

IN THE CIRCUIT COURT OF RAY COUNTY
STATE OF MISSOURI

FILED

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RAY COUNTY CIRCUIT COURT

State of Missouri, ex inf.)
Andrew Bailey,)
Attorney General of the)
State of Missouri)

Relator,)

v.)

Case No. 24RY-CV00208

Scott Childers)
Ray County Sheriff,)

Respondent.)

SUGGESTIONS IN SUPPORT
OF PETITION OF QUO WARRANTO

This Court has jurisdiction to hear an original writ in the nature of quo warrant for the removal of public officers who have forfeited their office through acts of misconduct. § 531.010, RSMo.

Section 106.220, RSMo, states:

Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner provided in sections 106.230 to 106.290.

See also ex inf. McKittrick v. Williams, 144 S.W. 2d 98 (Mo. banc 1940)(holding quo warranto is an appropriate method of removal for county officers who have forfeited their offices because of misconduct). In his capacity as Ray County Sheriff, Respondent occupies an elective county office and is not subject to impeachment. Therefore, he is subject to removal under § 106.220, RSMo, for the willful and egregious acts of misconduct and neglect of duties he has committed during his term of office.

Respondent is the chief law enforcement officer for Ray County. Respondent's duties include supervising a staff whose duties include housing and keeping pretrial detainees accused of crimes in the Ray County Jail until such time as their criminal proceedings are concluded.

Previous Missouri cases involving sheriffs who have engaged in similar misconduct gave fair warning to the Respondent that his actions were unlawful and could result in his removal from office by means of this writ. In *State ex rel. Nixon v. Russell*, 45 S.W. 3d 487 (Mo. App. W.D. 2001), the Miller County Sheriff was removed from office for allowing an inmate to escape from confinement without court authorization. *Id.* at 495. "Nothing in [Missouri's] statutes permit a sheriff to allow an inmate to leave the confines of the jail at the Sheriff's discretion." *Id.* Likewise, the misconduct was compounded when Respondent allowed detainees to leave the jail to perform labor of his home and

the homes and businesses of the sheriff's friends and supporters. The "use of inmate labor for personal benefit is improper." *Id.* at 498.

Respondent was aware of the case law, but continued his illegal acts.

Under long-established law of this State, Respondent's commission of the acts of official misconduct as alleged in Relator's Petition results in the "automatic forfeiture of his office, leaving nothing remaining to make it official except the establishment of the fact in a proper proceeding and a judicial declaration of forfeiture." *State ex inf. Ashcroft v. Riley*, 590 S.W. 2d 903 (Mo. banc 1980), *citing State ex inf. McKittrick v. Murphy*, 148 S.W. 2d 527 (Mo. banc 1941). Respondent's misconduct in the instant case is egregious and mandates his removal from office.

CONCLUSION

For the foregoing reasons, Respondent has forfeited his public office upon acting in willful violation and neglect of his duties. Relator requests a preliminary order in quo warranto be issued requiring Respondent to answer the allegations set forth in the Petition within ten (10) days or such time as this Court deems just and proper, and that Respondent be immediately enjoined from engaging in any activity, or exercising any authority, as the Sheriff of Ray County, subject to further order of this Court, and that Respondent not be permitted to enter the office of the Sheriff, the Ray County

Courthouse, or the Ray County Jail unless expressly authorized by this
Court.

Respectfully submitted,

ANDREW BAILEY
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/s/ Ted Bruce

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