November 26, 2001

OPINION NO. 2001-042

The Honorable J. Kenneth Blackwell
Secretary of State
180 East Broad Street, 16th floor
Columbus, Ohio 43215

Dear Secretary of State Blackwell:

You have requested an opinion concerning the signature requirements applicable to a state-wide referendum petition. You specifically ask:

1. If, after the county boards of elections have certified to my office the validity and sufficiency of the part-petitions, it is determined that the referendum petition contains valid signatures from more than 6% of the electors of the state but from fewer than 3% of the electors from each of 44 counties, are the petitioners entitled to an extra ten days after that determination is made to supplement the number of signatures in order to obtain the 3% required from 44 counties?

2. If, after the county boards of elections have certified to my office the validity and sufficiency of the part-petitions, it is determined that the referendum petition contains valid signatures from fewer than 6% of the electors of the state and also from fewer than 3% from each of 44 counties, are the petitioners entitled to an extra ten days after that determination to supplement the number of signatures to obtain both the 3% from 44 counties and the 6% statewide?

In order to answer your questions, we must begin with a brief discussion of the referendum process, as governed by the Ohio Constitution and the facilitating provisions of R.C. Chapter 3519. Article II, § 1 of the Ohio Constitution vests the legislative power of the state in

the General Assembly, but also reserves to the people of the State of Ohio the power to adopt and reject laws through the processes of initiative and referendum.[1]

Section 1c of Article II of the Ohio Constitution provides for the exercise of the power of referendum by the filing with the Secretary of State, within the time specified, a petition signed by six percent of the electors of the state. Once such a referendum petition has been filed with the Secretary of State:

> the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same.

Ohio Const. art. II, § 1c.[2]

In addition to the requirements established by Article II, § 1c, the state-wide referendum process is also subject to the provisions of Ohio Const. art. II, § 1g, part of which requires that with respect to each such petition, "it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county." *See generally Shryock v. City of Zanesville*, 92 Ohio St. 375, 380, 110 N.E. 937, 938 (1915) (all sections of Ohio Const. art. II, § 1 through § 1g, with the exception of § 1f, apply to initiative and referendum as a state-wide matter). As further

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[1] Ohio Const. art. II, § 1 states, in pertinent part: "The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided." *See generally State ex rel. Davis v. Hildebrant*, 241 U.S. 565, 566 (1916) ("[b]y an amendment to the Constitution of Ohio, adopted September 3d, 1912, the legislative power was expressly declared to be vested not only in the senate and house of representatives of the state, constituting the general assembly, but in the people, in whom a right was reserved by way of referendum to approve or disapprove by popular vote any law enacted by the general assembly").

[2] Ohio Const. art. II, § 1d states, in pertinent part:

> Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.... The laws mentioned in this section shall not be subject to the referendum.

Thus, pursuant to Article II, § 1d of the Ohio Constitution, certain laws are not subject to referendum.

provided in Article II, § 1g, "[t]he basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor."[3]

Thus, pursuant to Article II, §§ 1c and 1g of the Ohio Constitution, a referendum petition must contain the signatures of six percent of the electors of the state, including the signatures of at least three percent of the electors from each of forty-four or more counties within the state. *See State ex rel. Patton v. Myers*, 127 Ohio St. 95, 186 N.E. 872 (1933) (finding a referendum petition to be subject to both the signature requirements contained in art. II, § 1g and the prohibition in art. II, § 1c against including more than one enactment in a single petition). *See generally Toledo Edison Co. v. City of Bryan*, 90 Ohio St. 3d 288, 292, 737 N.E.2d 529, 532 (2000) ("[w]here provisions of the Constitution address the same subject matter, they must be read *in pari materia* and harmonized if possible"). Article II § 1g further provides for the allowance of additional time in which additional signatures to such a petition may be filed.

Article II, § 1g finally provides that: "The foregoing provisions of this section shall be self-executing,[4] except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved," (footnote added). Thus, the General Assembly has enacted R.C. Chapter 3519 for the purpose of facilitating the processes of initiative and referendum. *See generally State ex rel. Hodges v. Taft*, 64 Ohio St. 3d 1, 591 N.E.2d 1186 (1992) (discussing the authority of the General Assembly under Ohio Const. art. II, § 1g, to enact various provisions within R.C. Chapter 3519).

Within R.C. Chapter 3519, the General Assembly has addressed various matters related to referendum and initiative petitions, such as the form of petitions, R.C. 3519.05, verification of petitions, R.C. 3519.06, and the qualification and duties of signers, R.C. 3519.10. R.C. Chapter 3519 also imposes specific duties upon the Secretary of State, the county boards of elections, and

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[3] Ohio Const. art. II, § 1g also contains numerous details concerning, *inter alia*, the content, signers, and circulators of initiative, supplementary, and referendum petitions. For example, pursuant to Ohio Const. art. II, § 1g, a petition may be presented in separate parts, commonly referred to as "part-petitions," *see generally* 5 Ohio Constitutional Revision Commission 1970-1977, 2459, each of which must contain "a full and correct copy of the title, and text of the law, section or item thereof sought to be referred," Ohio Const. art. II, § 1g.

[4] *See generally In re Protest*, 49 Ohio St. 3d 102, 104, 551 N.E.2d 150, 152 (1990) ("Section 1g, Article II of the Ohio Constitution, by its own language, is a self-executing provision. A clause in a constitution is self-executing if it contains more than a mere framework, and specifically provides for carrying into immediate effect the enjoyment of the rights established therein without legislative action. However, laws may be passed to facilitate its operation, as long as they do not restrict or limit the provision or the powers therein reserved" (various citations and footnote omitted)).

the courts with respect to initiative and referendum petitions. For example, R.C. 3519.14 prohibits the Secretary of State from receiving for filing any petition "which does not purport to contain at least the minimum number of signatures required for the submission of the amendment, proposed law, or law to be submitted under the initiative or referendum power." In addition, pursuant to R.C. 3519.15, "[w]henever any initiative or referendum petition has been filed with the secretary of state, he shall forthwith separate the part-petitions by counties and transmit such part-petitions to the boards of elections in the respective counties."

R.C. 3519.15 describes the duties of the county boards of elections, which are required to determine whether the part-petitions are properly verified, and "whether the names on each part-petition are on the registration lists of such county, or whether the persons whose names appear on each part-petition are eligible to vote in such county, and to determine any repetition or duplication of signatures, the number of illegal signatures, and the omission of any necessary details required by law." Thereafter, "[t]he boards shall make note opposite such signatures and submit a report to the secretary of state indicating the sufficiency or insufficiency of such signatures and indicating whether or not each part-petition is properly verified, eliminating, for the purpose of such report, all signatures on any part-petition that are not properly verified." R.C. 3519.15. As further provided in R.C. 3519.15, "[i]n determining the sufficiency of such a petition, only the signatures of those persons shall be counted who are electors at the time the boards examine the petition."

In the event that anyone questions a board of elections' findings under R.C. 3519.15, R.C. 3519.16 provides a mechanism by which any elector may challenge a board of elections' findings as to the "sufficiency or insufficiency of the signatures and of the verification thereof." Pursuant to R.C. 3519.16, such challenges are to be resolved by the court of common pleas. Thereafter, the board of elections must return to the Secretary of State "the properly verified part-petitions, together with the report of the board, ... not less than fifty days before the election." R.C. 3519.16.

Once the boards of elections have returned to the Secretary of State the properly verified part-petitions and their reports,

> [t]he secretary of state shall notify the chairman of the committee in charge of the circulation as to the sufficiency or insufficiency of the petition and the extent of the insufficiency. If the petition is found insufficient *because of an insufficient number of valid signatures*, such committee shall be allowed ten additional days after such notification by the secretary of state for the filing of additional signatures to such petition.

R.C. 3519.16 (emphasis added).

Having briefly reviewed the constitutional and statutory provisions concerning the referendum process, let us now turn to your first question, which asks:

> If, after the county boards of elections have certified to my office the validity and sufficiency of the part-petitions, it is determined that the referendum petition contains valid signatures from more than 6% of the electors of the state but from fewer than 3% of the electors from each of 44 counties, are the petitioners entitled to an extra ten days after that determination is made to supplement the number of signatures in order to obtain the 3% required from 44 counties?

In answering this question, we begin by noting that Ohio Const. art. II, § 1c requires a referendum petition to contain the signatures of six percent of the electors of the state.[5] It is Ohio Const. art. II, § 1g, however, that requires a referendum petition to include signatures of at least three percent of the electors from each of no less than forty-four counties. The constitutional entitlement to receive additional time to collect the number of signatures required for such a petition is also contained in Article II, § 1g, which states, in pertinent part: "The petition *and* signatures upon such petitions shall be presumed to be in all respects sufficient, unless not later than forty days before the election, *it* shall be otherwise proved and *in such event* ten additional days shall be allowed for the filing of additional signatures to such petition," (emphasis added). *See also* R.C. 3519.16 (stating, in part, "[i]f the petition is found insufficient *because of an insufficient number of valid signatures*, such committee shall be allowed ten additional days after such notification by the secretary of state for the filing of additional signatures to such petition" (emphasis added)).[6]

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[5] *Cf.* Ohio Const. art. II, § 1b (fixing at three percent the number of signatures required for an initiative petition).

[6] Concern has been expressed about the effect of 1950 Op. Att'y Gen. No. 1419, p. 67, upon the analysis set forth in this opinion. 1950 Op. Att'y Gen. No. 1419, p. 67, concluded in paragraph three of its syllabus that if a defect in an initiative petition resulted in a deficiency of signatures for reasons other than the number of valid signatures (such as for the failure to verify the part-petition containing the signatures), there was no right to an additional ten days to secure additional signatures. The opinion relied upon the language of G.C. 4785-179 (now R.C. 3519.16), which allowed the additional ten days only if the petition were found insufficient because of an insufficient number of valid signatures. Although the 1950 opinion quoted Ohio Const. art. II, § 1g, it did not discuss the possibility that the Constitution granted a right to an additional ten days in circumstances that were not covered by the statute. The validity of the conclusion in paragraph three of the syllabus of the 1950 opinion is subject to serious question for this reason. *See, e.g.*, 5 Ohio Constitutional Revision Commission 1970-1977, 2467 ("[t]his ruling is of doubtful constitutionality because the constitutional language itself appears to place a defect in the petition and a defect in a signature on the same level—both are presumed sufficient unless otherwise proved and 'in such event ten additional days shall be allowed for the filing of additional signatures to such petition'"). Accordingly, we decline to follow 1950 Op. Att'y Gen. No. 1419, p. 67 (syllabus, paragraph three) on this point. We conclude that Ohio Const. art. II, §

In determining the meaning of a constitutional provision, we must start with the principle that, "[i]n construing a constitution we apply the same general rules that we do in statutes, save and except that the terms of a constitution must of necessity be of a more general and omnibus character, and, therefore, in order that the grants of power under the constitution shall be workable, such grants should be favorably and liberally construed so as to effect the public welfare sought by the constitutional grant." *County of Miami v. City of Dayton*, 92 Ohio St. 215, 223, 110 N.E. 726, 729 (1915). Moreover, as stated in *Buckeye Community Hope Foundation v. City of Cuyahoga Falls*, 82 Ohio St. 3d 539, 542, 697 N.E.2d 181, 184 (1998), "[w]ords used in the Constitution are construed according to their usual or customary meaning." Specifically concerning the construction of referendum provisions, the court in *State ex rel. Hodges v. Taft*, 64 Ohio St. 3d at 5, 591 N.E.2d at 1189, stated, "[t]he powers of initiative and referendum should be liberally construed to effectuate the rights reserved."

The circumstances in which a petitioner is entitled to receive added time to gather additional signatures is described within a single sentence contained in Article II, § 1g of the Ohio Constitution, as set forth above. The first clause of this sentence creates the presumption that both the petition and the signatures thereon are sufficient in all respects. This presumption is limited, however, by the succeeding clause that provides for overcoming such presumption by proof otherwise made more than forty days before the election at which the petition will be submitted to the voters. The final clause of the sentence describes the circumstances in which the petitioners are granted an additional ten days to obtain sufficient signatures as "in such event." The "event" to which the final clause of the sentence refers is the event described in the second clause of the sentence, *i.e.*, proof made more than forty days prior to the election that the petition and signatures are not in all respects sufficient. *See State ex rel. Schwartz v. Brown*, 32 Ohio St. 2d 4, 10, 288 N.E.2d 821, 825-26 (1972) ("we think it clear that the 40-day provision is not limited to signatory insufficiency but extends to any defect of the petition of such character as would render it insufficient to require submission to a vote of the electorate as provided by Section 1a, Article II"). *See generally Markus v. Trumbull County Bd. of Elections*, 22 Ohio St. 2d 197, 200, 259 N.E.2d 501, 503 (1970) ("[t]he requirements for referendum petitions provide the mechanics for securing the ultimate and important goal of the legitimate obtaining of a voted expression of the will of the electorate. Courts should strive to nurture and preserve the integrity of the right of referendum").

The issue thus presented by your first question is whether a determination that the signatures on a referendum petition are insufficient because the petition lacks the required number of signatures from a sufficient number of counties, is an "event" within the meaning of Ohio Const. art. II, § 1g that entitles the petitioners to an additional ten days to gather more signatures. Because Ohio Const. art. II, § 1g grants additional time to gather signatures when it is proved, more than forty days before the election, that there is any type of insufficiency in

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1g allows an additional ten days to secure additional signatures whenever the petition or signatures are insufficient in any respect, and that R.C. 3519.16 does not limit or restrict that allowance of additional time.

either the petition itself or the signatures thereon, the proof of an insufficiency in the required number of signatures such as you describe constitutes an event under Article II, § 1g, the occurrence of which entitles the petitioners to an additional ten days for gathering additional signatures.

Your second question asks whether a petitioner is entitled to an additional ten days to obtain additional signatures in the event that it is determined that a petition lacks sufficient signatures to meet both the six percent requirement of Ohio Const. art. II, § 1c and the three percent requirement within forty-four counties set forth in Ohio Const. art. II, § 1g. Again, as stated in the answer to your first question, Ohio Const. art. II, § 1g grants an additional ten days for the gathering of signatures for a referendum petition if either the petition itself or the signatures thereon are found to be in any way insufficient. A finding of an insufficiency in the number of signatures required by either Article II, § 1c or Article II, § 1g constitutes an insufficiency for which Ohio Const. art. II, § 1g grants petitioner an additional ten days to gather additional signatures.

Based upon the foregoing, it is my opinion, and you are hereby advised that, pursuant to Article II, § 1g of the Ohio Constitution, in the event that a referendum petition or the signatures thereon have been proven, more than forty days prior to the election on which such referendum would be submitted to the voters, to be insufficient in any way, including failure to include a sufficient number of signatures as required by Ohio Const. art. II, § 1c or Ohio Const. art. II, § 1g, the petitioners are entitled to an additional ten days in which to gather additional signatures. (1950 Op. Att'y Gen. No. 1419, p. 67 (syllabus, paragraph three), questioned.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

November 26, 2001

The Honorable J. Kenneth Blackwell
Secretary of State
180 East Broad Street, 16th floor
Columbus, Ohio 43215

SYLLABUS: 2001-042

Pursuant to Article II, § 1g of the Ohio Constitution, in the event that a referendum petition or the signatures thereon have been proven, more than forty days prior to the election on which such referendum would be submitted to the voters, to be insufficient in any way, including failure to include a sufficient number of signatures as required by Ohio Const. art. II, § 1c or Ohio Const. art. II, § 1g, the petitioners are entitled to an additional ten days in which to gather additional signatures. (1950 Op. Att'y Gen. No. 1419, p. 67 (syllabus, paragraph three), questioned.)