

IN THE 6th JUDICIAL DISTRICT IN BOURBON COUNTY KANSAS

Michael J. Hoyt, Pro se)	
)	
PETITIONER)	WRIT OF
)	QUO WARRANTO
v.)	
)	
Leroy Kruger (Respondent 1))	Case# <u>BB-2024-CV-59</u>
Jennifer Hawkins (in her capacity of Bourbon)	
County Elections Officer))	
(Respondent 2))	
)	
RESPONDENTS.)	

SUMMARY

Comes now the *Petitioner* Michael J. Hoyt, acting pro se seeking relief by hearing on a *Writ of Quo Warranto*, "by what authority" can Respondent 1 Kruger hold the "incompatible office" of County Commissioner and a Fort Scott, Kansas City Official in the role of law/codes enforcement officer? As to Respondent 2 Hawkins, by what authority did the County Elections Official find that Kruger was not seeking an "incompatible" position when filing as a candidate for office for a position in violation of K.S.A. 19-205(a) Eligibility to office of commissioner..."no person holding any state, county, township or city office shall be eligible to the office of county commissioner in any county in this state." In Dyche v. Davis, 92 Kan. 971 (1914), the Kansas Supreme Court defines this doctrine as follows: "Offices are incompatible when the performance of duties of one in some way interferes with the performance of duties of the other... It is an inconsistency in the functions of the two offices." In addition to the violation above, the Kansas Attorney General has issued at least one ruling on incompatibility involving

the office of county commissioner and the position of city law enforcement office. Kan Atty Gen. Op. No. 82-8. Clearly stated in the published synopsis of this "common law" opinion:

"A person may not serve simultaneously as a county commissioner... because of common law doctrine of incompatibility of offices, nor may a county commissioner serve as a city police officer... because of the statutory prohibition of K.S.A. 1980 Supp. 19-205... K.S.A. 15-204."

The Kansas Supreme Court has also recognized the common law incompatibility doctrine see *U.S.D. 501 v. Baker, 269 Kan. 239 (2000)*. The courts have also recognized a common law component of the doctrine of conflict of interest. A public officer [city codes/law enforcement] has a duty to serve the public and must avoid situations that will cause him/her to act in a way that is not in the best interest of the public. Any such action is considered a breach of confidence. See *Anderson v. City of Parsons, 209 Kan. 337, 341(1972)*.

JURISDICTION

Kansas Statutes Chapter 60 – Procedure, Civil Article 12 – QUO WARRANTO 60-1201 – Proceeding for relief:

KS Stat § 60-1201 Proceeding for relief. "Relief in the form of quo warranto shall be obtained under the same procedure as relief on other civil actions."

CAUSE FOR ACTION

Generally, a public office signifies a position of trust. It is an entity that exists even without someone holding the office. A public office is usually required to take an oath and a salary is usually provided by state or local law, but these are not indispensable to public office. A public office has not been defined to mean a position which has been created by law involving tenure,

continuity, and the imposition of duties on the incumbent which involves some exercise of the sovereign power, large or small, in the making, executing, interpreting, and administration of the law.¹

It is obvious, Respondent 1 Kruger has the duty to enforce the law/codes established by the governing body of the City of Fort Scott Kansas; to issue citations that may result in significant monetary fines and even jail time; and also has the ability to prohibit an individual from inhabiting his/hers personal home if they deem it necessary. I view this type of enforcement no different than a police officer issuing a speeding ticket and the adjudication necessary to continue their driving privileges or to retain possession of their personal vehicle. These duties are incompatible for Respondent 1 Kruger to hold both positions simultaneously.

RELIEF SOUGHT

The primary election in Bourbon County for commission district #3 as already been damaged by the furtherance of Respondent 1 Kruger's electioneering in the August 2024 primary, and since he will advance to the general election opposed by a rival party candidate. Can this situation be corrected before the general election; I can offer no argument to provide a correction to repair the damage. If Respondent 1 Kruger should lose the general election, then the question here is moot. However, should Respondent 1 Kruger prevail as the winner, then two elections have been damaged from the incompatibility issue that has gone unaddressed.

The Petitioner seeks no monetary damages in this matter; **BUT TIME IS OF THE ESSENCE.**

¹ James M. Kaup, Kansas Government Journal, February 1989 (revised to include recent opinions of the Kansas Attorney General. Published in Chapter 22 pages 278 -289 Kansas Association of Counties Handbook 2024 edition.

CONCLUSION

Anyone who holds an elected office, or an appointed office, or seeks election to an office should keep incompatibility of said office in mind when ever running or offered an appointment to an elective office; as should the County Elections Official. The governing body and the appointive designees must also consider whether the dual offices holding will result in incompatibility. Also, officers should bear in mind that the two offices in question need not belong to the same unit of government.

The fact that the offices are incompatible does not mean that a public official cannot take the second office. A person who accepts a second office incompatible with the first is said to vacate the first office. The mere acceptance of the second incompatible office terminates holding the first office as effectively as would a resignation. This rule arises from the assumption that a choice was made between the offices when the second office was accepted. No judicial determination or formal resignation is necessary – the first-held position is lost. The Kansas Attorney General has also recently opined that when the first-held of the incompatible offices is a position of employment other than a public office, Kansas courts would give the individual the choice between resigning from the first position and resigning from the second.²

The Petitioner, pro se will present this matter in a hearing before this court as deemed necessary.

Respectfully submitted,



Michael J. Hoyt, pro se Petitioner

Dated: September 9, 2024

² Kan AG 16-12

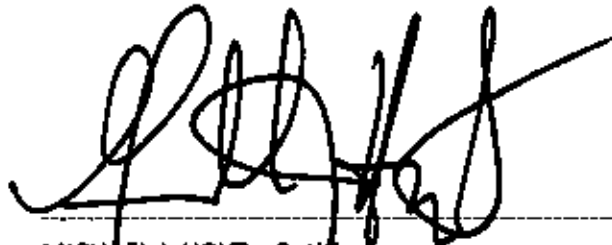
CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing WRIT OF QUO WARRANTO was sent as indicated below this 9th day of September, 2024, to the following:

RESPONDENTS

Leroy Kruger
1405 S Margrave
Fort Scott, KS 66701
First Class Mail & Bourbon County Process Server

Jennifer Hawkins
Bourbon County Clerk
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Fort Scott, KS 66701
Hand Delivered & Bourbon County Process Server



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