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LOUISVILLE, KENTUCKY

JIM "POP" MALONE  
CLERK

OFFICE  
625-6374

February 26, 1987

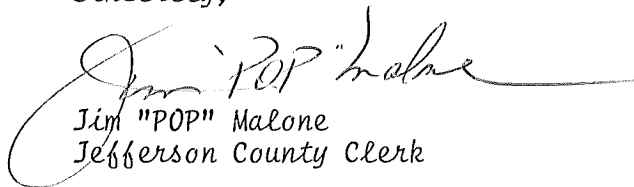
Honorable Drexell R. Davis  
Secretary of State  
New Capitol Building  
Frankfort, KY 40601

Dear Drex:

Pursuant to K.R.S. 81.094(c), I am sending you written notice of the dissolution of the City of Newburg in Jefferson County, Kentucky. The question of dissolution was on the ballot at the last General Election, November 4, 1986 but, due to a court challenge, the Board of Elections was restrained from certifying the results until a judgment was entered in the case yesterday, February 25, 1987.

Enclosed please find a copy of the certification of the vote totals and a copy of the judgment that was entered in the case. I will advise you if the ruling is appealed. If there are questions, please let me know.

Sincerely,

  
Jim "POP" Malone  
Jefferson County Clerk

JM/lss

Enclosures

NO. 86CI08921

JEFFERSON CIRCUIT COURT

FOURTEENTH DIVISION

JESSIE H. TUCKER, et al

PETITIONERS

VS

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER AND  
JUDGMENT

ROBERT H. KING, et al

RESPONDENTS

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This matter came before the court for trial initially on February 12, 1987 at which the Petitioners were present in person and by counsel, Mr. James Crumlin. Respondents were present in person and by counsel, Mr. Walker Cunningham, for the Jefferson County Board of Elections, and Mr. Geoffrey Morris for Respondent King.

Petitioners herein filed a complaint against Respondent King as Mayor of the City of Newburg, Kentucky seeking among other things to declare null and void a petition for referendum regarding the dissolution of the City of Newburg. They further seek to enjoin the Jefferson County Board of Elections from certifying the results of said election held in November, 1986, and also they seek to declare KRS 81.094 unconstitutional as being "special legislation." The following narrative constitutes the Court's findings of fact, and conclusions of law.

To say that controversy has surrounded Newburg from its inception would be an understatement. The feelings and emotions of the parties on both sides of this controversy are intense, and the Court is acutely aware of that fact.

BY  
JIM FALONE JCS  
PND \$  
1987 FEB 25 PM 4:05  
FILED IN OFFICE

The heart of this controversy centers around a petition styled "Petition for the Dissolution of the City of Newburg" which was filed with the Jefferson County Clerk on August 29, 1986. The petition was circulated for the purpose of placing on the November, 1986 ballot the issue of whether the City of Newburg should be dissolved. Specifically, the question appearing was: "Are you in favor of dissolving the City of Newburg?"

The above question was placed on the ballot, and the uncertified results indicate that 807 people voted "yes," and 399 people voted "no."

The procedure to place the above question and referendum on the ballot is governed by the provisions of KRS 81.094 which became effective July 15, 1986. One of the requirements set forth in the statute is that a petition must be "signed by registered voters of the city equal in number to at least twenty percent (20%) of the total votes cast in the city in the last presidential election."

Petitioner's exhibit number 1 is a certified copy of the Petition for Dissolution filed with the Jefferson County Clerk's office as determined from the testimony of Mary Ann Ryan, director of elections for the County Clerk's office. Ms. Ryan stated that upon receipt of a Petition she thereafter sends it or a copy thereof to the office of voter registration, and that office then determines the minimum number of signatures required, and also makes a determination as to which people on the Petition are in fact registered voters, i.e. in this case registered to

vote in the City of Newburg. Ms. Ryan testified that her office was advised by the Office of Voter Registration that in the City of Newburg 2,232 people voted in the last presidential election, thereby requiring 446.4 or 447 signatures of registered voters to place the question on the ballot. (See Petitioner's exhibit number 2).

By memo dated September 9, 1986 Mr. Eugene Drago, co-director of the Jefferson County Board of Elections, stated that the Petition for Dissolution was presented to the Voter Registration Department for verification of registered voters located in the City of Newburg, and it was verified that 553 names on the Petition were registered voters in precincts located within the City of Newburg. (See Respondent's exhibit number 1). Mr. Drago, who testified in this action, stated that 553 was a typographical error and that in fact the initial review showed 553 people signed the Petition, and of that number 453 were registered in the City of Newburg.

On the first two days of the trial, the Petitioner called approximately 13 witnesses, a number of whom were circulators of the Petition. Specifically, Noble Butler, Jr., Mary Crosby, Elza Riles, Sr., Raymond Spalding and Charles Richy testified as their procedures as circulators. All of these witnesses called by the Petitioners, testified that they secured signatures on the Petition; that no one signed the petition for another person; and essentially that they took the person's word that he or she was a properly registered voter when they signed the Petition. Much of the aforesaid testimony was repetitive and

cumulative, and had little probative value particularly regarding the issue raised in Petitioner's complaint that some persons signed for others.

Mr. Arthur Smith, Joyce Smith, Barbara Kenealy, Druzela Christon were all called as witnesses by counsel for Petitioners, and each simply testified as to the circumstances of their signing or not signing the Petition. None of this testimony revealed any irregularities. Ms. Joyce Smith did state that she examined the Petition and made an independent determination that some of the people thereon had addresses outside the City of Newburg, and this was subsequently verified by the check done by the Department of Voter Registration.

Late in the day on Friday, February 13th, counsel for Petitioners called Eugene Drago as a witness. As previously noted, he is co-director of the County Board of Elections. Mr. Drago generally explained the procedures followed by his department in checking the Petition to determine which persons thereon are qualified registered voters. Plaintiff's exhibit number 3 was introduced which again is a certified copy of the Petition for Dissolution, but which bears the markings on it from the employees of the Voter Registration Department. When a name was checked, beside the name in the left hand column would be marked the letter "R" if the records showed the person properly registered, or the letters "NR" if the records showed that person not registered, or no mark if the name and/or signature was illegible, and therefore was not counted.

Mr. Drago further testified concerning the boundary lines and streets contained in Newburg, and there was introduced into evidence Petitioner's exhibits 4 through 9, being precinct maps of precincts C-101, C-105, C-106, C-109, C-110 and C-111, all precincts within the City of Newburg.

It was during the direct examination of Mr. Drago that Petitioner's counsel raised among other things the issue of whether a person who signed the Petition and was not registered, could have thereafter registered prior to Mr. Drago's office conducting the verification. Counsel for Petitioners had a list of some 60 plus people that he thought were not properly on the Petition for a variety of reasons. After further discussion, and at the direction and suggestion of the Court it was agreed that on the next business day of Tuesday, February 17th, another check would be done to verify properly registered voters on the Petition, and that this would be done by pulling every voter registration card for persons on the Petition to determine precisely their date of registration and whether they properly resided within one of the precincts mentioned above.

Prior to the Court recessing on February 13th, Petitioner's counsel called Helen Pezarossi to testify and her testimony revealed only that she notarized the signatures of 31 of the circulators at the home of a Mr. Jones on August 25, 1986. Rev. Rudolph Smith also offered a short piece of testimony.

The trial resumed on February 18, 1987. Mr. Drago was recalled by Petitioner's counsel and he testified concerning the approximately all day check of voter registration cards done on

February 17th by employees under his direction and supervision. Mr. Drago repeated his earlier testimony that when the Petition was initially checked 453 persons were thought to be properly registered. When the count was done February 17th by pulling and examining each voter registration card, the number actually increased to 474. Only one person was found to have registered subsequent to the date she signed the Petition and that was a Mary Johnson on page 31 who in fact registered September 3, 1986.

On cross-examination, counsel for the Board of Elections introduced Respondent's exhibit number 2 which shows among other things in red markings the date a person registered and in what precinct within the City of Newburg that person resides. Mr. Drago stated that his office's final calculations considered all objections raised by Petitioner's counsel in the form of duplications of name, dates of registrations, etc., and in fact used Petitioner's counsel's list as a document of reference and from which to work.

On further cross-examination by counsel for Respondent King, Mr Drago stated that the required number of registered voters was present to cause the dissolution question to be placed on the ballot.

Petitioners next called Steven Slyter as a witness. Mr. Slyter's profession is that of a question document examiner/handwriting expert. He testified as to his background and qualifications, and was voir dired by Respondent King's counsel regarding same. The Court found that he was qualified to

offer opinion testimony regarding certain signatures on the Petition for Dissolution.

Mr. Slyter testified regarding the questioned signatures of four (4) individuals on the Petition. His methodology consisted of using the signature of a person as it appeared on their voter registration card as a known specimen signature, and thereafter comparing that specimen to the signature as it appeared on the Petition. Petitioner's exhibit number 18 showed enlargements of signatures in question by Petitioners as they appeared on the Petition and voter registration cards.

Mr. Slyter testified that he compared between 35 and 40 signatures on the Petition with those signatures on voter registration cards, and that he was provided those questioned signatures by Petitioner herein, Ms. Jessie Tucker. After completing his comparison process Mr. Slyter found a total of three (3) instances where, in his opinion, one person signed two (2) names on the Petition, and one (1) example where the signature on the voter registration card did not match that on the Petition.

First. Mr. Slyter referred to the signature of Fannie Stewart appearing on page 15 of the Petition on line number 3. He stated that after comparison that the questioned signature did not match that on the voter registration card. The Court notes that Ms. Stewart registered to vote and signed her signature card on April 12, 1973. (See Respondent's Exhibit number 2).

Next, Mr. Slyter referred to the signatures of Alene and Richard Betts found on page 25 of the Petition at lines 17 and 18. Mr. Slyter opined that one person signed both names as the signature of Alene Betts does match the voter registration card signature, but the signature of Richard Betts does not, and that the signature of Richard Betts on the Petition matches that of Alene Betts. The Court agrees.

Mr. Slyter next testified that on page 28 of the Petition the signatures of James Ellis Watkins and Cardell Bundley are signed by one person, and that the signature of Cardell Bundley does not match his voter registration card, but that it does match the signature of James Watkins. The Court agrees. It should be noted that James Watkins was not counted as a registered voter.

Mr. Slyter thereafter testified that on page 28 of the Petition at lines 19 and 20 that the signatures of Bill and Della Titus are those of the same person. The Court agrees, but it must be pointed out that both persons appeared as not registered, and so were not counted in the total of qualified registered voters signing the Petition.

Counsel for Petitioners thereafter called Ms. Marilyn Hettich to testify. Ms. Hettich has been a supervisor at the County Board of Elections since 1977. She testified specifically about the records check conducted on February 17th, and stated that some persons initially believed that not registered (NR) turned out to be registered (R) after further matching of addresses with the spelling of names on the Petition. Therefore,

it is noted that this witness actually offered testimony in support of Respondent's position.

Counsel for Petitioners called Ms. Joyce Smith to testify concerning residency of some people who signed the Petition. Ms. Smith left her records at home and in large part was unable to offer substantive testimony concerning residency. The Court very reluctantly allowed Petitioner's counsel to offer this testimony of witnesses, and after doing so no testimony offered by the various witnesses could substantially contradict the residence and/or domicile of any person who signed the Petition. The testimony referred to was that offered by the following persons in addition to Joyce Smith mentioned above: Darryl Sea, Earl Clayton, Jr., Olga Ford and Jessie Tucker. All but Mr. Sea are named parties herein.

The Court, having considered the testimony of all witnesses herein, and exhibits introduced herein finds specifically that the Petition for the Dissolution of the City of Newburg filed with the Jefferson County Clerk on August 29, 1986 contained 553 signatures. Of those who signed said Petition, 471 are proper signatures of duly registered voters in the City of Newburg at the time said Petition was filed. Specifically, in addition to those persons shown not to be properly registered, the Court finds that the signatures of Richard and Alene Betts on page 25 and the signature of Candell Bundley on page 28 of the Petition should not be considered. The 471 remaining signatures of registered voters is greater than the 447 required pursuant to the requirements of KRS 81.094.

The Court now turns to the issue raised by Petitioners herein relative to the constitutionality of KRS 81.094. Petitioners alleged in their complaint that KRS 81.094 constituted "special legislation," and was violative of the equal protection and due process clauses of the U. S. and Kentucky Constitutions, and therefore constitutionally defective. Counsel for Respondents moved to exclude any testimony relative to said issue based upon the provisions of CR 24.03 dealing with intervention and which states in part as follows:

"...When the constitutionality of an act of the General Assembly affecting the public interest is drawn in question in any action to which the State or an officer, agency, or employe thereof is not a party, the movant shall serve notice of the motion upon the Attorney-General." (Emphasis added)

The constitutionality of KRS 81.094 was directly drawn into question by the framing of Petitioner's complaint, and the Petitioners did not serve notice thereof upon the office of the Attorney-General. The Court does not wish to exalt form over substance, but the civil rules are enacted for a purpose. If the Attorney-General declined to participate in these proceedings he could have easily made that fact known after being properly noticed. That not having been done so on the day of trial, the Court finds the failure to do so procedurally defective and therefore Petitioners are precluded from offering proof as to the constitutionality of KRS 81.094. This judge may have inadvertently indicated to counsel for Petitioners that he may later notice the Attorney-General regarding this issue, but upon further review of the record it appears that all parties knew the

nature and substance of the proceeding, and the Attorney-General should have been properly notified prior to these proceedings. Therefore, no further amendments of pleadings will be permitted to correct the above.

At the conclusion of the testimony heard and evidence presented herein counsel for Petitioners urged the Court to declare the Petition for Dissolution of the City of Newburg null and void. After all is said and done the main thrust of Petitioner's argument centers on the integrity of the Petition due to the testimony of Mr. Slyter regarding the signatures of certain persons on the Petition. The Court says this because exhaustive measures were taken by all parties to this action to examine the Petition in great detail in an effort to assure its integrity relative to the correct number of registered voters who signed this very important document.

This Court cannot come to any other conclusion, but that the requisite number of proper signatures were present on the Petition for Dissolution, and that being the case the question of dissolving the City of Newburg was properly presented to the voters thereof in November, 1986.

Counsel for Petitioners has argued and presented for the Court's consideration the position that should the Court find (as it did) certain signatures on the Petition to be improper that all signatures on those pages of the Petition should be stricken and not considered in the total count. Counsel has cited to the Court a number of cases for its consideration on

this issue, and most if not all are clearly distinguishable from the case at bar. Their position is not supported.

Petitioners herein have attempted, in a very round about way, to prove fraud on the part of circulators in procuring the signatures of persons on the Petition for Dissolution. The Court would like to set forth a portion of the reported opinion in the case of United Labor Committee of Mo. vs. Kirkpatrick, 572 S.W.2d 449 (1978) which Petitioner's counsel has cited in support of their position. This case dealt with the issue of whether the voter signatures on certain petitions relative to proposed constitutional amendments dealing with right to work laws were valid despite the fact that the circulator's affidavit was "affixed outside the presence of the notary, with the notary signature added at a later time and despite evidence that certain circulators, not present when the voters signed the petition, nevertheless signed affidavits swearing that they witnessed the signatures." Id. pp. 450-451.

The Supreme Court of Missouri, in pertinent part referred to the case of State ex rel. Carson vs. Kozer, 105 Or. 486, 210 P. 179, 183 (1922) relied upon by the trial court and which stated as follows:

"...The end sought to be attained is the signing by a sufficient number of legal voters. The affidavit of the circulator and the certificates of county clerks and notaries public are mere forms and evidence designed to accomplish the end sought to be attained. The affidavit and the certificates are forms, while the signatures of legal voters are the substance. ...Genuine signatures of legal voters constitute the vitalizing element of a petition, and all else in mere form and evidence. Even though the prima ficie quality of the evidence

...is destroyed,...there yet remains a petition is in truth signed by a sufficient number of legal voters, it is a legally sufficient petition...Impeachment of the evidence furnished by the certificate does not foreclose inquiry concerning the truth; and the truth can be learned only by a consideration of all available evidence relating to the genuineness of the signatures." Id. pp. 455-456 (Emphasis added).

The Court has heard no evidence of the nature required to support any allegation of fraud surrounding the Petition for Dissolution. Petitioners subpoenaed a good number of the circulators, but did not subpoena the two circulators listed on pages 25 and 28 of the Petition, and which pages contain questioned signatures which the Court has deleted from the total count.

The Petitioners herein are a group of concerned and conscientious citizens who sincerely want the area in which they live to remain incorporated and governed in accordance therewith. They have tried very hard but have fallen very short in proving to this Court that the Petition for Dissolution is invalid, for whatever reason. The Court upholds the validity of the Petition in accordance with the above findings.

This Court concludes that the Petition for the Dissolution of the City of Newburg filed with the Jefferson County Clerk on August 29, 1986 was valid and contained a sufficient number of signatures of registered voters thereon pursuant to the requirements of KRS 81.094.

The Court also, having considered the testimony of witnesses, and other evidence, and arguments and memoranda of counsel, and being otherwise sufficiently advised;

HEREBY ORDERS AND ADJUDGES as follows:

1. That the temporary restraining order entered by this Court on October 31, 1986, be, and the same is hereby dissolved.
2. That Petitioner's motion for a temporary injunction is hereby overruled.
3. That Petitioner's complaint filed herein is hereby dismissed, at the cost of the Petitioners.
4. This is a final and appealable order and judgment.

February 25, 1987  
DATE

Michael J. O'Connell  
SPECIAL JUDGE MICHAEL J. O'CONNELL

cc: Mr. James Crumlin  
Mr. Geoffrey Morris  
Mr. Walker Cunningham

ENTERED IN COURT  
FEB 25 1987  
PAULIE MILLER, Clerk  
By P. Lawless  
Deputy Clerk

# Board of Elections

## JEFFERSON COUNTY, KENTUCKY

BOARD MEMBERS  
JIM 'POP' MALONE, Chairman  
County Clerk

JAMES D. GREENE  
Sheriff

LOUISVILLE GARDENS

Sixth and Muhammad Ali Boulevard  
LOUISVILLE, KENTUCKY 40202  
581-6073 • 581-6074

JAMES F. STEINFELD  
Republican Member

WALTER L. CATO, JR.  
Democrat Member

MARY ANNE RYAN  
Secretary

COUNTY OF JEFFERSON

FEBRUARY 25, 1987

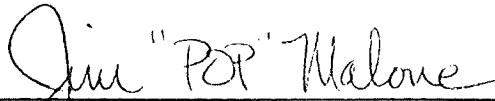
The Jefferson County Board of Elections, duly authorized to canvass the returns of the County of Jefferson, does hereby certify that at an election held on the 4th day of November, 1986, in the City of Newburg, the following votes were cast for the following:

### QUESTION

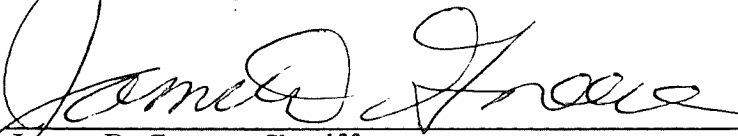
"Are you in favor of dissolving the City of Newburg?"

YES 807

NO 399



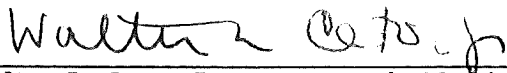
Jim "POP" Malone, Chairman  
Jefferson County Board of Elections



James D. Greene, Sheriff  
Jefferson County, Kentucky



James F. Steinfeld, Republican Member



Walter L. Cato, Jr., Democratic Member