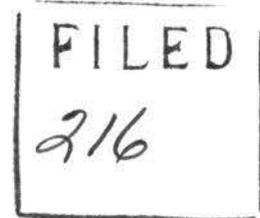


SECRETARY OF STATE: Secretary of State should refuse to  
INITIATIVE AND REFERENDUM: issue his certificate when examina-  
CONSTITUTIONAL LAW: tion of initiative petition shows  
such petition does not contain a  
constitutional enactment clause, does not contain a title, does  
not contain sufficient signatures or if the petition contains more  
than one amended and revised article of the Constitution or one  
new article which contains more than one subject. He has no power  
to determine the validity or genuiness of signatures on such peti-  
tions.

OPINION NO. 216

July 25, 1972

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



Dear Mr. Kirkpatrick:

This is in answer to your recent request for an official  
opinion in which you ask the four following questions:

- "1. Does this office have the authority to determine that an initiative petition contains an enacting clause and to refuse to accept a petition for filing if it does not?
- "2. Does this office have the authority to determine that the proposed amendment contains more than one subject, and to refuse to file it if it does?
- "3. Does this office have the authority to determine that the petition does not contain a full and correct copy of the title, and to refuse to accept the petition for filing if it does not?
- "4. Does this office have the authority to determine that the petition contains sufficient signatures, and, if so, does evidence that the names are not valid and genuine give this office the authority to reject those signatures?"

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Section 126.081, RSMo Supp. 1971, provides in part as follows:

"When any measure is filed with the secretary of state, to be referred to the people by the referendum petition, and when any measure is proposed by the initiative petition, the secretary of state shall examine the petitions to determine that they comply with the provisions of the Missouri constitution and with this chapter, and upon such determination shall issue his certificate setting forth, by congressional district, the number of signatures contained on petitions that comply with this chapter and he shall then forthwith transmit to the attorney general of the state a copy thereof, together with a copy of the measure subject to the initiative or referendum, and within ten days thereafter the attorney general shall provide and return to the secretary of state a ballot title for the measure. . . ." (Emphasis added)

It is clear from the provisions of such section that it is at present the duty of the Secretary of State to examine initiative petitions and if the contents of the petitions disclose that the petitions comply with the provisions of the Missouri Constitution and with Chapter 126, RSMo Supp. 1971, he is to issue his certificate and transmit to the Attorney General a copy of such certification together with a copy of the measure and the Attorney General is then to submit a ballot title for such measure. Conversely, it is clear from such section that if from an examination of the petitions the Secretary of State determines that such petitions do not comply with any provision of the Missouri Constitution or of Chapter 126, it is his duty to refuse to issue his certificate.

Section 50 of Article III, Constitution of Missouri, provides as follows:

"Initiative petitions proposing amendments to the Constitution shall be signed by eight per cent of the legal voters in each of two-thirds of the congressional districts in the state, and petitions proposing laws shall be signed by five per cent of such voters. Every such petition shall be filed with the secretary of state not less than four months

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before the election and shall contain an enacting clause and the full text of the measure. Petitions for constitutional amendments shall not contain more than one amended and revised article of this Constitution, or one new article which shall not contain more than one subject and matters properly connected therewith, and the enacting clause thereof shall be 'Be it resolved by the people of the state of Missouri that the Constitution be amended:' Petitions for laws shall contain not more than one subject which shall be expressed clearly in the title, and the enacting clause thereof shall be 'Be it enacted by the people of the state of Missouri:'."

A determination that can and must be made by the Secretary from an examination of the petitions is whether the above requirements are met by the petition and if the Secretary of State determines that such constitutional requirements together with statutory requirements are met he must issue his certificate to that effect and if he determines that these requirements have not been met, it is his duty to refuse to issue such certificate.

Section 50, Article III of the Constitution provides that petitions for constitutional amendments shall contain an enacting clause providing "Be it resolved by the people of the state of Missouri that the Constitution be amended" and that petitions for laws shall contain an enacting clause "Be it enacted by the people of the state of Missouri."

In view of the fact that the Constitution makes specific requirements that petitions for constitutional amendments and petitions for laws shall contain the specified enacting clauses and since such fact can be determined by the Secretary of State from an examination of the petitions submitted, it is our view in answer to question No. 1 that you do have authority to determine whether or not an initiative petition contains the enacting clause required by the Constitution and if the petition does not contain the constitutionally required enacting clause, it is your duty under Section 126.180 to refuse to issue your certificate for such initiative petitions.

Section 50, Article III also provides that petitions for constitutional amendments shall not contain more than one amended and revised article of the Constitution or one new article which shall not contain more than one subject and matters properly connected therewith. Therefore, in answer to your second question, the Secretary of State does have authority to determine from an examination of the petition itself whether the petition contains

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more than one amended and revised article or one new article containing more than one subject and if he determines that the proposed amendment does contain more than one amended and revised article or one new article containing more than one subject, it is his duty to refuse to issue his certificate for such petitions.

Section 126.041, RSMo Supp. 1971, provides in part as follows:

". . . When circulated for signatures, each sheet for petitioners' signatures shall be attached to or contain a full and correct copy of the title and text of the measure so proposed by the initiative petition, and the petition shall be filed with the secretary of state, numbered in sequence for each congressional district. . . ."

It is apparent that Section 126.041 requires that each sheet for petitioners' signatures shall be attached to or contain a full and correct copy of the title of the measure proposed by the initiative petition. Therefore, in answer to your third question, it is clear that the Secretary of State has the authority to determine whether or not the sheets for the petitioners' signatures contain or are attached to a full and correct copy of the title of the measure proposed by the initiative petition. If an examination of the petition shows it contains no title, it is the duty of the Secretary of State to refuse to issue his certificate for such petition.

Section 50, Article III of the Constitution provides that an initiative petition proposing a constitutional amendment shall be signed by eight percent of the legal voters in each of two-thirds of the congressional districts in this state and a petition proposing a law shall be signed by five percent of the voters in each of two-thirds of the congressional districts in this state. The question as to whether there are sufficient signatures on a petition can be determined by the Secretary of State by an examination of the petition. It follows that the Secretary of State has the authority and duty to determine whether or not there are sufficient signatures on a petition. If he determines that there are not sufficient signatures on a petition, it is his duty to refuse to issue a certificate.

However, the Secretary of State has no authority to determine that signatures on any petition presented to him are invalid and not genuine and to refuse to count such signatures. The authority of the Secretary of State is limited and he is authorized only to examine the face of the petitions and determine from his examination whether or not there has been compliance with the Constitution and with Chapter 126. The determination of whether or not

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certain names are valid and genuine involves a question of fact and the Secretary of State has no authority to make such a determination. Such a determination can be made only in proper court proceedings. Section 126.081 does not purport to give the Secretary of State any authority to make determinations of fact, but gives him authority only to make findings based upon an examination of the petitions presented to him. The Supreme Court of Missouri in the case of State ex rel. Kemper v. Carter, 165 S.W. 773 held that the Secretary of State has no power to make determinations as to alleged fraudulent and forged signatures on petitions stating, l.c. 781:

"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.  
. . ."

The refusal of the Secretary of State to issue his certificate if he determines that a petition is not in compliance with the Constitution and Chapter 126 does not determine the question whether the measure in the petition is to be placed on the ballot and voted on by the electors. The Secretary of State simply determines whether the Constitution and Chapter 126 have been complied with by the petition submitted to him. A determination whether failure to comply with one or more constitutional and statutory requirements is sufficient to keep the proposed measure from being voted on by the electors can be made only by the courts.

#### CONCLUSION

It is the opinion of this office that:

1. The Secretary of State has the authority to determine whether an initiative petition contains the enacting clause required by the Constitution of Missouri and if he determines that the petition does not contain such constitutional enacting clause, he should refuse to issue his certificate.

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2. The Secretary of State has the authority to determine whether a proposed constitutional amendment contains more than one amended and revised article of the Constitution or one new article which contains more than one subject and matters properly connected therewith and if he determines that the proposed amendment contains more than one amended and revised article or one new article and matters properly connected therewith, it is his duty to refuse to issue his certificate.

3. The Secretary of State has the authority to determine whether an initiative petition contains a full and correct copy of the title of the measure proposed and if he determines that it does not contain a full and correct copy of the title, the Secretary of State should refuse to issue his certificate.

4. The Secretary of State has the authority to determine that an initiative petition contains the number of signatures required by the Constitution and if he determines that the petition does not contain sufficient signatures, it is his duty to refuse to issue his certificate.

5. The Secretary of State has no authority to determine whether names on initiative petitions are valid and genuine but such determination must be left to the courts in proper proceedings.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,

*John C. Danforth*  
JOHN C. DANFORTH  
Attorney General