

BOARD OF ELECTION
COMMISSIONERS:

The Board of Election Commissioners in passing upon the sufficiency of initiative petitions acts only in a ministerial capacity.



October 6, 1952

10-6-52

Honorable Paul C. Calcaterra
Chairman
Board of Election Commissioners
For The City of St. Louis
208 South 12th Boulevard
St. Louis, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"Find enclosed petition which has been circulated here. Among such circulated, a husband and wife as a team obtained signatures filling one hundred and fifty petitions. Before having same notarized they divided between themselves these petitions about equally, each signing as affiant his or her portion without considering or regarding the question as to whether he or she actually witnessed the signing of the petitioners whose names appeared before affiant's signature.

"The Election Board questioned this couple; the husband admitted the above procedure and under oath stated that he could not say for sure that the signatures which he in his affidavit as affiant certified to having been written in his presence. This, of course, made his affidavit false.

"In view of the above, our Board questions our right to certify the petitions to the Board of Aldermen here."

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The power to enact ordinances through the instrumentality of an initiative petition and the vote of the people are reserved to the people of St. Louis by Article V of the City Charter. The provisions therein contained have been held not to be violative of the constitution or laws of this state. *Pitman v. Drabelee*, 267 Mo. 78.

Section 3 of Article V of the Charter provides that initiative petitions shall be governed by, and proceedings shall be had thereon in accordance with the provisions of Section 3 and 5 of Article III.

Said section is as follows:

"Sec. 3. Each such petition and the papers comprising same shall be governed by, and proceedings shall be had thereon in accordance with, the provisions of Section 3 and 5 of Article III concerning the Recall, but construing said sections with reference to the petition and the sufficiency thereof required by this article."

Sections 3 and 5 of Article III provide as follows:

"Sec. 3. The signatures need not all be appended to one paper, but all papers comprising the petition shall be uniform in character and shall each be verified by affidavit stating that each signature thereto was made in affiant's presence by, as affiant verily believes, the person whose name it purports to be. Each signer shall state, opposite his signature, his residence address. Any person shall be deemed a registered voter whose name is unerasd on the registration books.

* * * * *

"Sec. 5. All papers comprising the petition shall be assembled by the petitioners and filed with the Board of Election Commissioners as one instrument, and within ten days thereafter said Board shall find and certify as to the sufficiency of the petition, stating the number of registered voters signing. If the petition is certified to be insufficiently signed, supplemental papers conforming to the requirements for the originals may be filed within twenty days thereafter, and said Board, within ten days after such supplements are filed, shall find and certify

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as to the sufficiency of the petition, so supplemented. If found still insufficiently signed, no further supplement shall be allowed, but a new petition may be filed."

Since there would appear to be some duplicity, although not conflicting, between Section 5 of Article III, and Section 4 of Article V, insofar as they pertain to your question, we will here set out that portion of Article V in order that they may hereafter be considered together.

"If the Board of Election Commissioners find that the petition with supplements, if any, is sufficient, it shall forthwith certify that fact, together with a copy of the petition, omitting signatures, to the Board of Aldermen."

Section 3 of Article III specifies the form and contents of an initiative petition. It (each paper) must be verified by affidavit stating that each signature thereto was made in the affiant's presence and that affiant believes that the signatures are the signatures of the persons whose name it purports to be. Each petition must contain the address of the signer opposite his name and all papers comprising the petition shall be uniform in character. Section 2 of Article V specifies the number of signatures required.

Section 5 of Article III provides that the petition shall be filed with the Board of Election Commissioners and they shall thereafter find and certify as to the sufficiency of the petitions. Section 4 of Article V, supra, contains a like provision that the board shall find and certify the sufficiency to the Board of Aldermen. We are unable to find any other provisions in regard to the authority of the Board of Election Commissioners to pass on the sufficiency of the petitions other than that if they find the petition lacking in the requisite number of signatures that may allow the filing of additional papers. Section 5, Article III.

Under the foregoing, we are of the opinion that the Board of Election Commissioners is possessed of no judicial or quasi-judicial authority to inquire into the legal sufficiency of the petition but acts only in a ministerial capacity in passing upon such sufficiency. The provisions of the Charter setting forth the duties of the Election Commissioners and directing what they shall, or shall not do are express positive and mandatory and permit them to make no judicial investigation of the truth or falsity of any facts certified to. The Board of Election Commissioners in passing upon a petition, look to the petition alone and are governed exclusively by what appears upon the face thereof. This rule is stated in 59 C.J., Sec. 278, page 706, as follows:

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"Duty of secretary of state to file a petition received from the proper official or person properly prepared, and when all the statutory requirements have been fulfilled, is mandatory. His action must be based upon the face of the petition as it is received in his office, and when a petition is presented complying substantially with statutory requirements, he is not permitted to make inquiries regarding the genuineness of the petition, or as to the truth or falsity of the certification, but he must file it and leave to the courts the determination of questions of latent fraud or hermetic illegality. * * *"

In the case of State ex rel. v. Carter, 257 Mo. 52, the Supreme Court of Missouri in passing upon a similar question in regard to referendum petitions filed with the secretary of state under laws substantially the same as the Charter provisions here considered said:

"For example, in the latter State, touching a referendum petition duties are enjoined upon the Secretary which involve, it is said, 'the power to receive protests against the sufficiency of the petitions, and to hear evidence and argument in support thereof, and to determine the sufficiency of the petitions involve the power to find facts and require the exercise of judicial or quasi-judicial powers.' (Norris v. Cross, 25 Okla. l.c. 312.) We have no such provision in our statute. The duties of the Secretary of State as to filing a referendum petition and dealing therewith are with us purely ministerial. (Sec. 6748-6754, R.S. 1909.)

* * * * *

"We are not saying that the Secretary of State must file a referendum petition upon which either there is not enough congressional districts represented by the signers thereon, or not enough signers from such, or any one of such districts. But where prima facie all of these facts appear, he must file the petition as presented to him and leave to the courts the determination of questions of latent fraud, forgery and hermetic illegality; * * *."

We believe that the foregoing cited text and case authority is here controlling and if said petitions are regular in form, contain

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the required number of signatures and affidavits in compliance with Section 3, Article III, that the Board acts in a ministerial capacity and must certify their sufficiency to the Board of Aldermen.

CONCLUSION

Therefore, it is the opinion of this office that the Board of Election Commissioners of the City of St. Louis in passing upon the sufficiency of initiative petitions acts in a ministerial capacity only and possesses no judicial or quasi-judicial authority to determine questions of latent fraud, forgery or hermetic illegality.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:

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J. E. TAYLOR
Attorney General

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