



## City Clerk's Office

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210 Martin Luther King, Jr. Boulevard, Room 105, Madison, WI 53703-3342  
voting@cityofmadison.com • licensing@cityofmadison.com • clerk@cityofmadison.com  
[www.cityofmadison.com/clerk](http://www.cityofmadison.com/clerk) • [www.cityofmadison.com/election](http://www.cityofmadison.com/election)

April 13, 2026

To: Dane County Clerk Scott McDonell and the Dane County Board of Canvassers

From: Lydia McComas, Madison City Clerk

Re: Ballots delivered to polling places after 8:00 p.m.

On Election Day, April 7, 2026, twenty-three ballots were delivered to four polling places after 8:00 p.m. These ballots had been in the Clerk's Office's custody since Monday, April 6, 2026. These ballots were part of a larger batch of absentee ballots sent to individual polling places. The courier left around 6:30 p.m., but due to a longer-than-usual delivery time, the courier arrived at the last four polling places shortly after polls closed.

When the Clerk's Office was made aware that there may be absentee ballots delivered to polling places after polls closed, I reached out to the City Attorney's Office. City Attorney Haas advised the Clerk's Office to have Chief Inspectors mark each late arriving ballot and count it with the other ballots. Please see Attorney McReynolds's memorandum detailing the legal basis for this action.

Ward	Number of ballots	Time delivered
Ward 77	1 ballot	8:05 p.m.
Ward 75	5 ballots	8:05 p.m.
Ward 132	2 ballots	8:10 p.m.
Ward 78/79	15 ballots	8:31 p.m.

On April 10, 2026, the Madison Municipal Board of Canvassers decided to accept the twenty-three late delivered ballots as counted.



## McDonell, Scott

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**From:** County Clerk Mail  
**Sent:** Monday, April 13, 2026 7:47 AM  
**To:** McDonell, Scott  
**Subject:** FW: 2026 Spring Election Canvass and Absentee Ballots Not Processed at Polling Places on Election Day

From the cc inbox.

Patti

**From:** Nick Boerke <nick@njblaw.net>  
**Sent:** Friday, April 10, 2026 10:59 PM  
**To:** McReynolds, Amber <AMcReynolds@cityofmadison.com>; McComas Lydia <lmccomas@cityofmadison.com>; Haas, Michael R <MHaas@cityofmadison.com>  
**Cc:** Jenna Banfield <jbanfield@wis.gop>; County Clerk Mail <county.clerk@danecounty.gov>  
**Subject:** RE: 2026 Spring Election Canvass and Absentee Ballots Not Processed at Polling Places on Election Day

### This Message Is From an Untrusted Sender

You have not previously corresponded with this sender.

Amber,

Thank you for the prompt response and clarification. It was my understanding that the ballot envelopes and ballots at issue were never delivered to polling locations and therefore not counted on election day, but that they would somehow be processed, opened, and counted at the initial county canvass under Wis. Stat § 7.60. Your clarification that the ballots were delivered (albeit after 8pm) but still counted at polling locations on election day is helpful at narrowing the issue. However, we still maintain that the statutory language is clear—absentee ballots that are not timely delivered to polling locations before 8pm may not be counted.

With regard to your citation of case law, *Johnson v. Hayden*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981), it is not on point because it concerns the authority and decisions of the Board of Canvassers sitting in their capacity during a recount under Wis. Stat. § 9.01, not in a ministerial role under Wis. Stat. § 7.60.

We very strongly disagree with the assertion from the WEC investigation that somehow the Board of Canvassers would have the legal authority to review and process additional absentee ballot envelopes and count new ballots during an initial post-election canvass. That said, we appreciate your clarification that no such situation is present here.

Nick



**Nicholas J. Boerke**

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**From:** McReynolds, Amber <[AMcReynolds@cityofmadison.com](mailto:AMcReynolds@cityofmadison.com)>

**Sent:** Friday, April 10, 2026 1:32 PM

**To:** Nick Boerke <[nick@njblaw.net](mailto:nick@njblaw.net)>; McComas, Lydia A <[LMcComas@cityofmadison.com](mailto:LMcComas@cityofmadison.com)>; Haas, Michael R <[MHaas@cityofmadison.com](mailto:MHaas@cityofmadison.com)>

**Cc:** Jenna Banfield <[jbanfield@wis.gov](mailto:jbanfield@wis.gov)>; [county.clerk@danecounty.gov](mailto:county.clerk@danecounty.gov)

**Subject:** RE: 2026 Spring Election Canvass and Absentee Ballots Not Processed at Polling Places on Election Day

Attorney Boerke,

Thank you for reaching out.

The 23 ballots you reference were timely returned, received, and in the custody of the Clerk's Office as the voters intended. The ballots were delivered to specific polling locations and counted on April 7 shortly after 8pm, so I understand your concern. The City has contacted the WEC about this issue and was advised to make the Municipal Board of Canvass, and the Dane County Board of Canvass aware of this situation and the Boards can decide, within their statutory discretion, if the ballots should be included in the official, certified canvass statement totals.

It is the City's position that these counted ballots should remain included in the certified canvass totals. Specifically, under *Johnson v. Hayden*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981): "A challenge of compliance with procedures for absent voting is within the board of canvassers' jurisdiction. Absent connivance, fraud, or undue influence, substantial compliance with statutory voting procedures is sufficient."

In this situation, there was no connivance, fraud, or undue influence and the Clerk's office and election officials substantially complied with the statutory voting procedures.

The City's position is also consistent with the Commission's position regarding past uncounted ballots. The City received significant criticism from the Commission for failing to bring timely received but uncounted ballots to the City, County, and State canvass. The WEC specifically wrote that the county canvass could have counted ballots that were in the City Clerk's custody but had not been counted at the polls:

“At the time the Ward 65 ballots were found, the county canvass was continuing, and those ballots could have easily been counted.” *In re Investigation of the City of Madison* July 17, 2025  
P. 14 ¶8 – p. 15 ¶ 1.

Given the information the City has regarding these ballots, the case law, and the City’s understanding of Commission positions, the City had a legal basis for counting the ballots and the Boards of Canvassers have a legal basis to include these in their certifications.

Sincerely,

Amber McReynolds

Amber McReynolds (she/her)  
Assistant City Attorney  
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608-266-4511  
City-County Building, Room 401  
210 Martin Luther King, Jr. Blvd.  
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**From:** Nick Boerke <[nick@njblaw.net](mailto:nick@njblaw.net)>  
**Sent:** Friday, April 10, 2026 10:01 AM  
**To:** Madison Votes <[madisonvotes@cityofmadison.com](mailto:madisonvotes@cityofmadison.com)>; McComas, Lydia A <[LMcComas@cityofmadison.com](mailto:LMcComas@cityofmadison.com)>; Haas, Michael R <[MHaas@cityofmadison.com](mailto:MHaas@cityofmadison.com)>; McReynolds, Amber <[AMcReynolds@cityofmadison.com](mailto:AMcReynolds@cityofmadison.com)>  
**Cc:** Jenna Banfield <[jbanfield@wis.gop](mailto:jbanfield@wis.gop)>; [county.clerk@danecounty.gov](mailto:county.clerk@danecounty.gov)  
**Subject:** 2026 Spring Election Canvass and Absentee Ballots Not Processed at Polling Places on Election Day  
**Importance:** High

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear City of Madison Clerk and City Attorney,

I write on behalf of the Republican Party of Wisconsin regarding certain absentee ballots that were not timely delivered to their designated polling place on April 7, 2026. Because those ballots were not delivered, they were not received, processed, tabulated, or counted on election day as required by law. We understand there are plans to count these ballots during canvass on Monday, April 13, 2026, and we write to respectfully inquire about the legal basis for doing so.

Under Wis. Stat. § 6.87(6), the law is clear and mandatory: **an absentee ballot that is not timely delivered to the polling place on election day "may not be counted."** Section 6.88, as applicable to the City of Madison, further requires that absentee ballot processing must occur at the polling place on election day. The canvass process is designed to compile and certify results from votes already lawfully counted on election day with the lone and express exception of provisional ballots under Wis. Stat. § 6.97. The canvass is a ministerial process, not a vehicle for processing absentee ballots that were never received at a polling place by the statutory deadline nor a mechanism to conduct an unauthorized recount outside the specific authority of Wis. Stat. § 9.01.

We recognize this situation may have resulted from an unfortunate logistical failure. However, administrative error does not create statutory authority that otherwise does not exist. Voting absentee is a privilege granted by the Legislature that comes with inherent risks and the election day deadline for the receipt, processing, tabulation, and counting is mandatory.

We therefore respectfully request that the City provide, in writing, the specific legal authority upon which it intends to rely in counting these ballots at canvass. We also request that no such ballots are counted without satisfactory legal justification or other appropriate authorization.

We are copying the Dane County Clerk given the County's role in the canvass under Wis. Stat. § 7.60.

Thank you for your prompt attention to this matter.

Nick



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

Date: April 9, 2026

MEMORANDUM

TO: City Attorney Mike Haas  
FROM: ACA Amber McReynolds  
RE: Interpretation of Wis. Stat. §6.87  
CC: Dane County Corporation Counsel

Wis Stat 6.87(6) reads as follows:

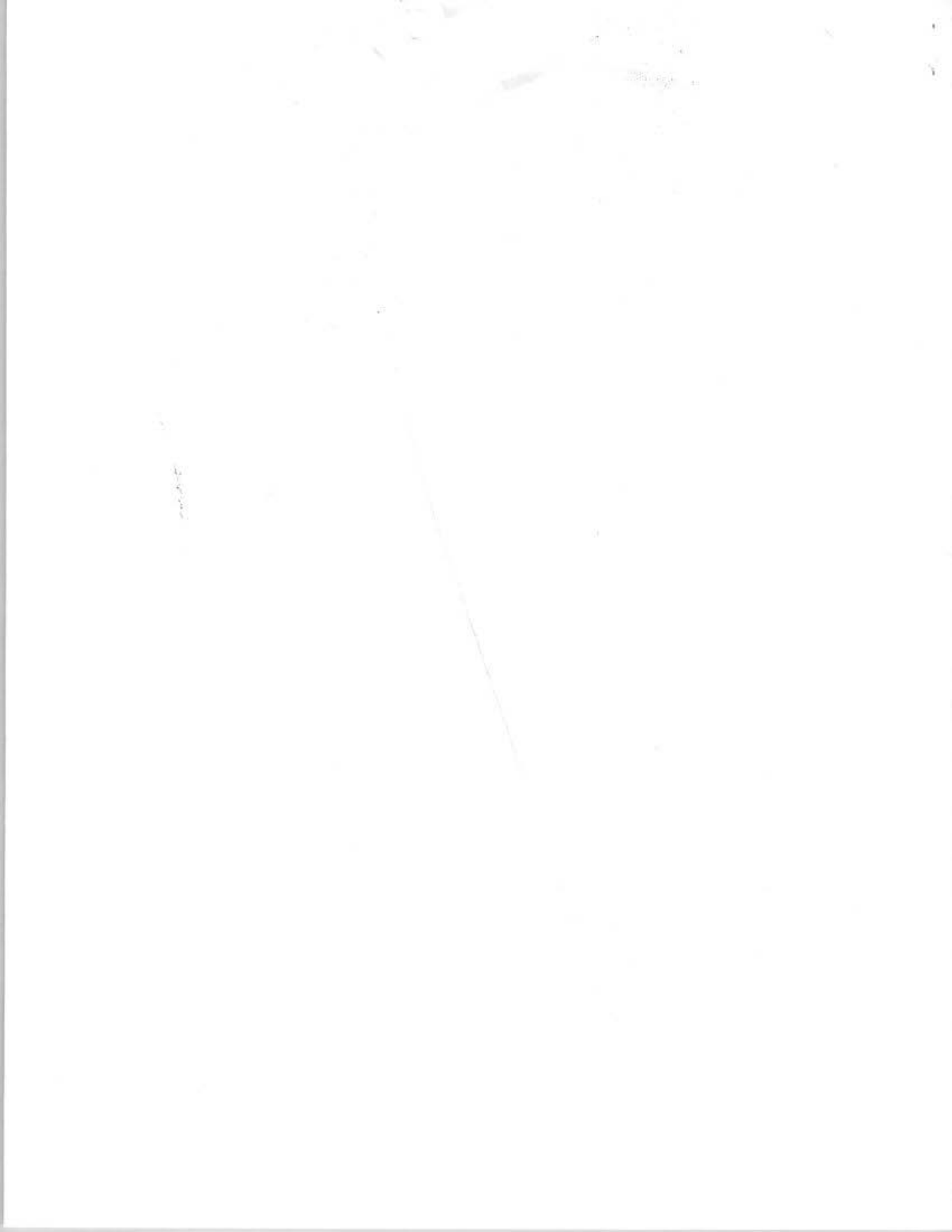
“The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector’s residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.”

The annotated cases which follow Wis. Stat. 6.87 provide guidance for a situation where absentee ballots arrive at the Clerk’s office, are in the Clerk’s custody, but do not arrive to their designated polling place before 8 p.m. *Updated 2023-24 Wis. Stats. Published and certified under s. 35.18. April 3, 2026* linked here:

<https://docs.legis.wisconsin.gov/statutes/statutes/6.pdf>

*Lanser v. Koconis* is particularly instructive:

“The directions in sub. (3) for mailing or personal delivery of an absentee ballot and in sub. (6) that a ballot not mailed or delivered as provided in the section should not be counted are **directory and not mandatory.** *Lanser v. Koconis*, 62 Wis. 2d 86, 214 N.W.2d 425 (1974). (emphasis added).



The *Lanser* court noted:

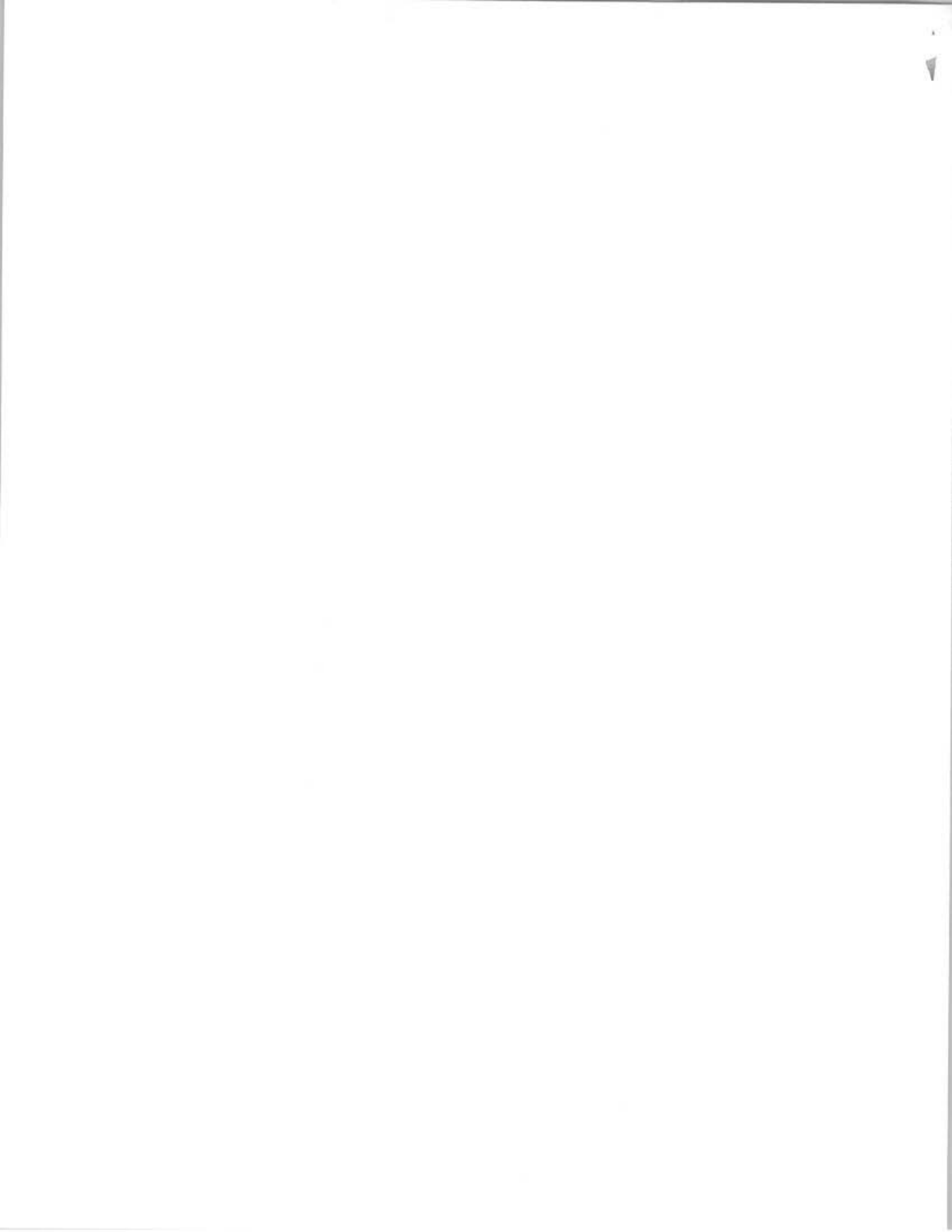
“ ‘The difference between mandatory and directory provisions of election statutes lies in the consequence of nonobservance: An act done in violation of a mandatory provision is void, whereas an act done in violation of a directory provision, while improper, may nevertheless be valid. Deviations from directory provisions of election statutes are usually termed ‘irregularities,’ and, as has been shown in the preceding subdivision, such irregularities do not vitiate an election. Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result, as where the statute merely provides that certain things shall be done in a given manner and time without declaring that conformity to such provisions is essential to the validity of the election.” *Lanser* (citing *Gradinjan v. Boho* (1966), 29 Wis.2d 674, 681, 139 N.W.2d 557, 561,). (emphasis added).

In addition, *Johnson v. Hayden* shows that the board of canvassers has jurisdiction to review challenges of compliance with absentee voting procedures:

“A challenge of compliance with procedures for absent voting is within the board of canvassers’ jurisdiction. Absent connivance, fraud, or undue influence, substantial compliance with statutory voting procedures is sufficient. *Johnson v. Hayden*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981). (emphasis added).

In the situation presented where ballots in the Clerk’s custody arrived to a polling location after 8pm, there was no fraud or undue influence and the Clerk’s office and election officials substantially complied with the statutory voting procedures.

The last consideration of whether to count absentee ballots received by the Clerk’s office but not delivered to the polling place by 8pm and to include that count in the canvass results comes from the City’s experience with the Wisconsin Election Commission’s investigation into uncounted ballots in the November 2024 election. While the two situations have factual differences, what they have in common is that they involve absentee ballots properly returned to the Clerk’s office and received by the Clerk’s Office before 8pm on election day. Taking the WEC’s view of facts from November 2024, both situations also involve properly received ballots that were not delivered by 8pm to the polling location on election day. The City received significant criticism for failing to bring the uncounted ballots to the County canvass and the State canvass once they were



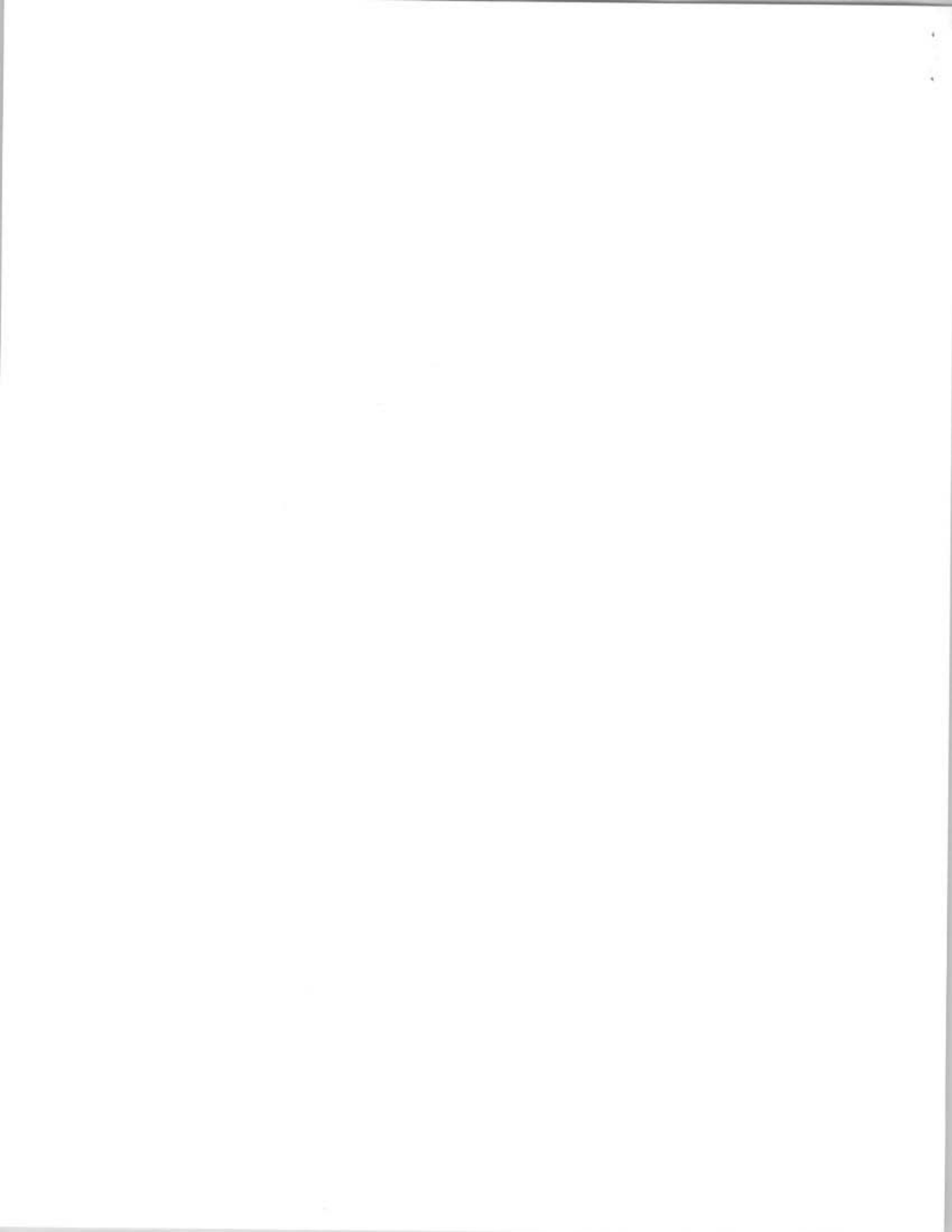
discovered. The WEC specifically stated that the county canvass could have counted the found ballots:

“At the time the Ward 65 ballots were found, the county canvass was continuing, and those ballots could have easily been counted.” *In re Investigation of the City of Madison* July 17, 2025 P. 14 ¶8 – p. 15 ¶ 1.

The WEC also said that the uncounted ballots should have been brought to the attention of the Commission:

“no urgent action was taken to confirm either the existence of those ballots, or to notify the Commission of the matter such that direction could be given as to how to address them prior to state certification.” *In re Investigation of the City of Madison* July 17, 2025 P. 15 ¶2

For the reasons stated above, the City Attorney’s Office concludes that the 23 absentee ballots that arrived to polling places after 8pm on April 7 were properly counted. In fact, if these ballots had not been counted, the ballots should have been provided to the municipal board of canvass to count and then included for the county board of canvassers to also count since “those ballots could have easily been counted”. *In re Investigation of the City of Madison* July 17, 2025 P. 14 ¶8 – p. 15 ¶ 1.



**6.87 Absent voting procedure.**

- (6) The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

