

**KAY CO. GRAND JURY  
SUBMISSION OF QUESTION**

I, Jessica Pepper, formally request the Kay Co. Grand Jury to consider the following question for review.

**Did Kay County District Attorney Mark Gibson commit malfeasance or obstruction of justice by filing a motion to quash a petition in which he was named as a party to be investigated?**

(See attached amended petition and motion to quash)

Submitted this day November 28, 2008.

J. Pepper  
Requesting Party

**IN THE DISTRICT COURT IN AND FOR THE COUNTY OF KAY  
STATE OF OKLAHOMA**

<b>IN RE: MOTION TO CONSIDER</b>	)	
<b>THE CONVENING OF</b>	)	
<b>A GRAND JURY</b>	)	
<b>IN AND FOR</b>	)	<b>Case No. CV-2008-28</b>
<b>THE COUNTY OF KAY,</b>	)	
<b>STATE OF OKLAHOMA</b>	)	

**AMENDED PETITION FOR IMPANELING THE GRAND JURY**

COME NOW Jot Hartley and Daniel Giraldi, of THE HARTLEY LAW FIRM, PLLC, and pursuant to the provisions of Title 38, Section 101 of the Oklahoma Statutes and Article II, Section 18 of the Constitution of the State of Oklahoma, respectfully petition this Court to determine the sufficiency of their Amended Petition to impanel a grand jury in and for the County of Kay, State of Oklahoma for the purpose of conducting a thorough investigation into the conduct of the City of Blackwell, its City Council, the Blackwell Industrial Authority and Kay County District Attorney Mark Gibson; and, in addition, to investigate into any and all other matters called to the attention of the Grand Jury. (See Petition to Impanel Grand Jury attached hereto as Exhibit "A").

In support of their request, Petitioners would show the Court as follows:

1. This Court has jurisdiction to impanel a grand jury as the events in question occurred in Kay County.
2. Petitioners have been informed by residents of Blackwell that there is a need to investigate numerous instances of oppressive and abusive behavior, willful neglect of duty, corruption in office, and willful overcharge of fees by the City of Blackwell and its City Council.

3. Title 22, Section 1181 of the Oklahoma Statutes, states, in pertinent part, that “any officer not subject to impeachment . . . may be removed from office for any of the following causes: willful neglect of duty . . . oppression in office, corruption in office, extortion or willful overcharge of fees in office, willful maladministration . . . .”
4. Title 22, Section 338 of the Oklahoma Statutes states, in pertinent part, that “the grand jury must inquire into . . . the willful and corrupt misconduct of public officers . . . .”
5. Title 11, Section 14-109 of the Oklahoma Statutes states, in pertinent part, that “penal ordinances of every municipality shall be compiled and published in a permanent form not less often than once every ten (10) years.”
6. Title 11, Section 14-111 of the Oklahoma Statutes states, in pertinent part, that “no municipality may levy a fine of over \$50.00 until it has compiled and published its penal ordinances as required in Section 14-109 of Title 11.”
7. From 1982 to the present day, the City of Blackwell has not updated its Municipal Code Classifications. However, during this timeframe, the City of Blackwell levied fines in excess of \$50.00 for municipality offenses.
8. The City of Blackwell has failed to reimburse citizens for fines that exceeded the statutory \$50.00 limit and the City has also continued to collect old fines that exceed said \$50.00 limit. The Blackwell Municipal

Court Bond Schedule documents those fees which were in excess of \$50.00.

9. Title 25, Section 307 of the Oklahoma Statutes states, in pertinent part, “. . . No Body shall hold executive sessions unless otherwise specifically provided for in this section . . . executive sessions of a public body will be permitted only for the purpose of: (1) discussing the employment, hiring, appointment, promotion, demotion, or resignation of any individual salaried public officer or employee.”
10. One example of the City of Blackwell violating the Oklahoma Open Records Act’s guidelines on Executive Sessions is highlighted in the minutes from the February 28, 2007 city council meeting, in which the Blackwell City Council went into executive session to obtain general legal advice from its attorney and to discuss the possible hiring of additional counsel for assistance on a pending lawsuit. *See* Title 25, Section 307(B)(4) of the Oklahoma Statutes.
11. The Oklahoma Attorney General has stated that “the Oklahoma Legislature did not exempt from public scrutiny every discussion between a public body and its attorney involving a pending investigation, claim, or action unless the public body and its attorney determine that disclosure will seriously impair the body’s ability to deal with the issues in the public interest.” *See Oklahoma Attorney General’s Opinion*, 2005 OK AG 29.

12. The Blackwell Industrial Authority (BIA) is a trust established for the benefit of the City of Blackwell. The director of the BIA is also the director of the Blackwell Chamber of Commerce.
13. The minutes show that the BIA has gone into executive session during every meeting from January 17, 2007 through March 26, 2008, and the reasons for the executive sessions are often vague or omitted entirely.
14. The Oklahoma Open Records Act, Title 51, Sections 24A.2, states that “it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The purpose of this act is to ensure and facilitate the public’s right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power.”
15. On June 18, 2008, Greg Deffner went to pick up documents he requested under Oklahoma’s Open Meeting Act. City of Blackwell City Clerk Debra Paige told Mr. Deffner that he was required to pay \$7.75 for the copies and \$375.00 for the City Attorney to inspect the documents before the City of Blackwell handed them over to Mr. Deffner.
16. Many citizens of Blackwell have been denied requests for documents (including police audio and video recordings) requested under Oklahoma’s Open Meeting Act. In denying such requests, officials of the City of Blackwell have allegedly claimed that the citizen’s requests are unintelligible and that the City does not understand the citizen’s requests.

17. Citizen requests for documents pertaining to the City of Blackwell's Chamber of Commerce (the City of Blackwell gives the Chamber of Commerce money for services and the Chamber of Commerce receives membership dues from the City of Blackwell, the Airport Authority, the Blackwell Municipal Authority, and the Blackwell Industrial Authority) have been repeatedly denied.
18. Citizens such as Claude and Bill Williams have been denied the right to videotape public meetings, in violation of Title 25, Section 312 of the Oklahoma Statutes.
19. The Blackwell Industrial Authority has violated the provisions Title 61, Section 114 of the Oklahoma Competitive Bidding Act on July 18, 2007 by voting to allow the son of the BIA Chairman to have the bid for three jobs.
20. The Oklahoma Competitive Bidding Act, Title 61, Sections 114, states that "members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock, ownership, partnership interest or otherwise in any such contract. Contracts entered into in violation of this section shall be void and persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office."

21. The BIA also violated Section 128 of the Oklahoma Competitive Bidding Act on July 18, 2007 by awarding a bid to perform electrical work to a contractor who was unlicensed and uninsured.
22. Title 61, Section 128 of the Oklahoma Competitive Bidding Act states, in pertinent part, that “the awarding agency is authorized to require the contractor to carry insurance against damage from fire and the elements during the process of construction to the extent of protecting said agency’s equity in said project until accepted by said agency.”
23. Petitioners have been informed by City of Blackwell citizens that Kay County District Attorney Mark Gibson has failed to address and investigate the allegations alleged herein after such allegations were brought to his attention.
24. Petitioners request that the Grand Jury inquire into Mr. Gibson’s efforts at addressing the allegations alleged herein and that a special prosecutor be assigned to investigate all said allegations contained within this Petition.
25. Witnesses, including Justin Robertson, Lynn Courtney, Greg Deffner, Jessica Pepper, Peggy Massey, Paula Bennett, Claude Williams, and Bill Williams can testify before the grand jury about the events in question.
26. That the official records and minutes of the Blackwell City Council and the Blackwell Industrial Authority contain information supporting and confirming the matters asserted herein.
27. That the alleged actions of the City of Blackwell, its city council, the Blackwell Industrial Authority, and District Attorney Mark Gibson

constitute willful neglect of duty, oppression in office, corruption in office, extortion or willful overcharge of fees in office, and willful maladministration, all of which warrant the investigation of these entities.

**WHEREFORE**, Petitioners respectfully petitions this Court to determine the sufficiency of their Amended Petition to impanel a grand jury in and for the County of Kay, State of Oklahoma to investigate allegations of willful neglect of duty, oppression in office, corruption in office, extortion or willful overcharge of fees in office and willful maladministration by the City of Blackwell, its city council, the Blackwell Chamber of Commerce, and the Blackwell Industrial Authority as stated herein, as well as conducting any other investigations as the grand jury sees fit.

**Dated** this 11<sup>th</sup> day of August, 2008.

Respectfully submitted,

By:

\_\_\_\_\_  
Jot Hartley, OBA #3947  
Daniel Giraldi, OBA #21192

THE HARTLEY LAW FIRM, PLLC  
177 W. Delaware, P. O. Box 553  
Vinita, Oklahoma 74301-0553  
918/256-2100 FAX 918/256-2121

**VERIFICATION**

**STATE OF OKLAHOMA, COUNTY OF KAY, ss:**

Jot Hartley and Daniel Giraldi, of lawful age, being first duly sworn on oath, states:

That we have read the above and foregoing Petition; am familiar with the contents thereof; and the statements and allegations therein contained are true and correct.

\_\_\_\_\_  
Jot Hartley

\_\_\_\_\_  
Daniel Giraldi

Subscribed and sworn to before me this 11<sup>th</sup> day of August, 2008.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

IN THE DISTRICT COURT IN AND FOR THE COUNTY OF KAY  
STATE OF OKLAHOMA

IN RE: MOTION TO CONSIDER )  
THE CONVENING OF )  
A GRAND JURY )  
IN AND FOR )  
THE COUNTY OF KAY, )  
STATE OF OKLAHOMA )

Filed in the DISTRICT COURT  
Kay County, Oklahoma

Case No. Cv-2008-28

AUG 08 2008

MARY RAMEY, Court Clerk

BY \_\_\_\_\_  
DEPUTY

**RESPONSE TO PETITION FOR IMPANELING THE GRAND JURY**

COMES NOW Kay County District Attorney Office and its chief officer District Attorney Mark Gibson, through and by its attorney of record, David M. Wilkie, of the Kay County District Attorney Office, and state the following in response to Petitioner's Petition For Impaneling The Grand Jury and allege the following:

1. Petitioners have filed a petition in Kay County without any contact with Kay County. Neither have they alleged that the conduct complained of affected them nor do they show how they have standing to file a petition.
2. Standing refers to the legal rights of a person to challenge the conduct of another in a judicial forum. A party whose standing is challenged must show (1) actual or threatened injury, (2) for which relief can be given, and (3) the interest to be protected is within a statutorily or constitutionally protected zone. These interests must not only be direct, immediate and substantial, but the litigant must also have a personal stake in the outcome. In standing issues, the question is whether the party invoking the court's jurisdiction has a legally cognizable interest in the

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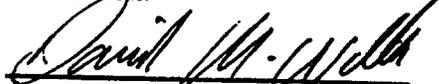
**MOTION FOR HEARING ON PETITION AND RESPONSE TO IMPANEL  
GRAND JURY**

COMES NOW Kay County District Attorney Office and its chief officer District Attorney Mark Gibson, through and by its attorney of record, David M. Wilkie, of the Kay County District Attorney Office, and submits upon this Honorable court a motion for the following:

1. That Petition and Response to Petition to Impanel a Grand Jury should be set for hearing so that oral arguments can be made in the above en-captured and styled case;
2. That such hearing should be set by this Court in Kay County.

**THEREFORE** the Kay County District Attorney Office respectfully prays upon this court to order a hearing set in and for the subject the matter outlined in this

motion.

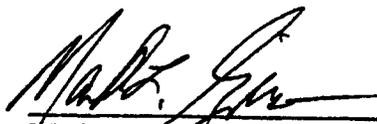


David M. Wilkie, OBA #22017  
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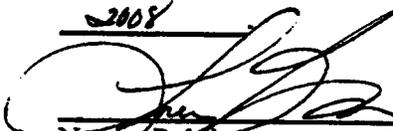
**VERIFICATION**

STATE OF OKLAHOMA        )  
  ) ss.  
COUNTY OF KAY            )

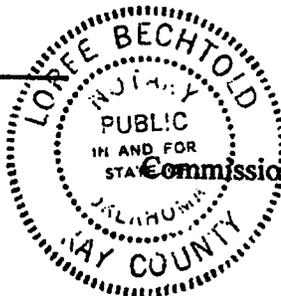
Mark L. Gibson, of lawful age, being first duly sworn, upon oath deposes and states: I am the party of interest named above and the representative of the party of interest named above; I have read the foregoing document and understand its contents. I hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Mark L. Gibson

Subscribed and sworn to before me this 9<sup>th</sup> day of August, 2008

  
\_\_\_\_\_  
Notary Public 00017597

My Commission Expires: 11-1-08



Commission Number:

**CERTIFICATE OF MAILING**

I hereby certify that on the 8 day of August, 2008, I mailed a full, true and correct copy of the foregoing document to the parties listed below, with postage fully paid.

Jot Hartley  
THE HARTLEY LAW FIRM, PLLC  
177 W. Delaware, P.O. Box 553  
Vinita, Oklahoma 74301-0553

Kay County District Attorney Office

By: Mark L. Selman