

Answer by Letter (Burns)

October 31, 1969

OPINION LETTER NO. 498

Honorable Kenneth Rothman
State Representative
District No. 36
130 South Bemiston Avenue
Clayton, Missouri 63105



Dear Mr. Rothman:

This is in answer to your letter of recent date in which you asked as to the legal sufficiency of a form of initiative petition for a constitutional amendment which you submitted to this office.

The initiative petition purports to repeal Section 2 of Article VIII, of the Constitution of Missouri relating to qualifications of voters and to adopt a new section in lieu thereof. The change in the constitutional section makes the legal age for voting eighteen instead of twenty-one.

It is our view that the initiative petition which you have submitted does comply with the constitutional and statutory requirements for such petitions and would, if signed by the requisite number of electors, authorize and require the Secretary of State to submit such proposed amendment at the next general election if the initiative petition is submitted within the proper statutory time.

We do, however, have several suggestions with regard to the petition. We believe that the statutory provisions of Section 126.030 contemplate that the proposed amendment shall be set out as part of the initiative petition rather than being attached to the petition as such.

In the case of State v. Burns, 172 S.W.2d 259, a petition was approved when the petition was placed on the back and front side of a single sheet. The petition proper and thirty-two of

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the signatures were on the front side and eighteen signatures, the affidavit and the proposed measure were on the back side. The court upheld the validity of such initiative petition because the court held that the suggested statutory form was not mandatory, but required only substantial compliance with its requirements. However, the court did state that the apparent intent of the statute is that the proposed measure will appear on one sheet of the initiative petition and the signatures and affidavit on another so that the admonition of such statute can be followed and the sheets containing the measure itself can be discarded and the Secretary of State shall retain only the signatures of the petitioners and the affidavit attesting the signatures of the petitioners.

For this reason, we believe it would be preferable, instead of referring to the "attached" proposed amendment, to use statutory language found in Section 126.030, and the reference should be made to the "following" proposed amendment. We believe that it would be preferable in making out the petition to provide that the statutory language of Section 126.030 be followed down to the provision "3rd day of November, A.D. 1970" and add after such provision "to wit" and then to insert at that point the proposed constitutional amendment and on such page, also, after the text of the proposed amendment, to continue with the rest of the statutory provision beginning "and each."

We suggest in view of the ruling in the Burns case, that there could be a separate sheet for the signature of the persons signing the petition and the verification, and a column, as is provided in your petition, for residence and post office. As the court pointed out in the Burns case, the entire petition including signatures and verification can be on the front and back of one sheet. However, it would appear that the number of signatures that could be affixed and verified if the text were included in the petition would be more limited than if a complete sheet were provided for signatures and verification.

We suggest, also, for the benefit of the circulators of the petition and of those wishing to sign the petition, that there be inserted in parentheses under the heading of "residence" the following: "if in a city, give street and house number." Under the heading "post office" we suggest there should be inserted in parentheses: "Mailing address including city."

In the case of Sayman v. Becker, 269 S.W. 973, the Supreme Court held that the city, street and house number did not have to appear in the columns under both the headings of "residence" and "post office." However, we believe that it might be wise

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to include in the petition form the references above so that the street and house number shall appear under the heading "residence" and if the post office is different from the town in which the residence is located, that such should appear under the heading "post office." In any event, the town and state should also be listed under the heading "post office."

The affidavit of the circulator, of course, can be on the reverse side of the sheet containing the signatures of the persons who signed the petition. In any event, whether the petition is finally made out as you have submitted, or as we have suggested, there will be two sheets, one containing the proposed measure and the other containing the signatures of those signing the petition and the affidavit of the circulators.

As stated above, it is our view that it would be preferable to have the measure set out in the petition, and the signatures of the individuals signing the petition and the affidavit of the circulator on a separate sheet. In this way there can be no doubt as to the fact that those signing the petition will have been fully informed as to the provisions of the proposed amendment because it is contained on the first sheet containing the request for the Secretary of State to submit the constitutional amendment and not on a second attached sheet.

We believe that the court will be liberal in upholding the right of the people to submit an amendment by the initiative, but we believe that it would be preferable to include the title and text of the proposed amendment in the petition itself, as this would, we believe, discourage any attack on the sufficiency of the petition as to form.

The initiative petition submitting a statute authorizing branch banking voted on November 4, 1958, contained the text of the proposed act in the petition itself and not as an attachment, and we believe, such form of petition to be in compliance with the legal requirements.

Very truly yours,

JOHN C. DANFORTH
Attorney General