



STATE OF KANSAS

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CURT T. SCHNEIDER
ATTORNEY GENERAL

September 13, 1978

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ATTORNEY GENERAL OPINION NO. 78- 290

Mr. David M. Mills
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Post Office Box 896
Arkansas City, Kansas 67005

Re: Elections--Petitions--Sufficiency

Synopsis: The sufficiency of a petition filed under K.S.A. 71-501 is to be determined by the county election officer, and not the clerk of the board of trustees of the community junior college with whom the petition is filed. So long as each petitioner personally executes his or her own signature, that signature is not invalid because some other person supplies the residence address and date of signing therefor. If it is shown that a circulator who has verified a petition document in fact signed the names of other persons on such petition document, the entire petition document may not be rejected, because other signatures thereon, as to which no showing of forgery or false signing has been made, may well be valid and entirely acceptable. All petition documents carried and verified by a single circulator may not be rejected merely because one or more signatures on one of the petition documents presented by that circulator are shown to have been false. Likewise, if it is shown that the circulator files petition documents and has verified all signatures thereon, but that certain of those petition documents were in fact left unattended in a public place, such a showing does not justify rejection of other petition documents verified by that same person as to which the signatures and verification thereon have not been impeached.

* * *

Dear Mr. Mills:

As counsel for the board of trustees of the Cowley County Community Junior College, you inquire concerning a petition which has been filed with the clerk of the board pursuant to K.S.A. 71-501.

You advise that on or about May 15, 1978, the board adopted a resolution pursuant to that statute, authorizing a five year special building fund levy. The resolution was published as required, and within 90 days following the last publication, the clerk of the board of trustees was presented with petitions protesting the levy and asking for an election on the question. The petitions include 81 separate petition documents, each bearing from 4 to 25 signatures, and the total number of signatures exceeds the number required by statute. However, three legal questions have arisen concerning these petitions, concerning which you request my opinion.

First, you inquire whether the clerk of the board of trustees or the county election officer is responsible for determining the sufficiency of the petition. K.S.A. 25-3601 states thus:

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

K.S.A. 71-501 provides that the protest petition authorized thereunder shall be filed with the clerk of the board of trustees. That section does not, however, designate that person as responsible for determining its sufficiency. The board clerk is designated only as the filing officer, as it were, who has no other responsibilities in connection with the petition. In my judgment, it is the county election officer who is responsible for determining the sufficiency of a protest petition filed under K.S.A. 71-501.

Secondly, you advise that on several of the petition documents which have been filed, it appears that in several instances, the street addresses, town designations and dates following several petitioners' signatures were written in by persons other than

Mr. David M. Mills
Page Three
September 13, 1978

the petitioners themselves. You inquire whether K.S.A. 1977 Supp. 25-3602(3) or any other applicable statute requires each person who signs his or her name to a petition to also write in his or her address and the date of signing, or whether the latter information may be written in by another person. The referenced statute requires that a petition contain "blank spaces for the signature, residence address and date of signing for each person signing such petition," all preceded by a recital stating thus:

"I have personally signed this petition;
I am a registered elector of the state of
Kansas and of _____, and my residence
address is correctly written after my name."

Each petitioner must have personally signed the petition. It is the signature of each petitioner which denotes his or her support for the position urged by the petition. The residence and date of signing are descriptive matter, often useful in assisting the county election officer to determine whether the signers are indeed the same persons as are registered to vote. The requirement that the petitioner have personally signed the petition is satisfied, in my judgment, if the petitioner does just that, personally executing his or her own signature. It is not material, in my judgment, to the sufficiency of the petition that the residence address and date of signing are executed by some other person.

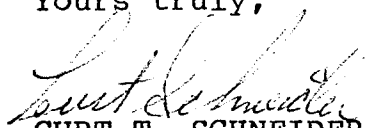
Lastly, you advise that the county election officer and the clerk of the board of trustees have determined that one person has signed two or more names as petitioners. Notwithstanding, each such petition document on which such dual signatures appear contains the verification required by K.S.A. 1977 Supp. 25-3602(c) of the circulator, that he or she has personally witnessed the signing of the petition by each person whose name appears thereon. You inquire, thus, whether, when it can be established that one person signed two or more names to a petition document, the entire petition document is tainted and therefore void because of the false verification affixed thereto, and whether all petition documents carried by that circulator may be disregarded as void for that same reason, i.e., that he or she has been shown to have made a false verification to another petition. In my judgment, a showing that the verification is indeed false as to one or more signatures appearing on a petition document does not justify rejection of all other signatures on that same petition document, as to which signatures the verification has not been impeached.

Mr. David M. Mills
Page Four
September 13, 1978

A showing that the verification is false as to certain signatures does not affect the validity of other signatures. A protest petition is the sole device afforded under K.S.A. 71-501 for the electorate to oppose the tax in question. There are, of course, a number of technical requirements which each petition must satisfy. However, the expression of popular views through the petition mechanism should not be thwarted on artificial means. Many signatures on a given petition document may well be valid, notwithstanding that certain others are not. Those persons whose signatures are unquestioned should not be penalized and deprived of their voice through the petition process merely because they by chance happened to sign a petition document to which the circulator improperly added signatures which are invalid. Likewise, in my judgment, a showing that a circulator has improperly or unlawfully affixed certain signatures to one petition document does not warrant rejection of every other petition document which has been carried by that circulator.

Lastly, you ask whether, when it is established that petition documents were left unattended in a restaurant or other public place in order for patrons to sign them if they wished, and such petition documents have been verified by a circulator falsely, all other petition documents which are verified by the circulator may be deemed tainted and void. For the reasons given above, in my judgment, such a showing does not warrant a wholesale rejection of every petition document carried by that circulator. Certainly, his or her credibility may be diminished, and there may be reason to question the validity of such other documents. However, to reject those other petition documents merely on the basis of suspicion and surmise, without an actual showing that particular signatures are indeed invalid, is to reject possibly entirely valid signatures merely on the basis of conjecture, and to frustrate impermissibly, in my judgment, the petition process.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj