



March 18, 2009

Don Jackson
525 W. Rainbow Blvd.
Salida CO 81201

Elizabeth Kudasik
1310 E. Hwy 50
Salida CO 81201

RE: Initiative Petitions

Dear Mr. Jackson and Ms. Kudasik:

On February 23, 2009, you submitted thirty petition sections to me in my capacity as City Clerk of the City of Salida. At that time, I date stamped each section on the circulator affidavit page. Pursuant to C.R.S. Section 31-11-109, it is my duty to inspect the petition sections and the attached affidavits and issue a statement as to whether a sufficient number of valid signatures has been submitted. Further, pursuant to C.R.S. Section 31-11-118(1), it is my duty to "render all interpretations and...make all initial decisions as to controversies or other matters arising in the operation of [Article 11 (Municipal Initiatives, Referenda, and Referred Measures)]." Although there are a sufficient number of signatures of registered voters of the City of Salida, for the reasons set forth below, I hereby declare all thirty (30) petition sections invalid.

Attached to this letter is an index of the petition sections and a summary of my review of the Occupational Lodging Tax Initiative Petition sections. By letter dated January 30, 2009, I approved the form of the petitions submitted to me by you and determined, pursuant to my authority set forth in C.R.S. Section 31-11-118(1), that the form of the petition constituted an initiative. The attached summaries indicate: (1) the signature disqualifications that I determined based upon my review of the signatures against a list of registered voters of the City of Salida that I obtained from the Clerk of Chaffee County on March 2, 2009; and (2) a list of the defects associated with each petition section that have caused me to declare all petition sections invalid.

A summary of the defects in the petition sections is as follows:

- A. No numbering system is evident on the cover pages of the petitions contrary to C.R.S. Section 31-11-106(4) ("all sections of any petition shall be pre-numbered serially").
- B. Several of the petitions contained orange and yellow highlighting on the cover

pages contrary to C.R.S. Section 31-11-106(3)(b) (“the summary shall be true and impartial and shall not be an argument or likely to create prejudice, either for or against the measure.”) C.R.S. Section 31-11-106(5) provides that “any petition section that fails to conform to the requirements of this article that is circulated in a manner other than that permitted by this article shall be invalid.”

- C. All of the petition sections had evidence of disassembly, including:
- (i) Corners cut off pages;
 - (ii) Different color pages;
 - (iii) Fax sheets inserted into a petition section;
 - (iv) First signature pages blank with no signatures;
 - (v) Evidence of multiple staple holes on numerous sheets;
 - (vi) More staple holes on same pages, less on others in the same petition section;
 - (vii) Staple holes that do not line up.
- D. What clearly appears to be a fraudulent signature is included on the petition submitted by Yolanda Hansen, a circulator. The signature of Roger Evans indicates the wrong address. The signature of Roger Evans, with a different address also appears on the petition submitted by Elizabeth Kudasik. It is evident that one of the signatures, I believe the one on the Yolanda Hansen petition section, is fraudulent.

I would also note that when you submitted the petitions, you admitted to me that all the petition sections had been disassembled. C.R.S. Section 31-11-106(3)(e)(ii) provides:

Any disassembly of a section of the petition that has the effect of separating the affidavit from the signature page or pages shall render that section of the petition invalid and of no force and effect.

A similar provision appears in the State statutes regarding State initiatives. C.R.S. Section 1-40-113(2) provides:

Any disassembly of a section of the petition which has the effect of separating the affidavits from the signature shall render that section of the petition invalid and of no force and effect.

Moreover, the Secretary of State’s election rules, provide:

Each section shall be checked for evidence of disassembly. If it appears that the section was disassembled, all entries in the section shall be rejected.

Election Rules of the Colorado Secretary of State, Rule 17.1.4.

In *Elkins v. Milliken*, 80 Colo. 135 249 P.55 (Colo. 1926), the Colorado Supreme Court held:

We are all of the opinion that the separation and alteration of the sections of the petition destroyed the integrity of each one so separated and rendered it worthless. ...When these sections of the petition were taken apart and altered, we can see no grounds to support the theory that the affidavit is any longer in force...[T]o separate a solemn instrument into the separate sheets of which it is composed and reattach the sheets to the affidavit, especially without the presence of the affiant, opens a door to fraud which we cannot tolerate.

Id. 249 P.2d 656-657.

As noted above, several of the petitions contain pages that are a different color than the balance of the petition section. Attached is a copy of two photographs taken which evidence this change in coloration of some of the pages.


For the reasons set forth above, I hereby declare all of the petition sections invalid.

Finally, by seeking to impose the tax on the visitor, your initiative petition would result in a lodging tax that is beyond the authority of a statutory city to enact, which your attorney admitted would be unconstitutional in his letter to me dated February 19, 2009.

As required by C.R.S. Section 31-11-109, a copy of this statement is being mailed to each of you as the persons designated to represent the petition proponents.

Very truly yours,

CITY OF SALIDA


Janella Martinez
City Clerk

Enclosure

cc: Jack Lewis
Mayor Charles P. Rose
Members of the City Council
David B. Waller, Esq.
Loyal E. Leavenworth, Esq.

