

Monday
February 5, 2023

To: The House Committee on Local Government
From: Douglas A Kern
RE: Written testimony in support of HB 2661

My name is Douglas A Kern and I have the great honor and privilege of serving on the Pottawatomie County Planning and Zoning Commission. After serving on that commission for several years, I felt there were issues that came before the County Commission that might be better served if there were more than 3 commissioners on the commissioners court. So, I began to research how that might be done and discovered that it could be put before the citizens for a vote if a valid petition were submitted to the county elections office.

The process is a rather lengthy one and I will list the requirements that need to be met before the electorate has an opportunity to cast a vote on a ballot:

- (1) Hire an attorney to draft the petition
- (2) Submit that petition to the Attorney representing the County Commission for a determination of sufficiency
- (3) The attorney representing the County Commission has five business days to make that determination and send notification that the petition is sufficient. If there is no notification to the petitioner, the petition is assumed to be sufficient.
- (4) Once the petition is determined to be sufficient, there is a 180-day window to collect and then submit a petition to the county elections office that contains valid signatures of 5% of the qualified electors in the county who cast a ballot in the most recent election.
- (5) The county elections office has 60 days to validate the signatures on the petition.
- (6) The election where the electorate decides whether to expand the county commission.
- (7) After validation by the county elections office, the county commission has until January 1 to divide the county into the appropriate number of districts and submit the new district lines to the governor's office.
- (8) The governor determines whether to call a special election or wait until the next general election to fill the newly created commissioner seats.
- (9) If a special election is called, it must be held not less than 60 days nor more than 90 days from January 31st. If a special election is not called, the candidates are elected at the next general election.

Following the protocol outlined above, I visited Bernard Irvine, a practicing attorney in Manhattan, Kansas and paid him \$725 to create a petition. He submitted the petition to John Watt, the attorney representing the Pottawatomie County Commission for a determination of sufficiency. Per the statutory requirements, Mr. Watt reviewed the

petition and sent Mr. Irvine and me a letter stating that the petition was valid. I could now begin to collect signatures on the petition.

Initially, I was going from door to door collecting signatures on the petition. However, I soon realized that I only collected a signature or two from every fourth or fifth house. I needed to collect signatures where there were a lot of people. I went to the proprietors of two local bar and grill establishments in Wamego (4th & Elm and also Barleycorns) and asked them if I could collect signatures in their places of business. Thankfully, they were both very accommodating and I began to collect signatures exclusively at these two places. Over the course of several weekends, I collected some 1,150 signatures and submitted them to the Pottawatomie County Elections Office during the week of June 20, 2022. I felt that many signatures would be sufficient to meet the 5% threshold. I was incorrect as the petition was determined to be 25 to 50 signatures short of the 892 needed to be valid. As you can imagine, I was very disappointed.

Now, what do I do from here? Thinking that the next general election was in November 2022, knowing that the election office would need 60 days prior to the general election to prepare the ballot and that it would take two weeks or so to have the signatures on another petition validated, I was left with very little time to gather another set of 1,200 or 1,300 signatures and get them submitted.

Needing a large crowd from which to gather signatures, I first went to the annual Flush, Kansas picnic where there were rumored to be 1,500 to 2,000 people in attendance. I only gathered 75 signatures there because so many attendees were out of county. I was feeling like this proposal wasn't going to be on the November 2022 ballot.

Then, I had an idea. There was a primary election on August 2, 2022. I checked to see if Kansas permitted one to collect signatures on a petition at polling sites and discovered that fortunately Kansas is not among the 17 states and Washington, D.C. that do not permit collecting signatures at a polling site. Since everyone or nearly everyone at the primary polling site would be a registered elector in the county, I could collect signatures and be assured they were nearly all registered voters. I collected approximately 1,200 signatures in Wamego and a friend collected another 100 signatures in St. Marys. I submitted those signatures the week of August 8, 2022. On August 22, 2022, I received an email from Dawn Henry, who is the elections administrator in Pottawatomie County and also the County Clerk, indicating that there were 1,011 valid signatures and the issue would be on the November 2022 general election ballot. In the November 2022 election, the question passed with a margin roughly two to one in favor of the proposal.

At some point in the process, Mr. Irvine determined there was an internal conflict in the current statutes that made it impossible to hold an election for county commissioners in November 2023 and abide by the state statutes. The law requires that county commissioners be elected to a term of four years. The law also requires that no more than a simple majority can be on any one ballot. If Governor Kelly chose to have a special election, the new commissioners would be elected to a term of two years under current statute. However, if she chose to have the new commissioners elected in the next general

election, they would be elected to a term of 4 years. Because we will have four commissioners on the November 2023 ballot, two commissioners up for re-election and the two new commissioners, there wasn't a way to have the election and not be in violation of the current state statutes.

Mr. Irvine informed Mr. Watt of the issue. As per state statutes, the Pottawatomie County Commission drew new boundaries for five districts and submitted that to Governor Kelly along with a recommendation (against Mr. Watt's advice) that there be no special election for the two new commissioners. They made this recommendation based upon two factors: (1) they did not want to spend an estimated \$20,000 to hold a special election and (2) to a lesser extent, two of the three sitting commissioners were not in favor of expanding the commission to five commissioners; "if it ain't broke, don't fix it".

So, we have an issue of not being able to hold an election for county commissioners in November 2023 without violating the relevant state statutes. We have the opportunity to preclude that situation with a change in the statutes during this legislative session.