

IN RE:

Complaints Filed Against Mayor Doug Diny

DECISION

The above-entitled matter came before the City of Wausau Ethics Board (hereinafter "Board") for hearing on October 10, 2025. This matter arose upon Complaints filed by Scott Bryan, Jay Coldwell, Kurt Hase and Jerry Phelan (the "Complainants"). On or about February 19, 2025, pursuant to Section 2.03.060(c) of the City of Wausau Municipal Code, the Ethics Board found the Complaint alleges facts sufficient to constitute a violation of the City Ethics Code, and commenced an investigation. On or about April 3, 2025, pursuant to Section 2.03.070(a) of the City of Wausau Municipal Code, the Ethics Board issued preliminary written findings of fact and conclusions based thereon, making its determination that probable cause existed to believe that a violation of the Ethics Code occurred, and set the matter for hearing. Additional procedural matters, motions, discovery issues and scheduling were considered by the Ethics Board in a series of 9 meetings held prior to the hearing. On October 10, 2025, members of the Ethics Board presiding in the matter on hearing were Jesse Kearns, Doug Hosler, Robyn DeVos, and Calvin Dexter who served as Chair. Mayor Doug Diny (the "Respondent") was represented by Attorney Andrew Erlandson, Hurley Burish, S.C. Attorney Eric J. Larson, Municipal Law & Litigation Group, S.C., served as legal counsel to the Ethics Board. Also present were Attorney Samuel C. Hall, Crivello, Nichols & Hall, S.C., who represented some of the witnesses subpoenaed to appear at the hearing. Attorney Douglas M. Poland of the law firm Law Forward, who represented the Complainants, had filed certain correspondence with the Ethics Board's legal counsel, but made no appearance at the hearing.

Sworn testimony was presented at the hearing from the following persons: Matthew Barnes, Chief of Police; Gerard Klein, IT Director, City-County Information Technology Commission; Eric Lindman, Director of Public Works & Utilities; Leo Gau, Facilities Manager, Department of Public Works; Lisa Rasmussen, Council President, Alder for District 7; Kaitlyn Bernarde, City Clerk; Anne Jacobson, City Attorney, and the Respondent, Mayor Doug Diny. Exhibits 1 to 25 were marked, identified and received in evidence. The full testimony and evidence provided is in the record of the proceedings and will not be summarized in this decision.

FINDINGS OF FACT¹

Based upon all the testimony and exhibits received at the hearing, the Ethics Board finds as follows:

1. The Respondent Doug Diny was elected Mayor of the City of Wausau in the Spring election held April 2024. Upon taking office, Mayor Diny assumed all powers and duties of the office of Mayor, including serving as the Chief Executive Officer of the City of Wausau, and has done so continuously to date. The Mayor is obligated to “take care that city ordinances and state laws are observed and enforced and that all city officers and employees discharge their duties.”² The powers of Mayor Diny include the power to hire and fire the appointed Wausau City Clerk.³
2. An absentee drop box was placed in front of City Hall in approximately November, 2021. City Clerk Bernarde oversaw two elections in which that drop box was used, and she believed it was without incident. That drop box had been bolted to a concrete footing and locked, with a slot for depositing ballots, and with cameras and lighting that City Clerk Bernarde found to be sufficient for security of the ballots. Use of the absentee ballot drop box was immediately ended, however, upon release of a decision of the Wisconsin Supreme Court that held drop boxes were not lawful, on July 8, 2022 (the “Tiegen” decision).⁴ The drop box remained in front of City Hall from that date to April 2024, but it was locked and covered so nothing could be placed in it, and it was not used to collect absentee ballots.
3. Shortly after his election to office, in April, 2024, Mayor Diny directed City staff to remove the drop box, which was done. In his campaign for office, Mayor Diny spoke with many people about the use of absentee drop boxes. He testified he knocked on approximately 2,000 doors and frequently discussed the topic. He believed his constituents were concerned about the use of absentee drop boxes.
4. In July of 2024, the Wisconsin Supreme Court overruled the Tiegen decision (the “Priorities” decision).⁵ Shortly thereafter, on July 18 or July 19, 2024, Mayor Diny scheduled a meeting with the City Clerk to discuss the issue of absentee ballot drop boxes. Mayor Diny and the City Clerk both concluded that it would be too rushed to try to get an absentee ballot drop box ready for the August primary.

¹ To the extent that any Finding of Fact herein involves issues of law, it is intended in that respect to be a Conclusion of Law, and to the extent that a Conclusion of Law herein involves factual issues, it is intended in that respect to be a Finding of Fact. The heading under which the statement is made shall not be controlling.

² Exhibit 5; Wis. Stat. Section 62.09(a).

³ Exhibit 13 (Section 2.08.010, Wausau Municipal Code); and Exhibit 14 (Wis. Stat. Section 17.12 (1)(c)2.)

⁴ Tiegen v. Wisconsin Elections Commission 403 Wis.2d 607, 976 N.W.2d 519 (July 8, 2022).

⁵ Priorities USA v. Wisconsin Elections Commission, 412 Wis.2d 594, 8 N.W.3d 429 (July 5, 2024)

5. Mayor Diny wanted the City Clerk to seek the advice and consent of the Common Council concerning her decision regarding the use of an absentee ballot drop box. From conversations with mayors of other municipalities, Mayor Diny believed this was a common practice.
6. On July 26, 2024, the City Attorney advised Mayor Diny not to pressure the City Clerk or interfere with her decision regarding the use of an absentee ballot drop box, because the City Clerk has sole authority in the matter. At least once prior to July 26, 2024, on a date between July 5, 2024 and July 26, 2024, the City Attorney previously offered the same advice to Mayor Diny. At the meeting held on July 26, 2024, the City Attorney provided Mayor Diny a copy of an FAQ from Wisconsin Elections Commission (WEC), in which the WEC said the governing body of the municipality need not be consulted in the decision to implement use of drop box, as the clerk has the sole authority. Mayor Diny testified he had reviewed the Priorities USA decision, and he did not believe he had the authority to disregard the authority of that decision.
7. By Legal Opinion #24-5, issued September 26, 2024, the City Attorney advised that "it is within the statutory authority of the municipal clerk, not the mayor, to utilize secure drop boxes."⁶ The formal opinion states this is "affirming the consistent advice I have previously provided to both you [the City Clerk] and the Mayor."
8. On September 19, 2024, the City Clerk advised Mayor Diny that she was deploying an absentee ballot drop box for the general election to be held that fall. The City Clerk told Mayor Diny that the City Clerk had sole discretion in the matter, per advice she had received from the City Attorney. She said the City Attorney further advised it would be a bad idea to take the issue to the Common Council. Mayor Diny recalls raising concerns about lighting, security, proper markings, cameras, and the possibility of a live feed camera. The City Clerk does not recall those concerns being raised, other than the live feed camera. Mayor Diny was unhappy with the City Clerk's decision. He felt the City Clerk's action was "out of left field," and he felt "sucker punched."
9. The City Clerk testified she had considered the issues of security, lighting, and camera coverage, before making the decision to install the absentee ballot drop box.
10. On September 19, 2024, the same box that had been used as an absentee drop box previously and removed in April 2024, was placed outside the City Hall, at the direction of the City Clerk, to prepare the drop box for use in the election as an absentee ballot drop box. When the box was placed outside, it was not yet ready to be used as an absentee drop box. The City Clerk had arranged for the box to be wrapped, so the messaging would be as she deemed appropriate for an absentee drop box. The box was not yet bolted to the sidewalk, because the

⁶ Exhibit 7

contractor was planning to come wrap the box, which could be more easily completed if it were not bolted down. The box was locked, so nothing could be placed into it at that time, and it bore a sign that said "kiosk closed." The City Clerk intended for the box to be wrapped, and then secured to the sidewalk on Monday September 23, 2024, and opened for service on that day. The City Clerk planned to have the drop box ready to receive ballots on Monday, September 23, 2024, because the ballots were mailed on Thursday, September 19, so voters could receive the ballots and be ready to return them to the drop box by the 23rd.

11. On Sunday September 22, 2024, Mayor Diny took a dolly outside of City Hall, to the location of the drop box outside, put the drop box onto the dolly, and wheeled the drop box into City Hall, onto the elevator, and upstairs into his office. Mayor Diny testified that he performed these acts in his official capacity. Mayor Diny wore a hard hat as he performed this task, dressed in a suit and tie, accompanied by a person who took his photograph. He testified that he took the drop box in a frivolous moment, and he sent the photo to some friends. He testified that he brought the drop box inside to send a message to the City Clerk. Mayor Diny testified some might not like the methods, but he needs to establish some discipline, respect, and cooperation.
12. On Monday, September 23, 2024, Mayor Diny advised the City Facilities Manager and Chief of Police that the drop box was in his office. The door to the Mayor's office where the drop box was kept was locked when he was not present.
13. On Wednesday, September 25, 2024, the City Clerk issued a press release which made several statements as shown in Exhibit 8, including directing residents how to return absentee ballots given that the drop box was not installed as planned due to its unauthorized removal.
14. On the same day, Wednesday, September 25, 2024, Mayor Diny emailed the City Clerk saying policy should be set by the Common Council, and there is a difference between an elected clerk and a non-elected clerk. (Exhibit 25) The email from the Mayor also said "Please provide your rationale for disregarding my directive to seek advice and consent from the council in the matter of placing, securing, monitoring, and taking the pulse of the residents regarding the drop box." At the hearing, Mayor Diny testified that the word "directive" was stronger than he intended in the email message, he meant to refer to the agreement he thought he had reached with the City Clerk in July when they first discussed the use of a drop box.
15. Mayor Diny testified that the City Clerk did not contact him to seek the return of the drop box, during the week of September 23, 2024. He was aware that the City Clerk wanted to use an absentee drop box for the election, however, from prior conversations with the City Clerk, including on September 19, 2024. Mayor Diny also was aware that the drop box was needed, from statements made by the Council President, and from the press release from the City Clerk, and a

complaint the City Clerk made to the WEC. The City Clerk also testified that she assumed the drop box would be taken in evidence by the State Department of Justice or District Attorney, as they investigated her reports of the incident, so she did not directly seek the return of the drop box until Friday, September 27, 2024.

16. On Friday September 27, 2024, the City Clerk formally requested Mayor Diny return the drop box to the City Clerk no later than noon that day, as shown in Exhibit 10. The drop box remained locked in Mayor Diny's office until Sunday, September 29, 2024.
17. On Sunday, September 29, 2024, Mayor Diny placed the drop box on a dolly, moved it to the maintenance garage, and notified the City Clerk that he did so. He informed the City Clerk that he left the drop box in the City Clerk's charge. (Exhibit 19.)
18. Within the email sent to the City Clerk on September 29, 2024 (Exhibit 19), Mayor Diny also said he placed the drop box utilization issue on the October 8, 2024 Common Council agenda. Mayor Diny listed seven issues the City Clerk should have the Council consider regarding the drop box. He attached to the email a draft Resolution from the City of Brookfield, as an example of what the City Clerk should prepare for the Council's consideration. The draft Brookfield Resolution stated in its initial substantive phrase: "... be it resolved, by the Common Council of the City of Brookfield that it hereby approves the City Clerk's decision...".
19. On Monday September 30, 2024, the drop box was taken out of the maintenance garage, secured to the sidewalk, the lock was removed, and the absentee ballot drop box was placed in service for the general election, pursuant to the direction of the City Clerk.

CONCLUSIONS OF LAW⁷

In light of the foregoing Findings of Fact, the Board makes the following Conclusions of Law.

1. The Complaint alleges Mayor Diny violated Section 2.03.030(j) of the City of Wausau Municipal Code, which says:

No official/employee shall in his or her official capacity do any act or use his or her official title in performing any act, which he or she knows is in excess of his or her lawful authority or which he or she knows he or she is forbidden by law to do in his or her official capacity.

⁷ See footnote 1, above.

2. Mayor Diny's actions concerning the drop box were all undertaken in his official capacity.
3. The City Clerk has the sole authority to decide whether to place an absentee ballot drop box for the collection of absentee ballots. The Wisconsin Supreme Court ruled in the Priorities decision that:

"By mandating that an absentee ballot be returned not to the "municipal clerk's office," but "to the municipal clerk," the legislature disclaimed the idea that the ballot must be delivered to a specific location and instead embraced delivery of an absentee ballot to a person—the "municipal clerk." Given this, the question then becomes whether delivery to a drop box constitutes delivery "to the municipal clerk" within the meaning of Wis. Stat. § 6.87(4)(b)1.

We conclude that it does. A drop box is set up, maintained, secured, and emptied by the municipal clerk. This is the case even if the drop box is in a location other than the municipal clerk's office. As analyzed, the statute does not specify a location to which a ballot must be returned and requires only that the ballot be delivered to a location the municipal clerk, within his or her discretion, designates. See Wis. Stat. § 7.15(1)." Priorities USA v. Wisconsin Elections Comm'n, 2024 WI 32, ¶¶ 25-26, 412 Wis. 2d 594, 607-08, 8 N.W.3d 429, 435-36

The Common Council does not have this authority. The Mayor does not have this authority. Only the City Clerk has the authority to decide whether to place an absentee ballot drop box.

4. The Ethics Board concludes Mayor Diny knew he had no lawful authority over the City Clerk's decision to place an absentee ballot drop box. Mayor Diny testified he had read the Priorities decision and knew he had no ability to act contrary to the decision. Mayor Diny had received the WEC FAQ document from the City Attorney in July of 2024, which says the common council has no authority over the decision to place a drop box, it is solely for the clerk to decide. (Exhibit 18.) The City Attorney had advised him on more than one occasion that it was solely for the City Clerk to decide. The City Clerk told the Mayor on September 19, 2024, that she had been advised by the City Attorney that the City Clerk alone had authority over the matter. This statement from the City Clerk, which repeats the conclusion Mayor Diny had previously heard directly from the City Attorney, was given three days before Mayor Diny took the box into his office. Mayor Diny's sample Resolution from the City of Brookfield also acknowledged that the issue was for the City Clerk to decide. The Ethics Board finds and concludes that the clear and convincing evidence demonstrates Mayor Diny knew he had no lawful authority to take and retain possession of the drop box the City Clerk intended to use as an absentee ballot drop box in the election.

5. Mayor Diny wanted to allow the Common Council to offer their advice and consent, to provide City residents an opportunity to consult with their representatives on the issue. Mayor Diny recognized that this might provide him an opportunity to veto the resolution, if a resolution was adopted to approve the drop box. This desire does not alter the City Clerk's sole authority over the decision to place an absentee ballot drop box.

"Election administration in this state is "highly decentralized." "Rather than a top-down arrangement with a central state entity or official controlling local actors, Wisconsin gives some power to its state election agency (the Commission) and places significant responsibility on a small army of local election officials." see Wis. Stat. § 7.15(1) (setting forth that "[e]ach municipal clerk has charge and supervision of elections and registration in the municipality" and listing duties the clerk "shall perform," which includes "any others which may be necessary to properly conduct elections or registration"). Those local election officials, i.e., municipal clerks, are "primarily responsible for election administration in Wisconsin." Priorities USA v. Wisconsin Elections Comm'n, 2024 WI 32, ¶ 27, 412 Wis. 2d 594, 608, 8 N.W.3d 429, 436 (citations omitted).

6. Mayor Diny is the Chief Executive Officer of the City of Wausau and has authority to hire and fire the appointed City Clerk. This, however, does not give the Mayor any authority to interfere with the City Clerk in the exercise of her statutory duties concerning the administration of elections. Mayor Diny's action, done in an intentionally dramatic fashion with a hard hat and photograph, which he described as frivolous and by which he intended to send a message, was followed by his conduct of holding the box in his locked office. He did so to send a message to the City Clerk concerning discipline, respect, and cooperation, because he demanded the City Clerk submit her authority to Mayor Diny's wishes. When the City Clerk did not surrender her authority, he knowingly and flagrantly prevented the City Clerk from proceeding with installing the drop box.

DETERMINATION

By the clear and convincing evidence presented in this matter, the City of Wausau Ethics Board determines Mayor Diny violated Section 2.03.030(j) of the City of Wausau Municipal Code. Mayor Diny, in his official capacity, performed the act of removing a drop box that he knew was intended to be an absentee ballot drop box, and held it in his possession for seven days, while knowing this was in excess of his lawful authority.

ORDERS AND RECOMMENDATIONS

With all depth of conviction expressed by the Declaration of Policy of the Ethics Code, which declares moral and ethical standards among City public officials to be essential to the conduct of representative government, THE CITY OF WAUSAU ETHICS BOARD HEREBY ORDERS Mayor Diny to conform his conduct to the

requirements of the City of Wausau Ethics Code. Specifically, Mayor Diny is ordered to refrain from interfering, intervening, or in any manner inhibiting the City Clerk in her exercise of her duties in the administration of elections, including with regard to the placement of any absentee ballot drop box in the City of Wausau.⁸

These Findings, Conclusions, and Determination were prepared based on the Board's discussions following the hearing, and have been approved by the Board by motion duly made, seconded and unanimously adopted at their meeting of October 15, 2025.

Dated: This 15th day of October, 2025

CITY OF WAUSAU
ETHICS BOARD

By: 

Calvin Dexter, Chair

ATTEST:


Kody Hart, Board Secretary

⁸ The City of Wausau Ethics Board has the ability to issue orders and recommendations, pursuant to Section 2.03.090 of the City of Wausau Municipal Code. The Ethics Board has chosen the option provided by subsection (d) of that section, to order the official to conform their conduct to the standards of the ethics code. The Ethics Board has considered other actions it may take pursuant to the Ethics Code and declines to do so. The Ethics Board declines to offer a recommendation to the Common Council that Mayor Diny be censured, suspended or removed from office, because the Ethics Board sees no cause consistent with the Declaration of Policy of the Ethics Board to further inflame the political tension surrounding this issue. The Ethics Board declines to impose a forfeiture in the range permitted by the Ethics Code, because such forfeiture would be merely symbolic and nominal in relation to the significant time and expense incurred by the Respondent and the City in this matter, and would do nothing to serve a punishment or deterrence purpose under the circumstances. The Order issued herein, made pursuant to subsection (d) of such ordinance, is the remedy the Ethics Board finds to be warranted, to send a strong message that this dramatic conduct of interfering with the City Clerk's administration of elections will not be tolerated in the City of Wausau. The Ethics Board also believes others may have additional authority over the conduct at issue in this matter, which may include the District Attorney, the Attorney General, the Wisconsin Elections Commission, and the Common Council of the City of Wausau, so the Ethics Board reserves to all such entities the ability to pursue the matter as they deem appropriate.