



STATE OF KANSAS

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ATTORNEY GENERAL OPINION 84- 41

David Belling
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Paola, Kansas 66071

Re: Elections -- Sufficiency of Petitions --
Incomplete Notations of the Date of Signing

Synopsis: Incomplete notations of the date of signature on a petition do not constitute a defect or irregularity which would invalidate the entire petition or the individual signatures, if the incomplete notations of the date do not prevent the election officer from determining whether the petition was filed within the time limit established by the statute. Even if individual signatures are invalid, they do not necessarily operate to invalidate the entire petition if sufficient valid signatures remain to meet the statutorily required minimum. Cited herein: K.S.A. 19-204; 25-3601; 1983 Supp. 25-3602.

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Dear Mr. Belling:

As Miami County Attorney you have requested an Attorney General Opinion on the sufficiency of a petition recently filed in the office of the Miami county election officer.

The petition in question is governed by K.S.A. 19-204 and K.S.A. 25-3601 et seq. The petition asks that the number of commissioner districts in Miami County be increased from three to five

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and that the proposition be submitted to the voters at the next regular election. The form of the petition and its sufficiency is governed by K.S.A. 1983 Supp. 25-3602, which sets forth a number of detailed technical requirements for such petitions. That statute provides in relevant part:

"(b) Each petition shall, unless otherwise specifically required: . . . (3) contain the following recital above the spaces provided for signatures: 'I have personally signed this petition. I am a registered elector of the state of Kansas and of _____ (insert name of political or taxing subdivision) and my residence address is correctly written after my name.' The recital shall be followed by blank spaces for the signature, residence address and date of signing of each person signing the petition."

K.S.A. 1983 Supp. 25-3602(e) provides that any petition shall be null and void unless it is submitted to the county election officer within 90 days of the first signature on the petition. This provision relates to the timeliness of the entire petition and not to each individual petition document. All documents constituting a petition must be filed at one time, and any subsequent filing, even though it relates to such petition, cannot be regarded as part of the previously filed petition. See K.S.A. 1983 Supp. 25-3602(a).

Along with your inquiries relating to the statutory requirements noted above, you have submitted copies of two documents which are part of a petition which has circulated in Miami County. The first document you submit has eight signatures which show only the month and day on which the petitioner signed in the "date signed" blank. You ask whether the failure to include the year should invalidate the petition. A second document shows a signature in which the month and year of the signature are noted but the day of the month is either blank or illegible. You also inquire about the effect of this signature on the validity of the petition.

The opinions of this office have consistently viewed the requirements of K.S.A. 1983 Supp. 25-3602 as mandatory. See Attorney General Opinion Nos. 77-303; 78-40; 81-23; 82-230. Those opinions, however, have not addressed the specific issue presented by your inquiry. K.S.A. 1983 Supp. 25-3602 specifically provides that petitions must provide a blank space for the date

of a petitioner's signature. The purpose of requiring the date of signature is to enable the election officer or other responsible official to determine whether the petition has been submitted within the statutorily required 90 days from the first signature on the petition. While the failure to include a complete notation (month, day and year) of the date of a signature constitutes a defect, such a defect does not necessarily affect the validity of the entire petition.

The purpose of the requirements set out in K.S.A. 1983 Supp. 25-3602 is to insure that an issue has been fairly submitted to the voters. Thus the statute establishes a number of detailed requisites designed to prevent fraud and corruption in the petition process. For example, the statute requires that a petition contain a recital that each petitioner personally signed the document, that his or her residence address is correctly written and verification that each signature was witnessed by the person who circulated the petition. The documents submitted to this office contain the proper recital and verification statements. Past opinions of this office have consistently concluded that any substantial departure from the statutory form will render a petition invalid. See Opinions Nos. 81-230 and 82-230. At the same time, a petition should not be invalidated by unimportant irregularities or defects if it is in substantial compliance with statutory requisites. See Community Gas and Service Co. v. Walbaum, 404 P.2d 1014 (Okla., 1965); 26 Am. Jur.2d, Elections §189; 29 C.J.S. Elections §69.

In our opinion, incomplete notations of the date of signature like those on the documents submitted to this office do not constitute so substantial an irregularity as to invalidate the entire petition. This is true as long as the incomplete dates do not make it impossible for the election officer to determine that the petition was timely filed. The requirement that the date be noted on the petition is necessary to allow the election officer to determine the timeliness of the petition. If the election officer may ascertain from dated signatures appearing before and after the incomplete dates or from other information on the petition that the petition was timely filed, such omissions do not invalidate the entire petition.

This is not to say that the requirements of K.S.A. 1983 Supp. 25-3602 are to be taken lightly. As noted above, however, the documents submitted to this office comply in form with all the requisites of the statute. The defect lies in the notation of the date on fewer than 10 signatures. In Opinion No. 78-290, Attorney General Schneider concluded that an entire petition

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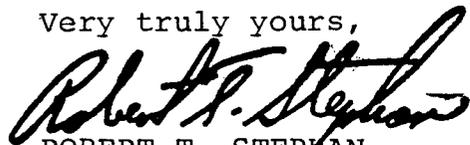
may not be rejected on the basis of certain improperly verified, and thus invalid, signatures. In discussing the sufficiency of a petition governed by K.S.A. 25-3602 the opinion concluded:

"A showing that the verification is false as to certain signatures does not affect the validity of other signatures. . . . 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 happen to sign a petition document to which the circulator improperly added signatures which are invalid."

Similarly, in the present situation, the questions concerning certain signatures should not be permitted to invalidate all the signatures on the petition. Thus a petition is sufficient if, after striking any invalid signatures from it, there are nevertheless enough valid signatures to satisfy the minimum number required by statute. 26 Am.Jur.2d, Elections §189. In our opinion, the incomplete notation of the date does not affect the validity of the signature, however, if any question remains about the signatures, the petition in question may well be valid without them.

We conclude accordingly that incomplete notations of the date of signature on the petition do not constitute a defect or irregularity which would invalidate an entire petition or the individual signatures, if the incomplete notations of the date do not prevent the election officer from determining whether the petition was filed with the time limit established by the statute. Even if the individual signatures are invalid, they do not necessarily operate to invalidate the entire petition if sufficient valid signatures remain to meet the statutory minimum.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General