

ELECTIONS:

Signer of petition may withdraw names any time before sufficiency of petition is determined.

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October 14, 1938

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Mr. E. Jay Rice  
Presiding Judge  
County Court of  
Texas County  
Houston, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads as follows:

"Some three weeks ago a petition was filed with the County Court, Texas County, Missouri, asking for a vote on 'County-wide Stock Law.' This petition was presented and filed early in September, and now a petition is filed by a number of the signers of the original petition asking that their names be stricken from the original petition.

"Can these signers of the original petition eliminate their names from this original petition by filing a petition asking that they be not considered as signers of the original petition?"

Section 12805, R. S. Mo. 1929, provides as follows:

"The county court of any county in this state, upon the petition of one hundred householders of such county, at a general election, and may upon such petition of one hundred householders, at a special election, called for that purpose, cause to be submitted to the quali-

fied voters of such county the question of enforcing, in such county, the provisions of this article. Said petitioners shall state in their petition to said court what species of the domestic animals enumerated in section 12797 of this article they desire the provisions of this article enforced against, and may include one or more of said animals in said petition; and said court shall cause notice to be given that such vote will be taken, by publishing notice of the same in a newspaper published in such county, for three weeks consecutively, the last insertion of which shall be at least ten days before the day of such election, and by posting up printed notices thereof at three of the most public places in each township in such county, at least twenty days before said election; said notices shall state what species of domestic animals on which the vote will be taken, to enforce the provisions of this article against running at large in such county, which shall be the same as petitioned for to said court."

It will be noted that the statute quoted above does not contain any express provision for the withdrawal of the signatures of the petitioners. 11 L. R. A., N. S. 372, states:

"None of the cases deny the right of the signer of a petition \* \* to withdraw his name therefrom while the same is in circulation for further signers and before it has been filed or presented to the person or body to whom it is addressed."

As was said in *Dagley v. McIndoe*, 190 Mo. App. 166:

"The statute \* \* \* contains no express prohibition against the withdrawal of

a signer before the petition is acted upon and we can see no good reason for placing a strict construction on the statute with respect to withdrawal."

The question, therefore, is as to the particular stage of the proceedings in which this right to withdraw may be exercised. Where a petition is presented by a certain number of householders asking that a certain question be submitted to the voters of the county, it is the duty of the county court to ascertain whether the requisite number of signatures are attached to the petition. It is not until this matter is determined does the county court have jurisdiction to call the election. The authorities are in harmony that until the sufficiency of the petition is ascertained that the right of withdrawal still exists and it is not until the sufficiency is determined does the jurisdiction of the county court attach.

As was said in Mack v. Polecat Drainage District, 216 Ill. 56, 74 N. E. 691:

"\* \* \* it was the duty of the court to ascertain whether the petition had been signed by the requisite number of property holders. Until these facts had all been determined, the court did not acquire general jurisdiction of the case; \* \* \* \* \*"

In Littell v. Board of Supervisors, 198 Ill. 205, 65 N. E. 78, it is stated:

"Our examination of the decisions cited by council on either side from other courts on analogous statutes has led us to the conclusion that the act of signing such petitions is not an irrevocable act, and that it may be revoked at any time before the jurisdiction of the body authorized to act has been determined by it."

The status of the petition and its effect after being filed is given as follows in Board of Education of Putnam County v. Board of Education of Hartsburg, 146 N. E. 816:

"\* \* \* the filing of the petition merely invokes the jurisdiction of the board or tribunal, and therefore the withdrawal of the names by the electors who originally signed them to the petition is permissible until the time that official action is taken upon the petition. The electors, having a right to invoke the jurisdiction of the board or tribunal, are entitled any time before jurisdiction is assumed by the board or tribunal to revoke their action. Withdrawal of the names does not render ineffectual the action of the board or tribunal because none has been taken, but simply nullifies the invoking of the jurisdiction. \* \* \* \* \*"

The views expressed above have been followed by the court in this jurisdiction. In Fleming v. Fones, 91 S. W. (2d) 208, and Dagley v. McIndoe, 190 Mo. App. 166, 176 S. W. 243, it was held that signers of a petition filed with a city clerk could withdraw their names after the same had been filed but before the clerk had made his certificate to the council. Both cases hold that it is the duty of the city clerk to determine the sufficiency of the petition by ascertaining whether the signers meet the requirements of the statute and until he does determine this question that the right of withdrawal exists, however, once the petition has been determined to be sufficient in all respects by the clerk, and he has made his certificate to the city council then the right of withdrawal ceases to exist.

Mr. E. Jay Rice

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It is, therefore, the opinion of this department that persons who petition the county court to submit at an election a question of whether a stock law should be enforced in the county, may withdraw their names from said petition any time before the county court passes upon the question of whether the petition is sufficient. After the county court decides that the petition is sufficient the right of withdrawal ceases to exist.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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