

ELECTIONS: Sufficiency of petition for special election to establish Public County Health Center determined from petition as amended, but supplemental petitions not permitted.

April 27, 1948

Mr. Emmett L. Bartram
Prosecuting Attorney
Nodaway County
Maryville, Missouri



Dear Sir:

We have received your request for an opinion of this Department, which request is as follows:

"The County Court of Nodaway County has written me a letter asking my opinion upon a certain question and as this question will probably be a state wide question, I have told them I would prefer to write your department for an opinion in regard to the same. They have stated they would appreciate your opinion. The letter is as follows:

"The County Court of Nodaway County, Missouri, has asked your written opinion on the sufficiency of petitions filed in the County Court of Nodaway County under Section 1, Laws of 1945, page 969.

"On the 7th day of February, 1948, thirty-six petitions were filed with the Clerk of the County Court bearing a total of approximately eleven hundred names. Thereafter on the 17th day of February, 1948, the Court in regular session considered said petitions and on said date, made the following entry of record:

"A group of Petitions having been presented to the County Court of Nodaway County, Missouri, on February 7, 1948, requesting that a Sepcial Election be called, or at the General Election, to vote on a mill levy on a valuation of \$39,760,000.00 which would raise some \$795,200.00 over a twenty year period for the purpose of setting up a County Health Unit, the County Court finds many names which we believe were copied on said Petitions by some person or persons, since so many names appear not to be the genuine original signature of the person whose name appears on said Petitions.

"Unless positive proof is furnished that these signatures are the original, having not been copied, and in full compliance with laws of the State of Missouri, the County Court of Nodaway County shall be compelled to throw out said Petitions.

M. S. Carmichael, Presiding Judge
Everett A. Gray, Associate Judge
C. H. Farnan, Associate Judge."

"Thereafter, a committee representing themselves to be acting officially for the petitioners, appeared and obtained the same thirty-six petitions; agreed that certain names thereon were not genuine signatures; eliminated certain names, by marking through them, from the petitions; obtained additional signatures and finally on the 20th day of March, 1948, refiled in the County Court of Nodaway County the same original petitions with corrections and amendments heretofore noted and two additional petitions.

"Will you please furnish this Court an opinion stating whether these petitions shall be considered the same as if all of them had been originally filed and the same as if no action had ever been taken thereon."

Respectfully submitted,

Chester R. Lyle,
Clerk of the County Court,
Nodaway County, Mo."

"Thanking you in advance of your consideration and opinion in this matter, I am

Yours very truly,

Emmett L. Bartram
Maryville, Mo."

The statute under which the election is proposed to be held reads as follows:

Laws Missouri, 1945, Sec. 1, page 969:

"Any county or group of counties, subject to provisions of the Constitution of the State of Missouri, may establish, maintain

and manage and operate a public county health center in the following manner: Whenever the county court or courts shall be presented with a petition signed by ten per cent or more of the qualified voters in the county or counties affected as determined by the number of votes cast for governor at the preceding general election, asking that an annual tax be levied for the establishment, building, maintaining of a public health center and the maintenance of such personnel as may be needed for the operation of such center and shall specify in their petition, the maximum amount of money proposed for said purposes, such county court or courts shall submit the question to the qualified voters of the county or counties at the next general election to be held in the county or counties or at a special election called for that purpose, first giving ninety days' notice thereof in one or more newspapers published in the county or counties, if any be so published, and if not so published, by posting written or printed notices in each township of the county or counties, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of said county or counties, which tax shall not exceed one (1) mill on the dollar, for a period of time not exceeding twenty years, and be for the issue of county bonds to provide funds for the purchase of a site or sites, the erection thereon of a public health center and for the support of the same including necessary personnel; which said election shall be held at the usual voting places in the county or counties for voting upon county officers, and shall be canvassed in the same manner as the vote for county officers is canvassed."

As can be seen, this section makes no provision for an initial determination of the question of the sufficiency of the number and genuineness of the signatures and for subsequent amendments to make up any deficiency. Such provisions are found in some statutes providing for elections on the petition of a specified number of voters. See Secs. 6567, 6632 and 7075, R. S. Mo. 1939, providing for initial examination of petitions for election by city clerk in certain municipal elections.

In view of the absence of such a provision in the statute in question, the county court would have been acting properly had it passed upon the petitions as originally presented. However, since they permitted the petitions to be withdrawn and amended, we are of the opinion that they now must pass upon them as they presently stand and not consider the petitions as they appeared when originally filed.

As a general rule, a petition, such as that involved here, is not regarded as completed until the body to whom it is addressed has taken final action thereon. A signer may withdraw his signature at any time before such final action. *Sedalia ex rel. Gilsonite Construction Co. v. Montgomery*, 227 Mo. 1, 127 S.W. 50, *Dagley v. McIndoe*, 190 Mo. App. 166, 176 S.W. 243. In this case the court had taken no final action, but had merely stated that the petition would be refused, unless proof was furnished that the signatures were genuine. In view of this fact, and the fact that the court permitted the withdrawal of the petition and its amendment, its sufficiency must be determined on the basis of the present status thereof. In addition, if, as you state, there have been interlineations in amendments, they would undoubtedly be great difficulty in determining just how the petition stood when it was originally filed, and determination on that basis would probably be impossible.

As for the two additional petitions which were filed, there is no provision made for the filing of such additional petitions in the statute in question.

The question of the admissibility of supplemental petitions has never been presented to the court in this state, but it was held by the Supreme Court of Nebraska, in the case of *Ayers v. Moan*, 34 Neb. 210, 51 N.W. 830, that supplemental petitions should not be allowed in a situation similar to this. In that case the court said:

"The law does not contemplate a supplemental petition in the procedure. In courts a supplemental petition is permitted to include certain matters which have arisen since the filing of the original petition, as in an action to foreclose a mortgage for one or more installments then due. If other installments should become due before a decree is rendered they may be set up by supplemental petition. If, however, the installments set forth were due when the action was brought, a supplemental petition is not available. So in this case the petitioners must present their full petition at the outset. If, after a thorough examination

of the petition it is found to contain the necessary number of signatures of resident electors, it will be the duty of the board to call an election. If it does not contain such number, then it is the duty of such board to refuse to call the same."
(51 N.W. 1.c. 833.)

These principles are, we believe, applicable in this situation and the supplemental petitions should not be considered.

CONCLUSION

THEREFORE, it is the opinion of this department that the sufficiency of a petition for a special election for the establishment of a public county health center must be determined when the county court has permitted the withdrawal of such petition for amendments of signatures by the petition as it stands following such amendments, but supplemental petitions subsequently filed should not be considered.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General