

Joseph L. Swanson, Director
Division of Elections

July 26, 1993

663-93-0419

465-3600

Application for petition
for recall of Yukon Flats
REAA school board member

Virginia B. Ragle
Assistant Attorney General

I. INTRODUCTION

Your predecessor, Charlot Thickstun, requested that this office review an application for a petition to recall a member of the Yukon Flats Regional Educational Attendance Area (REAA) school board to determine whether the application meets technical requirements and states grounds for recall under AS 29.26.250, as required by AS 29.26.260. The application should be denied because it does not substantially meet statutory technical requirements and because its allegations are not sufficient to state grounds for recall. The applicants may correct the technical deficiencies and resubmit an application that states proper grounds.

II. TECHNICAL DEFICIENCIES

Members of an REAA school board are subject to recall in accordance with provisions of the Municipal Code, AS 29.26.240 -- 29.26.360, "except that the director of elections shall perform the functions of a municipal clerk, the lieutenant governor shall perform the functions of the assembly or council under those sections, and the last regular election is the last regularly scheduled election held within the regional educational attendance area." AS 14.08.081.

Contents of an application for a recall petition are set out in AS 29.26.260 as follows:

(a) An application for a recall petition shall be filed with the municipal clerk and must contain

(1) the signatures and 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.

The application states that the undersigned 14 individuals "wish to initiate a recall petition against Ruth A. Crow...." and identifies a contact and alternate contact person. However, the application provides no addresses of the contact, alternate contact, or other sponsors. The return address on the envelope in which the application arrived at the Division of Elections' Region IV office in Fairbanks includes only a Post Office box number and city, with no name of an individual.

The statute requires that an application for a recall petition include addresses of contact persons and sponsors. The Division of Elections can determine if contact persons and sponsors are currently REAA voters only if it is provided with the current addresses of the persons who sign the application.

The application should also clearly indicate that the persons signing the application are sponsors of the recall. As we explained in an informal opinion dated January 15, 1991 (no. 663-90-0393), inclusion of this language provides assurance that the persons who sign the application

do so as sponsors who assume the duties of sponsors in circulating the petition. This is important because, once an application for a recall petition is found to meet the requirements of AS 29.26.260, the petition that is prepared for circulation must include "a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be."
AS 29.26.270(a)(6).

The applicants can easily indicate their status as sponsors by substituting the word "sponsor" for the word "initiate" in the application.

The application is also technically deficient because the statement of the grounds for recall exceeds the statutory limit of 200 words.¹

Because the application does not provide addresses of contact persons or sponsors, does not indicate that the

¹ By our count, the statement of grounds includes 211 words.

signatories are sponsors of the recall, and includes an over-length statement of grounds for recall, we recommend that the application be denied due to its technical deficiencies.

III. SUFFICIENCY OF ALLEGATIONS

Grounds for recall of an REAA school board member "are misconduct in office, incompetence, or failure to perform prescribed duties." AS 29.26.250.

The application sets out its statement of grounds for recall as follows:

We feel that Ruth A. Crow has failed to perform her prescribed duties as a regional school board member.

We feel that Ms. Crow:

(1) Fails to have full and open communication between board and constituents and fails to report pertinent information on issues discussed and adopted.

(2) Fails to accurately present concerns of constituents. Has very poor rapport with constituents; consequently only presents personal based and narrow-scoped views. Presents false and erroneous information to board.

(3) Fails to respond to requests made to verbally present matters of great concern to the board and does not support the local school.

(4) Publically [sic] defames character of school employees.

(5) Meddles in the private, off-duty lives of employees and immediately reports rumor-laden findings to persons of authority.

(6) Unjustly harrasses [sic] employees while on the job which interferes with the operation of the school.

(7) Fails to enlighten constituents with knowledge gained from meetings, workshops and conferences attended.

(8) Makes independent decisions regarding the needs of students at Circle School.

(9) Is incapable of making sound decisions which would benefits the school students - bases decisions on biased prejudiced and personal views.

(10) Abuses travel and per diem privileges.

Uses position for personal monetary gain.

(11) Condemns some employees and students for minor infractions and defends others who have grossly violated rules and job responsibilities.

Based on the decision of the Alaska Supreme Court in Meiners v. Bering Strait School District, 687 P.2d 287 (Alaska 1984) and on previous opinions of this office reviewing recall applications, we do not believe that any of the allegations are sufficient to state grounds for recall.² Several of the allegations might be sufficient, if they were restated with particularity.

For example, the allegations of abuse of travel and per diem privileges and use of position for personal monetary gain (No. 10) might state the ground of "misconduct in office," if the allegations included references to particular instances of unlawful conduct. If the allegation that the board member "presents false and erroneous information to the board" (No. 2) were accompanied by allegations of particular instances, it is possible that the applicants could state grounds for recall. The allegation of public defamation of school employees (No. 4) might state the ground of "misconduct in office" if particular defamatory conduct were alleged to have been performed while Ms. Crow performed her duties as a school board member. The allegation of harassment of employees on the job (No. 6) might be sufficient if allegations of particular instances could fairly be read as showing either "misconduct in office" or "failure to perform prescribed duties." It is difficult to envision how a school board member's making of "independent decisions regarding the needs of students" (No. 8) could state grounds for recall, unless there were also particular allegations of unauthorized independent conduct.

Because of their lack of particularity, none of the allegations can fairly be read as stating grounds for recall. Therefore, the application should be denied for failure to state grounds for recall.

IV. CONCLUSION

² We have attached several of our recent opinions for your review. The applicable law is set out on pages 3--4 of the January 15, 1991, informal opinion (no. 663-90-0393). If you decide to deny the application in accordance with our recommendation, it might be helpful to the applicants and to the target official to have copies of these opinions.

Joseph L. Swanson, Director
Division of Elections
AG File: 663-90-0419

July 26, 1993
Page 5

Because of the above-mentioned technical deficiencies and insufficiency of the allegations, we recommend that you deny the application for a recall petition. The applicants may file a corrected application at any time; however, a completed petition may not be filed less than 180 days before the end of the school board member's term of office. AS 29.26.290.

Please let us know if you need further advice in this matter.

VBR:kh

Enclosures