

SUPREME COURT OF WASHINGTON

In the Matter of the Recall Charges Against City of Covington Council Member Jesse Ackerson, Sr.

143 Wn. 2d 366, 20 P.3d 930 (2001) · No. No. 69889-9 · Decided April 5, 2001

SUMMARY

The Supreme Court of Washington reviewed recall charges against a Covington city council member alleging campaign-fund conversion, an undisclosed conflict of interest, and voting after sleeping through a public hearing. The court held that the charges were legally and factually insufficient, reversed the superior court, dismissed the charges, and denied attorney fees.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Washington
DECIDED	April 5, 2001
DOCKET	No. 69889-9
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ackerson directly appealed the superior court's order finding three recall charges legally and factually sufficient and certifying the ballot synopsis.
STANDARD OF REVIEW	The sufficiency of recall charges is reviewed as a matter of law under the same criteria applied by the superior court.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Jesse Ackerson, Sr. v. Kathlene Simpson

TOPICS

[recall elections](#) [election law](#) [municipal law](#) [appellate jurisdiction](#) [standard of review](#)

PRACTICE AREAS

[election law](#) [municipal law](#) [constitutional law](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the first recall charge, alleging conversion of campaign funds for personal use, was legally and factually sufficient.
2. Whether the second recall charge, alleging nondisclosure of a conflict of interest and participation in a vote concerning a building moratorium, was legally and factually sufficient.
3. Whether the third recall charge, alleging that Ackerson voted after sleeping through a public hearing, was legally sufficient despite being factually supported by an audiotape rather than personal observation.
4. Whether either party was entitled to attorney fees.

HOLDINGS

1. The first recall charge was legally and factually insufficient because it did not allege facts showing Ackerson's intent to commit a wrongful act and did not provide sufficient detail about when, where, or how the campaign funds were allegedly converted.
2. The second recall charge was legally and factually insufficient because it alleged only a possible future conflict, did not identify an actual transaction or specific wrongdoing, and improperly relied on the appearance-of-fairness doctrine, which does not apply to legislative acts such as voting on a building moratorium.
3. The third recall charge was factually sufficient because the petitioner had an adequate basis of knowledge from an audiotape, but it was legally insufficient because the petition did not identify a law, rule, or standard making the alleged conduct misfeasance, malfeasance, or a violation of the oath of office.
4. Neither party was entitled to attorney fees because no bad faith was shown.

KEY QUOTATIONS

*“The sufficiency of the charges in a recall petition is reviewed as a matter of law under the same criteria as the superior court.” (*933)*

*“Courts do not have the authority to look at the truthfulness of the charges or question the underlying motivations.” (*933)*

*“While sleeping during a public meeting is ill advised, it does not amount to a violation of the oath of office.” (*936)*

FACTUAL BACKGROUND

Simpson's recall petition alleged that Ackerson converted campaign funds for personal use, failed to disclose a conflict of interest concerning a building moratorium, and voted on legislation after sleeping through a public hearing. The superior court found those three charges sufficient, although it rejected a fourth charge concerning zoning decisions. The Supreme Court concluded that the charges either lacked specific facts establishing legal or factual sufficiency or failed to identify conduct constituting misfeasance, malfeasance, or violation of the oath of office.

PROCEDURAL HISTORY

Kathlene Simpson filed four recall charges against Covington City Council member Jesse Ackerson, Sr. The superior court rejected the fourth charge but found the first three sufficient and certified the ballot synopsis. Ackerson appealed directly to the Washington Supreme Court, which reversed and dismissed the three remaining charges.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court's order finding the three recall charges sufficient was reversed, and the three remaining charges were dismissed. No further substantive proceedings were directed.

CASES CITED

- Cole v. Webster, 103 Wn. 2d 280, 287-88, 692 P.2d 799 (1984)
- In re Recall of Shipman, 125 Wn. 2d 683, 684-85, 886 P.2d 1127 (1995)
- Chandler v. Otto, 103 Wn. 2d 268, 270, 274, 693 P.2d 71 (1984)
- Greco v. Parsons, 105 Wn. 2d 669, 717 P.2d 1368 (1986)
- In re Recall of Wade, 115 Wn. 2d 544, 549, 799 P.2d 1179 (1990)
- Teaforde v. Howard, 104 Wn. 2d 580, 586-87, 707 P.2d 1327 (1985)
- In re Recall of DeBruyn, 112 Wn. 2d 924, 930, 774 P.2d 1196 (1989)
- In re Recall of Lee, 122 Wn. 2d 613, 617, 859 P.2d 1244 (1993)
- City of Bremerton v. Corbett, 106 Wn. 2d 569, 576, 723 P.2d 1135 (1986)
- In re Recall of Anderson, 131 Wn. 2d 92, 95, 929 P.2d 410 (1997)
- In re Recall of Sandhaus, 134 Wn. 2d 662, 668, 670, 953 P.2d 82 (1998)
- In re Recall of Beasley, 128 Wn. 2d 419, 428, 908 P.2d 878 (1996)
- Jenkins v. Stables, 110 Wn. 2d 305, 751 P.2d 1187 (1988)
- In re Recall of Morrisette, 110 Wn. 2d 933, 756 P.2d 1318 (1988)
- In re Recall of McNeill, 113 Wn. 2d 302, 778 P.2d 524 (1989)
- In re Recall of Zufelt, 112 Wn. 2d 906, 908-09, 912, 914, 774 P.2d 1223 (1989)
- In re Recall of Pearsall-Stipek, 136 Wn. 2d 255, 267, 961 P.2d 343 (1998)