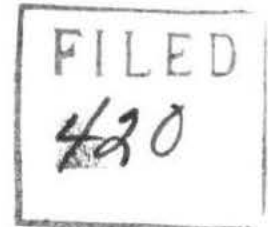


[ANSWER BY LETTER - KLAFFENBACH]

OPINION LETTER NO. 420

July 27, 1970



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

Dear Mr. Kirkpatrick:

This letter is in response to your request for an opinion which states in part as follows:

"Petitions exercising the right of the initiative and proposing a constitutional amendment have been received in this office and are being examined to determine their sufficiency.

Section 126.040 requires that 'each and every sheet of every such petition containing signatures shall be verified. . . ' according to a form and affidavit set out in that section. The affidavit requires that the person signing it copy the names of the signers on the petition and that he or she make the oath before a person entitled to give such."

Your first question asks whether a petition is void and the Secretary of State therefore cannot count the names signed on such petition if the affidavit does not contain the names of the persons who signed the petition.

You also inquire as to whether such a petition is deficient if it lacks the affidavit.

Honorable James C. Kirkpatrick

Insofar as the first question is concerned, Section 126.040 RSMo 1969, clearly indicates that the forms are not mandatory and if substantially followed, in any petition shall be sufficient. This point was considered in Sayman v. Becker, 269 S.W. 973, wherein the Supreme Court of Missouri stated at l.c. 977:

"V. It is contended there are 19 names not set out in the affidavits of the circulators on the back of the sheets on which the names appear, and that these cannot be counted. The affidavit, in each instance, was to the effect that the name of each petitioner was signed in the circulator's presence, that the circulator believes each signer had stated his name, post office address, and residence correctly, and that each signer is a legal voter of the state of Missouri and of the Twelfth congressional district. In the petition each signer made equivalent statements. The statutory form is expressly made directory by the statute (section 5908, R. S. 1919), and the substantial thing is the verification of the facts stated in the affidavit."

Therefore, we conclude that the fact that the verification required by Section 126.040 fails to repeat the names of such signers does not in itself make such petition fatally defective so as to preclude the Secretary of State from counting the names signed to such petition.

With respect to your second question, it is clear that the affidavit is expressly required by the statute and its absence is not just a clerical or technical error. Kaesser v. Becker, 243 S.W. 346, 352.

Very truly yours,

JOHN C. DANFORTH
Attorney General