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## BLAINE COUNTY PROSECUTING ATTORNEY

November 1<sup>st</sup>, 2024

Stephen,

I have received and reviewed the report and the attached documents regarding your investigation of Sun Valley City Councilman Bradly Dufur. A challenge was received by you alleging that Mr. Dufur was not a resident of the city of Sun Valley, and therefore ineligible to serve as a city councilman. You prepared a report outlining the facts and the law and requested that the Prosecuting Attorney determine Mr. Dufur's residency during the relevant time period, and whether Mr. Dufur was ineligible to serve as Sun Valley City councilman prior to his resignation.

The challenge asserted that Mr. Dufur was no longer a resident of Sun Valley, and therefore, was ineligible to serve as a city councilman. As provided in your report; to serve in an elected city office, a person must be a qualified elector at the time of his declaration of candidacy. I.C. Section 50-702. To be a qualified elector, a person must have "resided in the city at least thirty (30) days preceding the election at which he desires to vote and who is registered within the time period provided by law." I.C. Section 50-402(c). Further, an elected official is required to remain a qualified elector to retain his elected position.

The process and remedy for a challenge to whether a person is a qualified elector is found in Idaho Code Section 34-432. That statute provides that the County Clerk is authorized to "make inquiry into the validity of any [voter] registration at any time" and invoke the challenge process set forth in Idaho Code Section 34-432(2). It is the County Clerk who shall determine whether the information satisfies the challenge. *Id.* If there is a successful challenge, the Clerk shall cancel the voter's registration.

As for Mr. Dufur's candidacy, Mr. Dufur's qualifications for office as an elector may be investigated by the County Clerk pursuant to Idaho Code Section 34-219. This process culminates in a determination as to whether the Clerk must exclude Mr. Dufur from the ballot. The investigation and actions fall squarely within the authority of the County Clerk.

Here, my authority is limited to actions against a person who "usurps, intrudes into, holds or exercise any office... without authority of law." I.C. Section 6-602. Only then is the Prosecuting Attorney authorized to file a cause of action for usurpation of office and ask a Court to order the removal of the official in question. Mr. Bronson questions whether Councilman Dufur, because

of his apparent lack of qualification as a Sun Valley elector, unlawfully remained in office pursuant to Idaho Code Section 6-602. I lack the authority to weigh in or answer that question.

It is uncontroverted that Mr. Dufur resigned his seat on the Sun Valley City Council on August 14, 2024. Accordingly, he no longer remains in office. Thus, there is no office being usurped and I lack authority to file a cause of action under Idaho Code Section 6-602, and the courts lack any authority to grant relief on this issue. Under such circumstances, the lawsuit for usurpation of office has been rendered moot. *See State v. Keithly*, 155 Idaho 464 (2013) (finding usurpation action moot because challenged directors of recreation district had resigned). Accordingly, no usurpation action will be filed by this office.

It is also likely that Dufur's resignation, and subsequent registration as a Ketchum elector, also renders the Clerk's investigation and challenge to Dufur's elector status as moot, but that is a question for you to decide. To the extent you have opined on various possible explanations concerning Dufur's elector status, those hypothetical exercises have also been rendered moot. There is simply no reason to speculate when the core issues in this matter (Dufur's elector status and continued candidacy) have been resolved.

To the extent you seek a bright line rule to apply in residency cases such as this, I note that residency is a highly fact-specific determination using the broad set of factors set forth by statute and applied on a case-by-case basis. The Idaho Legislature has chosen to include a person's subjective intent to return as a prominent factor in determining residency, and this makes this determination much more difficult. In Dufur's case, there is evidence supporting both sides of the residency debate and it will be difficult to overcome his intent. This fact-specific analysis, coupled with an element of subjective intent, will differ in every case, making it highly unlikely to yield a universally applicable rule or consistent outcomes. In my view, rendering an opinion on Mr. Dufur's residency is unlikely to provide any guidance for the future.

Please let me know if you have any questions or would like to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Fredback". The signature is stylized with a large, looped "M" and a cursive "Fredback".

Matthew Fredback  
Blaine County Prosecuting Attorney