



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 25, 1978

ATTORNEY GENERAL OPINION NO. 78- 40

Mr. Don J. Knappenberger
Stafford County Attorney
Stafford County Courthouse
St. John, Kansas 67576

Re: Elections--Petitions--Sufficiency

Synopsis: If a document is offered to the county election officer for filing as a petition pursuant to art. 36, ch. 25, K.S.A., and that document lacks the provisions and recitals required by K.S.A. 1977 Supp. 25-3602 or other applicable provisions, the county election officer has no duty or authority to proceed further to determine the sufficiency of the signatures thereon.

* * *

Dear Mr. Knappenberger:

You inquire concerning the duties of the county election officer in determining, pursuant to K.S.A. 25-3601, the sufficiency of a petition which has been filed protesting a tax levy imposed by the board of education. In particular, you advise that the petition which has been presented did not include the recital required by K.S.A. 1977 Supp. 25-3602(d)(3), that the signer is a registered elector of the state and of the political subdivision involved, and has personally signed the petition and resides at the given address, and that the petition lacked the verification required by K.S.A. 1977 Supp. 25-3602(d).

K.S.A 25-3601 states thus:

"Whenever under the laws of this state
a petition is required or authorized as a

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part of the procedure applicable to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of this act by the county election officer or such other official as designated in the applicable statute." [Emphasis supplied.]

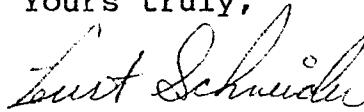
The question is raised whether the county election officer is authorized to determine only the sufficiency of individual signatures and the number thereof, or whether that officer is also empowered to determine that a petition is insufficient because it lacks other provisions and recitals required by law, such K.S.A. 1977 Supp. 25-2602. This provision was amended in 1966 to require that the petition set forth clearly the question which the petitioners seek to bring to an election, the taxing or political subdivision in which the election is sought to be held, the recital described supra, and a verification signed by the circulator of each set of documents in the petition. These are all mandatory requirements of any petition and, generally speaking, the courts have held that the lack of mandatory matter from a petition invalidates the document. See, e.g., State ex rel. Janasik v. Sarosy, 12 Ohio St.2d 5, 230 N.E.2d 347 (1967); State ex rel. Abrams v. Bachrach, 175 Ohio St. 257, 193 N.E.2d 517; Community Gas and Service Co. v. Walbaum, 404 P.2d 1014 (Okla. 1965).

The purpose of K.S.A. 25-3601 was to designate the county election officer as the official responsible for determining the sufficiency of petitions generally, except when otherwise specifically provided by law. It would be a strange construction of these provisions in art. 36, ch. 25, K.S.A., by which the county election officer was permitted, and indeed required, to certify the sufficiency of the signatures on a document which lacked even the legal requisite provisions of a petition. K.S.A. 1977 Supp. 25-3602 prescribes certain provisions and recitals which every document must have in order to be legally effective as a petition. The county election officer is authorized by K.S.A. 25-3602 to determine the sufficiency of signatures only on petitions falling within the scope of article 36, ch. 25, K.S.A. Thus, if the county election officer determines that a document which is offered for filing under any procedure to which K.S.A. 25-3601 is applicable lacks any of the provisions and recitals required by K.S.A. 1977 Supp. 25-3602, the document

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is legally insufficient to constitute a petition under this article,
and the county election officer has no duty to proceed to deter-
mine the sufficiency of the signatures thereon.

Yours truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj