

Received
Washington State Supreme Court

JAN 25 2016

No. 91843-1

Ronald R. Carpenter
Clerk

SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF:

RECALL OF TROY KELLEY

REPLY BRIEF OF APPELLANT

Will Knedlik, complainant, *qua* appellant *pro se*
Post Office Box 99
Kirkland, Washington 98083
425-822-1342

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. ARGUMENT.....	2
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

CONSTITUTIONAL AND RELATED DOCUMENTS

Washington State Constitution

Article III, §24.....*passim*

CASES

Sane Transit v. Sound Transit, 151 Wn.2d 60 (2004).....*passim*

TEXTS

*“Considerations of Laws Regulations in an Audit
of Financial Statements..... 5*

Government Accountability Office, *Yellow Book*.....*passim*

Comes now appellant Will Knedlik and presents his Reply Brief:

I. INTRODUCTION

The State's briefing on behalf of its *nominal* State Auditor is limited to matters related to inadequacies of his auditing of a junior taxing district, and thus limits this reply to such issues and to immediate *sequelae* thereof.

The State's responsive briefing requires a reply because it both fails to inform this Honorable Court adequately as to paramount inadequacies of the audit of the junior taxing district at issue for recall purposes herein, due to patent defects therein, based on core professional competencies and on foundational audit requirements for government audits of the type central for one recall question before the court, and because it also effectively thus aids and abets a major fraud of long standing against this Honorable Court by the junior taxing district's key open-court misrepresentation through its General Counsel discussed in some detail in complainant's opening brief.

II. ARGUMENT

As squarely documented to the trial court – through initial briefing below and through a motion for reconsideration submitted following the Pierce County Superior Court's *fiat* preclusion of the clearly fundamental, because constitutionally afforded, right of citizens to recall Troy X. Kelley from a state office of quintessential public trust being held *nominally* as a pretender, and as a usurper, constitutionally ineligible to serve therein due

to violation of Article III, §24 of the Washington State Constitution – the discretion of that office is not absolute and, even if it were, obligations as created by the oath of office, as taken to hold the position of State Auditor, require fully reasonable efforts as to steps essential to conduct professional audits pursuant to professional duties outlined with genuine clarity below.

Thus, each matter within a second group of charges assembled by the Office of State Attorney General must be determined sufficient, both factually and also legally, based upon analyses of the relevant particulars, notwithstanding a measure of complexity not present in the *nominal* State Auditor’s defiance for our state constitution by failing to establish actual residency as mandatory, as a condition precedent, for lawful entry into the state office unconstitutionally usurped by him through wrongful pretense.

However, any complexity derives from ordinary unfamiliarity with various requirements mandated for audits in the public sector by Government Auditing Standards rather than from any impenetrability as to substance.

Indeed, the current *Government Auditing Standards* manual, as issued by the U.S. Government Accountability Office in 2011, documents Mr. Kelley’s wrongdoing as starkly as Article III, §24, even though GAGAS terminology as to “generally accepted government auditing standards” can be somewhat dense so as to benefit from a baseline explication herein by referenced to that foundational document for all public audits nationwide.

In particular, subparagraphs a through d of the second group of related charges assembled together in the proposed Ballot Synopsis, as prepared by the Office of State Attorney General, all derive from failures by Mr. Kelley to conform the Office of State Auditor's auditing functions with Generally Accepted Government Auditing Standards (or GAGAS) that thus afford "a framework for providing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and service" (GAO-12-331G Government Auditing Standards at 1), which include duties that expand responsibilities for competent GAGAS financial audits **beyond** all obligations imposed by the American Institute of Certified Public Accountants, such that "when performing a GASAS financial audit, auditors should extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements" (GAO-12-331G GAS, §4.06, at 74), and such that GAGAS financial audits are thus required, *inter alia*, to communicate "noncompliance with provisions of laws or regulations that have a material effect on the audit and any other instances that warrant the attention of those charged with governance; (3) noncompliance with provisions of contracts or grant agreements that has a material effect on the audit; and (4) abuse that has a material effect on the audit" (GAS, §4.23, at 81), as well as requiring

“findings related to deficiencies from the previous year that have not been remediated” (GAS, §4.28, at 83), which trigger in turn, absent remediation by management, both internal and also external reporting duties (GAS, §4.30, at 84-85), which such thereby-greater core reporting obligations by GASAS auditors are stated to continue even “if they have resigned or been dismissed from the audit prior to its completion” (GAS, §4.31, at 85).

Mr. Kelley’s first audit of the junior taxing district fails as to each of these core GAGAS obligations required to afford competent public audits.

Nor are the foundational AICPA standards themselves undemanding, even though they are specifically to be surpassed by key GAGAS auditing requirements in major part because of the federal GAO’s vital explanatory pronouncement that “in audits performed in accordance with GAGAS, auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs” (GAS, §4.47, at 90), as well as its directive that all “Auditors should identify any provisions of laws, regulations, contracts or grant agreements that are significant within the context of the audit objectives and assess the risk that noncompliance with provisions of laws, regulations, contracts and grant agreements could occur” (§6.28, at 140).

As is evident, each clearly applies in this matter, and had Mr. Kelley's thus-defective audit complied, the fraud against this Honorable Court still ongoing could not have continued because any competent public audit would have revealed both the junior taxing district's patent violations of central terms of its Resolution No. 75 squarely guaranteed in the ballot title at issue to its district's residents, as voters and as taxpayers, and also its open-court frauds on the court directly as to guarantees relied on by the majority in *Sane Transit v. Sound Transit*, 151 Wn.2d 60 (2004).

In fact, these heightened GASAS obligations are built squarely upon AICPA standards that require careful attention to such issues because of explicit recognition in its "*Considerations of Laws Regulations in an Audit of Financial Statements*," as set out as AICPA AU-C Section 250, that "provisions of some laws or regulations have a direct effect on the financial statements in that they determine the reported amounts and disclosures in an entity's financial statements" (AU-C 250.02), in consequence of which central AICPA principles directly advise that "The auditor should include in the audit documentation a description of the identified or suspected noncompliance with laws and regulations" (AU-C 250.28), along with a list of "**Audit Procedures When Noncompliance is Identified or Suspected**" (bolding in original), including those instances wherein actual "Noncompliance with laws or regulations [has been] cited

in reports of examinations by regulatory agencies that have been made available to the auditor” (AU-C 250.A21), as well as a specific advisory that “If withdrawal from the engagement is not possible under applicable law or regulation, the auditor may consider alternative actions, including describing the noncompliance in an other matter(s) paragraph in the auditor’s report” (AU-C 250.A25 with citation *via* footnote to “Paragraph .08 of section 706, *Emphasis-of-Matter Paragraphs and Other-Matter Paragraphs in the Independent Auditor’s Report*” for further information in respect to noncompliance issues).

While Government Auditing Standards set forth in the 220 pages of the current manual issued by the GAO, in 2011, include many more demanding GAGAS requirements than the brief outline hereinabove, any examination of the audit of the junior taxing district for 2012 – as signed by Mr. Kelley on April 24, 2014 – documents gross inadequacies in his self-styled “work” at the heart of the second group of charges assembled together within the proposed Ballot Synopsis.

In particular, notwithstanding all of the above-quoted requirements for competent GAGAS audits cited *supra*, notwithstanding wholesale abandonment of major ballot-title obligations **both** legally undertaken to millions of state citizens by the junior taxing district in order to obtain a huge taxing authority for that subordinate jurisdiction from voters in King,

Pierce and Snohomish counties in November, 1996 (which allows that agency to take in over \$2 million in taxes, daily, through false pretenses to state citizens), and **also** squarely reaffirmed with fully specific assurances given in open court to every Justice of this Honorable Court in June, 2003 in order by such means to retain that enormous taxing authority (which allowed it to prevail thereby in *Sane Transit*), and notwithstanding Honorable Brian Sonntag's direct identification of the failure of that junior taxing to honor its ballot-title obligations in prior audits of the agency issued in October, 2007 (in Performance Audit No. 1000005 issued by the Office of State Auditor) and in October, 2012 (in Performance Audit No. 1008277 likewise issued by the Office of State Auditor), Mr. Kelley nonetheless purported to issue "the results of our independent accountability audit of the Sound Transit from January 1, 2012 through December 31, 2012," and further purported to determine that "The Authority also complied with state laws and regulations and its own policies and procedures in the areas that we examined" (both at its page 1).

While heightened GASAS standards and lesser AICPA standards both require diligence in pursuing deviations from legal requirements by audited agencies – as gleaned by various means and from sundry sources – Mr. Kelley's signed Accountability Audit Report does absolutely **nothing** with information of a major lack of accountability ferreted out by the

previous holder of the Office of State Auditor, with industry and with assiduousness, as handed to him on a platter, except to bury it, either through utter incompetence, or else through some more sinister modality.

Whether based on ineptitude or on something worse, doubt cannot exist respecting Mr. Kelley's contribution toward the resulting cover-up of wrongdoing by the junior taxing district that Mr. Sonntag had identified, piece by piece, over several years (at very significant political risk in light of hard-ball tactics exploited, repeatedly, by that scofflaw junior taxing district, including its ongoing open-court fraud on this Honorable Court).

In brief, Mr. Sonntag identified the junior taxing district's failure to honor **both** a specific warranty to all district residents, in 1996, through the ballot title employed by it to request truly gargantuan taxing authority (namely, that it would "conduct an annual comprehensive performance audit through independent audit services" so as to inform district voters of its fiscal-and-physical performance, thereby, before thereafter proposing any further tax-ballot elections), and **also** its follow-on representations, in open court, to all nine Justices sitting on our State Supreme Court on June 10, 2003 (during oral argument in its crucial legal defense of voter approval for its second tax ballot in Sane Transit's pivotal litigation against that agency) that it is **legally** obligated by, and would **fully** comply with, **every** ballot-title provision thus guaranteed to all district voters (as

its General Counsel affirmed then, clearly, under very intense questioning from the bench, so as to bind that agency under law).

Squarely based both on that agency's ballot-title representations, and also on its open-court commitments to comply **fully** with **every** element of its ballot-title warranties to citizens as voters and as taxpayers, a 6-to-3 majority of Justices, on a then starkly divided state Supreme Court, ruled against the legal challengers to that regional transit authority's financial powers, in *Sane Transit*, notwithstanding a lashing opinion, in dissent, chastising the majority for having lost sight of the high court's fiduciary obligations, in adjudicating between public institutions and the state citizens who fund them, with its memorable final accusation that "it is not our role to help Sound Transit railroad the voters" (at 104), which the current Associate Chief Justice joined, followed immediately by a second dissenting opinion, which was framed more somberly in order "to lament a disturbing trend of our jurisprudence," as a gathering regret then focused directly upon Article II, section 1, that the great "power of the people to legislate directly should be jealously guarded and protected by the judicial branch," with lack of such a judicial defense as the basis stated for a dire apprehension, for our state judiciary, in this pure trepidation as to justice in the State of Washington and for its citizens: "I fear this court is failing its constitutional duty to protect the legislative role of the people by permit-

ting inaccuracies, false representations, and clever manipulation of these processes. This court has failed its essential constitutional duty to protect the integrity of the exercise of the people's legislative power" (*Ibidem*).

Notwithstanding the centrality of ballot-title guarantees for our high court's deeply divided 6-to-3 majority decision against Sane Transit, including open-court assurances binding upon the junior taxing district as a matter of law, and notwithstanding two powerful dissenting opinions, one pointed and belligerent, the other poignant and bemoanful, that agency has since operated, at all times to this date, and is continuing to function, today, both with complete ongoing disdain for its ballot-title warranties to local voters, and also with utter contempt for every member of our state Supreme Court, and this bad-faith misconduct has never abated, even after the previous State Auditor's rather narrowly focused state performance audit into that subordinate agency's light-rail program, directly identified, as the very first of several telling formal "Findings," that "Sound Transit has not commissioned annual, independent, comprehensive performance audits limiting the ability to identify and address budget, schedule and scope issues" (Performance Audit Report No. 1000005), which such thus-defiant violations **both** of its ballot-title promises and **also** of its open-court undertakings to this Honorable Court continue, right up to this very day, with not-one-"annual comprehensive performance audit through

independent audit services” having **ever** yet been conducted to allow any true revenue accountability (to millions of state citizens), with no follow-up audit review of this thus-documented wrongdoing by the current State Auditor (an office itself now under a criminal grand jury inquiry) and with no legislative oversight for that damning audit Finding (as to a very junior taxing district having dishonored its core ballot-title duty since 1996).

The junior taxing district’s noncompliance with a statutory contract created by terms that it was forced to negotiate with King, Pierce and Snohomish counties in order to obtain legal ability to present any of its enormous tax ballots to voters living within those three counties – in 1995, in 1996, in 2007 and in 2008 – was not identified by Mr. Sonntag, but it is of like kind and audits that are competent will identify such wrongdoing, over time, which is why foundational AICPA standards offer counsel that, “[d]uring the audit, the auditor should remain alert to the possibility that other audit procedures applied may bring instances of noncompliance or suspected noncompliance with laws and regulations to the auditor’s attention” (AICPA AU-C Section 250.15).

This has not occurred, of course, because competent auditing has not been done by the Office of State Auditor nominally under Mr. Kelley.

Mr. Kelley’s lack of due professional care exposes more-than-three million state citizens living in the junior taxing district to liability for not-

less-than-\$8.4 billion in new long-term debt, despite the junior taxing district's *ultra vires* lack of lawful debt authority for even \$1 billion, due to willful violations **both** of an absolute \$800 million ceiling, on its long-term debt authority, as the central financial limit of the statutory contract that it negotiated with King, Pierce and Snohomish county governments in order, by its very reluctant acceptance of that absolute \$800 million ceiling on its long-term debt, to obtain **any** ballot access whatsoever to voters in those three large counties, thereby, to request **any** voted taxing power, and **also** of state constitutional debt limits on it as set by Article VIII.

King, Pierce and Snohomish counties demanded this absolute \$800 million debt limit from the junior taxing district, as a condition precedent for being granted **any** ballot access therein, and thus received a statutory-contractual "**Maximum Bonding Level**" guarantee for every "Phase I" light-rail project necessary to link Everett, Redmond and Tacoma with Seattle (bolding within *TheRegional Transit Authority Master Plan*, as formally incorporated by Pierce County into its legally pivotal authorizing Ordinance No. 94-148, which specifies that "To ensure that the RTA maintains a reasonable, fiscally prudent debt level, an overall long term debt ceiling of \$800 million shall be established"), due to then-yet-very-fresh concerns by general-purpose local government officials over a then-still-recent Washington Public Power Supply System default on \$2.25 billion

in debt and over the resulting debt, *fiasco*'s adverse fiscal *sequelae*, and over further concerns about taxpayer willingness to support future bond issues for county-and-city programs, for common schools and for other important capital projects constrained by Article VIII supermajority terms and provisions for voter-approval of debt, as well as from knowledge that "megaproject" costs often exceed projections hugely and that after-the-fact borrowing is often the easiest political fix despite burdens of debt (with direct relevance for the junior taxing district's thus-far-revealed plan to borrow at least \$8.4 billion despite a total debt ceiling of \$800 million).

Again, these are contractual obligations that competent auditing would have identified had Mr. Kelley not disregarded GASAS obligations.

In fact, that junior taxing district has also willfully failed to request excess-debt authority from taxpayers, even after it advanced a plan that requires not-less-than-\$8.4 billion in debt for its capital program, even after its staff documented far higher potential borrowing needs of \$10.4 billion and even after its staff identified only \$5.4 billion in legal **unvoted** debt authority under Article VIII, section 6 now (each orders of magnitude beyond its absolute \$800 million debt lid), in order to attempt a legislative end-run around the 60-percent requirement of Article VIII, §6, by holding our state's transportation budget for highway purposes hostage, in 2015,

all with its variety of hard-ball tactics, as effectively aided and abetted by Mr. Kelley's lack of professional due care at issue herein.

The state's position below, and apparently again herein, that Mr. Kelley has complete discretion as to **every** audit function such that his grossly substandard performance substantially deficient as measured by Generally Accepted Government Auditing Standards are therefore beyond recall, in key part by pointing to his predecessor's issuance of a public-relations document, which does **not** conform to GAGAS requirements for competent audits conducted to professional standards, but which PR is propounded as a substitute for GAGAS terms and conditions quoted in some detail *supra*.

Though Mr. Kelley's predecessor may or may not have been satisfied with an implementation that "may have addressed [an] underlying issue differently than suggested" for public relations purposes (as is stated at page 3 of same), because the junior taxing district then had and still has never supplied the "annual comprehensive performance audit through independent audit services" promised in the ballot title's direct reference to that guarantee (as reaffirmed in open court by its General Counsel to every member of our state Supreme Court thereafter), his disregard for this pivotal audit-identified defect following that audit finding cannot fulfill either competent auditing or else best-efforts obligations legally created by the mandatory oath of office as sworn or as affirmed by Mr. Kelley.

III. CONCLUSION

Hence, Mr. Kelley's utter obliviousness to professional obligations supports his recall, and would even if thus related violations of his oath of office did not extend a long-running fraud against this Honorable Court.

Given the nature of constitutional and other violations at issue, and given inherent attacks both on our state's republican form of government and also on its democratic institutions, this appeal merits a full-rather-than-summary review preliminary to a decision required by Article III, §24 and by other constitutional, statutory, decisional and common law implicated in wrongdoing by a pretender and by a usurper whose acts and failures to act aid and abet a long-and-ongoing fraud against our state's highest court.

DATED on this 22nd day of January, 2016, and

Respectfully submitted,



Will Knedlik, complainant, *qua* appellant *pro se*

CERTIFICATION

Will Knedlik hereby certifies delivery of this document to legal counsel for each Interested Party upon the date of filing of same.



Will Knedlik, complainant, *qua* appellant *pro se*