

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER  
ATTORNEY GENERAL

P.O. Box 899  
(314) 751-3321

September 8, 1992

OPINION LETTER NO. 180-92

The Honorable George R. Engelbach  
Representative, District 106  
State Capitol Building, Room 135BC  
Jefferson City, Missouri 65101

Dear Representative Engelbach:

This opinion letter is in response to your question asking:

Is the form of the petition relating to Section 64.900, RSMo, in substantial compliance with the requirements for petitions as specified in Sections 115.700 and 115.019, RSMo, and can thereby be found as sufficient, disregarding clerical and merely technical errors?

Based on the information we have been provided, we understand your question concerns a petition submitted to the county commission of Jefferson County asking that a proposition concerning the planning and zoning program of the county be submitted to the voters of the county. A copy of the form of petition is attached hereto as Attachment A. Attached hereto as Attachment B is a copy of a certificate of the county clerk regarding the checking of the names on the petition, and attached hereto as Attachment C is a copy of a certificate of the county clerk regarding the number of signatures required. We understand the issue for consideration is whether or not the form of petition is in substantial compliance with the statutory requirements concerning form such that there is no deficiency in form precluding the proposition being placed on the ballot.<sup>1</sup>

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<sup>1</sup>We have not been asked to address nor do we address any aspects of the submission of the ballot proposition other than  
(Footnote Continued)

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Section 64.900, RSMo Supp. 1991, provides:

**64.900. Termination or continuation of county planning, zoning--election.--**1. Upon receipt of a petition signed by a number of voters in the county equal to five percent of the total vote cast in the county at the next preceding election for governor requesting the submission of the question of continuation or termination, the county commission in any county which has adopted a program of county planning, county zoning or county planning and zoning shall make an order to submit to the voters of the county the question to continue or to terminate the program.

2. The question shall be submitted in substantially the following form:

Shall (county planning, county zoning, or county planning and zoning) be continued?

YES             NO

3. If a majority of those voting on the question vote yes for continuation, the program shall be continued unless and until terminated by a vote of the qualified voters voting thereon; if a majority of those voting on the question vote no for the termination of the program, the county commission shall declare the program terminated and shall discharge any commission appointed thereunder. Any resolution, ordinance or regulation adopted under the program pursuant to the provisions of sections 64.800 to 64.905 shall be void and of no effect from and after the termination of the program as provided in this section.

Section 64.900 does not provide a suggested form of petition.

Section 115.700, RSMo 1986, provides:

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(Footnote Continued)  
whether the form of petition attached as Attachment A differs so significantly from the form of petition set forth in Section 115.019, RSMo 1986, as to preclude placing the requested proposition on the ballot.

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**115.700. Local issues, petition, form and procedure, when.**--When the form of a petition is not provided by law for local issues, the provisions of section 115.019 shall, as far as possible, govern the form of the petition, but not the date of the election.

Section 115.019, RSMo 1986, to which Section 115.700 refers, provides in part:

**115.019. Voters may petition to establish a board of election commissioners, procedure--form of petition.--**

\* \* \*

4. Each petition for the formation of a board of election commissioners shall consist of sheets of uniform size. The space for signatures on either side of a petition page shall be no larger than 8½ X 14 inches, and each page shall contain signatures of registered voters from only one county. Each page of each petition for the formation of a board of election commissioners shall be in substantially the following form:

To the Honorable . . . . . , county clerk of . . . . . County:

We, the undersigned, citizens and registered voters of . . . . . County, respectfully order that the following question be placed on the official ballot, for acceptance or rejection, at the next general election to be held on the . . . . . day of . . . . . , 19. . . . :

"Should a board of election commissioners be established in . . . . . County to assume responsibility for the registration of voters and the conduct of elections?";

and each for himself says: I have personally signed this petition; I am a registered voter of the state of Missouri and . . . . . County; my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

CIRCULATOR'S AFFIDAVIT STATE OF MISSOURI, COUNTY OF . . . . . I, . . . . . , a Missouri registered voter and a resident of the state of Missouri, being first duly sworn, say (print or type names of signers)

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NAME (Signature)	DATE SIGNED	REGISTERED VOTING ADDRESS (Street)(City, Town or Village)	ZIP CODE	CONGR. DIST.	NAME (Printed or typed)
(Here follow numbered lines for signers)					

signed this page of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and ..... County.

.....  
Signature of Affiant  
(Person obtaining signatures)

.....  
Address of Affiant

Subscribed and sworn to before me this ... day of  
....., A.D. 19...

.....  
Signature of Notary

Notary Public (Seal)  
My commission expires.....

If this form is followed substantially, it shall be sufficient, disregarding clerical and merely technical errors.

\* \* \*

In determining the validity of a petition, the court in State ex rel. Blackwell v. Travers, 600 S.W.2d 110 (Mo. App. 1980) stated:

A legislative act allowing people to exercise their democratic right to determine issues must be liberally construed to effectuate the purpose of the act. Liberal construction of provisions which reserve to the people the power of the initiative is particularly favored so as to make effective this

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reservation of power. State ex rel. Voss v. Davis, 418 S.W.2d 163, 166[4] (Mo. 1967). We are also guided by certain recognized canons of construction, among which are: "[T]he naked letter of the law must gently and a little give way to its obvious intentment." Rutter v. Carothers, 223 Mo. 631, 122 S.W. 1056 (1909).

\* \* \*

The initiative is a tool of participatory democracy and its purpose is to allow the electorate to resolve questions where their duly elected representatives failed to act on them or refuse to proceed with a change which the public desires.

\* \* \*

Id., at 113.

While the form of petition submitted to the county commission, Attachment A hereto, differs in some respects from the form of petition set forth in Section 115.019, we do not consider the differences to be of such significance as to preclude placing the requested proposition on the ballot. As stated in State ex rel. Blackwell v. Travers, supra, the legislative act allowing people to exercise their democratic right must be liberally construed to effectuate the purpose of the act. The differences between the form of petition submitted to the county commission and the form of petition set forth in Section 115.019 do not impact the obvious intent of the signers of the petition.

It is the opinion of this office that the form of petition attached hereto as Attachment A does not differ so significantly from the form of petition set forth in Section 115.019, RSMo 1986, as to preclude placing the requested proposition on the ballot.

Very truly yours,

  
WILLIAM L. WEBSTER  
Attorney General

Attachments: A, B and C

# PETITION

## TO THE HONORABLE COUNTY COURT of JEFFERSON, STATE of MISSOURI:

WE, the undersigned registered voters of the State of Missouri and County of Jefferson in accordance with Section 64-900 R.S. of Missouri 1990 Cumulative Supplement, respectfully demand that the County Court shall submit to the County voters a proposition to terminate or continue the Planning and Zoning Program of the County and the County Clerk shall prepare the ballots.

AND each for himself says: I have personally signed this petition; I am a legal voter of the State of Missouri, in the County of Jefferson; my residence and post office are correctly written after my name.

NAME	RESIDENCE	POST OFFICE

STATE OF MISSOURI }  
COUNTY OF JEFFERSON } SS.

I, ..... being first duly sworn that the above named signed this sheet of the foregoing petition, and each of them signed his or her own name hereto in my presence; I believe that each has stated his or her name, post office address and residence correctly, and that each signer is a legal voter of the State of Missouri and County of Jefferson.

Signed .....

Subscribed and sworn to before me this ..... day of ..... A.D. 19.....

Notary .....

My Commission Expires ..... 19.....



County of **JEFFERSON**

State of Missouri

OFFICE OF  
ELEANOR KOCH REHM

JEFFERSON COUNTY COURTHOUSE  
HILLSBORO, MO. 63050  
(314) 789-5478 / 942-4300

COUNTY CLERK &  
ELECTION AUTHORITY

CERTIFICATION  
PLANNING & ZONING

I, Eleanor Koch Kehm, County Clerk and Election Authority for the County of Jefferson, State of Missouri, hereby acknowledge the receipt of a petition concerning termination of Planning & Zoning, and consisting of 249 pages, which was forwarded to this office to be checked to determine if the signers of the petition in the county were, at the time of signing, properly registered voters in the County of Jefferson. We further certify that this office has checked names contained on the above-referenced pages and that the following has been found:

- 1. 4,760 Number of signers found valid
- 2. 866 Number of invalid due to no record
- 3. 281 Number of invalid due to wrong address
- 4. 29 Number of invalid due to printed names and surname incorrect
- 5. 193 Number of duplicate names
- 6. 1,369 Total number found invalid (add lines 2, 3, 4, & 5)
- 7. 6,129 Total number checked (add lines 1 & 6)

This is also to certify that the petition sponsor's name appearing toward the bottom of each page was checked for validity as to their being a registered voter.

Eleanor Koch Kehm  
Signature of County Clerk/Elec. Auth.

August 24, 1992  
Date signed



County of

**JEFFERSON**

State of Missouri

OFFICE OF  
ELEANOR KOCH REHM

JEFFERSON COUNTY COURTHOUSE  
HILLSBORO, MO. 63050  
(314) 789-5478 / 942-4300

COUNTY CLERK &  
ELECTION AUTHORITY

August 24, 1992

RE: Planning & Zoning Petition to Terminate  
Section 64.900 (Copy attached)

November 8, 1988 Govenors race:

John Ashcroft	35,559
Betty Cooper Hearnnes	21,104
Mike Roherts	<u>609</u>
Total Votes Cast	57,272
X (Percentage required)	<u>5%</u>
	2863.6

Total number of signatures required - 2,864

Eleanor Koch Rehm  
Eleanor Koch Rehm, County Clerk

Jean M. Gunnett  
Jean M. Gunnett, Chief Clerk/Elections

NOTE: Attachment to County Clerk's Certification to County Commission

"VOTE - and the choice is yours."

"DON'T VOTE - and the choice is theirs."

"REGISTER - or you have NO choice."