


FILED  
HALL CO. GA.  
IN THE SUPERIOR COURT OF HALL COUNTY  
2011 NOV -2 PM 2:51  
STATE OF GEORGIA

IN RE: Application for Recall of )  
Craig Lutz, Hall County Commissioner )  
District 1, Filed August 18, 2011 )  
 )  
Petition Chairperson: Kevin Kanieski )

CHARLES BAKER, CLERK  
SUPERIOR STATE COURT  
BY   
CIVIL ACTION FILE NO. 2011-CV-2182A

**ORDER**

An evidentiary hearing on the Petition to Determine Sufficiency of the Application for Recall Petition was scheduled October 7, 2011. Craig Lutz, Hall Count Commissioner, appeared through counsel and Kevin Kanieski appeared pro-se. Mr. Kanieski indicated that he did not wish to present evidence, and the Court will proceed based on the documents filed into evidence in this matter.

Under O.C.G.A. §21-4-6 (f) the Court is to review the application for Recall regarding the “legal sufficiency of the recall ground or grounds and the legal sufficiency of the alleged fact or facts upon which such ground or grounds are based as set forth in such recall application. The review of such alleged fact or facts shall include a determination of whether probable cause exists to believe that such alleged fact or facts are true. The burden shall be on the petition chairperson to prove that such probable cause exists.”

In this matter, the grounds stated in the application for recall petition, being that Mr. Lutz allegedly “committed an act or acts of malfeasance while in office, violated his or her oath of office, and committed an act of misconduct in office,” all fall under the statutory elements listed in O.C.G.A. §21-4-3 (7)(B) and are pre-printed in the form as set out in O.C.G.A. §21-4-7. Insofar as these grounds fall under the statute, they are sufficient to satisfy the statutory requirements.

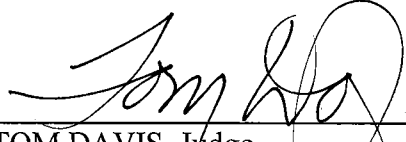
As to the legal sufficiency of the alleged fact or facts upon which such grounds are based, the Application for Recall lists the following: “(1) violated Georgia Open Meeting Laws (A) Mr. Lutz and two other commissioner (sic) did contractual work prior to it being voted on by the entire board. (B) Mr. Lutz and two other commissioners fired the three administrators without it being voted on by the entire board.”

As the Petition Chairperson has the burden to prove that probable cause exists to believe that the alleged facts are true, and as Mr. Kanieski failed to put forth any evidence regarding the allegations as required under O.C.G.A. §21-4-6 (f), the Court finds that Mr. Kanieski failed to carry said burden of

proof. Even if his Application for Recall is evaluated on its face, it fails to identify with reasonable particularity the meeting or meetings which violated the Georgia Open Meeting Laws, or the activities which represent a violation of Commissioner Lutz' oath of office, represent misconduct in office, or represent acts of malfeasance while in office. In view of the Court's finding of legal insufficiency with regard to the facts,

IT IS ORDERED that the Hall County Elections Superintendent is enjoined from issuing recall petitions to Kevin Kanieski based on the grounds listed in the applications as tendered to the superintendent on or about August 18, 2011. If either side seeks attorney fees, they shall file a brief regarding said award on or before close of business November 10, 2011. Responses to said briefs, if any, shall be filed on or before November 23, 2011.

SO ORDERED this 31<sup>st</sup> day of October, 2011.

  
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TOM DAVIS, Judge  
Superior Court of Hall County