



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 19, 1977

ATTORNEY GENERAL OPINION NO. 77-303

Mr. Phillip L. Harris
City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Elections--Petitions--Verification

Synopsis: The requirement of K.S.A. 1976 Supp. 25-3602(c) that the circulator of each petition verify, at the end of each set of documents carried by such person, that the circulator personally witnessed the signing of the petition by each person whose name appears thereon is mandatory, and any petition lacking the verification is legally insufficient to authorize the calling of an election therefor.

* * *

Dear Mr. Harris:

You inquire concerning the sufficiency of petitions which have been filed with the Johnson County election commissioner seeking a referendum election upon an ordinance which has been adopted by the governing body of the City of Overland Park enacting a one-half percent sales tax, pursuant to Article 12, § 5 of the Kansas Constitution and K.S.A. 12-137 and -138, as amended by 1977 Senate Bill 327, ch. 56, L. 1977. The petitions were filed within the sixty-day period provided by the latter statutes, which period expired September 6, 1977. By letter of that date, the Johnson County election commissioner advised that the number of signatures on the petitions exceeded those required by statute.

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However, a further question has arisen concerning the legal sufficiency of the petitions. K.S.A. 25-3601 *et seq.*, enacted in 1970, is an act dealing with the sufficiency of petitions generally. It applies to the petition in question under K.S.A. 25-3601, which commences 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."

Nothing in K.S.A. 12-137 and -138 specifically provides otherwise. Section 2 of the 1970 act, K.S.A. 25-3602, was amended by the 1976 legislature, see ch. 190, § 1, L. 1976, to add the following requirement:

"(c) Any such petition shall contain, at the end of each set of documents carried by each circulator, a verification, signed by the circulator, to the effect that such circulator personally witnessed the signing of the petition by each person whose name appears thereon."

Concerning such requirements, the writer at 5 *McQuillen, Municipal Corporations* § 16.63 at p. 238 states thus:

"Without verification or a sufficient authentication the petition is legally insufficient. It sometimes is required that it be made to appear by affidavit or verification that the signers of the petition signed it with knowledge of its contents, and such a requirement is mandatory." [Footnotes omitted.]

In *State ex rel. Janasik v. Sarosy*, 12 Ohio St. 2d 5, 230 N.E.2d 347 (1967), the court granted a writ of prohibition against a

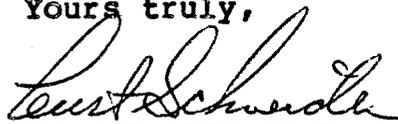
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board of elections, preventing the submission of a referendum question to the voters, on the ground that the petition lacked the affidavit of the circulator attesting to the authenticity of the signatures. The court held the statutory requirement must be followed strictly, quoting from its previous decision in an analogous case, *State ex rel. Abrams v. Bachrach*, 175 Ohio St. 257 at 261, 193 N.E.2d 517 at 520 thus:

"Thus, sound public policy dictates that the section requiring the affidavit of a circulator of an initiative petition to contain a statement that the signers thereof 'signed such petition with knowledge of the contents thereof' must be strictly complied with, and that the failure to include such statement will invalidate the petition."

The requirement of verification by the circulator is clearly mandatory, and is not merely a formality which may be disregarded at will. In the language of K.S.A. 1976 Supp. 25-3602(c), and the clear weight of authority, the verification is mandatory, and a petition lacking the verification of signatures is legally insufficient to authorize the city governing body to call an election under K.S.A. 12-138, as amended by ch. 56, § 2, L. 1977. Lacking a sufficient petition, the governing body has no authority under K.S.A. 12-138 as amended to call a referendum election upon the sales tax ordinance, for the period of time during which the governing body might call an election thereon without a petition has long since passed.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj