

Richland County

Rules & Strategic Planning Standing Committee

September 29, 2023

NOTICE OF MEETING

Please be advised that the Richland County Rules and Strategic Planning Standing Committee will convene at 10 a.m., Thursday, October 5, 2023 in the County Board Room at 181 W. Seminary Street.

Meeting access information can be found at: <https://administrator.co.richland.wi.us/minutes/rules-strategic-planning/>.

If you have any trouble accessing the meeting, please contact MIS Director Barbara Scott at 608-649-5922 (phone) or barbara.scott@co.richland.wi.us (email), or County Administrator at 608-649-3001 (phone/text) candace.pesch@co.richland.wi.us (email).

Agenda

1. Call To Order
2. Roll Call
3. Proof Of Notification
4. Approval Of Agenda
5. Approval Of September 7, 2023 Minutes
6. Public Comments (*topics raised from public may be placed on agenda for future consideration*)
7. Discussion & Possible Action: Utilization Of Corporation Counsel Policy
8. Discussion & Possible Action: County Board Rules Review
9. Discussion & Possible Action: Strategic & Comprehensive Plan Review
10. Discussion & Possible Action: Ethics Policy Review
11. Discussion & Possible Action: Determination Of Residency For County Officials
12. Discussion & Possible Action: Transfer Of Education Standing Committee Duties To Public Works Standing Committee
13. Future Agenda Items
14. Adjournment

Meeting materials may be found at <https://administrator.co.richland.wi.us/minutes/rules-strategic-planning.shtml>

CC: Committee Members, County Board, Department Heads, Richland Observer, WRCO, Valley Sentinel, Courthouse Bulletin Board

A quorum may be present from other Committees, Boards, or Commissions. No committee, board or commission will exercise any responsibilities, authority or duties except for the Rules and Strategic Planning Standing Committee

Richland County

Rules & Strategic Planning Standing Committee

September 7, 2023

The Rules and Strategic Planning Standing Committee met on Thursday, September 7th, 2023, at 10:12 a.m. in the County Board Room at 181 W. Seminary Street via videoconference and teleconference.

1. Call To Order: Chair Turk called the meeting to order at 10:12 a.m.

2. Roll Call: Clerk Kalish conducted roll call. Committee members present: Brewer, Glasbrenner, Gentes, Turk, and Fleming. Committee members absent: Cosgrove, Frank, and Seep.

4. Approval Of Agenda: Motion by Brewer second by Fleming to approve agenda. Motion carried and agenda declared approved.

5. Approval Of March 2, 2023 Minutes: Motion by Gentes second by Fleming to approve March 2, 2023 minutes. Motion carried and March 2, 2023 minutes declared approved.

6. Public Comments: No one present for Public Comment.

7. Discussion & Possible Action – Utilization Of Corporation Counsel: Attorney Windle stated he would like committee input on what tasks he should be completing as the county's Corporation Counsel and confirmation that he is providing services to county as expected. Administrator Pesch stated she is an advocate for a protocol to be in place that defines the utilization of Attorney Windle's service as Corporation Counsel. Consultant Hochkammer noted that a policy could be drafted that something should be in place. Discussion regarding the procedure for requesting use of Corporation Counsel's services continued. Administrator Pesch indicated her preference for a policy would include department head level interaction with oversight from the County Administrator as needed. Administrator Pesch will review topic further and present a draft policy to committee at a future meeting. No further action taken on agenda item at the meeting.

8. Discussion & Possible Action – County Board Rules Review: Administrator Pesch noted that many of the current Rules of the Board need updated as some do not align with parameters set forth in state statute or how the county currently operates. Turk stated he was in favor of a review of the rules and Gentes noted a methodical approach to review the rules would be most efficient. Brewer questioned whether or not the review could be handled by current staff and Pesch replied that staff could complete first review. Consultant Hochkammer noted that the Rules of the Board affect many functions of the county and stated that a big picture review would also be helpful. Glasbrenner asked how the committee could help and Hochkammer replied by stating that basic feedback is helpful. Administrator Pesch noted that a systematic approach would be used to review the overall operations of the county and that a draft of the proposed rules changes could be completed by staff and brought back to committee for review. Attorney Windle noted there is an omission of enforcement with the current set of rules. Administrator Pesch will review rules and present proposed changes for committee review at a future meeting. No further action taken on agenda item at the meeting.

Richland County

Rules & Strategic Planning Standing Committee

9. Discussion & Possible Action – Strategic Plan Review: Troy Maggied of Southwest Wisconsin Regional Planning Commission briefly reviewed the status of and difference between the county’s current strategic and comprehensive plans. Maggied noted that there is remaining grant funding for projects within Richland County and a common theme is the improvement of relations between the city and county. Maggied stated that clarity from the county is needed to move forward with the comprehensive plan. Glasbrenner questioned the status of the extension and Maggied stated the extension was approved and notification was sent to staff no longer with the county. Administrator Pesch stated that further review is needed from she and Consultant Hochkammer to familiarize themselves with both plans as they stand. Committee requested the comprehensive plan be forwarded to full County Board for approval.

10. Discussion & Possible Action – Ethics Policy Review: Attorney Windle stated that the current ethics ordinance has no avenue for discretion and no standards for the establishment of a complaint. Attorney Windle also stated that he is in favor of the complainant having to identify an alleged violation of a specific provision within an ethics ordinance and emphasizing, but not requiring, the need for supporting documentation to substantiate a claim of violation. Discussion regarding complaint procedure followed. Administrator Pesch stated that some utilize a code of conduct that supervisors are expected to follow as officials of the county. Discussion regarding a code of conduct followed. Administrator Pesch will review topic further and present proposed changes to ethics ordinance to committee at a future meeting. No further action taken on agenda item at the meeting.

11. Discussion & Possible Action – Amendments To The Land & Zoning Standing Committee Structure: Wisconsin Act 32 was reviewed by committee. This act removed the requirement for a member of the Land & Zoning Standing Committee to be the Farm Services Agency (FSA) Chair or their designee. Motion by Glasbrenner second by Fleming to amend Land & Zoning Committee Structure to reflect the changes made with Wisconsin Act 32. Motion carried and amendment forwarded to full County Board for approval.

12. Future Agenda Items:

Glasbrenner: Determination of residency for county officials

3. Proof Of Notification: Clerk Kalish confirmed the meeting was properly noticed.

13. Adjournment: Motion by Brewer second by Fleming to adjourn. Motion carried and the meeting adjourned at 11:50 a.m.

Derek S. Kalish
Richland County Clerk



Determining Residency of Municipal Officers

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

At the time they are elected, members of municipal governing bodies and other local elected officers must be resident electors of the municipality.¹ Common council members representing aldermanic districts must not only reside within the city but must also be residents of the district from which they are elected.²

While virtually all elected offices have a residency requirement, the same is not true for appointive offices. Some appointive offices are subject to a residency requirement.³ Others are not.⁴ Some municipalities have enacted local laws that require residency in order to be eligible for appointment to certain appointive offices even though state law does not impose such a requirement.

Where residency is an eligibility requirement for holding office, it is not enough for the office holder to be a resident at the time of election or appointment. Residency must be maintained throughout the term. A local elective office is vacated when the incumbent ceases to be a resident of the municipality or district from which he or she was elected.⁵ In addition, if residency is a local requirement for appointive offices, a local appointive office is vacated

when the incumbent ceases to be a resident of the municipality.⁶

Sometimes questions arise concerning the residency of municipal officers. For example, where does an elected municipal officer reside when he or she maintains two dwelling places, one inside and one outside the municipality? Does an elected officer who is forced by circumstances to temporarily move outside of the municipality or district from which elected cease to be a resident? Because Wis. Stat. sec. 17.03(4) provides that failure to maintain residency results in the office being vacant, determinations regarding residency are important and must be made carefully. This comment discusses what factors are pertinent in determining a municipal officer's residency.

Standards for Determining Residency

State statutes governing city and village officers do not define "resident," but Wis. Stat. sec. 6.10 provides standards governing residence as a qualification for voting. Since elected officials must be "resident electors," these standards are clearly relevant. Section 6.10 provides,

among others not included here, the following standards:

- The residence of a person is the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return.⁷
- When a married person's family resides at one place and that person's business is conducted at another place, the former place establishes the residence. If the family place is temporary or for transient purposes, it is not the residence.⁸
- The residence of an unmarried person sleeping in one ward and boarding in another is the place where the person sleeps.⁹ The residence of an unmarried person in a transient vocation or a teacher or student who boards at different places including for, some of the time, his or her parents' home, is the parents' home unless the person has elected to establish a residence elsewhere.
- A person shall not lose residence when the person leaves home and goes into another state or county, town, village

1. Wis. Stat. secs. 61.19 and 62.09(2)(a). A resident elector is a U.S. citizen, age 18 or older who has resided in an election district or ward for a certain duration before the election. Wis. Stat. sec. 6.02. That duration is in question. The legislature increased the durational residency requirement from 10 days to 28 days in 2011 Wis. Act 23, but the United States District Court for the Western District of Wisconsin concluded that the increase was unconstitutional. *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 906 (W.D. Wis. 2016). The decision is currently being appealed to the Seventh Circuit.

2. Wis. Stat. sec. 62.09(2)(a).

3. Examples of appointed offices subject to a residency requirement include library board members under Wis. Stat. sec. 43.58, board of review members under sec. 70.46, and commissioners for a redevelopment authority under Wis. Stat. secs. 66.1333(3)(a)3., applicable to villages by sec. 66.1339.

4. For example, state statutes do not require that plan commission, zoning board of appeals or police and fire commission members be municipal residents.

5. Wis. Stat. sec. 17.03(4)(c).

6. Wis. Stat. sec. 17.03(4)(d).

7. Wis. Stat. sec. 6.10(1).

8. Wis. Stat. sec. 6.10(2).

9. Wis. Stat. sec. 6.10(4).

or ward of this state for temporary purposes with an intent to return.¹⁰

- As prescribed by article III of the constitution, no person loses Wisconsin residence while absent from Wisconsin on state or federal business, and no member of the U.S. armed forces gains Wisconsin residence because of being stationed in Wisconsin.¹¹
- No person gains a residence in any ward or election district of this state while there for temporary purposes only.¹²
- A person loses Wisconsin residence if he or she moves to another state with an intent to make a permanent residence there or, if while there, exercises the right to vote as a citizen of that state.¹³
- Neither an intent to acquire a new residence without removal, nor a removal without intent, shall affect residence.¹⁴

In addition to the above standards, there are some cases that provide insight on residency. Although the cases involve determining residency of municipal employees rather than municipal officers, and were decided before Wis. Stat. sec. 66.0502 prohibited municipalities from requiring employees to reside within the municipality, they are useful because the courts are examining what residency means.

In *Kempster v. City of Milwaukee*,¹⁵ the Wisconsin Supreme Court analyzed a provision of Milwaukee's charter requiring that the health commissioner

reside in the city continuously for one year prior to appointment. The court stated:

“The word ‘residence’ as used in the charter does not mean physical location continuously. It is used in the broad sense of domicile requisite to citizenship. For the purposes of such residence there must be an actual location in the place in question, with the intention of making it a permanent home. That is sufficient to meet all the requisites of legal residence at the outset. In one sense a person may have more than one place of residence, but he can have only one which has the element of permanency essential in a legal sense to his domicile. He can have only one domicile at one time. To constitute that there must be an actual location, with the intent to make such place his home indefinitely...”

Kempster, 97 Wis. at 347-348, 72 N.W. at 744 745 (1897).

In *Eastman v. City of Madison*,¹⁶ a Madison police officer and firefighter sought reinstatement as Madison employees after their positions of employment were vacated for failure to comply with the city's residency ordinance. The employees kept apartments in Madison and Madison mailing addresses, telephone numbers, automobile and voter registrations. However, the employees' spouses and families lived exclusively outside Madison and the children attended school outside of Madison. Moreover, the employees spent most of their off-duty time in their homes outside of Madison.

The employees claimed that they complied with the residency ordinance even though they had homes outside the city. However, the court disagreed. The court of appeals referred to the definition of “residence” in Black's Law Dictionary in determining that the ordinance requiring city employees to “reside” in the city was not unconstitutionally vague. The court noted, “Black's Law Dictionary defines ‘residence’ as ‘[p]ersonal presence at some place of abode with no present intention of definite and early removal.... Residence implies something more than mere physical presence...’”¹⁷

In analyzing the residency issue, the court declared that “[c]ontinuous personal presence and intention establish residency.”¹⁸ The court noted, however, that the employees' declarations of intent were not conclusive because “[s]uch declarations are only evidence of state of mind and ‘may be suspect because of their self-serving nature.’”¹⁹ The court stated, “The self-serving declaration cannot be conclusive but must yield to the intent which the acts and conduct of the person clearly indicate.”²⁰ In addition, the court of appeals indicated that “the location of immediate family, and the site of children's schooling is significant in determining residency.”²¹ Thus, the *Eastman* court concluded that the fact that the employees maintained apartments and voter registrations in Madison, “in light of the totality of the circumstances, establishes neither the intent nor the presence necessary

10. Wis. Stat. sec. 6.10(5).

11. Wis. Stat. sec. 6.10(6).

12. Wis. Stat. sec. 6.10(8).

13. Wis. Stat. sec. 6.10(10).

14. Wis. Stat. sec. 6.10(11).

15. 97 Wis. 343, 72 N.W. 743 (1897).

16. 117 Wis.2d 106, 342 N.W.2d 764 (Ct. App. 1983).

17. 342 N.W.2d at 769, quoting Black's Law Dictionary 1176 (rev. 5th ed. 1979).

18. *Id.* at 770.

19. *Id.*, quoting Restatement (Second) of Conflict of Laws.

20. *Id.*, quoting *McCarthy v. Phila. Civ. Svc. Comm.*, 339 A.2d 634, 637 (Pa. 1975), *aff'd*, 424 U.S. 645 (1976) (*per curiam*).

21. *Id.*

for residency” under the Madison ordinance.²²

In an Illinois case, the Seventh Circuit court of appeals found that a city employee who resided within city limits only two days per week and lived with his wife outside the city limits the remainder of the time period for 20 years, violated a city residency ordinance even though the employee paid taxes, registered his car, voted, and obtained his driver’s license using his city address, where his wife continuously resided in the marital home.²³

It is evident from case law and the standards listed above that residency determinations must be made on a case-by-case basis. In general, temporary absences from one’s residence do not result in the loss of residency. In addition, a person’s intention is important, but it must be supported by and not contradicted by the facts.

It’s clear that an important factor in determining residency is continuous personal presence at a particular location. This inquiry focuses on where the person spends most of his or her non-working time. Other relevant considerations in determining the residency of a person dividing time between two dwellings are the location of the person’s immediate family, and the site of the children’s schooling, if any. In addition, other facts should be taken into account when determining the residency of a person, such as: where the person is registered to vote, the person’s mailing address, and what address appears on the person’s

driver’s license, car registration, bank accounts, and tax returns.²⁴

Who Determines the Residency of a Municipal Officer?

When questions are raised concerning the residential status of a municipal officer, who or what body is authorized to make a determination concerning the officer’s residency? With regard to municipal governing body members, each city and village governing body may determine the residency of its members. This is because village boards and common councils have the power to judge the qualifications of their members.²⁵ Municipal governing bodies should not, however, make a determination regarding a member’s residency without holding a due process hearing. Also, such a determination is subject to judicial review.

In addition to the ability of municipal governing bodies to determine the residency of their members, any individual who believes that a person holding a local elective office is not a resident of the municipality or district in which he or she serves may file a complaint with the attorney general alleging that the individual is not qualified to hold office because of a failure to meet a residency requirement.²⁶ The attorney general may, when such a complaint is filed, investigate whether the allegations are true. If the attorney general finds that the allegations in the complaint are true, the attorney general may commence an action under ch. 784, Stats., for a writ of quo warranto to have the person’s office declared vacant

because of failure to meet a residency requirement.²⁷

If the attorney general refuses to act on a complaint alleging that a particular officer is not a resident of the municipality or district in which the officer serves, the complainant may, on his own, commence a quo warranto action under ch. 784.²⁸ However, only a person who has an interest which is distinct from that of the general public would have standing to commence a quo warranto action. *City of Waukesha v. Salbashian*.²⁹ But, as the *Salbashian* court explained, “only a slight interest” is necessary to qualify a person to apply for leave to prosecute a quo warranto action.³⁰

De facto Officers

When an elective municipal officer, such as a common council member, moves out of the municipality or district from which elected but continues to exercise the powers and duties of the office for the remainder of his or her term, the officer’s votes and any actions taken by the governing body are valid. While an elective municipal officer who ceases to be a resident of the municipality may not be considered a de jure officer, he or she is a de facto officer if “in possession of [the office], performing its duties, and claiming to be such officer under color of an election or appointment.”³¹ The acts of a de facto officer are valid as to the public and third parties, and cannot be attacked collaterally.³²

► p.25

22. *Id.*

23. *Gusewelle v. City of Wood River*, 374 F.3d 569 (7th Cir. 2004).

24. See Officers 743.

25. Wis. Stat. secs. 61.32 and 62.11(3)(a).

26. Wis. Stat. sec. 8.28(1).

27. Wis. Stat. sec. 8.28(2).

28. Wis. Stat. sec. 784.04(2).

29. 128 Wis.2d 334, 349, 382 N.W.2d 52, 57 (1986).

30. *Id.*

31. *State ex rel. Reynolds v. Smith*, 22 Wis.2d 516, 522, 126 N.W.2d 215 (1964).

32. *Burton v. State Appeal Board*, 38 Wis.2d 294, 304-05, 156 N.W.2d 386 (1968); 77 Op. Att’y Gen. 228, 229 (1988).

Conclusion

Occasionally, questions arise concerning the residency of a particular municipal officer. This Comment has reviewed various factors to consider when attempting to determine the residency of a municipal officer. The residential status of a municipal officer is important because a local elective office is vacated when an incumbent ceases to be a

resident of the municipality or district from which he or she was elected. Also, a local appointive office is vacated when the incumbent ceases to be a resident of the municipality if residency is a local requirement. Thus, it is important to make sure that any determination as to residency is made by considering the relevant factors.

Governing Bodies 335R2
Officers 751R2
Officers 752R2
Officers 753R3

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for or against that proposed resolution or ordinance. In doubtful cases, the Chair shall assign all matters to the appropriate committee.

Rule 20

Vacancies on the County Board are created in the following ways:

- (a) removal for cause by a two thirds vote of all Supervisors;
- (b) removal for cause per Wisconsin Statutes, section 17.14 (2) relating to valuation or
 - i. equalization of real estate for tax assessment purposes;
- (c) by death;
- (d) by moving out of the County; Supervisors who move out of their District
 - i. but remain a resident of the County, may serve the remainder of their term.
- (e) by submitting a letter of resignation to the Sheriff per Wisconsin Statutes,
 - i. section 17.01 (7). The Sheriff shall then file the resignation with the County Clerk. The effective date of the resignation shall be stated in the resignation document. Resignations can be effective: immediately; at a future date; or upon the happening of a future event.
- (f) conviction of a felony.

Rule 21

The following procedure shall be utilized when there is a vacancy in a County Board Supervisory District which occurs when there is not less than 5 months remaining in the Supervisor's term:

- (a) Within 30 days of the seat becoming vacant, the County Clerk shall place a standard advertisement (not in the legal section) for 2 consecutive weeks in The Richland Observer and The Shopping News, as follows:
 - 1. Notifying the public that there is a vacancy in Supervisory District #_____ and setting forth a map which reasonably informs the public of the boundaries of the District.
 - 2. Stating that persons interested in being appointed as a County Board Supervisor from the vacant District shall submit the following information to the County Clerk in any format, except verbally, by a stated deadline which shall be not less than 30 days from the date of the last publication:
 - i. The applicant's name and address
 - ii. That the applicant is at least 18 years' old
 - iii. That the applicant is qualified to vote in the District.
 - iv. A brief statement as to the applicant's qualifications to serve on the County Board.
 - 3. Stating that the vacancy will be filled from the list of applicants, at the next County Board meeting after the expiration of the application deadline. The advertisement should state the place, date and time of that County Board meeting.

4. Stating the County Clerk's mailing address, fax number and e-mail address.
- (b) The vacant seat shall be filled in the manner set forth in Rule 5 of the Rules of the Board for the selection of the members of the Committee on Committees and the Highway Committee. Only persons who have timely filed applications in accordance with paragraph 1 shall be eligible for appointment.
 - (c) If no applications have been received, the Board will receive nominations of qualified and willing persons from the floor.
 - (d) The person appointed shall, if present, take the oath of office immediately following the appointment. Otherwise, the person appointed shall take the oath of office at the start of the next County Board meeting. If the person originally elected to the District in which the vacancy exists, remains a resident of Richland County, and is willing to do so, he or she shall continue to serve until his or her replacement takes the oath of office.

Rule 22

A committee, board or commission may adopt a motion requesting another committee, board or commission to attend a future meeting of the requesting body. In such event, each participating committee, board or commission shall prepare an agenda for the joint meeting in the usual manner.

Rule 23

In the event no Rules of the Board have been heretofore established and if there is no legal impediment, Robert's Rules of Order, as amended, shall apply.