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## Gessler in Rowland's Corner?

*Do we all live under the same "rule of law"?*

by Jerry and Susan Bishop

Last month the *Prairie Times* reported that Commissioner Robert Rowland had been personally fined \$1,000 by an Administrative Law Judge from a complaint filed by a citizen alleging he used public funds to influence a mil levy increase in last November's election. \$15,000 of taxpayer money had been paid to Tim Buchanan to "educate" the voters prior to the election. The issue failed at the polls overwhelmingly. The story isn't over, however, because Mr. Rowland hasn't paid his fine, and with the help of Commissioner Kurt Schlegel, has voted to appeal the ruling (Ross voting against it). It should be noted that Mr. Rowland did not recuse himself from the vote to appeal even though he stands to gain financially.

Now the plot thickens. Secretary of State Scott Gessler has stated he will not enforce the ruling or make Rowland pay the fine. He is also endeavoring to get the ruling nullified.

By way of full disclosure, Susan and I supported Scott Gessler in his run for Secretary of State in 2010 both financially and by sponsoring a public rally in his support that drew 350 people. In our recent interview with Mr. Gessler he stated: "I'm not weighing in on the merits of whether or not a violation occurred. When a county commissioner votes on something by a majority vote, they are not supposed to be personally liable for the vote. There's nothing in the law that says any commissioner is personally liable. I think the decision was completely wrong. If the county is responsible for violating the law, then they need to be held accountable for that. My gripe is that you don't hold individuals accountable when there's no statute for doing that. I think it's flat out wrong, and that's why we're intervening. If the judge thought the county was breaking the law, the punishment should have been against the county, not the commissioner."

We asked, "Did Rowland contact you and ask you to intervene?"

"No, he didn't. I called and notified him that we were going to do this after the news reports came out." (We are now wondering who sent him the news reports.)

Our next question: "Many conservatives were delighted by this judge's ruling. There is a concern that you stepped in where you shouldn't have, so you're going to need to put our minds at ease that as governor, you would not overstep your bounds and be partisan for other Republicans' benefits."

Mr. Gessler answered, "Partisan means when you are for or against a party. I am basing my decisions on the rule of law. I'm not basing my decisions on what any one person did or didn't do as far as the local elections. I hope conservatives in Elbert County can respect the decision for me to get involved in a couple of ways.

1) We're a nation, state, and civilization based on the rule of law, not a rule of political power or political anger.

2) I am not defending or attacking Rowland's or anyone else's actions. I'm saying that this judge is out of bounds. 3) The essence of local control is that when something bad or something you don't like happens, don't run to a state judge and ask him to whack your people. If you don't like what he's done, take action locally through a protest or local pressure or in the next upcoming election. You can recall commissioners or vote them out of office. There is recourse."



When our county elected officials don't follow the State Laws (rule of law) regarding the firing of an employee, who pays if there is a lawsuit? Taxpayers, of course, because a wrongful dismissal with no chance to right the situation usually results in a lawsuit. The wronged person gets money, their lawyer gets money, and the taxpayers get shafted.

Where do citizens go to complain about these lawsuits or even find out about them? As part of these types of "settlements," judges often place gag orders so the taxpayers can't find out anything.

Mr. Gessler says, "You take personal responsibility and if you don't like what he's done, you take action locally, through a protest or local pressure, or in the next upcoming election. You can recall commissioners, or vote them out of office. There *is* recourse." Yes, the citizens can try to mount a recall, at considerable time and expense and there is always the next election cycle.

I'm not sure what Mr. Gessler means by us "taking personal responsibility" when we don't like what an elected official has done. To me it implies that it's up to us (the citizens) to do something about "official" wrongdoing. Could this be because there is no real legal oversight? In Commissioner Rowland's case that's what a citizen did. They took personal responsibility, and filed a complaint (at their own expense) with Mr. Gessler's office. The case was heard by an Administrative Law Judge and Mr. Rowland was fined \$1,000. Mr. Rowland was defended at this hearing by the county attorney (paid for by the taxpayers) and now it has come to light that Mr. Buchanan (initially hired to "educate" the public) billed the county an additional \$2,615 to testify on Mr. Rowland's behalf at that hearing.

To us this is like saying if you don't like the fact that an elected official just ran a red light and whacked your car (in the line of their official duties), it's up to you to do something about it. If we truly are a nation of laws, there is enforcement and accountability for everyone, whether they're an elected official or not. Perhaps, as Mr. Gessler stated, "they are not supposed to be personally liable for the vote. There's nothing in the law that says any commissioner is personally liable..." but maybe the law *should* make elected officials personally liable! But wait a minute, the only people who could pass such a law *are* the elected officials!

Mr. Gessler's statement was: "If the judge thought the county was breaking the law, the punishment should have been against the county, not the commissioner."

The "county" did not break the law. Actually, where *do* we citizens go with a complaint? Wasn't it right for a concerned individual to go to Secretary Gessler's office about that election issue? Now we, the taxpayers, are faced with more revenue down the drain because of Commissioner Rowland's appeal, which he does not have to personally pay for.

And, looking back over receipts, the original \$15,000 in question here, allocated for "voter education" along with the "360 report" and Mr. Buchanan's phone call to our county lawyer and his appearing in court (to the tune of \$350/hr) will have grown to nearly \$20,000. Are we taxpayers finally done with Tim Buchanan?

It appears the county (we taxpayers) are paying through the nose as a

He added, "We do have people who make decisions based on politics and not the principles of the rule of law. Sometimes when you approach decision making [through the rule of law], your principles upset people who are on your side of the political spectrum. But you have to be willing to adhere to your constitutional and philosophical principles. I hope people realize that's what I'm doing here and what I'll do as governor."

We, the *Prairie Times* staff, believe wholeheartedly in the rule of law, but lately it has been becoming more and more evident to us that those in public office live under a different rule of law than the rest of us.

As one small example, did you know that "special" license plates make members of the State legislature's vehicles "invisible" to traffic tickets in Denver and Aurora?

result of Commissioner Rowland's decisions.

So the real question becomes, is what we have here (and everywhere regarding government officials) the Rule of Law or Immunity *From* the Law? The nation's founders realized elected officials should be immune from liability over frivolous lawsuits while in office. If office holders were personally liable for every bad vote they made in office, many would be paying the taxpayers constantly for the privilege of serving. However the founding documents were written during a time when honor and integrity were the norm—are honor and integrity the norm in 2014? Maybe it's time to revisit the laws regarding liability for elected officials while in office and maybe election oversight should be assigned to a non partisan citizen panel. This would free the Secretary of State's office from being caught up in these types of issues, especially during the time leading up to the Republican primary. As a political observer, this looks to me like a lose-lose situation for both Mr. Gessler and Mr. Rowland, as well as Elbert County.