

COMMONWEALTH OF KENTUCKY
FIFTY-SIXTH JUDICIAL CIRCUIT
TRIGG CIRCUIT COURT
CASE NO. 23-CI-_____

TRIGG COUNTY BOARD OF
EDUCATION

PETITIONER

V.

CARMEN FINLEY,
TRIGG COUNTY CLERK

RESPONDENT

**Serve Respondent by Sheriff
at Trigg County Clerk's Office
38 Main St., Cadiz, KY 42211. **

PETITION AND COMPLAINT

Petitioner, Trigg County Board of Education ("TCBE"), by counsel, for its complaint and petition against Carmen Finley, in her individual capacity and her official capacity as Trigg County Clerk ("County Clerk"), states as follows:

I. PARTIES, JURISDICTION, and VENUE

1. TCBE, by virtue of KRS 160.160, is a body politic and corporate with perpetual succession, which may sue and be sued, make contracts, expend funds, and pursuant to KRS 160.290, exercises general control and management of the Trigg County Public Schools.

2. The County Clerk is presently, and was at all times relevant to this action, the duly elected County Clerk for Trigg County, Kentucky.

3. Venue is appropriate in this court pursuant to KRS 132.017 because TCBE is located in Trigg County, Kentucky.

II. FACTS

4. During a regular meeting on August 26, 2021, TCBE adopted a tax rate of 54.8 cents per \$100 of assessed property value for both real and personal property. At that time, TCBE also set the utility tax rate, motor vehicle tax rate, aircraft tax rate, and the watercraft tax rate. A true and accurate copy of the minutes of the August 26, 2021, TCBE meeting is attached as Exhibit 1.

5. During a regular meeting on August 11, 2022, TCBE adopted a tax rate of 54.9 cents per \$100 of assessed property value for both real and personal property. At that time, TCBE also set the utility tax rate, motor vehicle tax rate, aircraft tax rate, and the watercraft tax rate, each of which were the same as the rates set in 2021. A true and accurate copy of the minutes of the August 11, 2022, meeting is attached hereto as Exhibit 2. Out of 171 districts in the Commonwealth of Kentucky, this tax rate is the 59th lowest rate for real property and the 55th lowest rate for personal property. Source: Kentucky Department of Education.

6. During a duly called meeting on December 9, 2022, TCBE adopted a five-cent equivalent tax rate per \$100 on both real and personal property (commonly referred to as a “Nickel Tax”) dedicated to major renovation of existing school facilities, new construction, and debt service. A true and accurate copy of the minutes of the December 9, 2022, TCBE meeting is attached as Exhibit 3.

7. School districts that adopt a Nickel Tax are eligible for additional state funding commonly known as “equalization funding,” which is actually a second Nickel Tax as every district was required following the enactment of KERA in 1991 to levy a first Nickel Tax to participate in and receive state funding. Out of 171 school districts in

the Commonwealth of Kentucky, 119 have adopted a second Nickel Tax (some districts have adopted as many as four additional Nickel Taxes)- some of which have been recallable and some of which have not been recallable. Source: Kentucky Department of Education.

8. Being an equivalent rate tax, the Nickel Tax, which is only applied to real and personal property and not to motor vehicles, watercraft, or aircraft, is calculated to produce the amount or revenue a five-cent tax per \$100 on the entire tax base would produce. For TCBE, the Nickel Tax is six cents per \$100 of real and personal property.

9. Although the Nickel Tax rate for TCBE is six cents per \$100, the TCBE adopted the Nickel Tax in a manner that only increased the real and personal property tax rate by four cents per \$100 of assessed real and personal property over the rate adopted on August 11, 2022, by indexing the Nickel Tax to the 2022 compensating rate instead of the actual rate adopted on August 11, 2022.

10. By adopting the Nickel Tax, TCBE's tax rate increased from 54.9 cents per \$100 of assessed real and personal property to 58.9 cents per \$100 of assessed real and personal property.

11. The utility tax rate, motor vehicle tax rate, aircraft tax rate, and watercraft tax rate were unaffected by TCBE's action on December 9, 2022.

12. On December 19, 2022, a group of individuals referring to itself as the "Trigg County Citizens Right to Vote on Tax Increases" submitted a document purporting to be an "Affidavit to Protest the Proposed NICKEL TAX as Presented by the Trigg County Board of Education on December 9, 2022 by Submitting a Petition for this NICKEL TAX to be Placed on a Ballot." Said document will referred to herein as the

“Affidavit.” A true and accurate copy of the Affidavit is attached hereto as Exhibit 4. The group of individuals will be referred to herein as the “Committee.”

13. The Affidavit bears the names and address of five individuals who purportedly make up the Committee. The Affidavit also purports to have been signed by each of the individuals on December 18, 2022. None of these individuals were placed under oath with respect to their signatures on the Affidavit. None of the signatures were notarized.

14. That Affidavit also purports to have been signed by Lisa M. Champion as Chairperson of the Committee on December 19, 2022. The County Clerk received the Affidavit for recording in her office, adding her signature and notary stamp to the Affidavit on December 19, 2022. There is no indication that Ms. Champion was actually placed under oath with respect to her signature at the end of the Affidavit.

15. The Affidavit does not state that those signing will be responsible for circulating the petition and filing it in proper form.

16. Lisa M. Champion, the purported Chairperson of the Committee, submitted a document with no title as a petition with purported signatures to the County Clerk on or about January 17, 2023. Said document will be referred to as the “Petition” herein. A true and accurate copy of the Petition is attached hereto as Exhibit 5.

17. The Petition consisted of 175 pages. At the top of each page of the Petition was the wording:

I am “For” or “Against” an increase in the levy of the Trigg County School District tax rate from 52.8 cents to 58.9 cents per \$100 on real property and personal property valuation. This is an increase of 11.553% on both real and personal property. This is above the 4% allowable by the statute which makes the tax eligible for public vote with a

qualified petition. This is in accordance with KRS 160.37 and KRS 132.017.

18. At the bottom of each page of the Petition, there is a signature line for the Committee member collecting the signatures on each page. Approximately 66 pages of the Petition were signed by someone other than a member of the Committee. On all but one of those 66 pages, Lisa Champion's signature was added to go along with the nonmember's signature.

19. On January 23, 2023, the County Clerk issued a letter determining that the petition was sufficient to place the Nickel Tax levy on the ballot. A true and accurate copy of the letter is attached hereto as Exhibit 6.

III. KRS 132.017

IV. Pursuant to KRS 160.470, TCBE's Nickel Tax levy may be subject to recall only if the requirements of KRS 132.017 are strictly met.

V. KRS 132.017 mandates the steps that must be taken to recall a school district tax levy that is subject to recall under KRS 160.470.

IV. THE PROTEST AFFIDAVIT FAILED TO COMPLY WITH KRS 132.017.

22. Petitions such as the one in this case must strictly comply with the authorizing statute's express requirements. *Board of Elections of Taylor County v. Board of Education of Campbellsville Independent Sch. Dist.*, 635 S.W.2d 324, 328 (Ky. App. 1982), citing *Board of Education of Warren County v. Fiscal Court*, 485 S.W.2d 752 (Ky. 1972) When a public vote is sought through a petition process, the petition must be patterned on the requirements of the statute. *Wiggins v. City of Winchester*, 421 S.W.2d 843, 845 (Ky. 1967).

23. Under KRS 132.017(2)(b), the first step to recalling the tax at issue is described as follows:

[A]ny five (5) qualified voters who reside in the area where the tax levy will be imposed may commence petition proceedings to **protest** the passage of the ordinance, order, resolution, or motion by filing with the county clerk an **affidavit** stating that they constitute the petition committee and that **they** will be responsible for circulating the petition and filing it in the proper form within forty-five (45) days from the passage of the ordinance, order, resolution, or motion. (Emphasis added.)

A. The Affidavit Was an Essential Part of the Petition Process.

24. The affidavit is a crucial and essential part of the petition process. It is how the process is started. It is how the integrity of the process of circulating and filing the petition is ensured. The affidavit requirement ensures that those five persons constituting the committee swear or affirm under oath that they will be responsible for circulating and filing the petition in proper form. The affidavit is the only form of accountability for the Committee members in the statutory scheme. Without the affidavit, the entire petition process is invalid and deficient.

B. All Members Were Required to Execute the Affidavit.

25. KRS 132.017(2)(b) requires that an affidavit to be executed by all the Committee members as the statute requires that “they” take responsibility in the affidavit for the integrity of the petition process. *Petition Comm. v. Board of Education*, 509 S.W.3d 58, 64 (Ky. App. 2016).

C. The Affidavit Did Not Constitute an Affidavit.

26. The Affidavit submitted to the County Clerk did not constitute an affidavit. Without a valid affidavit, the entire petition process was deficient and void from the beginning. *Board of Elections v. Board of Education*, 635 S.W.2d 324, 328 (Ky. App.

1982). An affidavit is a written declaration under oath. *Blackburn v. Commonwealth*, 261 S.W. 277 (Ky. 1924); See also, *Black's Law Dictionary*, Sixth Edition. "The statute's use of the term 'affidavit' requires the administration and taking of an oath. To make a valid oath or affirmation, there must be some overt act which shows that there was an intention to take an oath or affirmation on the one hand and an intention to administer it on the other; mere intention, not accompanied by an unambiguous act, is insufficient." *Board of Elections v. Board of Education*, 635 S.W.2d at 327, quoting 3 Am.Jur.2d *Affidavits* Sec. 11 (1962). The mere reading and signing of a document, even when notarized, does not constitute an affidavit. *Id.* at 328. In this case, only one signature is even notarized with no indication that any oath was ever administered. The rest of the signatures were not even notarized. For this reason, the Petition is deficient and void as there was neither strict nor even substantial compliance with the affidavit requirement. The County Clerk should have rejected the Petition as deficient, and the County Clerk erred and abused her discretion in finding the Petition sufficient.

D. The Language of the Affidavit Is Statutorily Deficient.

27. Even if the Affidavit constituted an affidavit, it was nonetheless statutorily deficient. KRS 132.017(2)(b) required that the signing Committee members state in the affidavit that "they will be responsible for circulating the petition and filing it in the proper form." While this precise language may not be required in every affidavit, there must be some semblance of responsibility accepted in the affidavit to comply with the statutory requirement. There is no semblance of the acceptance of any responsibility in the Affidavit by any member of the Committee. As a result, the Affidavit and the consequent Petition is deficient as there was neither strict nor even substantial

compliance with this essential aspect of the affidavit requirement. *Board of Elections v. Board of Education*, 635 S.W.2d at 328. The County Clerk should have rejected the Petition as deficient, and erred and abused her discretion in finding the Petition sufficient.

V. THE PETITION WAS DEFICIENT AS A MATTER OF LAW.

28. Assuming for the sake of argument that the Affidavit complied with the requirements of the statute, the Committee was responsible for filing a petition protesting the tax with an adequate number of signatures of those voters eligible to sign the petition against the tax levy. KRS 132.017(2)(c). Once the Petition was filed with the County Clerk, the Nickel Tax levy was “suspended.” KRS 132.017(2)(d).

29. Once the Petition was filed, the County Clerk had the responsibility of reviewing the Petition, including the Affidavit, to determine whether the Petition filed was sufficient. KRS 132.017(2)(e). See also, *Board of Elections v. Board of Education*, 635 S.W.2d at 327. In this case, the County Clerk determined in error that that Petition was sufficient, which was an abuse of her discretion.

30. The County Clerk’s determination of the sufficiency of the Petition is subject to final review by the Trigg Circuit Court because that is where TCBE is located. KRS 132.017. KRS 132.017(2)(h).

31. If an election is ultimately held on this tax levy, the voters will be asked to vote “for” or “against” the tax levy. KRS 132.017(3)(b).

32. Petitions such as the one in this case must strictly comply with the authorizing statute's express requirements. *Board of Elections of Taylor County v. Board of Education of Campbellsville Independent Sch. Dist.*, 635 S.W.2d 324, 328 (Ky. App. 1982), citing *Board of Education of Warren County v. Fiscal Court*, 485 S.W.2d 752 (Ky.

1972) When a public vote is sought through a petition process, the petition must be patterned on the requirements of the statute. *Wiggins v. City of Winchester*, 421 S.W.2d 843, 845 (Ky. 1967).

A. The Petition Failed to Protest the Tax Levy.

33. KRS 132.017 requires that the Petition “protest the passage of the ordinance, order, resolution, or motion” that levied the tax increase. KRS 132.017(2)(b); *Daviess County Pub. Library Taxing Dist. v. Boswell*, 185 S.W.3d 651, 658 (Ky. App. 2005).

34. The language of the Petition is deficient as a matter of law. The Petition does not protest the passage of the tax levy as required. Instead, the Petition simply states that those signing are “for” or “against” the tax levy. At best, this language is deficient as it does not protest the tax levy. At worst, this Petition language is a clever but deceptive effort to persuade or cajole those persons who are neutral or in favor of the tax to sign a seemingly benign document. In either case, the Petition is deficient. The County Clerk should have rejected the Petition as deficient, and the County Clerk erred and abused her discretion in finding the Petition sufficient.

B. The Petition Was Deceptive and Misleading.

35. The language of the Petition for referendum must have been worded so that those signing the petition were not misled as to the circumstances, nature, or consequences of what they were signing. *City of Taylorsville v. Spencer County Fiscal Court*, 371 S.W.3d 790 (Ky. App. 2012). Otherwise, the Petition should be deemed deficient. *Id.*

36. The language of the Petition was materially misleading and deceptive. Specifically, the Petition used false statements to induce persons to sign the document. The Petition says that the December 9, 2022, tax levy increased the tax rate on real and personal property from 52.8 cents to 58.9 cents per \$100 on real property and personal property valuation. That statement was unequivocally false. The December 9, 2022, tax levy increased the tax rate from 54.9 cents to 58.9 cents per \$100 on real property and personal property valuation. The Petition overstates the magnitude of the tax increase by 52.5%. At best, this false information was included in the Petition as the result of a material mistake. At worst, this false information was included in the Petition to deliberately mislead those who were induced to sign. In either case, the Petition is deficient. The County Clerk should have rejected the Petition as deficient, and the County Clerk erred and abused her discretion in finding the Petition sufficient.

37. Additionally, the Petition doubled down on the false statement referenced in the immediately preceding numerical paragraph. Specifically, the next sentence of the Petition stated, "This is an increase of 11.553% on both real and personal property." The only reason to include this language in the Petition was to induce persons to sign the petition as otherwise this sentence serves no purpose. The writer of the Petition was only able to arrive at this percentage by using the false statement referenced in the immediately preceding paragraph. If the correct tax rate information had been used, the percentage increase would have been 7.285% instead of 11.553%. As written, the Petition exaggerates the percentage increase by 58.6%. At best, this false exaggeration of the percentage increase was included in the Petition as the result of a material mistake. At worst, this false exaggeration of the percentage increase was included in the Petition

to deliberately mislead those induced to sign. In either case, the Petition is deficient. The County Clerk should have rejected the Petition as deficient, and the County Clerk erred and abused her discretion in finding the Petition sufficient.

VI. BY DETERMINING THE PETITION SUFFICIENT, THE COUNTY CLERK VIOLATED SECTION 2 OF THE KENTUCKY CONSTITUTION.

38. TCBE realleges and repeats paragraphs 1 through 37 hereof.

39. The actions and failures of County Clerk discussed herein and the determination of the sufficiency of the Petition constitute arbitrary and capricious conduct in violation of Section 2 of the Kentucky Constitution.

40. The arbitrary and capricious conduct of the County Clerk has caused significant injury to TCBE and entitles TCBE to a declaration that the Petition, including the Affidavit, was wrongfully determined sufficient and striking the Petition from any future election.

WHEREFORE, Petitioner Trigg County Board of Education respectfully requests that the Court enter a judgment declaring (1) that Respondent Carmen Finley, Trigg County Clerk, erred in certifying the Petition, including the Affidavit, as sufficient because it failed to comply with the requirements established by Kentucky law; (2) that the Petition is insufficient and void; and (3) any and all other relief to which the Petition may be entitled.

Dated this 1st day of February, 2023.

/s/Jack N. Lackey, Jr.
Deatherage, Myers & Lackey, PLLC
701 S. Main St.
P.O. Box 1065
Hopkinsville, KY 42241-1065
Tel: (270)886-6800
Fax: (270)885-7127
*Counsel for Trigg County
Board of Education, Petitioner.*