

ELECTIONS:
SECRETARY OF STATE:
REFERENDUM:
INITIATIVE:
PETITIONS:

(1) The duty of the Secretary of State with respect to referendum petitions is ministerial rather than discretionary; and if petitions are presented that on their face contain signatures verified as provided

for in Section 126.040, RSMo 1959, your duty is only to determine whether there are sufficient signatures from the prescribed number of congressional districts.

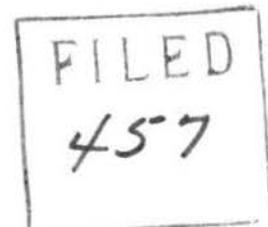
(2) Circulators of initiative and referendum petitions must personally witness the signing of all names that they verified pursuant to Section 126.040, RSMo 1959; however, there may be more than one circulator for each sheet of a petition. The Secretary of State is required to file all petitions that appear, prima facie, to be in order. The validity of petitions which the Secretary files may be contested according to the provisions of Section 126.050.

(3) Elections called by referendum are to be held at the general election in November of even numbered years unless the legislature should designate another date.

OPINION NO. 457

October 24, 1969

Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This opinion is issued in response to your request for an official opinion on the following questions:

"1. What is the responsibility of the Secretary of State regarding the examination of signatures on such petitions? Is this responsibility simply mathematical, or does it encompass any determination of the validity of signatures, which may or may not ultimately affect the total number of names submitted on the petition?

"2. Similar questions have been asked of this office concerning the verification of the referendum and initiative petitions:

a. Must the circulator of such petitions personally witness the signing of all the names on the petitions?

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b. If more than one person circulates a given petition, must each circulator complete a verification affidavit?

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d. In the event information is presented to the Secretary of State that such affidavits have been incorrectly or falsely made:

(1.) Is the Secretary of State required to file such petitions?

(2.) If such petitions must be filed, in what manner may the validity of such petitions be tested?

* * * * *

"3. Section 126.030 RSMo (1959) refers to referendums being submitted at the 'ensuing election,' and Section 126.070 states that the measure is to be voted on at the 'coming General Election.' Furthermore, Article III, Section 52 (b) of the Missouri Constitution states in part:

'All elections on measures referred to the people shall be had at the General State Elections . . .'

"In light of Attorney General Opinion No. 121-1957, would a referendum petition submitted on or before October 13, 1969, be submitted to the people on the August, 1970, Primary Election, or the November, 1970, General Election as stated in the petition."

In answer to the first question it is the opinion of this office that your duty with respect to referendum petitions is to determine that the petitions are prima facie sufficient to meet the requirements of Article III, Section 52(a) of the Missouri Constitution. To perform this duty you must determine that the petitions are signed by five percent of the legal voters (to be computed according to the provisions of Article III, Section 53 of the Constitution) in each of at least two-thirds of the congressional districts of this state. If you decide that the petitions are in order, you are to file the same. Of assistance in determining the prima facie validity of each

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In State ex rel. Kemper v. Carter the Supreme Court held:

"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 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, for which determination our statutes, it would seem, have provided full and ample machinery for every condition and contingency, and for the protection and safeguarding of both protagonists and antagonists of the act sought to be referred. . . ." 257 Mo. 52, 165 S.W. 773, 781 (1914)

We find, therefore, that the holdings of the Supreme Court of Missouri indicate that your duty with respect to referendum petitions is ministerial rather than discretionary; and if petitions are presented that on their face contain signatures verified as provided for in Section 126.040, RSMo 1959, your duty is only to determine whether there are sufficient signatures from the prescribed number of congressional districts. If you so find you are to file the petitions, request a ballot title from this office (Section 126.060, RSMo 1959) and certify that title to county clerks at the same time you furnish names of candidates for state and county office for the next general election (Section 126.070, RSMo 1959).

In answer to your second question, it is the opinion of this office that the circulator of each sheet of a petition is required by Section 126.040, RSMo 1959, personally to witness the signing of all names on each sheet that he verifies. Since that statute, by its express terms, requires only substantial compliance we see no prohibition against more than one person circulating a sheet of a petition. In that case each circulator should verify the sheet of the petition as to the signatures of those persons who signed in his presence. We deem a sheet of a petition containing the verification of several circulators in substantial compliance with Section 126.040, RSMo 1959.

In the event information is presented to you alleging that affidavits have been incorrectly or falsely made you have no authority to reject such affidavits or the petitions on which they are placed if the affidavits appear on their face to substantially comply with provisions of Section 126.040, RSMo 1959 (see quoted language from Kaesser v. Becker and State ex rel. Kemper v. Carter, supra).

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The validity of any petition accepted and filed by you, may be contested after filing by injunction in accordance with the provisions of Section 126.050, RSMo 1959. That section reads in part as follows:

". . . On showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the supreme court within ten days after a decision is rendered. The circuit court of Cole County shall have jurisdiction in all such cases."

In answer to the third question, we are of the opinion that the provision of Article III, Section 52(b) stating:

". . . All elections on **measures** referred to the people shall be had at the general state elections, except when the general assembly shall order a special election. . . ."

refers to the elections held pursuant to Article VIII, Section 1 which provides:

"The general election shall be held on the Tuesday next following the first Monday in November on each even year, unless a different day is fixed by law, two-thirds of all members of each house assenting."

Therefore, if petitions referring a matter to the people were filed on or before October 13, 1969, the election should be held on November 3, 1970, unless the General Assembly should fix a different date for the general election or order a special election.

We observe that an opinion of this office (Opinion No. 121, 3-6-67, Rothman) referred to in your opinion request held that the term, any general election, used in Article V, Section 29(b) of the Constitution allowed the legislature to designate the August primary as the day for submission of a proposition concerning the Non-Partisan Court Plan to the voters of St. Louis County. We do not believe that the ruling in such opinion has any bearing on the present question for the question asked in that opinion required an interpretation of the words "any general election" as used in Article V, Section 29(b) of the Constitution, while the question you ask depends on the interpretation of the words "the general state elections."

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We see no way to interpret the words "the general state elections" as used in Article III, Section 52(b) to refer to any elections except elections held pursuant to Article VIII, Section 1; for if Article VIII, Section 1 is inapplicable with respect to Article III, Section 52(b), it would likewise be inapplicable in other instances where the Constitution requires an election to be held at the general election.

CONCLUSION

It is therefore the opinion of this office that:

(1) The duty of the Secretary of State with respect to referendum petitions is ministerial rather than discretionary; and if petitions are presented that on their face contain signatures verified as provided for in Section 126.040, RSMo 1959, your duty is only to determine whether there are sufficient signatures from the prescribed number of congressional districts.

(2) Circulators of initiative and referendum petitions must personally witness the signing of all names that they verified pursuant to Section 126.040, RSMo 1959; however, there may be more than one circulator for each sheet of a petition. The Secretary of State is required to file all petitions that appear, prima facie, to be in order. The validity of petitions which the Secretary files may be contested according to the provisions of Section 126.050.

(3) Elections called by referendum are to be held at the general election in November of even numbered years unless the legislature should designate another date.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General