner registers to circulate a recall petition on November 15, 2011, what is the last date that valid signatures can be added to that petitioner’s petition?

Wis. Stat. § 9.10(2)(d) states in pertinent part:

....The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

The “period provided in this paragraph” referred to in section 9.10(2)(d) ends on a Saturday, as explained above, but *signing* a petition is not “any payment to or the service upon or the filing with any officer, agent, agency, department or division of the state ... of any money, return, statement, report, notice or other document,” which is the language used in section 990.001(4)(c). Instead, the signing of the petition would be covered by section 990.001(4)(b), which states:

If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day.

Because the 60th day is a Saturday, and not a Sunday, the time period for the act of signing the recall petition would end on Saturday, January 14, 2012. For petitions registered on

Kevin Kennedy
January 11, 2012
Page 3

November 15, 2011, the last day that a valid signature can be added to such petitions is January 14, 2012; any signatures dated January 15, 16, or 17 would be invalid.

This document does not constitute either an informal or formal opinion of the Wisconsin Attorney General.