City of Galena
PO Box 149 - Galena, Alaska 99741-0149
(907) 656-1301 -- (907) 656-1769 Fax

CLERK'S CERTIFICATION OF PETITION FOR RECALL OF SCHOOL BOARD MEMBER KIMBERLY KOPP

An application for recall petition was submitted to the City on September 15, 2016. As city clerk, I reviewed the application for petition and found that it complied with all the requirements of AS 29.26.260 and GMC 2.20.020. I therefore issued the Petition for Recall of School Board Member Kimberly Kopp on September 26, 2016.

Galena Municipal Code 2.20.130(B) and AS 29.26.280(b) specify that a recall petition must contain "a number of voters equal to 25 percent of the number of votes cast for that office at the last regular election held before the date written notice is given to the contact person that the petition is available." I determined that the Petition for Recall of School Board Member Kimberly Kopp must contain 26 signatures of city voters in order to be certified.

On October 7, 2016, the sponsors submitted the Petition for Recall of School Board Member Kimberly Kopp. The Petition appeared to contain the signatures of 27 city voters. I reviewed the submitted Petition for Recall of School Board Member Kimberly Kopp and determined that only 24 of these are valid signatures of city voters.

I found that the Petition for Recall of School Board Member Kimberly Kopp contained an adequate number of signatures, counting both valid and invalid signatures, but an insufficient number of valid signatures to be certified. I therefore notified the contact person of this insufficiency by mail as required by AS 29.26.290 and GMC 2.20.140. On October 10, 2016, a supplementary petition was filed.

Having reviewed the supplemented Petition for Recall of School Board Member Kimberly Kopp, I find that all legal requirements for certification have been met. I hereby certify the Petition for Recall of School Board Member Kimberly Kopp.

Having certified the Petition for Recall of School Board Member Kimberly Kopp is sufficient, I shall submit it to the city council on October 18, 2016, the next scheduled meeting of the council.

Dated this 14th day of October 2016.

Shanda Huntington
City Manager and Clerk
October 14, 2016

Kim Kopp
PO Box 13
Galena, AK 99741

Re: Recall Petition

Dear Kim,

Thank you for your letter and sharing your concerns about the recall petition. I have my own concerns as to how this petition will affect our community. As city manager and clerk, my duty is to put aside my personal feelings and ensure that law is followed.

While I understand your concerns regarding the sponsors’ statement of the grounds for recall, the application for recall petition complied with Galena Municipal Code 2.20.110(C). As a result, I was legally obligated to issue the recall petition with the statement the sponsors drafted. (As you are aware, an earlier submission by these sponsors was rejected because I found that it did not meet legal requirements.)

An application for recall petition must contain (1) the signatures and residence addresses of ten qualified voters who will sponsor the petition, (2) the address to which all correspondence relating to the proposed petition may be sent, and (3) a statement in 200 words or less of the grounds for recall stated with particularity.\(^1\)

Ordinances relating to initiative and recall are to be liberally construed so that the people are permitted to vote and express their will, with all doubts as to technical deficiencies or failure to comply with the exact letter of procedure resolved in favor of the accomplishment of that purpose.\(^2\) The Alaska Supreme Court has stated that recall laws must not be interpreted in “so strict a manner that a petition prepared and circulated without the detailed advice of a lawyer would have no practical chance of qualifying for the ballot”.\(^3\) Further, in light of the political character of recall, charges may be read much more liberally in a recall petition than in a petition

---

\(^1\) GMC 2.20.110(C).
for the judicial removal of a public officer. I reviewed the application for petition and Galena Municipal Code with these principles in mind.

The application for petition contained the following statement:

Kim Kopp should be recalled from the GCSD board for incompetence: School legitimacy and effectiveness are damaged within our community because board member Kim Kopp does not share a clear understanding about the differing populations of students, learning, and academic expectations with the broader community. When communicating, she does not listen to understand, she listens to respond - rendering all dialog with community members as corrective and not comprehensive. Kim Kopp regularly misuses the chain of command to deny or avoid responsibility for critical problems with the system of authority. This chronic mis-use of the hierarchical institutional structure of policy and procedure has resulted in a culture of low trust, fear and retaliation, low morale, and breeds redundant layers of bureaucracy within our school. The conflict of interest surrounding Kim Kopp's leadership position on the Board of Education and in the Bible Church (Young Life) is a very divisive wedge that is toxically intertwined with the perceived over-involvement of the Bible Church on the SHS and GILA campuses.

It is the voters' role to assess the truth or falsity of the allegations in the petition. When reviewing the application, I must take the allegations as true without prejudging the voter's role to determine whether or not they are true.

In essence, my review of the sponsors' statement consists of three questions: (1) Does the statement exceed 200 words? If not, (2) are "the grounds for recall stated with particularity?" If so, (3) assuming that the facts and allegations are true, could they possibly constitute "misconduct in office, incompetence or failure to perform prescribed duties?" I reviewed the statement and found that it is fewer than 200 words, grounds for recall are stated with particularity, and that if these allegations are true, voters could reasonably believe they constitute misconduct in office, incompetence or failure to perform prescribed duties.

You assert that "particularity," as used in AS 29.26.260(3), requires specific dates and events. Legislative history dictates otherwise. Meiners v. Bering Strait School District, which you appear to rely on for your belief, was decided under a different statute. In 1984, the relevant statute required "a statement of the grounds of the recall stated with particularity as to specific instances." That's no longer the case.

4 Meiners, 687 P. 2d at n.7 (citing Gibson v. Campbell, 136 Wash. 467, 241 P. 21 (1925) (concurring opinion)).
5 Meiners, 687 P.2d at n.18.
6 Meiners, 687 P.2d at n.18.
7 Meiners, 687 P.2d at 291 (quoting AS 29.28.150(a)(3) (repealed, Sec. 88 ch 74 SLA 1985)).
In *Meiners*, the Supreme Court explicitly “commend[ed] to the Legislature the suggestion that these statutes be revised to clarify its intentions.” In response to *Meiners*, the Legislature repealed all of Chapter 29.28 and replaced it with Chapter 29.26, adopting three changes crucial to the clerk’s role in the recall process.

First, the relevant statute now reads “a statement in 200 words or less of the grounds for recall stated with particularity.” “Specific instances” was deleted and is no longer required. Second, the Legislature restricted the sponsors’ statement to 200 words or less, where it was previously unlimited. Finally, the statutes no longer read that the clerk shall “review the petition for content and signatures,” instead requiring that the clerk find that that the petition “contain[s]” the required statement.

These statutory changes respond to concerns the Supreme Court addressed in *Meiners*. The *Meiners* sponsor statement consisted of three distinct paragraphs and contained in excess of 450 words. The Court was presented with the question as to whether the sponsors’ statement could be edited by the reviewing official. The Court was highly reluctant to give such discretion to a municipal clerk. The old statute compelled such discretion because allowing a limitless sponsors’ statement “might force the target official to expend most of his 200 words of rebuttal fending off charges, which although legally insufficient for recall, he fears might garner the voters’ attention.”

In response, the Legislature clarified that the clerk’s discretion is to be minimal with three significant changes identified above. The first change, deleting “as to specific instances,” makes clear that sponsors need not identify “specific dates, events, people and circumstances that give substance to the allegations.” The 200 word limit restricts the sponsors’ ability to overwhelm the recall subject’s ability to present a rebuttal and thus the Legislature removed the discretion the Court reluctantly granted the clerk. Finally, the statutes no longer specify that the clerk is to review the “content,” but only determine if the document contains the required elements.

Taken together, these amendments reflect the position that it is unwise to “require municipal clerks to make significant discretionary decisions of a legal nature,” particularly when that discretion charges the clerk with determining whether or not “the people [are] permitted to vote and express their will”. Both the Legislature and judiciary soundly prefer to

---

8 *Meiners*, 687 P.2d at n.22.
10 *Meiners*, 687 P.2d at 291 (quoting AS 29.28.160 (repealed, Sec. 88 ch 74 SLA 1985)).
12 *Meiners*, 687 P.2d at 302.
13 *Meiners*, 687 P.2d at 296.
14 *Meiners*, 687 P.2d at 296.
"let the [recall] stand or fall on the merits of the case" rather than fall to "artificial technical hurdles".15

As to your allegation that signatures on the application for petition were procured by fraud, it is unclear to me what precisely you are alleging to have occurred. On September 8, Ms. Bryant submitted to me a document titled “Petition for Recall.” That document, however, was not a petition for recall as specified in the Galena Municipal Code because a petition for recall must be prepared and issued by the clerk, not the sponsors or petitioners. I informed Ms. Bryant that only the clerk can prepare and issue a petition, and that she would need to file an application for recall petition if she wanted me to issue a recall petition. I provided her with an application for recall petition form.

The application for recall petition was filed with the city on September 15, 2016. It appears on the face of the application that all application signatures were collected between September 9 and September 13, 2016. I saw no evidence of fraud in the gathering of the sponsor signatures. Finding all application requirements met, I issued the petition on September 26, 2016. I hope that relieves your concerns regarding fraud in connection with the application for recall petition.

Finally, you letter expresses concern that the city has “approved language that defames the reputations of both a local (Galena Bible Church) and a worldwide (Young Life) religious organization.” As you are aware, the city is not supposed to address the truth or falsity of allegations contained in a petition recall. Thus, the city does not “approve” the sponsors’ statement in the sense that it agrees with the statement or represents the statement as true. If an application for petition meets the requirements of the municipal code, the clerk is obligated to issue the petition.

The city cannot be liable for defamation in this context for two reasons: First, the city has not said anything untrue. The petition states the grounds for recall are “as determined by the petition’s sponsors.” Having identified that the statement is the sponsors’ and accurately reproducing that statement, the city’s statements are true. Any falsities in the recall statement belong to the sponsors. Second, and more to the point, the city was legally obligated to issue the petition containing the language you allege is defamatory. The city’s publication of the language, even if defamatory, is privileged.

Issuing the petition does not mean the city believes that you should be recalled or that the statements contained in the sponsors’ statement are true. If you believe that the sponsors’ statement is defamatory, that is a matter you must take up with the sponsors.

---

15 Meiners, 687 P.2d at 296.
The city has a duty to defend the validity of the petition if it is legally challenged. Duty to the public finances requires the city to seek an award of costs and attorney's fees incurred in successfully defending the validity of a recall petition.

The city, along with our Supreme Court, shares your disinclination for this matter to be resolved by litigation. If the petition is certified, I encourage you to take advantage of your right to submit a rebuttal statement, of 200 words or less, as the "rebuttal statement is the proper forum in which the official may defend against the charges."16

Again, I am personally concerned as to how this recall petition affects our community, and have empathy for any public official who is challenged as incompetent, but as city manager and clerk, my duty is to put aside my personal feelings and ensure that law is followed. That is what I have done. The grievances you have expressed are best resolved between you and the petition sponsors or through the political process.

Sincerely,

Shanda Huntington

---

16 Meiners, 687 P.2d at 301.
October 7, 2016

Dear Ms. Jenny Bryant

I the City Clerk for the City of Galena reviewed the Petition for recall of School Board Member Kim Kopp and found the petition is insufficient. There were three signatures who are not resident voters in Galena, therefore I return the petition to you. You have eleven days to return the petition with additional signatures.

Sincerely,

Shanda Huntington
City Manager/ City Clerk
September 9, 2016

Jenny M. Bryant
PO Box 6
Galena, AK 99741

Re: Petition for Recall

Dear Ms. Bryant:

The City of Galena received your Petition for Recall on September 8, 2016. To ensure that elections are fair to everyone, election laws, including recall procedures, require strict compliance. As clerk, I cannot certify the submitted petition because no application for petition was filed, the submitted petition was not issued by the city clerk, and it does not meet the requirements of AS 29.270 and GMC 2.20.120. I am therefore returning the document to you.

To recall an elected official, concerned voters must first apply to the city clerk for a recall petition. Only after the clerk issues the petition can signature gathering begin, and that must be completed within 60 days of the clerk issuing the petition.

An application for a recall petition must contain:

(1) The signatures and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) The name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and

(3) A statement in 200 words or less of the grounds for recall stated with particularity.

If you wish to apply for a recall petition, please file with me, as city clerk, an application that meets the above requirements. Please ensure that your application strictly complies with each of the above requirements. I cannot issue a petition based on partial compliance.

Upon receipt of an application for recall petition, I will review the application to determine if it meets the above requirements, which are specifically required by AS 29.26.260 and GMC 2.20.110. If the

1 AS 29.26.260; GMC 2.20.110.
2 AS 29.26.270(a)(4); GMC 2.20.120(A)(4).
3 AS 29.26.260(a); GMC 2.20.110(c).
4 AS 29.26.270(a); GMC 2.20.120(A).
application for recall meets all the requirements of AS 26.260 and GMC 2.20.110, I will prepare a recall petition that meets the requirements of AS 29.26.270 and GMC 2.20.120. Copies of such a petition will then be available to all the sponsors of the petition. The sponsors must use this petition to collect the signatures required by AS 29.26.280 and GMC 2.20.130.

I understand that the above requirements may seem duplicative of the work you’ve already done, but the integrity of our elections, and ultimately the validity of any recall, require precise adherence to election laws. If you submit an application for petition, I will endeavor to perform the required review and, if appropriate, issue the petition without delay. Please let me know if you have any questions regarding applications for recall petitions.

Sincerely,

Shanda Huntington

City Manager and City Clerk

Enclosure