

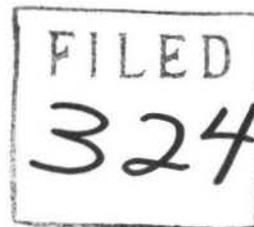
STATE AUDITOR:
PETITIONS:
VOTERS:
REGISTRATION:

With respect to petitions for the audits of political subdivisions by the state auditor under subsection 2 of Section 29.230, RSMo, that: (a) "qualified voter" as used in such subsection means registered voter; (b) petitioners must be registered as of the time of signing the petitions although the auditor may use the notarization date as the date to verify whether such signers are registered in the absence of any date on the petitions indicating the precise date of the signatures; (c) insufficient petitions may be supplemented by permission of the state auditor if the auditor believes that there is a reasonable expectation that sufficient signatures may be obtained within a reasonable time.

OPINION NO. 324

October 16, 1974

Honorable John D. Ashcroft
State Auditor of Missouri
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Ashcroft:

This opinion is in response to your questions asking:

"Must a signer of a petition for an audit of a political subdivision by the State Auditor under subsection 29.230(2) RSMo 1969 be registered to vote in order to be a 'qualified voter' within the meaning of the subsection?"

"If the answer to the above is yes, when must the signatory be registered?"

- a. Must the petitioner be registered by the date of the last gubernatorial election?
- b. Must the petitioner be registered at the time of his signing the petition?
- c. May the signer qualify if he registers after signing the petition and before delivery to the State Auditor?

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d. May the signer qualify if he registers after signing the petition and before final determination of the validity of the petition by the State Auditor?

"May valid signatures be added to a special audit petition after delivery to the State Auditor. . ."

Section 29.230, RSMo, provides:

"1. In every county which does not elect a county auditor, the state auditor shall audit, without cost to the county, at least once during the term of which any county officer is chosen, the accounts of the various county officers supported in whole or in part by public moneys. The audit shall be made as near the expiration of the term of office as the auditing force of the state auditor will permit.

"2. The state auditor shall audit any political subdivision of the state, including counties having a county auditor, if requested to do so by a petition signed by five percent of the qualified voters of the political subdivision determined on the basis of the votes cast for the office of governor in the last election held prior to the filing of the petition. The political subdivision shall pay the actual cost of audit. No political subdivision shall be audited by petition more than once in any one calendar or fiscal year."

With respect to your first question asking whether "qualified voter" within the meaning of subsection 2 of Section 29.230 means "registered voter", it is our view that the words "qualified voter" do mean "registered voter". We reach this conclusion because of the holding of the Missouri Supreme Court in State ex rel. Socialist Workers' Party of Missouri v. Kirkpatrick, No. 58,784 (Mo. Banc September 11, 1974). In that case the court held that signatures on nominating petitions under subsection 3 of Section 120.160, RSMo, which refers to "qualified voters" must be signatures of "registered voters". In reaching this conclusion, the court stated at l.c. 4:

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". . . it is our view that the better reasoned cases are those that rule that a 'qualified voter' is one that, in addition to other qualifications, must be registered where such is required as a condition for voting."

In answer to your second question, it is our view that the petition signer must be registered at the time of signing the petition.

In the holding of the Missouri Supreme Court in Scott v. Kirkpatrick, No. 58,584, (Mo. Banc July 22, 1974), it was implicitly assumed, at l.c. 5, that under Section 126.151, RSMo Supp. 1973, a person signing an initiative petition proposing a measure must be a qualified voter at the time the petition is presented to him. While the Scott case may seem distinguishable because the section then under consideration required that the petition signer be "legally entitled to vote" on the measure and made it a crime for a person to sign who "is not at the time of signing the same a qualified voter of this state," we believe that the court would reach the same conclusion in the present case. Further, in the Socialist Workers' case the court cited as authority Defilipis v. Russell, 328 P.2d 904 (1958) in which the Supreme Court of the State of Washington held that a person filing for the office of state representative had to be a "registered voter" at the time of filing for the office and that it was not sufficient if he registered eight days after filing for such office.

There is no requirement that the date any person signed the petition must appear on the petition. In most instances, therefore, the only date appearing on the petitions will be the date of notarization. This date therefore may be used as the date for the verification of whether the signers are registered in the absence of any date on the petition indicating the precise date of the signatures.

In answer to your last question asking whether additional signatures may be added after the petitions are filed, it is our view that such additional signatures may be added.

This result is consistent with the holding of the Missouri Supreme Court in State ex rel. Voss v. Davis, 418 S.W.2d 163 (1967) in which the court held with respect to petitions filed pursuant to Sections 19 and 20 of Article VI of the Missouri Constitution to amend the city charter of Kansas City that the right of initiative is to be liberally construed. The court in Voss concluded that it would be unduly restrictive of a constitutional right to refuse those interested a reasonable opportunity to

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secure additional signatures if the Kansas City Election Board were to close the mark on the first attempt. While the court in that case was construing the provisions of Sections 19 and 20 of Article VI of the Missouri Constitution relating to "petitions" it is our view that the Voss opinion would be followed in determining whether original petitions provided for in subsection 2 of Section 29.230 can be supplemented. Notably, in Voss, the court permitted the election board to supplement the original petitions within a ten day period and in doing so observed that it was "not a case where the number of signatures first obtained was so small as to make preposterous the expectation of obtaining sufficient additional signatures, or where the extension or period of time within which additional petitions were permitted was so long as to make stale the signatures on the petitions first filed."

We therefore conclude that the auditor may permit supplementary petitions to be filed within a reasonable period of time when there is some possibility that the required signatures can be obtained.

CONCLUSION

It is the opinion of this office with respect to petitions for the audits of political subdivisions by the state auditor under subsection 2 of Section 29.230, RSMo, that: (a) "qualified voter" as used in such subsection means registered voter; (b) petitioners must be registered as of the time of signing the petitions although the auditor may use the notarization date as the date to verify whether such signers are registered in the absence of any date on the petitions indicating the precise date of the signatures; (c) insufficient petitions may be supplemented by permission of the state auditor if the auditor believes that there is a reasonable expectation that sufficient signatures may be obtained within a reasonable time.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General