



WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

August 3, 2023

Wisconsin Supreme Court
<<Hand Delivered>>

Dear Justices:

It has come to our attention that, on August 3, 2023, the Court purported to appoint Judge Audrey Skwierawski of the Milwaukee County Circuit Court to serve as the interim Director of State Courts, a statutory office. We write to bring to your attention that Judge Skwierawski is prohibited from holding that position by Article VII, Section 10 of the Wisconsin Constitution and Wis. Stat. § 757.02(2).

The Wisconsin Constitution provides: “No . . . judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected.” Wis. Const. art. VII, §10(1). This same prohibition appears in Wis. Stat. § 757.02(2), which states: “The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he or she was elected or appointed.” Simply, a judge or justice of this state cannot hold another office of public trust unless it is a judicial office during their term.

The term “office of public trust” and the phrase “during the term for which elected” are well defined in Wisconsin law. An “office of public trust” is any “public office.” See *In re Appointment of Revisor*, 141 Wis. 592, 124 N.W. 670, 675-76 (1910) (comparing an office of public trust to a public office). This connection has also been suggested in several Attorney General opinions, including one issued in 2008. See e.g. Op. Att’y Gen. 04-08 (2008). A “public office” is one where “a portion of the sovereignty, legislative, executive or judicial, attaches, to be exercised for the public benefit.” *Martin v. Smith*, 239 Wis. 314, 330, 1 N.W. 163 (1941). Holders of public offices must take the oath of office required under the constitution, unless otherwise exempted. *Id.* at 331; Wis. Const. art. IV, § 28.

Article VII, Section 10 of the Wisconsin Constitution defines “during the term for which elected.” This Court held that the Wisconsin Constitution prohibits “a judge or justice from holding a nonjudicial position of public trust during the entire term for which he or she was originally elected.” *Wagner v. Milwaukee Cnty. Election Comm’n*, 2003 WI 103, ¶2, 263 Wis. 2d. 709, 666 N.W.2d 816. Importantly, this bar is “not effectively terminated by resignation.” *Id.*, ¶55; see also Op. Att’y Gen. 04-08 (2008) (“Wisconsin law does not allow a person who has resigned from the office of judge to serve [in an office of public trust] for the duration of the term to which the person was elected as a judge.”).

Under this Court’s binding interpretation of Article VII, Section 10, Judge Skwierawski cannot lawfully occupy the office of Director of State Courts. The Director of State Courts is an office of public trust, *i.e.*, a public office, because it is an office created by legislative act and is delegated authority that is exercised independently for public benefit. See, e.g. Wis. Stat. § 758.19; see also S.C.R. § 70.01. It is not a “judicial office” exempted by Wis. Const. art. VII, §10(1). The Supreme Court Rules state, “The director of state courts shall be the chief *nonjudicial* officer of the court system in the state.” S.C.R. § 70.01(1) (emphasis added). Therefore, Judge Skwierawski cannot hold the office

of Director of State Courts during her term as a judge in the Milwaukee County Circuit Court. That term does not expire until July 31, 2025.

Judge Skwierawski cannot serve as the Director of State Courts until the expiration of her term in the Milwaukee County Circuit Court. Her appointment, effective August 3, 2023, was unlawful and should be rescinded. The constitution demands no less.

Sincerely,



Senator Devin LeMahieu
Senate Majority Leader



Representative Robin Vos
Speaker