



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

September 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 309

Mr. Richard C. Dearth
City Attorney
Post Office Box 1037
Parsons, Kansas 67357

Re: Elections--Recall--Petitions

Synopsis: A petition to recall a local officer must contain signatures equal in number or not less than forty percent of the votes cast for the office to which the officer sought to be recalled was elected in the last general election at which such officer was elected. Where it is impossible to determine the total number of votes cast for a particular office, due to the method of election whereby the persons elected are those receiving the highest and next highest number of votes, the petition should contain signatures equal in number to forty percent of the sum equal to the total number of votes cast divided by the number of positions to be filled.

* * *

Dear Mr. Dearth:

You inquire concerning the number of signatures which are required in order to satisfy the requirement of K.S.A. 1976 Supp. 25-4325, regarding petitions to recall city commissioners of the City of Parsons.

You advise that a committee has been formed, and has announced its intention to file petitions to recall all three city commissioners of the city. The city operates under the commission-city manager form of government. Two commissioners are elected every two years. The candidate who receives the greatest number of votes is elected to a four-year term, and the candidate receiving the next greatest number of votes is elected to a two-year term.

Mr. Richard C. Dearth
Page Two
September 26, 1977

In 1975, Robert Bartelli was elected to a four-year term, and Charles W. Brown to a two-year term. There was a total of four candidates for the two positions to be filled, and each voter was instructed to vote for two of the four. That year, 1,813 persons voted, and 3,379 votes were cast. Bartelli received 1,262 votes, and Brown, 1,130 votes.

In 1977, Charles Brown was reelected, but to a four-year term, and Leon Ginn was reelected to a two-year term. Again, you indicate, there was a total of four candidates for the two positions to be filled, and 1,823 persons voted, casting 3,262 votes, 1,014 for Brown and 1,007 for Ginn.

K.S.A. 1976 Supp. 25-4325 requires that the recall committee obtain signatures of registered electors

"equal in number to not less than forty percent (40%) of the votes cast for the office of the local officer sought to be recalled in the last general election at which a person was elected to such office."

You advise that the county election officer has determined that in the instance of a petition to recall Mr. Brown, forty percent of the number of votes received by Mr. Brown is sufficient.

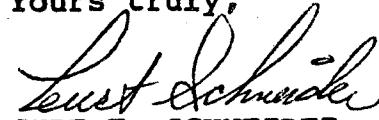
This provision requires that the petition contain not less than "forty percent (40%) of the votes cast for the office of the local officer," and not merely forty percent of the votes cast for the officer sought to be recalled. In the instance where, for example, the names of four candidates appear on the ballot for a single office, and voters are instructed to vote for one candidate the total number of votes cast for the office is the sum of the votes cast for each candidate therefor. Where, as here the names of four candidates appear on the ballot, and voters are instructed to vote for two candidates, one for each of the two positions to be filled, it is obviously impossible to determine precisely how many votes were cast for either of the two offices. The number of voters and the number of votes cast are readily determinable, as is the total received by each individual candidate. Here, for example, 1,813 persons voted in the 1975 election, and 3,379 votes were cast. Obviously, all voters did not vote for two candidates, and there appears to be no precise way in which a portion of the 3,379 votes cast can be determined to be attributable to one or the other of the two positions to be filled.

Mr. Richard C. Dearth
Page Three
September 26, 1977

Impossibility of determining the exact number required, however, should not preclude the availability of the recall procedure. It is necessary, in my judgment, to apply K.S.A. 1976 Supp. 25-4325 in such a fashion as to require a number of signatures in this instance which will most nearly correspond to the correct but indeterminable figure. Clearly, in both 1975 and 1977, the voters did not follow the ballot instructions fully. Not all voters cast votes for two candidates; i.e., not all voters cast votes for the offices to be filled. In 1975, if all 1,823 voters had cast two votes, a total of 3,646 votes would have been counted. Instead, only 3,262 votes were cast, 384 fewer than would have been cast had the instructions been followed completely.

At the same time, the total number of votes cast, 3,379, were not all cast for the office of any one commissioner. The sum is the aggregate of all votes cast, for both positions. Assuming that one half of this total was cast for each office, 1,689.5 votes could be attributed to each separate office. The assumption is demonstrably not correct, of course, for some persons apparently voted for only one candidate. However, lacking a more precise method of determining the number of votes cast for the office under these circumstances, it is my judgment the total number of votes cast should be divided by the number of offices to be filled, in this case, two, and that a petition should bear signatures equal in number to not less than forty percent of that number. It will not be arithmetically precise, but precision in this case is impossible, and only substantial and approximate compliance is possible. The method of determining the required number of signatures above represents substantial compliance, in my opinion.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj