

Dear Mr. James:

You have requested my opinion on the following question:

Does the provision of Article V, Section 1 of the Montana State Constitution, pertaining to the percentage of legal voters who must sign petitions for submission of any measure to the voters at a general election, mean eight percent of the number of voters who voted at the last general election for governor?

Article V, Section 1 of the Constitution of the State of Montana, which provides for initiative and referendum, provides that eight per cent of the legal voters of the state shall be required to propose any measure by petition, and that, in this number must be included eight per cent of the legal voters in each of two fifths of the counties of the state.

Legal voters are those who have the qualifications enumerated in our election laws, and are registered. This was recognized in the case of *State ex rel. Gleason vs. Stewart*, 57 Mont. 397, where it was said:

"In view of the fact that, though one who possesses the qualifications of citizenship, age, residence, etc., is in a general sense an elector, and is not entitled to vote unless he has been registered. A citizen who is not registered is not a legal voter. If he is registered, he is a legal voter, and, by the terms of the amendment, is qualified to sign an initiative or referendum petition."

However, the above quotation, while controlling on the question of qualifications of legal voters, has no bearing on the number of legal voters which is to be used as a total in computing the necessary eight per cent. It merely makes clear that the number, however arrived at, must be made up of registered voters. The number of registered voters varies from day to day, as electors die, or leave the state, or come of age and register for the first time. The Constitution provides a solution to this difficulty. The number of voters upon which the eight per cent is to be figured is the number of votes cast for governor at the last preceding general election. Article V, Section 1, says in part:

Opinion No. 99

Initiative—Qualification of Voters to Sign Initiative Petition—Percentage of Legal Voters Required as Signers of Initiative Petition.

Held: 1. That "eight per cent of the legal voters of the state "as used in Article V, Section 1, of the Montana Constitution, pertaining to petitions for initiative, means eight per cent of the number of votes cast for governor at the regular election last preceding the filing of the petition for initiative.

2. That "eight per cent of the legal voters in such county" as used in Article V, Section 1, of the Montana Constitution, pertaining to petitions for initiative, means eight per cent of the number of votes cast for governor in that county at the regular election last preceding the filing of the petition for initiative.

June 27th, 1952.

Mr. Ted James
County Attorney
Cascade County
Great Falls, Montana

"The whole number of votes cast for governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state."

This provision has dictated the correct practice and the one which has always been followed.

It is therefore my opinion that the phrases "eight per cent of the legal voters of the state" and "eight per cent of the legal voters of such county", as used in Article V, Section 1, Montana State Constitution, mean eight per cent of the number of votes cast at the last preceding general election, for the office of governor.

Very truly yours,
ARNOLD H. OLSEN
Attorney General