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County of Bourbon



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RE: Recall Petition of Susan Walker

Dear Recall Committee Members and Ms. Walker,

I am in receipt of a recall petition seeking the recall of County Clerk Susan Walker. This petition appears to be in proper order and contains all statutory required elements. Listed grounds for recall allege Misconduct and Failure to Perform Required Duties. Ultimately, after a review of case law and applicable statutes, I find that the stated basis of Failure to Perform Required Duties has been alleged with sufficient particularity and contains a nexus to the duties of Election Officer and County Clerk.

K.S.A. 25-4320 requires a petition to include: the name and office of the local officer sought to be recalled; the grounds for recall described in less than 200 words with particularity; a statement that the petition signers are registered electors of the election district; the name and address of the recall committee members; the warning required in K.S.A. 25-4321; and a statement that a list of all persons authorized to circulate the petition is on file at the office of the County Election Officer. All of these requirements are contained in the petition I have reviewed.

Statutes governing the exercise of a right to seek a recall are to be liberally construed in favor of that right. *Unger v. Horn*, 240 Kan. 740, 741, 732 P.2d 1275 (1987). Upon receipt of a petition, it is the duty of the County Attorney to determine the sufficiency of the petition. K.S.A. 25-4322. The petition must show some nexus between the conduct and the elected official's duties. *Baker v. Gibson*, 22 Kan.App.2d 36, 45, 913 P.2d 1218 (1995).

Here, it is alleged that the County Clerk caused to be printed and distributed incorrect ballots, specifically related to the USD 235 school board election. These incorrect ballots were used during early voting, although corrected prior to the general election. It is the duty of the County Election Officer to print ballots for all elections. K.S.A. 25-604(a). The County Clerk, in Bourbon County, is designated as the County Election Officer. K.S.A. 25-2303(a). Reviewing the petition and, for these purposes, assuming the facts are true, failure to correctly prepare and distribute ballots appears to be a failure to perform required duties with a nexus to the duties of Election Officer and County Clerk. "[T]he truth or falsity of the grounds must still be determined by the electorate, not the county or district attorney." *Baker*, 22 Kan.App.2d at 45.

### P Exhibit 3

However, the petition also alleges the grounds of misconduct in office. Misconduct in office is defined as “a violation of law by the officer that impacts the officer's ability to perform the official duties of the office.” K.S.A. 25-4302(b). Nothing in the petition supports this allegation. As such the recall cannot proceed on this allegation. Only the sufficient reasons for recall should be contained on the petition and posted at polling places. *See Reynolds v. Figge*, 28 Kan.App.2d 635, 648, 19 P.3d 193 (2001).

Sincerely,



James Crux  
Bourbon County Attorney