

Bond Case Briefs

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In re Lee

Court of Appeals of Texas, Austin - February 28, 2013 - S.W.3d

City Secretary does not have the authority to determine the legal sufficiency of the allegations contained in a recall petition.

Citizens completed a petition to recall town mayor. Upon completion, the recall petition was filed with the City Secretary, who reviews the petition to determine if it is sufficient or insufficient. In this case, the City Secretary deemed the petition insufficient. The next day, at its next regular session, the city council approved the City Secretary's certification of insufficiency and refused to order a mayoral recall election. Citizens brought a motion to compel.

The city did not contend that the recall petition lacked the required number of valid signatures. Rather, it contended that the City Charter authorized the City Secretary to review the factual allegations supporting the recall and to determine, in his or her discretion, if the allegations are sufficient to give rise to a claim "for reason of incompetence, noncompliance with this Charter, misconduct or malfeasance in office."

The court roundly rejected this contention, finding that a review of the sufficiency of the allegations supporting recall would, in essence, amount to a non-judicial determination by the City Secretary and the City Council of whether the facts as alleged give rise to a legal basis for recall under the City Charter.

"The Charter for the City of Brady creates a ministerial duty for the City Secretary to certify a recall petition upon determining that it contains the requisite number of signatures. Likewise, the City Charter creates a ministerial duty for the City Council to order a recall election if the official whose removal is sought refuses to resign. Here, there is no dispute that the recall petition included the correct number of signatures. Further, there is no explicit discretionary duty relied upon by the City Secretary for refusing to certify the recall petition as sufficient or by the City Council for refusing to order a recall election. Under these facts, we conclude that mandamus relief is warranted."