

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

(1) The signers of a given sheet of a referendum petition are not required to reside in the same congressional district and a signature on a referendum petition would not be invalid because the petition purports to

come from a congressional district in which the signer does not reside; (2) a petition that omits the county in which a signer resides or incorrectly states the county in which a signer resides is not invalid and signatures should not be disqualified on that account; (3) the Attorney General or a prosecuting attorney has no authority to act to prevent the filing of petitions that appear to contain forged signatures; the Secretary of State's function in filing petitions is ministerial and he has no authority to reject signatures that appear forged; (4) those same officials have no authority to ascertain whether or not a copy of the bill to be referred was attached to a referendum petition, and therefore may not act to prevent the filing of a petition on the ground that a copy of the bill allegedly was not attached at the time the petition was circulated; (5) a notary may witness the sworn statement of a circulator when the notary has also signed the sheet of the petition which he notarizes; (6) a notary may notarize petitions in any part of the state in which he has authority to act as a notary, there being no requirement that referendum petitions be notarized in the county in which they are circulated.

OPINION NO. 588

December 31, 1969

Honorable E. J. Cantrell
House of Representatives
306 Capitol Building
Jefferson City, Missouri 65101



Dear Representative Cantrell:

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

"FIRST: Is it in accord with the statutes to assemble names from varying counties or from varying congressional districts on a single petition, and request the Secretary of State to certify said petitions when the language or markings on said petitions indicate the signatures were from varying districts?

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"SECOND: If the language or markings designating the proper district or county is absent, would these signatures then be valid?

"THIRD: Is there any jurisdiction within the Attorney General's Office, Secretary of State's Office, or County Prosecuting Attorney's Office that would ascertain the authenticity of signatures that give preliminary indications of being forged?

"FOURTH: Would any of these same offices have the authority to ascertain whether or not the petitions signed at the time of signing had the proper matter attached? Again, if there were indications and instances cited that would determine the matter was not attached, could either of these offices take steps to curb the certification of those petitions?

"FIFTH: Under the statutes governing the notaries -- is it lawful for a notary witnessing the sworn statement of the circulator of a petition to sign the same document which he is notarizing?

"SIXTH: Does a notary have the authority to notarize petitions for persons from counties outside their jurisdiction? Or, would a notary from a county where he was commissioned have the authority to notarize a petition from another county which is clearly outside his commissioned territory?"

I

In response to your first and second questions the Missouri Supreme Court held in State ex rel. Westhues v. Sullivan, 283 Mo. 546, 224 S.W. 327, 341 342 (1920) that there is no statutory provision which requires that each petition contain signatures from residents of only one congressional district and that when a petition purports to contain signatures of residents of one district, but

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in fact contains signatures of another district, the signatures should be counted as coming from the district where the signer resides which can be determined from the residence which the signer must list next to his signature.

In those questions you also inquire whether a petition may be filed that incorrectly states the county, or omits all reference to the county, in which a signer or signers reside. Section 126.020, RSMo 1959 reads:

"The following shall be substantially the form of petition for the referendum to the people on any law passed by the general assembly of the state of Missouri:

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter.

PETITION FOR REFERENDUM

To the Honorable, Secretary of State for the state of Missouri:

We, the undersigned, citizens and legal voters of the state of Missouri (and the county of), respectfully order that the senate (or house) bill No., entitled (title of law), passed by the general assembly of the state of Missouri, at the regular (special) session of said general assembly, shall be referred to the people of the state, for their approval or rejection, at the regular (special) election to be held on the day of, A. D. 19-- , and each for himself says: I have personally signed this petition; I am a legal voter of the state of Missouri and county of, my residence and post office are correctly written after my name.

Name, Residence, Post

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substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors."

From those guidelines as to the sufficiency of the petition forms, we are of the opinion that the statutory requirements as to form are to be liberally construed and that if a petition omits a county in which a signer or signers reside, or incorrectly states the county in which a signer or signers reside, the petition would still substantially comply with the statutory form and would not be invalid. We find a petition to be substantially complied with in the above situation because we feel that the county of the signer has no bearing on the substantive provisions of the constitution or statutes relating to the referendum procedure.

II

In response to your third question, we are of the opinion that there is no authority permitting the Secretary of State, Attorney General, or a county prosecuting attorney to make a determination of the validity of signatures that appear to be forged on a referendum petition for the purpose of disqualifying such signatures.

With respect to the Attorney General and a prosecuting attorney, there is no statutory provision which authorizes such officials to make a determination as to which signatures are to be counted in determining if there are sufficient signatures from each of the required number of congressional districts. We believe that the fact that such signatures appear to be forged would not permit such officials to make such a determination. We note that the prosecuting attorney may investigate forged signatures for the purposes of considering criminal prosecution under Section 126.100, RSMo 1959, which makes it a felony to knowingly sign a name other than the signer's own name to a referendum petition.

We find from the holdings of the Missouri Supreme Court that the Secretary of State's function in filing referendum petitions is ministerial. If the petitions appear on their face to be in order, he has no authority to inquire into the possibility that some signatures may have been forged. For example, in State ex rel. Kemper v. Carter, the Supreme Court held:

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" 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).

III

You have informed this office that in your fourth question you desire our opinion on two questions: (1) Must a copy of the bill to be referred be attached to the referendum petition at the time the petition is circulated and signed by legal voters; and (2) May the Secretary of State, Attorney General, or a prosecuting attorney take action to prevent the filing of a referendum petition that appears to have been circulated without a copy of the bill to be referred attached?

Answering the second part of the question first, in our opinion the Secretary of State, the Attorney General or a prosecuting attorney has no authority to prevent the filing of a petition that was circulated without a copy of the bill to be referred attached. We base that opinion on the fact that whether or not a copy of the bill was attached at the time that the petition was circulated cannot be determined by examining the petition at the time it is offered for filing. As we pointed out in Section II of this opinion, the Attorney General (or a prosecuting attorney) has no authority to prevent a petition from being filed for any reason. The Secretary of State's function in filing a referendum petition is ministerial and for him to determine that the petition did not contain a copy of the bill to be referred at the

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time it was circulated would require that he act in a judicial rather than ministerial capacity, and therefore would not be proper.

In answer to the first part of your fourth question, inquiring as to whether the statutes require that a copy of the bill to be referred be attached to a referendum petition at the time that the petition is circulated, there is no decision of the courts in this state in point.

The only statutory section that would be relevant to this inquiry is Section 126.030, RSMo 1959. The relevant parts of that statute are as follows:

" . . . Every such sheet for petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed by the initiative petition; but such petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions shall be attached to a full and correct copy of the measure on which the referendum is demanded, and may be filed in numbered sections in like manner; . . . When any such initiative or referendum petitions shall be offered for filing, the secretary of state, in the presence of the governor and the person offering the same for filing, shall detach the sheet containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions; the detached copies of such measure shall be delivered to the person offering the same for filing. . . . "

While the quoted portions of Section 126.030, RSMo 1959, do not expressly hold that a copy of the bill must be attached to a referendum petition at the time such petition is circulated, it could be construed to impose such a requirement.

The Arkansas Supreme Court in Townsend v. McDonald, 42 S.W.2d 410, 184 Ark. 273, (1931) construed an Arkansas statute quite similar to Section 126.030, RSMo 1959, to hold that a copy of the bill must be attached to a referendum petition. In that case, the Arkansas court observed:

"The purpose of the section with regard to petitions for initiative measures is clear. The people could not intelligently act on an initiative measure, unless a copy of the measure itself was before them. The same reasoning would obtain in cases of a measure referred to the people. A full and correct copy of the measure attached to the petition would enable the signer thereto to act intelligently in the premises. Of course, he would not be required to read the measure, but it would be his duty to inform himself of its contents, and this would be a certain way for the signer to know that a different petition would not be presented from that signed by him. The signer would know that he was signing the measure passed by the Legislature, and was not taking the opinion of any one else as to the meaning of it. Otherwise, those in charge of the petition, either designedly or ignorantly, might inform the petitioners that the meaning of the bill proposed to be referred was essentially and substantially different from the one actually passed by the Legislature.
. . . "

On the other hand, the Nebraska Supreme Court construed a statute almost identical to 126.030, RSMo 1959, not to require that a copy of the bill to be referred be attached to the referendum petition at the time the petition is circulated. In that case, State ex rel. v. Amsberry, 104 Neb. 273, 177 N.W. 179 (1920), the court observed:

"Laws to facilitate the operation of the amendment must be reasonable, so as not to unnecessarily obstruct or impede the operation of the law. A law requiring a full copy of a 461-page act to be attached to each sheet would be unreasonable and unnecessarily obstructive. In practice it has never been thought necessary, in submitting a law to the voters, that a full copy of it should be attached to the voter's ballot. Accordingly, section 2340 [Section 126.020, RSMo.] of the act requires the ballot title to contain only an impartial statement of the purpose of the measure to be prepared by the Attorney General. Such legislation, for the purpose of informing a referendum petitioner, may tend to facilitate the operation of the law. The people

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are conservative. In the absence of fraud, they will be inclined to vote 'no' to a proposition which they do not understand and which purports to change existing laws."

In State ex rel. v. Olcott, 62 Or. 277, 125 P. 303 (1912) the Oregon Supreme Court has construed its referendum clause (Oregon has laws similar to Missouri on initiative and referendum) to hold that a copy of the bill to be referred to the people need not be attached to each separate sheet of the petition if several sheets of the petition are circulated together; it being sufficient if one copy of the bill is attached to several petition sheets circulated together.

In view of the fact that the Missouri Supreme Court has never ruled on whether a copy of the bill to be referred must be attached to each sheet of the referendum petition and that courts of other states have taken conflicting positions on that question, we believe that the question can only be answered by a Missouri court, and therefore, we decline to give our opinion on that question noting that Section 126.050, RSMo 1959, authorizes the raising of that question in court by filing a suit to enjoin the Secretary of State and all other offices from certifying or printing the official ballot on the matter referred.

A final determination by the courts that an injunction should issue would prevent the referendum.

IV

In answer to your fifth question, we find that that question is answered in State v. Sullivan, supra, where the Court held that a notary who attests to the affidavit of the circulator of a referendum petition may also sign the petition on which the affidavit of the circulator which the notary attests appears. The court said at l.c. 283 Mo. 599, 224 S.W. 342:

"A further contention, which affects a few petitions in several of the congressional districts, is that the affidavit of the circulator was made before a notary public, who himself had signed one sheet of the petition. There is nothing in this contention. The notary public, as a voter, signs the petition with other voters. The

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circulator makes affidavit before such notary that he (naming the notary and the other voters) have signed the petition. This single signer of the petition (the notary public) has no such interest in the matter as would preclude him from administering the oath to the circulator of the petition. Such officer is allowed by law to administer the oath to such a person. We know of no law, either statutory or common, which would make this official certificate bad. The cases cited do not apply."

In response to your last question, there is no law that requires the circulator's affidavit to be attested to in the county where the petition was circulated. By law a notary may notarize documents in the county for which he is appointed, the adjoining counties, and in any or all other counties of the state in which he has previously filed a certified copy of his appointment with the circuit clerk of that county, Section 486.010, RSMo 1967 Supp. The only situation in which a petition would be improperly notarized would be when a notary notarizes the petition in a county where he is not commissioned and which does not adjoin the county in which he is commissioned when he has not previously filed his commission with the county clerk in the county where he is not commissioned.

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CONCLUSION

It is the opinion of this office that (1) that the signers of a given sheet of a referendum petition are not required to reside in the same congressional district and a signature on a referendum petition would not be invalid because the petition purports to come from a congressional district in which the signer does not reside; (2) a petition that omits the county in which a signer resides or incorrectly states the county in which a signer resides is not invalid and signatures should not be disqualified on that account; (3) the Attorney General or a prosecuting attorney has no authority to act to prevent the filing of petitions that appear to contain forged signatures; the Secretary of State's function in filing petitions is ministerial and he has no authority to reject signatures that appear forged; (4) those same officials have no authority to ascertain whether or not a copy of the bill to be referred was attached to a referendum petition, and therefore may not act to prevent the filing of a petition on the ground that a copy of the bill allegedly was not attached at the time the petition was circulated; (5) a notary may witness the sworn statement of a circulator when the notary has also signed the sheet of the petition which he notarizes; (6) a notary may notarize petitions in any part of the state in which he has authority to act as a notary, there being no requirement that referendum petitions be notarized in the county in which they are circulated.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General