

SUPREME COURT OF WASHINGTON

In re the Recall of East

144 Wash. 2d 807 (2001) · Decided September 20, 2001

SUMMARY

The Washington Supreme Court reviewed the legal and factual sufficiency of two charges in a recall petition against a fire district commissioner. The court held that allegations concerning the unlawful division of a culvert project to avoid competitive bidding requirements were sufficient to proceed, while allegations concerning the removal of a disruptive citizen from a public meeting were legally insufficient because the board had reasonable legal justification. The court reversed the trial court and allowed the recall process to proceed only on the competitive-bidding charge.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Washington
DECIDED	September 20, 2001
DISPOSITION	reversed
PROCEDURAL POSTURE	John Chappell petitioned to recall fellow Pierce County Fire Prevention District No. 23 Commissioner Evan Kast. The Pierce County Superior Court dismissed the competitive-bidding-law charge as legally insufficient but held the Open Public Meetings Act charge sufficient to proceed. The Washington Supreme Court reviewed the sufficiency of both charges.
STANDARD OF REVIEW	The Supreme Court applies the same reviewing criteria as the superior court and independently evaluates the legal and factual sufficiency of the recall charges without determining whether the allegations are true.
PRECEDENTIAL VALUE	Published precedential Washington Supreme Court opinion
PARTIES	John Chappell v. Evan Kast

TOPICS

- recall elections
- election law
- municipal law
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the recall charge alleging that Kast unlawfully divided the culvert project and violated the state competitive-bidding law was factually sufficient.
2. Whether that competitive-bidding charge was legally sufficient to constitute misfeasance, malfeasance, or a violation of the oath of office.
3. Whether the recall charge alleging that Kast violated the Open Public Meetings Act by removing Osterhouse from a public meeting was factually sufficient.
4. Whether the Open Public Meetings Act charge was legally sufficient where the board had a reasonable legal justification for removing a disruptive or threatening individual.

HOLDINGS

1. The first recall charge was factually sufficient because, viewed as a whole and with the supporting affidavits, it identified the approximate time, nature, and circumstances of Kast's alleged unlawful conduct and alleged facts showing knowledge of an intent to violate the law.
2. The first charge was legally sufficient because Kast's alleged vote to divide the project and subsequent hiring of a contractor in violation of the competitive-bidding law constituted substantial wrongful conduct amounting to malfeasance or misfeasance.
3. The second recall charge was factually sufficient because it identified the removal of Osterhouse from the meeting and the involvement of the board and sheriff, even though the parties disputed who specifically ordered the removal.
4. The second charge was legally insufficient because Kast and VanSteertegem had a reasonable legal justification and exercised reasonable discretion in removing Osterhouse from the public meeting.

KEY QUOTATIONS

“Although the courts serve a gateway function in the recall process, we do not attempt to evaluate the truthfulness of the charges in a petition.” (813)

“Factually sufficient means the petition must comply with the specificity requirements of RCW 29.82.010.” (814)

“The Open Public Meetings Act does not purport to grant citizens the right to interrupt meetings as they see fit; rather, citizens are granted a privilege to be present during public meetings so that they can remain informed of an agency’s actions.” (818)

FACTUAL BACKGROUND

The fire district divided a culvert ditch project into labor and materials components, paid separate contractors \$2,480.15 and \$1,621.88, and allegedly did so to avoid the statutory competitive-bidding requirement for projects costing more than \$2,500. A state audit concluded that the district failed to follow competitive-bidding

law and denied local vendors an equal opportunity to bid. In a separate incident, Commissioner Kast and another commissioner voted to remove citizen Luke Osterhouse from a public meeting after Osterhouse made an allegedly threatening and out-of-order comment.

PROCEDURAL HISTORY

Chappell filed a recall petition containing charges that Kast unlawfully split a culvert project to avoid competitive bidding requirements and unlawfully removed a citizen from a public meeting. The superior court found the first charge legally insufficient and the second charge legally and factually sufficient. The Supreme Court reversed as to both charges, permitting the recall process to proceed on the competitive-bidding charge and dismissing the Open Public Meetings Act charge.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The recall process may proceed on the competitive-bidding-law charge; the Open Public Meetings Act charge must be dismissed.

CASES CITED

- In re Recall of Pearsall-Stipek, 141 Wn.2d 756, 764-65, 10 P.3d 1034 (2000)
- Chandler v. Otto, 103 Wn.2d 268, 274, 693 P.2d 71 (1984)
- In re Recall of Beasley, 128 Wn.2d 419, 427, 908 P.2d 878 (1996)
- In re Recall of Wade, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990)
- Herron v. McClanahan, 28 Wn. App. 552, 560, 625 P.2d 707 (1981)
- Skidmore v. Fuller, 59 Wn.2d 818, 823-24, 370 P.2d 975 (1962)
- In re Recall of Call, 109 Wn.2d 954, 958, 749 P.2d 674 (1988)
- Greco v. Parsons, 105 Wn.2d 669, 671-72, 717 P.2d 1368 (1986)
- In re Recall of Hurley, 120 Wn.2d 378, 381, 841 P.2d 756 (1992)
- In re Recall of Sandhaus, 134 Wn.2d 662, 672, 953 P.2d 82 (1998)
- In re Recall of Anderson, 131 Wn.2d 92, 95, 929 P.2d 410 (1997)