

**Racine County Sheriffs Office (RASO)****Supplemental Report**

Incident Report Number: 20-061588	Incident Location: 1 Racine County, Racine, WI, 53403	Incident Date: 12/08/2020
New Incident:	Original CFS Code - 1: 5999	New CFS Code - 1 : New CFS Code - 2:

**NARRATIVE**

On Tuesday, March 23, 2021, I, Investigator Michael J. Luell #10511, drafted an Open Records Request for the Wisconsin Election Commission. In the letter, I requested copies of any public records that contain the words "Special Voting Deputies", "SVDs", "nursing homes", "care facilities", or Wis. Stat. sec. "6.875" from January 1, 2020 through March 23, 2021. I sent the request through an attachment in an Email, and I mailed the letter via the US Mail.

Respectfully submitted:  
Inv. Michael J. Luell  
#10511

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New Incident:	Original CFS Code - 1: 5999	New CFS Code -1 : New CFS Code - 2:

**NARRATIVE**

On March 25, 2021, I, Investigator Michael J. Luell #10511, received an Email from Reid Magney, who is the Public Information Officer for the Wisconsin Election Commission. This Email was in response to the open records request I made to the WEC on March 23, 2021.

Attached to the Email were two documents: (1) a letter from PIO Magney and (2) a memorandum from Administrator Meagan Wolfe.

**LETTER FROM PIO MAGNEY**

In the letter, PIO Magney stated that there was a large amount of public information that covered the request I made for information surrounding Special Voting Deputies. PIO Magney stated that the first meeting by the WEC that addressed the Special Voting Deputies was held on March 12, 2020. PIO Magney provided links to the memorandum and recommendations for the meeting, as-well-as a link to a video of the meeting. PIO Magney stated the WEC held subsequent meetings where the guidance established at the March 12, 2020 meeting was affirmatively continued.

**WEC Zoom Meeting on March 12, 2020**

On March 12, 2020 the WEC and staff had a meeting via zoom - meaning they met (while in possession of the necessary documents for the meeting), talked to each other, shared information, made votes, and visually observed each other while each person was in a separate location.

In the memorandum and recommendations for the March 12, 2020 meeting, two recommended motions were listed that called for the abandonment of using Special Voting Deputies, for the use of absentee ballots by mail, and for the moving of polling places (See below). In paragraph seven of the memorandum and recommendations, it stated, "The resident may need to obtain assistance from either facility staff or another individual and must secure a witness to sign the certificate envelope." This statement may violate requirements explicitly listed in Wis. Stat. sec. 6.875. The two proposed motions were:

**Motion 1:**

*In light of Executive Order #72 and directives of the Department of Health Services, the Commission finds that Special Voting Deputies are "non-essential" individuals who are not permitted to enter nursing homes and other care facilities without completing a screening process that is not feasible to implement prior to the Spring Election and Presidential Primary. For that election and the May 12, 2020 Special Election in the 7th Congressional District, the Commission directs that municipalities shall not use the Special Voting Deputy process to serve residents in care facilities and instead shall transmit absentee ballots to those voters by mail. (Emphasis added).*

**Motion 2:**

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*In light of Executive Order #72 and directives of the Department of Health Services, the Commission finds that it is impossible or inconvenient for municipalities to conduct Election Day voting at nursing homes and other care facilities. The Commission finds that the municipal clerk or municipal elections commission executive director may relocate such polling places without obtaining the prior approval of the local governing body or municipal elections commission. (Emphasis added)*

In regards to Motion 1, it should be noted that, on March 12, 2020, this motion stated that Special Voting Deputies were non-essential because there was not enough time to implement a screening process prior to the April 7, 2020 election. This date was over six months prior to the November 3, 2020 election.

All six members of the WEC voted in favor of motion 1. These WEC members included: Secretary Marge Bostelmann, Commissioner Julie M. Glancey, Chair Ann S. Jacobs, Commissioner Dean Knudson, Commissioner Robert F. Spindell Jr., and Vice-Chair Mark L. Thomsen.

While discussing Motion 2, Commissioner Knudsen discussed the wording of "without obtaining the prior approval of the local governing body or municipal elections commissions." Commission Knudson expressed his concern about allowing "local government bodies" to relocate polling places without getting approval just because they did not have a meeting scheduled. Commissioner Knudson then stated (22:15 minute mark), "Just as this body is meeting on two hours notice after we made the call to have this meeting four hours ago, it is possible in the same fashion, for local governing bodies to meet . . . to say that they do not have a meeting scheduled for a few weeks, doesn't necessarily mean that they couldn't have a meeting. I would be more comfortable if we gave guidance that it is unadvisable to use these as polling places, you should be thinking of moving, even though the law prohibits that . . . what we are really saying here, is once again, we are saying that, despite what the law says, the election commission is saying, in this instance, we need to have some flexibility, to not follow that law." (Emphasis added).

It should be noted, according to Commissioner Knudson's above stated comments, that on March 12, 2020, the WEC was able to meet on two hours notice via a zoom call, attended by more than ten people, to discuss how it would be impossible for Special Voting Deputies to meet with voters at retirement homes on or before April 7, 2020. Furthermore, it was acknowledged that the WEC was giving advice "to not follow the law". And despite the fact that the WEC could meet within two hours on a zoom call, they could not figure out a way for Special Voting Deputies to have have "contact" with voters for the remaining elections in 2020 and the beginning of 2021.

The WEC slightly modified the language at the end of the first sentence of motion 2 (adding the words ", and other facilities as designated by the Department of Health Services or local health officials"), and five members of the WEC voted in favor of motion 2, with Commissioner Spindell not voting in favor of motion 2.

**WEC Zoom Meeting on June 24, 2020**

On June 24, 2020, the WEC and staff had a meeting via zoom - meaning they met (while in possession of the necessary documents for the meeting) , talked to each other, shared information, made votes, and visually observed each other while each person was in a separate location.

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The WEC met to discuss the use of Special Voting Deputies for the election to be held on August 11, 2020. During this meeting, it was acknowledged that Governor Evers' Executive Order #72 was no longer in effect. It was also acknowledged that some facilities may allow Special Voting Deputies into their facilities. Commissioner Spindell expressed concern that family members of residents were not being notified of the voting process. Assistant Administrator Richard Rydecki also stated that under the "Special Voting Deputies process" employees of a facility cannot assist in the voting process. However, the WEC members and staff did not have any apparent problem with staff members assisting residents with absentee mailed ballots. At one point, Commissioner Knudson stated that on March 11, 2020 he, along with Chair Jacobs and Administrator Wolfe, sent a letter to Governor Evers encouraging him to "suspend the Special Voting Deputy law" because of COVID-19, but Governor Evers responded that he did not have the authority to "suspend" the law. Commissioner Knudson stated that once Governor Evers declared a State of Emergency, the WEC held a special meeting the same day "to try to stop this from happening [using Special Voting Deputies in nursing homes]".

Commissioner Knudson went on to discuss the dangers of allowing people into nursing homes, and stated his opinion was that "more than anyone else in the state, nursing home residents ought to be voting by mail." Commissioner Knudson also stated that the WEC instructed local municipalities to "not follow the law" in the spring election in regards to changing polling place locations without notifying the local governing body within the proscribed time of 30 days. Commissioner Knudson stated the municipalities should now be ordered to follow the law. Commissioner Knudson acknowledged that the Governor's Emergency Order had ended. However, in regards to Special Voting Deputies, Commissioner Knudson stated, "We need to go back to following the law, but for the Special Voting Deputies, following the letter of the law here would mean putting hundreds and hundreds of nursing home residents' lives at severe risk. There is got to be a way to do this without doing that [using Special Voting Deputies]."

Chair Jacobs asked if Commissioner Knudson was stating that the WEC should continue its previous ruling that occurred on March 12, 2020. Commissioner Knudson stated it would be better if Chair Jacobs made that motion, but he stated he was in favor of continuing that order. Chair Jacobs then made a formal motion to "suspend" the use of Special Voting Deputies and use absentee mail ballots for the period of the elections through the end of 2020. Commissioner Knudson seconded the motion.

Commissioner Spindell pointed out that there were risks involved when anyone, including an air-conditioner repair man, went into these facilities. Commissioner Spindell stated that over the last several months, the care facilities have determined how to handle these risks in a much better fashion. Commissioner Spindell stated that the WEC should not take the position of telling care facilities what they can and cannot do, including allowing Special Voting Deputies into their facility. Commissioner Spindell stated the WEC did not know what was going to happen with all of the ballots floating around various care facilities. Commissioner Spindell stated he believed the local municipalities could work with their health departments to determine the appropriate safety procedures. Commissioner Spindell stated that to get into other types of facilities, including a hospital, a person has their temperature taken and they are asked several questions. Commissioner Spindell stated Special Voting Deputies could also wear a mask which would protect against transmissions. Commissioner Spindell stated that each facility should be allowed to make their own decisions. Commissioner Spindell voted against Chair Jacobs' motion to "suspend" the law concerning Special Voting Deputies.

Chair Jacobs then cited some statistics on COVID-19 deaths, and stated, "I think the facts speak for themselves".

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Commissioner Spindell responded by stating it is not the WEC's job to "mandate" to facilities that they cannot have Special Voting Deputies come into their buildings. Commissioner Spindell stated that he was also concerned about the lack of notice to the residents' families. Commissioner Spindell attempted to amend the motion to include instructions to the facilities that the families of the residents should be notified that the Special Voting Deputies were not going to be used and the families should be notified that the ballots were going to be mailed to the residents. Commissioner Jacobs would not accept that amendment stating, "These are grown adults, who have the right to cast their own ballots in the way that the law permits them to do it." Commissioner Spindell stated he was "concerned about fraud in nursing homes . . . and when you have whomever filling out these ballots . . . and I think that's a problem."

Chair Jacobs then called a vote on the motion: "To continue the order set forth on March 12, 2020 suspending the Special Voting Deputy attendance requirement that they go twice and be turned away and require that absentee ballots be sent to those registered voters who have requested them in those facilities." The following individuals voted in favor of the motion: Secretary Bostelmann, Commissioner Glancy, Chair Jacobs, Commissioner Knudson, and Vice-Chair Thomsen. Commissioner Spindell voted against the motion. The motion passed on a vote of 5 to 1.

It should be noted that Governor Evers' Emergency Order #72 had expired. During the course of the June 24, 2020 meeting, no law or authority was cited as to how the WEC had the authorization to "suspend" portions of the elections law as codified in Wis. Stat. sec. 6.875. No meaningful discussion was had on how to complete a "screening process" in a "feasible" amount of time as was stated in Motion 1 that was passed by the WEC on March 12, 2020.

**WEC Zoom Meeting on September 16, 2020**

On September 16, 2020 the WEC and staff had a meeting via zoom - meaning they met (while in possession of the necessary documents for the meeting), talked to each other, shared information, made votes, and visually observed each other while each person was in a separate location.

Assistant Administrator Richard Rydecki led a discussion on the WEC's June 24, 2020 decision to "suspend voting by Special Voting Deputies in nursing homes . . .". AA Rydecki's presentation was summarized in a memorandum drafted by Administrator Wolfe dated September 10, 2020. In this memorandum, Administrator Wolfe wrote, "This program [the use of Special Voting Deputies] was suspended by the commission earlier this year due to concerns over COVID-19". In the conclusion of the memorandum, Administrator Wolfe wrote, "Even if the program were reinstated, it is probable that SVD voting would not be available at all qualified facilities and that lack of uniformity would create training and messaging complications for voters who reside in those facilities, interested family members and facility staff." [Emphasis added]

During his presentation to the WEC, AA Rydecki stated, "This memo summarizes the results of this research and provides that information to the commission for their decision making discretion. As part of this research, we did what we have done numerous times throughout the 2020 election cycle, we consulted with public health officials, about the possibility of reinstating the Special Voting Deputy program." AA Rydecki stated staff had conference calls [meaning they did not meet in person, but were still able to communicate and share information] with a multitude of health officials that concluded that they did not believe that SVD voting could be conducted in a safe and effective way leading into the November election. AA Rydecki provided a number of concerns, including: the number of COVID-19 cases across the state, that group activities were still restricted at facilities, that visits to facilities were still restricted to essential people and end of life

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situations, that the Department of Health had not developed policies for indoor visits, that the Department of Health had "concerns" about Special Voting Deputies going room-to-room, and that the influenza season was approaching.

AA Rydecki reported on the possible precautions that could be implemented if the WEC "did reconsider the decision to send Special Voting Deputies into these facilities . . .", including: screening Special Voting Deputies for COVID-19 prior to going into the facilities, the use of PPE's at a level determined by the facility, and the use of a partitioned rooms with separate air flows. AA Rydecki stated that it would be difficult to have consistent procedures at all of the facilities. AA Rydecki stated they reviewed previous testimony of advocates within the disability and aging community, and the advocates believed that the WEC should be "taking the lead" from members of the public health community. AA Rydecki stated "they" encouraged the WEC to focus on "training, and partnerships for information sharing, including things such as partnering on webinars . . . and getting on their weekly calls and meetings." [meaning using technology to have "contact" between various groups that are in different locations].

AA Rydecki stated that staff had made "contact" with some local election officials who expressed concerns about using Special Voting Deputies because using Special Voting Deputies as the law requires "is not a process that can be planned overnight".

Commissioner Spindell asked AA Rydecki how many voters are usually serviced by the Special Voting Deputies, and AA Rydecki did not know that answer. Commissioner Spindell stated Wisconsin State Statutes hold the WEC is supposed to do something, the WEC is deciding they are not going to do that, and the WEC is deciding that Special Voting Deputies are not essential. Commissioner Spindell asked where the WEC received the power to do what he just stated.

At this point, Chair Jacobs stated that the WEC is only stating the two visits by the Special Voting Deputies need not be attempted. Chair Jacobs stated that "state law", at the time, would not allow for the Special Voting Deputies to get into the facilities. Chair Jacobs then corrected her-self and stated it was the "rulings of DHS". Chair Jacobs stated that the WEC interpreted the law to not require two unnecessary and potentially harmful visits by the "clerks" because according to "state law they were supposed to be turned away".

Administrator Wolfe added that there have been other times where there was a quarantine at a facility that led to the mailing of ballots.

Commissioner Knudson stated he agreed with the staff memo, and he added, "My thinking going back to March on this, from the time that I first communicated with the Governor saying I thought that we should not follow this law during this pandemic." Commissioner Knudson went on to argue the health concerns to residents at nursing homes.

Commissioner Spindell suggested the use of an Ipad so that the family could watch the process remotely. Commissioner Spindell stated that nurses use I pads to be the "eyes and ears" of doctors. Commissioner Spindell suggested that virtual Special Voting Deputies with a smart phone or a computer could be used, and they could be connected to a conference call number. Commissioner Spindell stated that the Special Voting Deputies could be able to answer any election related questions. Commissioner Spindell stated Special Voting Deputies could use this technology to supervise the filling out of ballots. Commissioner Spindell stated the Special Voting Deputy could virtually make sure the ballot was marked correctly. Commissioner Spindell stated that his intent was to make the voting process as transparent as possible. Commissioner

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Spindell expressed concern about the perception of voter fraud at nursing homes, and he stated that the WEC could eliminate that concern through the use of technology. Commissioner Spindell asked the commission if making the process more transparent was a worth-while endeavor.

After a long pause, Chair Jacobs stated that apparently no one had an opinion on Commissioner Spindell's idea. Commissioner Spindell suggested the WEC staff look into a virtual Special Voting Deputies program. Chair Jacobs responded, "I would point out, that doesn't exist, and I would be opposed to deciding six weeks out from an election that we are going to cobble together some sort of bizarre video thing." and "We are going to like hand out I pads to random nursing homes, and I do not see amongst the commission here any great eagerness."

Commissioner Spindell suggested there will be a problem if one person is simply taking a ballot to a resident who can not see the ballot or fill out the ballot.

**WEC Zoom Meeting on January 15, 2021**

On January 15, 2021 the WEC and staff had a meeting via zoom - meaning they met (while in possession of the necessary documents for the meeting), talked to each other, shared information, made votes, and visually observed each other while each person was in a separate location.

It should be noted that this meeting was held over ten months after the original motion was passed on March 12, 2020, which stated "the Commission finds that Special Voting Deputies are "non-essential" individuals . . . without completing a screening process that is not feasible to implement prior to the Spring [2020] Election . . .". Administrator Wolfe advised the WEC that because the ability for Special Voting Deputies to enter facilities is "restricted or significantly limited" the staff's recommendation would be the same - to not use Special Voting Deputies in the February 2021 Primary.

Commissioner Knudson expressed his concern that the "policy" of the WEC was "telling the clerks to break the law". Commissioner Knudson asked if there was some other way the WEC could take, other then "directing" the clerks not to use Special Voting Deputies. After expressing his opinion that people should not be allowed in facilities, Commissioner Knudson stated, "But I continue to have great discomfort with the idea that our motion is going to direct them, that we're the ones directing them to break the law."

Administrator Wolfe offered new language that could be used to state the position of the WEC: "Because of the prohibition on visitors in care facilities, including SVD's, clerks will be unable to accomplish the two in person visits, and should therefore proceed timely to mailing ballots to these voters so that they may timely return their ballots."

Chair Jacobs stated that she was always of the belief that the WEC was considering the requirement of two visits to be fulfilled by the fact that "it is ridiculous to send them twice, when, to somewhere that isn't going to let them in. And that forcing them to, through a charade of walking up to a door, and knocking on it, to be told to go away, was an interpretation that was absurd." Chair Jacobs stated that there are two "laws" that conflict - one "law" saying "you can't come in" and one law saying "you're supposed to go knock and ask." Chair Jacobs stated, "And my understanding on how we have approached this is to interpret the two visit rule as being fulfilled by the requirement that you're not allowed in. In other words, that we are accommodating and interpreting both laws in harmony." Chair Jacobs continued, "So we are reconciling

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two laws, rather than instructing people to break them." Chair Jacobs also stated that Administrator Wolfe's proposed language change to the motion was "reconciling two competing statutes . . .". [Chair Jacobs did not site the two laws she was referring to.]

Commissioner Spindell stated that a safe procedure could be implemented to allow Special Voting Deputies to enter facilities, such as PPE's, social distancing, etc. Commissioner Spindell also stated that the voting process could be monitored through an Ipad or other electronics. Commissioner Spindell stated the current system ordered by the WEC allows for large amounts of ballots to be dropped off at a facility to be administered by the facility staff. Commissioner Spindell stated he observed pictures of the people administering shots at retirement homes and they had a mask on and no other observable PPE's. Commissioner Spindell stated there have been allegations of voter fraud in nursing homes going back to the time of George Washington. Commissioner Spindell stated at public hearings there have been reports of irregularities in voting at retirement homes during the recent elections.

Vice-Chair Thomsen stated he agreed that COVID-19 is dangerous to nursing home residents, and he agreed with the response of the WEC concerning not using Special Voting Deputies. Vice-Chair stated the WEC had been acting consistent with the law in construing "two laws". [Vice-Chair Thomsen did not site the two laws he was referring to]. Vice-Chair Thomsen stated, "We have [not] told anyone to break the law." Vice-Chair Thomsen stated, while discussing the broad powers of the WEC, that the WEC has the power to "construe two laws that conflict, in such a way that people can vote safely and we can prevent lives." Vice-Chair Thomsen concluded by stating, "I am unaware of one allegation of fraud in a nursing home that was sustained in all the elections in 2020. And to promote a lie that says it is. I think is just a disservice to Wisconsin and it is a disservice to everybody that runs nursing homes."

Commissioner Knudson stated that there have been allegations of fraud made by the public, and he stated that voting in nursing homes could be monitored by witnesses through the use of an Ipad or other technology. Commissioner Knudsen stated the witness could be at another place monitoring that all of the policies "as required by law were being followed".

Vice-Chair Thomsen stated he was recently in a retirement home and at the entrance it stated, "'No camera's allowed' because of HIPPA concerns." He went on to state, "I'm very very concerned when someone is just flippedly throws out to the public that we are going to authorize people with cameras to go around making movies in nursing homes. As if it is all normal and it's O.K." Vice-Chair Thomsen then alleged that the WEC has received no complaints of voter fraud.

Administrator Wolfe proposed the language of the motion that the WEC voted on: "Because of the prohibition on visitors in care facilities, including special voting deputies, clerks will be unable to accomplish the two in person SVD visits and should therefore proceed directly to mailing ballots to voters who request them who reside in a care facility that would be otherwise served by SVD's for the February 16, 2021 primary. The WEC voted 5-to-1 to adopt the motion, with Commissioner Spindell voting "no" to the motion.

Commissioner Spindell made a motion to instruct the WEC staff to research an alternative method for the Special Voting Deputies to complete their duties in the event of medical issues that causes a quarantine. Chair Jacobs agreed to look into options for Special Voting Deputies for elections not in the near future, because "there are thousands of long term care facilities of all different kinds in Wisconsin. There is 4,000 assisted living facilities alone." The finale Motion was for staff to create a timeline and plan for addressing Special Voting Deputies any time people cannot get in the doors for COVID-19,

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Commissioner Knudson stated that earlier it was stated that we were trying to reconcile two conflicting laws and he never looked at this issue that way. Commissioner Knudson stated that the "SVD law is a law" and "some of the prohibitions on visitors at nursing homes, in the early days of the pandemic, it came down from the Centers for Medicaid and Medicare that it was a guidance, a directive, it wasn't clear whether it actually carried the force of law. Later, the Governor had 60 days, that ended. The DHS had been operating under certain emergency powers, certainly not clear that it is a law. But the law does say that SVD's should go in, and, you know, the objection was brought up about HIPPA, that's a total red herring, HIPPA applies to medical providers, it does not apply to recording by family members or third parties. There is no prohibition against a police officer with his body camera going in a nursing home and there would be a tape."

Chair Jacobs interrupted Commissioner Knudson and stated there is body cam legislation that addresses when police officers can go into hospitals, and when they have to redact the videos, and when they do not have to redact a video. [Chair Jacobs did not site any legal authority to support her statement].

Commissioner Knudson stated he would stand corrected if Chair Jacobs could show him where it stated in HIPPA that third parties cannot record in medical facilities. Commissioner Knudson stated hospitals may try to discourage recordings because they do not like recordings, but that this prohibition is not part of HIPPA.

The WEC passed the motion to have WEC staff create a plan and a timeline 5-to-1, with Vice-Chair Thomsen voting against the motion.

**MEMORANDUM FROM ADMINISTRATOR MEAGAN WOLFE**

Administrator Wolfe wrote a memorandum dated March 2, 2021 addressing the Special Voting Deputy procedures used in 2020 and 2021. Please see the memorandum for exact details of what Administrator Wolfe wrote in the memorandum.

Administrator Wolfe outlined the background and prior guidance that went into the WEC's decision on Special Voting Deputies. Administrator Wolfe documented the September 16, 2020 meeting where it was discussed to reinstate the Special Voting Deputies. Administrator Wolfe misquoted the conclusion of the memorandum prepared for the September 16, 2020 WEC meeting: "Even if the program were reinstated, it is probable that SVD voting would not be available at **[all]** qualified facilities and that lack of uniformity would create training and messaging complications for voters who reside in those facilities, interested family members and facility staff." [This statement acknowledges that some of the Special Voting Deputies would be allowed into facilities and would be allowed to perform their duties as is mandated in the law].

Administrator Wolfe documented that on February 11, 2021, the Joint Committee for the Review of Administrative Rules ("Committee") convened an executive session to discuss the WEC's guidance on Special Voting Deputies. The committee directed the WEC to promulgate its guidance as an emergency rule within 30 days. The WEC was informed that the Legislative Council opinion stated that the state law does not empower the WEC to waive the requirement for clerks to dispatch Special Voting Deputies to qualified care facilities, nor did it contain an exemption for clerks based upon a pandemic. The opinion further stated that state law does not permit clerks to mail absentee ballots to care facility residents prior to sending Special Voting Deputies on two separate visits.

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Administrator Wolfe next wrote about promulgating an emergency rule, per Wis. Stat. sec. 227.24. Administrator Wolfe stated that, for several reasons, staff would not recommend attempting to promulgating an emergency rule and would not recommend issuing the same type of guidance of not using Special Voting Deputies. The stated reasons were: (1) the public health guidance on the COVID-19 pandemic had changed, (2) it seemed apparent that Committee would rely on the opinion of the Legislative Council and not agree that the WEC could pass the emergency rule, and (3) the statute did not provide a clear process for clerks to follow when Special Voting Deputies were unable to make visits to a care facility.

Administrator Wolfe documented in the memorandum that on September 17, 2020, the Centers for Medicare and Medicaid Services ("CMS") provided an outline for visitation procedures. In a CMS press release dated September 17, 2020, the CMS entitled its announcement, "CMS Announces New Guidance for Safe Visitation in Nursing Homes During COVID-19 Public Health Emergency". Administrator Wolfe noted that the CMS guidelines apply only to facilities receiving Medicare and Medicaid funding. The procedures of the CMS listed by Administrator Wolfe included:

- (1) Screening of all who enter the facility for signs and symptoms of COVID-19 (e.g., temperature checks, questions or observations about signs or symptoms), and denial of those with signs or symptoms
- (2) Hand hygiene (use of alcohol-based hand rub is preferred)
- (3) Face covering or mask (covering mouth and nose)
- (4) Social distancing at least six feet between persons
- (5) instructional signage throughout the facility and proper visitor education on COVID19 signs and symptoms, infection control precautions, other applicable facility practices (e.g., use of face covering or mask, specified entries, exits and routes to designated areas, hand hygiene)
- (6) Cleaning and disinfecting high frequency touched surfaces in the facility often, and designated visitation areas after each visit
- (7) Appropriate staff use of Personal Protective Equipment (PPE)
- (8) Effective co-horting of residents (e.g., separate areas dedicated COVID-19 care)
- (9) Resident and staff testing conducted as required at 42 CFR 483.80(h).

Administrator Wolfe also drafted some proposed motions in the memorandum that were discussed at the March 2, 2021 meeting.

**WEC Zoom Meeting on March 2, 2021**

On March 2, 2021 the WEC and staff had a meeting via zoom - meaning they met (while in possession of the necessary documents for the meeting), talked to each other, shared information, made votes, and visually observed each other while each person was in a separate location.

During part of this meeting, Administrator Wolfe presented the information in the above described memorandum. Administrator Wolfe stated the purpose of the discussion was to decide on how Special Voting Deputies will be utilized in the April 6, 2021 election - over a year since the WEC made the decision to not send Special Voting Deputies into facilities. Administrator Wolfe emphasized that the public health guidance was currently different then it had been in the past. Administrator Wolfe cited to Wis. Stat. sec. 6.875(6)(e) as the authority to mail residents at care facilities their ballots for

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voting. Administrator Wolfe invited Staff Attorney Jim Witecha to provide a legal analysis of the advice the WEC had been providing concerning Special Voting Deputies.

Attorney Witecha began his analysis by stating staff attorneys and the WEC were not "wrong" in the actions they had previously taken. Attorney Witecha stated that the decisions that were previously made, despite the opinion of the Legislative Council and the Committee, were not wrong. Attorney Witecha stated, "The recent opinion drafted by Leg[islative] Council in many ways kinda chooses to ignore the reality of the public health situation over the past year." Specifically, that facility policies would not allow SVD voting to take place because visitors were expressly forbidden." Attorney Witecha stated that case law supports statutory interpretations that avoid an "absurd or unreasonable result". Attorney Witecha stated that Wis. Stat. sec. 6.875(6)(e) is a "safety valve" to the entire statute. Attorney Witecha stated, "It is more than reasonable in the staff opinion . . . to interpret this statute to mean that sending a ballot to residents when it is impossible to vote with an SVD conforms with the law." Attorney Witecha stated that the mandatory portion of the statute (i.e., sending the Special Voting Deputies) is not mandatory, when completing that action is "impossible".

Attorney Witecha next analogized to the interpretation of clauses in contracts as to why the WEC did not have to follow the Special Voting Deputies process, specifically "Force Majeure". Force majeure is a clause in contracts which frees both parties from liability or obligation when an extraordinary event occurs beyond the parties control, such as war, labor stoppages, or extreme weather - often referred to as an act of God.

Attorney Witecha stated "even under the worst of circumstances that is not applicable here" Wisconsin law provides for the defense of "Necessity" for a public official being "charged for failing to perform a ministerial or statutory duty of some kind."

Attorney Witecha stated that there may not have been enough time to have the Special Voting Deputies turned away two times, mail out the ballots, and then have the votes mailed back to the municipalities. Attorney Witecha stated, "The commission made its decision based upon the law and current science . . . those should be the guiding principles, the science and the facts of the day."

Attorney Witecha stated passing an administrative rule, per Wis. Stat. sec. 227.26(2)(b), as directed by the Committee, would produce an "absurd result" because the administrative rule might not be completed in time for the April 6, 2021 election and/or the administrative rule might have to be cancelled shortly after the election. Attorney Witecha spoke at length about the administrative rule making process versus "guidance documents".

Attorney Witecha answered questions from the commissioners and the commissions debated the issues surrounding [Special Voting Deputies](#). Administrator Wolfe continued to present the information from the above stated memorandum. The commissioners discussed and debated the law concerning Special Voting Deputies.

The commissioners were able to discuss issues with members of the Division of Public Health. The commission was informed that nursing homes are bound by Federal regulation and stated licensure requirements; that the Federal memo issued to nursing homes does classify individuals like Special Voting Deputies as contract workers that would be able to come into facilities with safe guards in place; that it is up to the facilities to determine if there are enough safeguards in place; and that the Federal memo did not prevent people like Special Voting Deputies from going into a facility - it is up to the individual facilities to determine if there are adequate protections in place.

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The WEC then passed the following motion: Specific to the April 6, 2021 election, Clerks shall contact all eligible facilities in their municipality no later than March 12, 2021 to determine whether Special Voting Deputies will be admitted. If SVD's are admitted, SVD's should schedule their SVD visits immediately in the allowable SVD period and consolidate such visits to the greatest extent possible, so that there are at least 14 days prior to the election for any voter who does not vote with SVD assistance may receive and return their absentee ballot. These visits should be scheduled no later than March 19, 2021. SVD's and observers must comply with any requirements of the care facility and of state and local health department to conduct the visits safely, recognizing the importance of preserving a resident's right to vote.

If the clerks is informed that SVD's will not be permitted entry to the facility, the SVD's should schedule two tele-visits with the administrator of the facility. These tele-visits should be scheduled immediately in the allowable SVD period so that if attempted visits are denied that there are at least 14 days prior to the election for the voters to receive and return an absentee ballot. SVD's should use the tele-visit to confirm that SVD's are not permitted to enter the facility. If SVD's are denied access to the facility, then Clerks must proceed to the provisions of Wis. Stat. sec. 6.875(6)(e) and send voters their ballots. The motion passed with all six commissioners voting in favor of the "policy".

Please see the recording of the meeting on "Wisconsineye" or Wiseye.org starting at the 58 minute mark and ending at the 4:02 minute mark for more information.

**VISITATION LOG FOR THE REDGEWOOD CARE CENTER**

On April 9, 2021, Ridgewood Care Center Director Scott Myers Emailed me the visitor logs that I had previously requested for the facility from March 2020 through November 2020. I was able to determine from March 13, 2020 [the day after the WEC's original order prohibiting Special Voting Deputies from going into facilities] through November 2020, there were approximately 26,900 visits to the Ridgewood Care facility. These individuals included approximately 330 different employees and approximately 900 different "personal" appointments. Some of the personal appointments included, but are not limited to, the following:

- (1) Cleaning fish tank, cleaning tanks, or tank maintenance (11 times)
- (2) Clean bird cage (3 times)
- (3) Copier (4 times)
- (4) Doordash delivery
- (5) Elevator (10 times)
- (6) Inspection (2 times)
- (7) Instructor (four times) with students (19 times)
- (8) Interview or job interview (24 times)
- (9) Kitchen or kitchen repair (17 times)
- (10) Laundry or laundry vendor (8 times)
- (11) Looking for job
- (12) Maintenance (6 times)
- (13) Orkin service (19 times)
- (14) Vendor or vending machine (17 times)

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During this same period in time, no Special Voting Deputies attempted to enter the Ridgewood Care Facility because of the order of the WEC.

Investigation to continue.

Respectfully submitted:

Inv. Michael J. Luell

#10511

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New Incident:	Original CFS Code - 1: 5999	New CFS Code - 1 :	New CFS Code - 2:
<p><b>NARRATIVE</b></p> <p>On April 21, 2021, I, Investigator Michael J. Luell #10511, received a response from Reid Magney, who is the Public Information Officer for the WEC, in regards to an open records request I had previously filed. I received a letter dated March 10, 2020, to Governor Tony Evers that was signed by [then] Chairmain Dean Knudson, [then] Member Ann Jacobs, and Administrator Meagan Wolfe. I also received a letter dated February 11, 2021 to Chairperson Ann Jacobs and Administrator Meagan Wolfe from the Joint Committee for the Review of Administrative Rules ("Committee").</p> <p>On April 23, 2021, I received additional documentation from PIO Magney. I received an Email dated March 11, 2020 from Chairman Knudson to Governor Evers. I also received a response to that Email sent that same day from Chief Legal Counsel for Governor Evers, Ryan Nilsestuen, back to Chairman Knudson.</p> <p><b>Review of Open Records Request Documents</b></p> <p>The sequence of events, as it relates to these documents, is as follows: In the letter to Governor Evers dated March 10, 2020, the WEC requested the "suspension" of "several provisions of Wisconsin election law" for the April 7 2020 and May 12, 2020 elections. The portions of the law that the WEC wanted to "suspend" were the use of Special Voting Deputies as mandated in Wis. Stat. sec. 6.875 and some of the rules surrounding the designation of polling places as mandated in Wis. Stat. sec. 5.25(2) and (3). In the letter it is stated, "Experts in infectious disease control have advised all nursing homes and residential care facilities to avoid unnecessary visits by members of the public. Based upon this guidance, it seems inadvisable for municipal clerks to be sending teams of elections workers into these facilities until the situation has stabilized and health officials issue different guidance."</p> <p>The letter concluded by stating:</p> <p><i>In summary, due to the need to minimize potential exposure of the CoVid-19 coronavirus to vulnerable populations, we request an executive order under the emergency powers granted to the Governor to include the following provisions:</i></p> <p><i>Temporarily suspending the application of Wis. Stats. §§ 5.25(2) and (3) and 6.875 during the administration of the 2020 Spring Election and Presidential Primary on April 7, 2020. Municipalities are prohibited from implementing voting through the special voting deputy process for this election.</i></p> <p><i>Permitting the Commission Administrator, if necessary, to temporarily suspend the application of Wis. Stats. §§ 5.25(2) and (3) and 6.875 during the administration of the May 12, 2020 Special Election in the 7th Congressional District.</i></p> <p><i>Permitting the Commission Administrator to suspend the applicability of additional election statutes for the 2020 Spring Election and the Special Election in the 7th Congressional District if necessary to protect the health and safety of electors and local election officials, provided that any such decisions do not affect voter eligibility requirements or the essential procedures for voting.</i></p> <p>On the next day, March 11, 2020, at 3:09 p.m., Chairman Knudson wrote the following Email to the Governor entitled</p>			
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"Emergency powers of the governor during a health emergency, related to nursing homes":

*Governor Evers - I understand your staff is uncertain whether the Governor has the power to suspend a statute during an emergency. The Governor has the power to suspend laws related to statutory transportation load limits during transportation emergencies (as in 2019 Executive Order #12). It would seem to follow that the Governor could declare that a public health emergency exists, related specifically to nursing home safety, requiring a similar suspension of the law that requires in person visits prior to voting absentee by mail.*

*A single nursing home in Washington state, home to just over 100 residents, has suffered at least 15 deaths due to coronavirus infection.*

*The single most important action that state and local officials can take right now to prevent coronavirus deaths is to protect our elderly citizens in nursing homes. Please use your best judgment in considering all the ramifications of a decision on this issue. I urge you to use your emergency powers to protect our nursing home resident*

On that same day, at 3:17 p.m., Chief Legal Counsel Nilsestuen Emailed Chairman Knudson back telling Chairman Knudson to give him a telephone call. According to the statements made by Chairman Knudson during the March 12, 2020 WEC meeting, Chairman Knudson was informed by the Governor's Office that they did not believe the Governor had the power to suspend parts of the Wisconsin voting law.

On March 12, 2020 Governor Evers issued Executive Order #72 which placed restrictions on the citizens of Wisconsin because of COVID-19. On that same date, the WEC met in an emergency meeting and passed Motions 1 and 2 which suspended parts of the Wisconsin voting law. The suspended law was the same law the WEC had requested the Governor's Office suspend on March 10, 2020, and it was the same law that the Governor's Office stated, on March 11, 2020, that they did not have the power to suspend.

On June 24, 2020, with Executive Order #72 no longer in existence, the WEC extended their March 12, 2020 for the rest of 2020, including the election on November 3, 2020. No legal authority was cited or discussed while the WEC made these decisions.

On January 15, 2021, the WEC extend their March 12, 2020 motions through the February 16, 2021 primary election.

On February 11, 2021, the Committee drafted a letter to Chair Jacobs and Administrator Wolfe requiring the WEC to show statutory authority for its directive relating to Special Voting Deputies and promulgate that authority as an emergency rule, or the WEC should cease issuing such directives. In the letter, it was stated that the Legislative Council provided an opinion that state law does not empower the Elections Commission to waive the requirement for Special Voting Deputies, nor does state law contain an exemption because of a pandemic.

On March 2, 2021, the WEC had a meeting where Staff Attorney Jim Witecha gave his legal opinion that the staff and the commission had done nothing "wrong" based upon: (1) the rule of statutory construction which states a statute should not be interpreted in a way that would lead to an "absurd or unreasonable result" and (2) "Force Majeure", which is a concept of contract interpretation that may free parties from obligations in a contract when there are events beyond the parties'

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control, i.e., "acts of God". Lastly, Attorney Witecha gave the opinion that even if the WEC had failed to perform a ministerial or statutory duty, they could invoke the affirmative defense of "necessity". During the meeting, the WEC did pass a new motion that would allow for the use of Special Voting Deputies.

**Interview of** [REDACTED]

On Friday, April 23, 2021, at approximately 1:00 p.m., I interviewed [REDACTED] in the interview room on the north side of the Law Enforcement Center. The interview was recorded using the closed circuit camera within the interview room. This report is a summary the interview. Please see the recording for exact details of the conversation.

[REDACTED] informed me that she no longer worked at the Ridgewood Care Center. I explained to [REDACTED] the duties of Special Voting Deputies as stated in Wisconsin Statute sec. 6.875 and the prohibition against facility employees acting as Special Voting Deputies while employed at the facility and for up to two years after their employment. I also explained to [REDACTED] the WEC's directive to municipalities during the COVID-19 pandemic. I told [REDACTED] that in one of the memorandums written by the WEC, it was suggested that facility staff assist the residents with the voting process. I informed [REDACTED] that it was my opinion that such assistance would be problematic, and [REDACTED] responded, "I would agree with you."

I asked [REDACTED] about her statements during the previous interview where she stated she assisted in 500 voting ballots, and up to 50 ballots per day. I asked [REDACTED] to explain those numbers to me, and she stated she felt those numbers were too high. [REDACTED] stated she did not know the exact number of people she assisted in voting, but she believed the Ridgewood Care Center had approximately 200 residents in the fall of 2000.

I informed [REDACTED] that I had spoken to some of the loved ones of residents at the Ridgewood Care Center, and they were shocked that their loved ones voted in the November 2020 election. I stated that [REDACTED]'s daughter, [REDACTED], did not believe [REDACTED] would have the ability to vote. [REDACTED] stated she did specifically remember [REDACTED] stated, "I do remember [REDACTED], and I had asked Ms. [REDACTED] multiple times, like: Hey, she does not want to vote." [REDACTED] stated that [REDACTED] would not exactly state that she did not want to vote, but she would state she needed to look into the issues a little bit more and watch T.V. [REDACTED] stated that [REDACTED] would ask her a variety of questions that [REDACTED] did not feel comfortable answering.

[REDACTED] stated that she informed Director [REDACTED] that [REDACTED] did not believe [REDACTED] knew "what she was thinking about" and Director [REDACTED] told [REDACTED] to go ask [REDACTED] if she was a Republican or Democrat. [REDACTED] stated Director [REDACTED] stated, "And then, read off the names, and if it says Democratic or Republican, fill it in." [REDACTED] stated that she asked Director [REDACTED], "Are you sure?" and Director [REDACTED] answered in the affirmative. [REDACTED] stated that she ultimately went and did what she was told.

[REDACTED] stated she did not recall the exact details of when [REDACTED] voted, but [REDACTED] stated that [REDACTED] "signed it herself". [The ballot envelope was actually signed by [REDACTED]] [REDACTED] stated [REDACTED] was "leery" about signing her name because [REDACTED] was unsure if she was voting for the right people.

I asked [REDACTED] how many times she went to Director [REDACTED] and told her [REDACTED] did not want to vote, and [REDACTED] stated she believed it was one time. [REDACTED] stated she told Director [REDACTED] that [REDACTED] was very "leery" and "questionable", and

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Director ██████ told ██████ to "go tell her about the election . . . look it over with her, ask her what she would identify with, Democratic or Republican."

I reminded ██████ of the conversation I had with Director ██████ and her while at the Ridgewood Care Facility where Director ██████ kept stating that the residents have a right to vote. I reminded ██████ that I agreed that the residents have a right to vote, but I also added that the residents should demonstrate a desire to request a ballot and a desire to vote. ██████ stated she remembered that conversation. ██████ stated Director ██████ told her, a couple of weeks after our conversation at the Ridgewood Care Facility, that Director ██████ watched a video on the voting process but Director ██████ did not understand the video. ██████ stated that she told Director ██████ that she lied to the police and she should not have done that.

I directed the conversation back to ██████ and stated the first time ██████ tried to get ██████ to vote, ██████ gave a negative response and communicated that she did not want to vote. ██████ stated, "Yeah, I picked up, I feel like this is going to be a pointless fight with her, like back-and-forth, so I went to ██████ and I told her about it. She gave me that advice, told me what to do." I asked ██████ what that advice was and she stated, "To go back in there and inform her of the election and like Presidential or state . . . remind her about the whole election, like who is running for what, about Trump, about Biden, and Democratic or Republican, jog her memory of that and see what she says."

I asked ██████ if she was influencing ██████'s vote given that ██████ had reservations and confusion about voting and ██████ came back a second time, shared additional information, and tried to get ██████ to vote. ██████ stated she tried to stay away from defining the terms Republican and Democrat. ██████ stated that she mainly kept asking ██████, "Democrat or Republican?" ██████ stated she tried to the best of her ability to not influence ██████ and to "just jog her memory of what the words are". I asked ██████ by jogging a person's memory, did it not make it very questionable whether they had the mental capacity to vote, and ██████ agreed with that statement. I then asked ██████, "So you think some of these people that you were instructed to have vote, probably did not have the mental capacity to vote?" and ██████ answered, "Probably not."

I pointed out to ██████ that ██████ signed the Request for Absentee Ballot, but ██████ did not sign the ballot envelop. I further stated that it appeared that ██████ signed ██████'s name on the ballot envelop and then signed her own name on the line signifying that she signed for ██████. ██████ confirmed that my statement was true and stated, "She wanted to sign the one, and she did not want to sign the other."

██████ stated there were times where Director ██████ thought the resident was cognitively functioning, and ██████ felt that the residents were questioning her in a way that put that opinion in doubt. ██████ stated Director ██████ would instruct her to "put the channel on for them . . . or go back later and see if they remember or if they are doing a little bit better mentally, later."

I explained to ██████ the policy of the legislature on voting as expressed in Wis. Stat. sec. 6.84 where it states:

*The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for*

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*fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.*

I asked [REDACTED] if the voting procedures used at the Ridgewood Care Facility were causing the overzealous solicitation of people who may not want to participate in the vote, and [REDACTED] responded, "Yeah, pretty much. I would agree. Unfortunately."

I asked [REDACTED] to estimate the number of residents where she was sent back to get their vote, and [REDACTED] estimated that it was between five and ten residents. [REDACTED] stated that each time it was on Director [REDACTED]'s instructions.

Investigation to continue.

Respectfully submitted:

Inv. Michael J. Luell

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