

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00467-CV

IN RE CRAIG STEWART

Original Proceeding

MEMORANDUM OPINION

Jasper resident Craig Stewart petitioned for a writ of mandamus to compel the Mayor and Council Members of the City of Jasper, Texas, to call and hold recall elections for Council Members Terrya Norsworthy, Willie Land, and Tommy Adams. The Election Code provides a remedy through mandamus “to compel the performance of any duty imposed by law in connection with the holding of an election[.]” *See* Tex. Elec. Code Ann. § 273.061 (West 2010). The City of Jasper’s Charter requires the City Council to order an election and fix a date for holding a recall election. *See* Jasper, Tex., Home Rule Charter art. VI, § 6.07 (Oct. 20, 1964, as amended June 10, 1991). We grant mandamus relief and order the Mayor and City Council Members of the City of Jasper to

order the recall elections for Norsworthy, Land, and Adams at the next uniform election date, November 8, 2011. *See* Tex. Elec. Code Ann. §41.001(a)(2) (West 2010).

The City of Jasper is a home-rule municipality operating under a charter. *See* Tex. Loc. Gov't Code Ann. § 5.004 (West 2008). The Charter reserves to the people of the City of Jasper the power to recall any elected officer of the City. *See* Jasper, Tex., Home Rule Charter art. VI, §§ 6.01, 6.02. That power may be exercised by filing with the city secretary a petition demanding the removal of the elected officer. *Id.* at § 6.04. The petition must “be signed by qualified voters of the city equal in number to at least thirty (30) percent of the number of votes cast at the last regular municipal election of the city, but in no event less than one hundred fifty (150) such petitioners.” *Id.* at § 6.02. When the city secretary presents the recall petition to the city council, the officer whose removal is sought may within five days request a public hearing, which must be held not less than five nor more than fifteen days after receiving the request for a hearing. *Id.* at §§ 6.05-6.06. If the officer does not resign, “it shall become the duty of the city council to order an election and fix a date for holding such recall election[.]” *Id.* at §6.07.

On July 27, 2011, petitions to recall Council Members Norsworthy, Land, and Adams were presented to the Jasper City Council. The city secretary certified that her office had verified the qualifications of each voter. On August 1, 2011, a specially-called meeting of the Jasper City Council included public hearings requested by Norsworthy, Land, and Adams. On August 8, 2011, the City Council in its regular meeting considered

approving the orders of recall elections and a notice of election. A council member moved to approve the orders of recall election, but each motion failed for lack of a second.

Relator petitions this Court to compel Council Members Terrya Norsworthy, Alton Scott, Randy Sayers, Tommy Adams, Willie Land, and Mayor Mike Lout to call for and hold the recall elections at the next authorized uniform election date. *See* Tex. Elec. Code Ann. §§ 41.001, 273.061. A response has been filed on behalf of the Mayor and the Council Members. Lout and Sayers disclaimed any interest in the proceeding and its outcome.

Respondents contend that the recall petitions are void because Article VI of the City Charter was written for Council Member of at-large districts. The 1991 amendments to the City Charter adopted a system in which the mayor and one council member are elected by the qualified voters of the entire city, and four of the council members are elected from single-member districts. *See* Jasper, Tex., Home Rule Charter art. III, § 3.01(a), (b). Norsworthy is the at-large Council Member, and respondents agree that “she may be subject to a recall election under the existing Charter.” Respondents argue that the recall petitions are void because Adams and Lane were voted into office by qualified members of their respective districts, but that they would be subject to recall by all of the qualified voters of the city. Respondents suggest that the City Charter would be in direct

conflict with the Voting Rights Act if voters outside of their respective districts could vote to recall Adams and Lane. *See generally* 42 U.S.C.A. § 1973c (West Supp. 2010).

We must give a statute or ordinance a construction that would render it valid, if it is reasonably possible to do so. *Grothues v. City of Helotes*, 928 S.W.2d 725, 730 (Tex. App.—San Antonio 1996, no writ). Section 6.02 provides that “[b]efore the question of recall of such officer shall be submitted to the qualified voters of the city, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of city secretary; which said petition shall be signed by qualified voters of the city equal in number to at least thirty (30) percent of the number of votes cast at the last regular municipal election of the city, but in no event less than one hundred fifty (150) such petitioners.” Jasper, Tex., Home Rule Charter art. VI, § 6.02. If a majority of votes cast at a recall election is against the recall of the person named on the ballot, the official continues in office, but if “a majority of the votes cast at such election” are for recall, the official is deemed removed from office and the vacancy is filled “as provided in section 3.06 of the charter.” *Id.* at § 6.09. Thus, the City Charter provides that a recall petition must be signed by qualified voters of the city, but it does not expressly state that all recall elections are city-wide. *See id.* at §§ 6.02, 6.09. Section 3.01 of the City Charter states that Districts One through Four “shall contain less than the entire area of the city[]” and that one Council Member “shall be elected by the qualified resident voters of such district.” Jasper, Tex., Home Rule Charter art. III, § 3.01(b).

Although Article VI of the City Charter provides that the qualified voters shall determine whether to recall a Council Member, the qualified voters for each election are described in Section 3.01, not in Section 6.02. Accordingly, the single member districts apply to recall and other special elections in the same manner as regular elections.

In *City Commission of Pampa v. Whatley*, the recall provisions of the charter were enacted when the mayor and commissioners were elected at large. 366 S.W.2d 620, 621 (Tex. Civ. App.—Amarillo 1963, no writ). The recall provisions were not changed with the enactment of the ward system of city government. *Id.* The city commission subsequently rejected recall petitions that did not comply with the plain requirement of the charter that the petition be signed by at least thirty percent of the qualified voters to be determined by the number of votes cast in the last regular municipal election. *Id.* at 621. The court of appeals held that the city commission exercised its discretion reasonably within its jurisdiction to reject recall petitions that did not contain the signatures of thirty percent of the qualified voters of the city. *Id.* at 622-23. Here, the City Secretary certified the total number of verified voters and there is no dispute that the number of verified names of voters on each recall petition satisfies the requirement of the City Charter.

A writ of mandamus will issue 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.* If the City Charter provides that the city council must order a recall election when the affected council member refuses to resign after the filing of a recall petition, then calling the election in a ministerial duty and mandamus lies to compel its performance. *Duffy v. Branch*, 828 S.W.2d 211, 212-13 (Tex. App.—Dallas 1992, orig. proceeding). Recall petitions have been presented for Norsworthy, Land, and Adams, and none of these council members has resigned. The City Charter requires that a recall election be called; accordingly, the members of the City Council have no discretion to exercise. *In re Jones*, 335 S.W.3d 772, 776 (Tex. App.—Beaumont 2011, orig. proceeding). “[T]he city council is bound by the terms of the charter as written.” *See In re Porter*, 126 S.W.3d 708, 711 (Tex. App.—Dallas 2004, orig. proceeding [mand. denied]).

This Court directs Mike Lout, Terrya Norsworthy, Alton Scott, Randy Sayers, Tommy Adams, and Willie Land to timely order recall elections for Council Members Terrya Norsworthy, Tommy Adams, and Willie Land. After ordering the recall elections, Respondents shall immediately file with the Clerk of this Court a certified copy of their official action ordering the recall elections.

PETITION GRANTED.

PER CURIAM

Submitted on August 25, 2011
Opinion Delivered August 29, 2011
Before Gaultney, Kreger, and Horton, JJ.