

DENY; and Opinion Filed November 8, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-01246-CV

IN RE SANDRA CRENSHAW, Relator

**Original Proceeding from the City of Dallas
Dallas County, Texas**

MEMORANDUM OPINION

**Before Justices Lang, Brown, and Stoddart
Opinion by Justice Brown**

On October 20, 2017, relator Sandra Crenshaw submitted to the Dallas City Secretary a written notice of circulation of a petition for the recall of Dallas City Councilmember Kevin Felder. The City Secretary conducted a “courtesy review” of the written notice and notified Crenshaw by letter dated October 24, 2017 that the City Secretary had determined the notice failed to meet the requirements of Dallas City Charter section V, section 1(2) because it did not contain the signatures of five registered voters “in the city council district.” In this original proceeding, Crenshaw seeks a writ of mandamus ordering the City Secretary to accept for filing Crenshaw’s notice to remove Felder from office. We deny the petition as premature because the City Secretary has not failed to perform a ministerial duty over which this Court can exercise writ jurisdiction.

Availability of Mandamus Relief

This Court has jurisdiction to consider relator’s petition and to “compel the performance of any duty imposed by law in connection with the holding of an election ... regardless of whether the person responsible for performing the duty is a public officer.” TEX. ELEC. CODE ANN. § 273.061 (West 2010). Disputes regarding petitions for recall elections are election disputes subject to review through mandamus. *Duffy v. Branch*, 828 S.W.2d 211 (Tex. App.—Dallas 1992, orig. proceeding).

A writ of mandamus is appropriate to compel a public official to perform a ministerial act. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). “An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion.” *Id.* To be entitled to mandamus relief, relator must establish (1) a legal duty to perform a non-discretionary act, (2) a demand for performance, and (3) a refusal to perform the non-discretionary act. *In re Cullar*, 320 S.W.3d 560, 563–64 (Tex. App.—Dallas 2010, orig. proceeding). This Court may not resolve factual disputes in a mandamus proceeding. *Id.*

Discussion

The City Secretary only has a ministerial duty to perform the requirements found in the Dallas City Charter. *See, e.g., In re Woodfill*, 470 S.W.3d 473, 475 (Tex. 2015) (duties of the City Secretary and the City Council of Houston when a referendum petition is filed are governed by Houston City Charter); *see also City of Plano v. Carruth*, No. 05-16-00573-CV, 2017 WL 711656, at *2 (Tex. App.—Dallas Feb. 23, 2017, pet. filed) (ministerial duties of Plano City Secretary set out in Plano City Charter).

Chapter V, section 1 of the Dallas City Charter sets out the procedure for seeking a recall of city council members. Dallas, Tex., Dallas City Charter, ch. V, § 1 (Feb. 2015 printing) (available at

http://citysecretary2.dallascityhall.com/pdf/City_Charter.pdf (last visited October 30, 2017). The first step in the process is for the voters seeking the recall election to provide written notice to the City Secretary that a petition for recall has been circulated. Dallas, Tex., Dallas City Charter, ch. V, § 1(2). The notice must be given on the day that the petition for recall is first circulated. *Id.* The petition with the total signatures required must be filed within 60 days after the city secretary receives the notice. *Id.* After the petition is filed, section 1(3) requires the City Secretary to examine the petition and “from the list of qualified voters, ascertain whether or not the petition is signed by the requisite number of qualified voters.” Dallas, Tex., Dallas City Charter, ch. V, § 1(3).

Section 1(2) provides nothing for the City Secretary to do at step one of the process, and does not authorize the City Secretary to review the written notice or to determine whether the voters submitting the notice are qualified voters in the councilmember’s district. *See, e.g., In re Lee*, 412 S.W.3d 23, 26, 27 (Tex. App.—Austin 2013, orig. proceeding) (refusing to infer authority of city secretary to certify a recall petition as “insufficient” with regard to the factual or legal allegations made in the affidavit and recall petition where charter provided only that city secretary could determine sufficiency of petition only as to verifying the number of signatures of qualified voters). Crenshaw provided the written notice and that notice was received by the City Secretary on October 20, 2017. The City Secretary’s duty to examine is solely in relation to the petition that has not yet been filed. Crenshaw’s request for mandamus relief is premature because the City Secretary has not yet failed to perform any ministerial duties. Accordingly, we deny relator’s petition for writ of mandamus.