

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: June 2, 2011

MEMORANDUM

TO: Brian Grady, Redistricting Coordinator

FROM: Michael P. May, City Attorney

RE: Timing for Redistricting and Remedies for Failure to Meet Deadlines

I was asked to provide you with an opinion for the Redistricting Committee regarding the 60 day requirements in state law for taking certain steps in the redistricting process, and what remedies exist if a county or municipality fails to meet those 60 day deadlines.

County Board Deadlines.

The redistricting process starts with the County Board establishing a tentative set of supervisory districts. Under §59.10(3) (b), Wis. Stats., the county is to do this within 60 days of receipt of the population count, but no later than July 1. The initial part of this statute reads as follows (emphasis added):

“Within 60 days after the population count by block, established in the decennial federal census of population, and map showing the location and numbering of census blocks becomes available in printed form from the federal government or a published redistribution by an agency of the state, but no later than July 1 following the year of each decennial census, each board shall propose a tentative county supervisory district plan . . .”

The population data was made available on March 21. The 60 day time frame set out in this statute would have expired on or about May 21. As of the date of this memo, the Dane County Board still has not adopted a tentative supervisory district plan.

My understanding is that the County reads the July 1 deadline as the absolute outside date, and that it may otherwise meet or exceed the 60 day deadline, so long as the July 1 deadline is met. This strikes me as an unusual reading of the statute. This reading suggests that the 60 days set out in the statute is a guideline and the only real deadline is July 1. Alternatively, the County is reading the statute as saying that the County is to establish its plan within 60 days, or July 1, whichever is later.

In contrast, I read the July 1 deadline as establishing the outside time which the tentative plan may be established, in the case when there does not exist 60 days

between receipt of the population data and July 1. In all other instances, the County should complete their tentative plan within 60 days.

In its publication, "Guidelines for Adjusting Municipal Wards Following the 2010 Federal Census", the State of Wisconsin Legislative Reference Bureau simply refers to the 60 day deadline. Despite that, in its chart listing the 2011 timing for completion of plans, the LRB lists the date of receipt of the population data as March 21, 2011, and states that counties are to adopt their tentative supervisory plans by "June, 2011." This suggests that the LRB does not view the 60-day deadline as a hard and fast requirement, meaning that there may be differences of opinion in terms of how to interpret the language in the statute.

Based on the foregoing, I think there is some ambiguity in the statutory language. It is not clear to me that a court would hold the County to the 60 day requirement until after July 1 has passed.

Municipal Deadlines.

With respect to the creation of wards by municipalities, § 5.15(1) (b), Wis. Stats., provides that the municipality is to create its wards "within 60 days after the receipt of a tentative supervisory district plan." Thus, it is clear that for the City of Madison, the 60 days does not begin to run until we receive the initial plan from the County.

There are other deadlines for counties and municipalities in rolling 60 day requirements.

Remedies.

The statutes provide a remedy if any governmental body fails to meet the 60 day requirements. §59.10(6), Wis. Stats., provides that if the county fails to comply with the time requirements for creating the tentative or final supervisory districts:

. . . any municipality located in whole or part within the county, or any elector of the county may submit to the Circuit Court for the county within 14 days from the expiration of either 60 day period . . . a proposed tentative or final plan for creation of supervisory districts in compliance with this section.

This section goes on to say that the court is to review the plan submitted by the petitioner, after notice to the county, and may promulgate that plan or any other plan. However, such plan promulgated by the court is only "a temporary supervisory district plan until superseded by a districting plan adopted by the Board in compliance with this section."

There is a similar enforcement mechanism for municipalities failing to meet their deadlines in §5.18, Wis. Stats.

Conclusion.

I conclude that, at this time, there seems little practical reason to commence an action to force the County to act. First, the statute is vague enough that a court might find the County has until July 1. Until that deadline passes, any court challenge is risky. Second, no matter how quickly any person would get into court and get the court to act, the County will likely act in the meantime to establish a tentative district plan. This would essentially moot any court case.

I further conclude that, while there may be some basis to force the County to act more quickly, there is no practical reason to attempt to enforce the deadlines, given that the County will soon be adopting its tentative district plan. I think the practical effect of the statutory remedies is to allow a person to sue and a plan to be adopted by a court when a political body is deadlocked and cannot agree on a plan.