

IN THE DISTRICT COURT OF SALINE COUNTY, KANSAS

City of SALINA, KANSAS, a municipal)
corporation,)
Plaintiff,)
)
v.)
)
KEVIN KORB,)
Defendant)

Case No: 2021-CV-160-OT

MOTION TO DISMISS

COMES NOW Defendant, Kevin Korb, and moves this court to dismiss Plaintiff's claim, and support of this motion states as follows:

1. Paragraph 21 of Plaintiff's petition implies that the action is brought pursuant to K.S.A. 25-3601, by referring to "this action" in the context of the statute.

2. K.S.A. 25-3601(e) states:

"Any action challenging the validity of the form of a question in a petition shall be filed in the district court within 20 days after such petition has been filed with the county election officer.

The court shall render an opinion in any action filed to challenge the validity of the form of a question in a petition within 20 days after the date such action is filed with the court."

3. The initiative and referendum petition was filed with the Saline County Election Officer on July 23, 2021 (see exhibit A).
4. Plaintiff's action was filed in Saline County District Court on August 27, 2021, which is more than 20 days after July 23, 2021.

FILED
SALINE COUNTY KS
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5. Resolution 21-7979 that is referenced in "Exhibit B" of Plaintiff's petition mentions that Plaintiff placed the question on the ballot "in order to comply with K.S.A. 12-3013".
6. K.S.A. 12-3013(e)(1) states that its provisions do not apply to administrative ordinances.
7. In paragraph 13(b) of Plaintiff's petition, they allege that the "petition ordinance" is, in some manner, "administrative."
8. By stating their desire to comply with K.S.A. 12-3013, and by complying as such, Plaintiff has acquiesced in the validity of the "petition ordinance" under the statute.

For the reasons state above, plaintiff is not entitled to the relief they seek and their petition should be dismissed.

WHEREFORE, the Defendant Kevin Korb moves the Court to dismiss Plaintiff's petition for the reasons stated and for such other and further relief as this Court deems just.

Respectfully Submitted,



Kevin Korb
600 Upper Mill Heights Dr.
Salina, KS 67401
785-452-2193
Pro Se

VERIFICATION

STATE OF KANSAS)

)

COUNTY OF SALINE)

Kevin Korb, being of lawful age and duly sworn upon oath declares that he has read the foregoing response, he is familiar with the contents herein and that all statements are true and accurate to the best of his knowledge and belief.



Kevin Korb
600 Upper Mill Heights Dr.
Salina, KS 67401
785-452-2193

Subscribed and sworn to me this 9th day of September, 2021.



Notary Public

My Commission Expires:

October 15, 2023



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ____ day of September, 2021, he mailed a true and correct copy of the above response upon counsel of record by depositing the same in the Courthouse mailbox of:

Clark, Mize and Linville, Chartered

and that on the same date, I hand-delivered the original thereof to the Clerk of the District Court of Saline County, Saline County Courthouse, City-County Building, 300 W. Ash Street, Salina, Kansas 67401 for filing in accordance with law, and I placed a chamber copy of this Motion in The Honorable Judge Hickman's Courthouse mailbox.

A handwritten signature in black ink, appearing to read 'Kevin Korb', is written over a horizontal line.

Kevin Korb

EXHIBIT A

Saline County Clerk/Election Office



Jamie R Doss – County Clerk/Election Officer

Phone: (785) 309-5820

300 W Ash St, Rm 215

FAX: (785) 309-5826

P.O. Box 5040

E-mail: Jamie.Doss@saline.org

Salina, KS 67402-5040

www.saline.org

July 28, 2021

JoVonna Rutherford, Salina City Clerk
City of Salina
300 W. Ash St, Room 206
Salina, KS 67401

Re: Petition for Proposed ordinance limiting the power of the city of Salina governing body to impose restrictions on businesses and citizens related to a state of emergency declared at the county or state level.

Dear JoVonna:

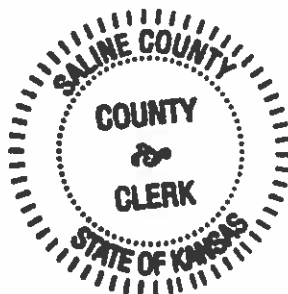
The petition for the proposed ordinance was filed to our office on July 23, 2021. Such petition shall be signed by electors equal in number to at least 25% in cities of the first class of the electors who voted at the last preceding regular city election as shown by the poll books. The 2019 City Election voter turnout was 6,527, which equates to the required signatures of 1,632.

Pursuant to Kansas Statute K.S.A. 12-3013, 25-3602(b)(4), and Notarial Statute 53-501, et. seq., as Saline County Election Officer, I am hereby certifying 1,662 signatures, as placed on the "Petition for the Limitations on power of Governing Body to impose restrictions during emergency.

The circulators registrations and signatures were checked and the proper notarizations were verified.

Sincerely,

Jamie R Doss
Saline County Clerk/County Election Officer



Cc: Mike Schrage
Kevin Korb