



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

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December 14, 2015

Ms. Tabitha Lehman
Sedgwick County Election Commissioner
Historic Sedgwick County Courthouse
510 N. Main
Wichita, Kansas 67208

Re: Petition to Recall Richard Ranzau from the Board of Sedgwick County
Commissioners, 4th District

Dear Ms. Lehman:

Pursuant to K.S.A. 2014 Supp. 25-4322, we have reviewed a petition submitted to your office on December 8, 2015 for the purpose of securing an election seeking the recall of Richard Ranzau from the office of Sedgwick County Commissioner, District 4. This is the second recall petition filed by the petitioners seeking the recall of Commissioner Ranzau in recent days. A copy of the one page petition is attached hereto as Appendix A, and will herein after be referred to as "the petition". The review is to determine the sufficiency of the grounds stated in the petition for recall.

Six of the seven determinations to be made pursuant to K.S.A 2014 Supp. 25-4322 can be done so preliminarily before a discussion of the final determination involving the grounds for the recall. Those determinations are:

- (1) The petition is substantially in the required form.
- (2) The petition was not filed during the first 120 days of the term of office of the official sought to be recalled or within less than 180 days of the termination of the term of office of the officer sought to be recalled.

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- (3) The person named in the petition is a local officer.
- (4) There are a sufficient number of required signatures.
- (5) The local officer sought to be recalled has not been and is not being subjected to another recall election during such officer's current term of office.
- (6) The application conforms to the relevant requirements of Article 43, Chapter 25 of the Kansas Statutes Annotated.

As to the final determination, whether the facts do not support the grounds for recall as stated in the petition for recall, K.S.A. 2014 Supp. 25-4302 sets out three exclusive statutory grounds for recall - conviction of a felony, misconduct in office and failure to perform duties prescribed by law. The last ground is again relevant to our review.

The law requires that the grounds of " '... failure to perform duties prescribed by law' in K.S.A. 25-4302 requires the recall petition to show some nexus between the alleged conduct and the elected official's duties as prescribed by law." *Baker v. Gibson*, 22 Kan. App. 2d 36, 45 (1995). Simply stated, for recall purposes, failure to perform duties prescribed by law simply involves specific non-performance of the stated duties of the office.

Kansas law mandates that "the grounds stated in the recall petition must be specific enough to allow the official an opportunity to prepare a statement in justification of his or her conduct in office." *Unger v. Horn*, 240 Kan. 740, 747 (1987). This is true of each charge in the petition. *Id* at 745. This requirement is necessary as Kansas law provides an elected official an opportunity to challenge the validity of the purported grounds for recall. K.S.A. 2014 Supp. 25-4329 provides that the person who is the subject of the recall petition may provide the county election officer a statement of not over 200 words in justification of the person's conduct in office. If provided, the statement shall be maintained by the county election officer for public inspection.

The specificity requirement has been analyzed in few appellate cases. However, it is clear that a high degree of specificity is required of allegations seeking to recall an elected official. For example, in the *Unger* case, the following allegation was found to lack the required specificity: "he violates the Kansas Open Meeting laws by participating in unannounced private meetings".

Here, the petition states the following as grounds for recall:

Richard Ranzau was required by law to take an Oath of Office to *support* the Constitution of the State of Kansas, and to faithfully discharge the duties of County Commissioner, one of which is to act as the board of health (KSA 65 – 201). Article 7, Section 4 of the Kansas Constitution prescribes that "respective counties of the state shall provide... for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the aid of society." In violation of his oath to support the State's Constitution, Commissioner Ranzau, disavowed Article 7, Section 4 of the Kansas Constitution in writing stating there is "no charity in government welfare programs." As Chair of the Board of Commissioners, Mr. Ranzau on 3 occasions **SIGNED** county orders that fail to provide for county inhabitants who by reason of age, infirmity or other misfortune, may have claims upon the aid of society; and he failed to act as a county board of health when he signed orders refusing public health funds for the poor, and for

infants and children. Commissioner Ranzau must be recalled for failing to perform duties prescribed by law pursuant to K SA 25 – 4302.

Article 7, section 4 of the Kansas Constitution states, in full: “The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid in supervise and control the administration thereof.”

This provision thus directs **counties** to provide assistance, *as otherwise may be called for in the law*, for certain needy residents and allows the state to assist in funding and supervising such assistance. As true with most constitutional provisions, broad language is used to describe its essence. The section does not specify any particular manner in which assistance is to be given, the particular type of assistance to given or define more precisely those “age, infirmity or other misfortune” may fall within its purview. It only requires the provision of assistance as other law might specify.

K.S.A. 65 – 201 provides, in relevant part, as follows:

The county commissioners of the several counties of the state shall act as county boards of health for their respective counties. Each county board thus created shall appoint a person licensed to practice medicine and surgery, preference being given to persons who have training in public health, who shall serve in an advisory capacity to the county board of health and as the local health officer... The local health officer ... shall hold office at the pleasure of the board.

As it applies to the Sedgwick County Board of County Commissioners, this statute creates a county board of health from the board of county commissioners and directs that board to hire a local health officer who is someone licensed to practice medicine and surgery. It does no more. By its terms, the statute has no application to any individual commissioner nor does it create any individual duty. *Any duty imposed is a duty of the board as a whole*, performed through the action of the majority of the board. See K.S.A. 77-201, *Fourth*. Black's Law dictionary, Ninth Edition, provides defines "duty" as “1. A legal obligation that is owed or due to another and needs to be satisfied; the obligation for which someone else has a corresponding right. 2. Any action, performance, task, or observance owed by a person in an official or fiduciary capacity.”

A review of the petition, relevant statutes and case law precedent has led to the following determination:

None of the petition’s allegations establish a sufficient nexus between the stated failures to perform and the prescribed duties of the officer sought to be recalled, and therefore are not sufficient legal grounds for recall.

Discussion

For the purposes of further discussion, the main elements of the petitioners’ first stated complaint can be more plainly understood when restated as follows: Commissioner Ranzau failed in his duty to support the state constitution by writing there is “no charity in government welfare programs.”

In regard to the additional complaint or complaints in the petition, it is unclear whether the petitioners' are referring to the same or different events in regard to signed orders. On the one hand, the signing of 3 unspecified orders not providing for needy county inhabitants is mentioned. On the other hand, there is another mention of an unspecified number of signed orders refusing public health funds. One mention refers to Commissioner Ranzau's position as Chair of the Board; the other refers to his purported role as county board of health. Regardless, for clarity, the main elements of these allegations can be restated as follows: Commissioner Ranzau failed in his duty to act as a commissioner and as a county health board when he signed orders refusing public health funds for the poor, infants and children or that didn't provide for such individuals as the constitution requires. Each of these claims will be discussed in turn.

Failure to support the state constitution

The requirement that all elected public officials in this state take an oath that they will support the federal and state constitutions and faithfully discharge the duties of their offices is found in K.S.A 54-106. The specific constitutional provision alleged to not be supported is the one broadly directing **counties** to provide such assistance *as may otherwise be granted by law* to certain needy individuals. Petitioners do not cite any other laws that may grant special assistance. This broad, constitutional provision does not require counties to pass any specific laws, nor could it. Governmental constitutional provisions are by their very nature open and expansive, describing the relationships, powers, rights and duties between the governed and the government. *Most importantly, the constitutional duty lies with the county*, which acts through its board of county commissioners. See K.S.A. 19-103. Actions taken by the board must be with the assent of a majority of its members. See K.S.A. 77-201, *Fourth*. Hence, any duty owed is that of the collective whole and not an individual duty. Without an individual duty to act, or an individual duty to not act, there can be no individual violation of duty.

While not necessary for the disposition of this issue, it is worth noting for petitioners' understanding, that an argument that a written expression of belief that there is "no charity in government welfare programs" made in an unspecified manner at an unstated date or dates in an undescribed context could somehow constitute a violation of a constitutional duty to provide assistance to the needy, such as to allow for a recall, is factually, logically and legally unsound. The requisite specificity is clearly lacking, but more fundamentally, petitioners do not tie the expression of belief to any act or failure to act that is a prescribed duty of the office, as explained above.

Failure to act as a commissioner (chair) and as a board of health

Petitioners charge that Commissioner Ranzau failed to act as a board of health when he signed unspecified orders refusing health funds for the poor on some unspecified date or dates. They charge that at some unstated point in time he failed to fulfill the duties set out in the state constitution by virtue of his signing unspecified orders they contend failed to provide for needy county inhabitants. Petitioners conflate Article 7, section 4 of the state constitution and K.S.A. 65-201 and attempt to create legal duties that do not exist. Nothing in the terms of those two authorities, viewed separately or in conjunction with one another, requires an individual commissioner, or a board as a collective whole, to take any particular action at any point in time, or to act in accordance with any particular political or policy perspective.

And, as stated in the discussion of the first allegation, the constitutional obligation at issue is

that of the counties, not of individual commissioners throughout the state. Without an individual duty to act, or an individual duty to not act, there can be no individual violation of duty.

Further, Commissioner Ranzau as an individual cannot act as a board of health, hence he did not. Black's Law dictionary, Ninth Edition, defines "board" in pertinent part as "1. A group of persons having managerial, supervisory, or advisory powers <board of directors>." The board of county commissioners, embodied as the county board of health, can act only through vote of the majority of the whole. See K.S.A. 77-201, *Fourth*. See also Kan. Atty. Gen. Op. 94-48.

Conclusion

For the reasons set out above, the allegations of the petition do not establish a sufficient nexus between his stated failures to perform and his prescribed duties in office and therefore are not sufficient legal grounds for recall.

Accordingly, it is our opinion that the facts do not support the grounds for recall as stated in the petition as required by law.



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On behalf of
Marc Bennett
District Attorney
18th Judicial District

cc: Commissioner Richard Ranzau
Neva Sedoreck Thiessen
Shirley A. Benton-Kelley
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