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**CASE NO. CR 24-633**

## OPINION

**FILED**

APR 22 2025

**JENNIFER POPPEN**  
**CLERK OF DISTRICT COURT**

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The Defendant/Appellee filed a Motion to Quash and/or Demurrer in Hall County Court on October 10, 2024. The Defendant/Appellee requested the Hall County Court grant the motion pursuant to Neb. Rev. Stats. §§ 29-1808 and 29-1810 that would dismiss the action. The Defendant/Appellee states and argues that none of the facts alleged in the Complaint constitute a criminal offense punishable by the laws of Nebraska.

Now on this 17<sup>th</sup> day of April, 2025, the Court hereby reverses the Order of the Hall County Court filed on November 22, 2024 and reinstates the State of Nebraska's Amended Complaint for the matter to proceed forward on the merits for the following reasons:

### **I. Standard of Review**

The Court sits today as an appellate court reviewing the Hall County Court's decision granting a motion to quash. The decision being evaluated is specific to statutory interpretation. Therefore, the issue before the Court is not a factual question, but a question of law that an appellate court resolves independently of the lower court. *State v. Evans*, 316 Neb. 943 (2024). The Court also notes that under Neb. Rev. Stat. § 29-1808, a motion to quash may be made in all cases where there is a defect apparent upon the face of the record, including defects in the form of the indictment or in the manner which an offense is charged.

### **II. Facts**

The specific facts surrounding the incident or incidents leading to the filing of this criminal case are not crucial for the Court's review and consideration of this appeal regarding statutory interpretation. The Court does recognize that Jacy C. Todd, the Defendant/Appellee was charged with

twenty-four (24) counts of Official Misconduct under Neb. Rev. Stat. § 28-924, all class II misdemeanors. The State of Nebraska filed the complaint on October 2, 2024 and filed an amended complaint on October 9, 2024. The Defendant/Appellee filed the motion to quash on October 10, 2024 and a brief in support of the motion on October 15, 2024. A hearing was held on the Defendant/Appellee's motion to quash on October 24, 2024 before the Honorable Judge Alfred E. Corey III. The State requested time to submit a brief and was given until November 7, 2024 to file its responsive brief. The Court took the matter of the motion to quash under advisement. On November 22, 2024, the Hall County Court filed its order granting the Defendant/Appellee's motion to quash and dismissing the State's amended complaint with prejudice. The Hall County Court determined that notary publics are not public servants, therefore cannot be found guilty of Official Misconduct under Neb. Rev. Stat. § 28-924. The Hall County Court accepted and agreed with the Defendant/Appellee in defining public servant under Neb. Rev. Stat. § 28-916.01(6) finding that a notary public does not fall under the contained definition. The Hall County Court rejected the State of Nebraska's argument that the definition of public servant related to Neb. Rev. Stat. § 28-924 is contained in Neb. Rev. Stat. § 28-109(19) that would include a notary public. The Hall County Court further concluded that the duties of notary publics are not governmental functions. Finally, the Hall County Court concluded and found that Neb. Rev. Stat. § 64-113 specifically addresses how to suspend or remove notary publics, therefore this specific statute is the proper avenue to address the issues in the State of Nebraska's amended complaint.

### **III. Analysis**

The Court is faced with a question of law and resolves the issue independently of the lower court. *State v. Evans*. The Court has reviewed the transcript and bill of exceptions from the Hall County Court that were received in this case. The Court considered the arguments of the parties presented in filed briefs with the Court. The Court must evaluate and consider the many statutes in play regarding the singular issue of whether a notary public be charged and convicted under Neb. Rev. Stat. § 28-924. In breaking the issue down further, the Court must determine if a notary public is a public servant? The State of Nebraska charged Mr. Todd with 24 counts of Official Misconduct under Neb. Rev. Stat. § 28-924 that states:

- (1) A public servant commits official misconduct if he knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties.
- (2) Official misconduct is a Class II misdemeanor.

In looking at the elements of the charged crime of Official Misconduct, the Court, as previously mentioned, must determine if a notary public is a public servant which is a question of law. If a notary public is a public servant, did he or she violate any statute, lawfully adopted rule, or regulation relating to official duties which is a question of fact to be determined by the finder(s) of fact based on the evidence presented. Finally, if the notary public is a public servant and did violate a statute, a lawfully adopted rule, or regulation relating to the notary public's official duties, did the notary public do so knowingly which is also a question of fact to be determined by the fact finder(s) based on the evidence presented.

The Hall County Court's decision in granting the Defendant/Appellee's motion to quash hinged on the definition of "public servant" and proceeded to accept the definition of "public servant" found in Neb. Rev. Stat. § 28-916.01(6) that states:

(6) Public servant shall mean any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant, or otherwise, in performing a governmental function, but the term shall not include witnesses:

However, Neb. Rev. Stat. § 28-916.01 titled Terms, defined begins by stating, "As used in this section and sections 28-915, 28-915.01, 28-919, and 28-922, unless the context otherwise requires:" and proceeds to define a list of terms including public servant. More confusion in this situation is found directly subsequent to this definition statute in Neb. Rev. Stat. § 28-916 also titled Terms, defined and begins in a similar fashion stating "As used in sections 28-916 to 28-923, unless the context otherwise requires:" and proceeds to define a few terms. To add even more confusion, "public servant" is also defined in Neb. Rev. Stat. § 28-109(19) stating:

(19) Public servant shall mean any officer or employee of government, whether elected or appointed, any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.

Again, like the other statutes defining specific terms, this specific statute is titled Terms, defined and begins "For purposes of the Nebraska Criminal Code, unless the context otherwise requires:" and defines a multitude of terms including "public servant" as discussed. The definitions are very

similar and differ only in minimal circumstances. The Court, in determining if a notary public is a public servant, has many statutes to consider. The Court must determine if one definition takes priority over another, if one should be used in a particular situation, or another possibility that both or neither definition nor statutes apply to this situation. In determining all the potential factors and potential interplay between the statutes, “it is the duty of the court, as far as practicable, to give effect to the language of a statute and to reconcile the different provisions of it so they are consistent, harmonious, and sensible.” *Malone v. Benson*, 219 Neb. 28 (1985).

The Hall County Court granted the Defendant/Appellee’s Motion to Quash and dismissed the State of Nebraska’s complaint finding a notary public is not a public servant under Neb. Rev. Stat. § 28-924 and further found that the legislature included a complete chapter designated for notary publics that specifically includes civil penalties for malfeasance. The Court, in its review of this matter, disagrees with the Hall County Court in granting the Defendant/Appellee’s Motion to Quash and in turn dismissing the State of Nebraska’s complaint. At this stage of the proceedings, the review of such a motion needs to be looked at in the light most favorable to the nonmoving party. Many facts are still unknown regarding this case that will require consideration from finders of fact and the extreme outcome of a motion to quash when granted needs to be used in rare situations when it is clear that a matter is not able to be pursued under the laws of this state. The evaluation in reaching the decision requires the Court to initially look at the definition in Neb. Rev. Stat. § 28-916.01.

Neb. Rev. Stat. § 28-916.01 begins by specifically listing that the following definitions will apply to the specific statute and Neb. Rev. Stat. §§

28, 915, 28-915.01, 28-919, and 28-922, unless the context otherwise requires. The plain language of the statute is that the definition of terms in Neb. Rev. Stat. § 28-916.01 do not apply to the language contained in Neb. Rev. Stat. § 28-924. The argument could be made there is residual clause with “unless the context otherwise requires,” however the statute references back to subsequent statutes of the chapter. This is also reasoning that simply because a section in a chapter of statutes has definitions, does not mean the closest definition to the statute at issue is used. The context and language used in Neb. Rev. Stat. § 28-924 makes no reference to Neb. Rev. Stat. § 28-916.01. In addition, there is a general definition for public servants that should be used as the more specific definition in the section or statute at question does not reference or include the context to use the definition of a term found in Neb. Rev. Stat. § 28-916.01. The plain language in review of these statutes should result in using the definition in Neb. Rev. Stat. § 28-109, however the Court also does not see a significant difference in the definitions that would warrant a motion to quash at this stage of the proceedings.

Both definitions of “public servant” began that it is any officer or employee of government. The two definitions begin to differ minimally at this point. In Neb. Rev. Stat. § 28-109, a public servant also requires being elected or appointed. The definition in Neb. Rev. Stat. § 28-109 then includes another category of any person participating as an advisor, consultant, process server, or otherwise in performing governmental function, but not witnesses. The definition in Neb. Rev. Stat. § 28-916.01 states that a public servant in one of the two categories does include legislators and judges and then goes on like the other definition and includes

a third category of person that is a juror, advisor, consultant or otherwise, in performing a governmental function, but the term shall not include witnesses. The Court finds that notary publics are not employees of government. The Court also does not even have to consider if a notary public fits into the residual language of both definitions. The Court finds that a notary public is an officer. Further, the Court finds that a notary public is appointed if using Neb. Rev. Stat. § 28-109. In finding that a notary public is an officer, the Court directs attention to Neb. Rev. Stat. § 64-101 that explains that the Nebraska Secretary of State **appoints** a person to the office of notary public and subsection (9) specifically states “Each person appointed as notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.” The last subsection explains again that the notary public is an appointed position that holds an office for a specified term of four years. This language clearly shows that a notary public is a public servant as an officer. No other language would be needed under Neb. Rev. Stat. § 28-916.01 and there is no question whether it is an appointed position thus satisfying the second requirement under Neb. Rev. Stat. § 28-109. Under either statute containing the definition of “public servant”, a notary public is a public servant that is subject to prosecution under Neb. Rev. Stat. § 28-924. The definition under Neb. Rev. Stat. § 28-109 has more requirements and should be used based on the plain language of the statutes at question in this matter.

The Hall County Court also ruled that the procedures and disciplinary action of a notary public are exclusive to Chapter 64 of the Nebraska Revised Statutes. The Court disagrees with this finding and points to Neb. Rev. Stat. § 64-113, also referenced by the Hall County Court when malfeasance occurs



in the office of notary public. This statute is specific to removal and the entire chapter only references civil penalties and there is no reference to criminal penalties. The argument has been made that the legislature designed the language of these statutes to specifically exclude criminal penalties for a notary public. The Court disagrees with this argument and finding. The Court goes back to plain language and there is no language that excludes criminal penalties for notary publics and there is no language that provides that chapter 64 is the exclusive remedy or statutes to use when a matter involves a notary public. This same rationale is also persuasive in looking at construction and wording of statutes when dealing with Neb. Rev. Stat. § 28-916.01 that includes specific sections to use definitions. However, as referenced above, that is not all that is necessary to consider that a notary public is an officer under both definitions and no other evaluation under the other subcategories is needed. Many positions under the category of public servant can face both civil and criminal penalties and a notary public is no different. A notary public can face criminal penalties under the criminal code of Nebraska found in chapter 28 and specifically under Neb. Rev. Stat. § 28-924. A notary public can also be subject to civil penalties under the Nebraska Revised Statutes including but not limited to chapter 64, which is a chapter that is specific to the office of notary public.

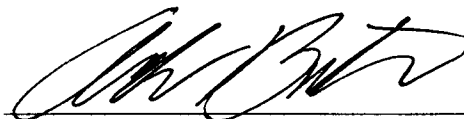
#### **IV. Conclusion**

For these reasons, the Hall County Court's ruling granting the Defendant/Appellee's Motion to Quash is reversed and the State of Nebraska's Amended Complaint is reinstated. Granting the motion to quash was not appropriate at that time when considering that facts most favorable to the nonmoving party. Further, and most importantly to the Court, a notary

public is a public servant that is subject to civil penalties and criminal penalties if warranted. Under both definitions a notary public is a public servant, but plain language of the statutes at question shows that Neb. Rev. Stat. § 28-109 is the proper definition to use when evaluating the criminal charges under Neb. Rev. Stat. § 28-924. A notary public is an officer which makes a notary public a public servant. At this stage, more information is needed to determine if the Defendant/Appellee has committed official misconduct in the office of notary public. The Court questions the extent of resources being used to pursue such criminal charges and the number of criminal charges in this matter when looking at the current climate of the state and voice of its residents, however those decisions are left to another entity. The Court simply is tasked with applying the laws as written and, in this matter, the motion to quash should have been denied and the matter considered by a finder(s) of fact. Therefore, the Hall County Court's decision granting the motion to dismiss is reversed, the State of Nebraska's amended complaint is reinstated, and the Hall County Court is directed to have the criminal matter proceed in a manner consistent with this opinion.

**IT IS SO ORDERED.**

BY THE COURT:

A handwritten signature in black ink, appearing to read "Andrew C. Butler", written over a horizontal line.

Andrew C. Butler  
District Judge

pc: Hall County Court  
Hall County Attorney's Office  
Nebraska Attorney General's Office  
Mark T. Porto

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on April 22, 2025 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

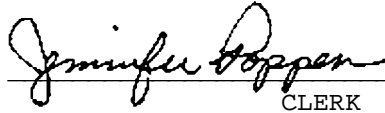
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Date: April 22, 2025

BY THE COURT:

  
CLERK

