

VOLUME NO. 35**Opinion No. 80**

CONSTITUTION — CONSTITUTIONAL AMENDMENT — Initiative, house districts, qualified signers, percentage of; CONSTITUTION — CONSTITUTIONAL AMENDMENT — Legislative districts, house districts, same as preceding gubernatorial election; INITIATIVES — CONSTITUTIONAL AMENDMENT — Petition, qualified signers, percentage of; INITIATIVES — CONSTITUTIONAL AMENDMENT — Petition, qualified signers, residence of, precinct and representative district, supplied by another; INITIATIVES — CONSTITUTIONAL AMENDMENT — Filing, prior to election, with secretary of state. Article V, Section 14, Article XIV, Sections 9 and 10, Constitution of Montana, 1972; sections 37-202, 37-203 and 49-123, R.C.M. 1947.

HELD: 1. A petition for a proposed constitutional amendment by initiative must be signed by ten percent (10%) of the qualified electors of the state, and that number shall include at least ten percent (10%) of the qualified electors in each of two-fifths of the house districts throughout the state, pursuant to Article XIV, Section 9, Constitution of Montana, 1972.

2. Legislative districts referred to in Article XIV, Section 9, Constitution of Montana, 1972, dealing with amendment of the constitution by initiative, are the same districts which

existed at the time of the preceding general gubernatorial election.

3. Initiative petitions for a constitutional amendment must be filed with the secretary of state on or before one hundred twenty (120) days prior to the election at which they are to be voted upon by the people, pursuant to section 37-203, R.C.M. 1947.

4. A qualified elector may sign an initiative petition for a constitutional amendment and supply his residential address, while allowing someone else whom he has authorized and directed to fill in the proper precinct and representative district number on the petition.

May 1, 1974

Senator Jim Moore
Two Dot,
Montana 59085

Dear Senator Moore:

You have requested my opinion concerning two questions of constitutional issues which may be phrased as follows:

1. Must a petition for a proposed constitutional amendment by initiative be signed by ten percent (10%) of the qualified electors in each of two-fifths of the house districts or two-fifths of the senate districts pursuant to Article XIV, Section 9, Constitution of Montana, 1972?
2. Are the legislative districts referred to in Article XIV, Section 9, Constitution of Montana, 1972, the same as existed prior to the adoption of the new constitution, or are they the new districts as drawn up by the reapportionment commission pursuant to Article V, Section 14, Constitution of Montana, 1972?

The Constitution of Montana, Article XIV, Section 9, 1972, states in pertinent part:

- (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include **at least ten percent of the qualified electors in each of two-fifths of the legislative districts.** (Emphasis supplied)

Article XIV, section 9, supra, does not specify whether the "legislative districts" in question are the one hundred (100) house or fifty (50) senate districts throughout the state.

However, the Constitution of Montana, Article V, Section 14, 1972, provides in pertinent part:

The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of **two adjoining house districts**, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

The thrust of Article V, Section 14, *supra*, appears to be that house districts are the basic "legislative districts" of the state for the "state shall be divided into as many districts as there are members of the house," and senate districts "shall be composed of two adjoining house districts ..."

Your second question asks whether the legislative districts referred to in Article XIV, Section 9, *supra*, are the former twenty-three (23) state districts which existed prior to the new constitution and the reapportionment commission's adoption of a redistricting and reapportioning plan, or are the one hundred (100) new state districts formed by the reapportionment commission pursuant to Article V, Section 14, Constitution of Montana, 1972.

Article XIV, Section 9, *supra*, states that petitions for a proposed constitutional amendment by initiative must be "signed by at least ten percent of the qualified electors of the state." That ten percent must include "at least ten percent of the qualified electors in each of two-fifths of the legislative districts".

It may appear from the discussion of your first question, *supra*, that the ten percent of the qualified electors in each of two-fifths of the legislative districts should be computed from the one hundred (100) new legislative districts as formed by the reapportionment commission. Article XIV, Section 10, Constitution of Montana, 1972, however, states that the number of qualified electors required for the filing of any petition provided for in the "Constitutional Revision" article of the new constitution must be based upon the number of votes cast for governor in the preceding general election. In this instance the number of "qualified electors in each of two-fifths of the legislative district" must be based upon the total number of votes cast for governor in 1972. Article XIV, Section 10, states:

The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election."

On the other hand, Article V, Section 14, Constitution of Montana, 1972, provides that all legislative districts shall be as nearly equal in population as is practical. Legislative districts, therefore, are apportioned according to **population**, not according to the number of actual **voters** within the district at the preceding general election.

It is practically impossible to mathematically compute the number of signatures of qualified electors needed on a petition to amend the constitution by initiative based upon the boundaries of the one hundred (100) new legislative districts until after the 1976 gubernatorial election. There simply is no reasonable means of computing the number of petitioners necessary in the new

districts, which are based solely on population, while the number of petitioners needed is based upon a percentage of the actual votes cast for governor in 1972 in the twenty-three (23) old districts. There could be such a divergence between the number of **votes** cast for governor in 1972 within the twenty-three (23) old districts and the **population** in the one hundred (100) new districts that it would be impossible for the secretary of state to accurately compute the required "ten percent of the of the qualified **electors** in each of two-fifths of the legislative districts."

The law certainly does not require impossible acts. Section 49-123, Revised Codes of Montana, 1947, states: "The law never requires impossibilities." See also: **Le Clair v. School Dist. No. 28**, 74 Mont. 385, 391, 240 P. 391 (1925); **Letz v. Lampen**, 110 Mont. 477, 483, 104 P.2d 4 (1940).

The only logical conclusion, therefore, appears to be for the "ten percent of the qualified electors in each of two-fifths of the legislative districts" to be computed from the former twenty-three (23) legislative districts until after the 1976 general election. In other words, until after the 1976 general election "ten percent of the qualified electors in each of two-fifths of the legislative districts" means ten percent of the qualified electors in ten of the old legislative districts.

After the 1976 gubernatorial election Article XIV, Section 10, *supra*, will clearly direct that the "number of qualified electors required for the filing" of any such petition for initiative will be determined "by the number of votes cast for the office of governor" in an election held in the one hundred (100) legislative districts. Then, there should be no problem whatsoever in mathematically computing the correct number of petitioners needed in each of the one hundred (100) districts.

It should be noted that the time for filing initiative petitions for a constitutional amendment is set forth in section 37-203, R.C.M. 1947, which provides:

Petitions in this chapter [No. 2—Initiated Constitutional Amendments and Conventions] shall be filed with the secretary of state on or before one hundred twenty (120) days prior to the election at which they are to be voted upon by the people. (bracketed material supplied)

Even though you did not ask, an important question arises concerning the form and execution of an initiative petition. Must a petitioner personally provide his voting precinct and representative district number upon an initiative petition for a constitutional amendment?

Section 37-202, R.C.M. 1947, provides the form which must be substantially followed for an initiative petition for a constitutional amendment. It states in pertinent part:

**PEOPLES INITIATIVE PETITION
FOR CONSTITUTIONAL AMENDMENT**

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the following proposed constitutional amendment shall be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the statewide election to be held on the _____ day of _____, 19____, and each qualified elector says for himself:

I have personally signed this petition, and my residence, post-office address, and voting precinct are correctly written after my name.

Name _____ Residence _____

Post-office address _____

If in city, street and number _____

Voting precinct _____ Representative District No. _____

(Each sheet for petitioner's signature shall be in substantially the form above ...)

As the above-mentioned form indicates, it is clearly the legislative intent to require a petitioner's precinct and legislative district number, as well as his signature and address, within an initiative petition for a constitutional amendment. The practical problem this election year is that the state has just reapportioned and redistricted into new legislative districts and precincts. As a result very few qualified electors, who are potential initiative petitioners, actually know their correct precinct and representative district number without first ascertaining them from their county clerk and recorder.

The address and precinct of the petitioner are generally required on an initiative petition. **Thompson v. Vaughan**, 192 Mich. 512, 159 N.W. 65 (1916). It has also been held that the place of residence, which is a substantial requirement to establish the validity of the petitioner's signature, may be written in by some other person acting under the authority and direction of the petitioner. **State ex rel. Patton v. Myers**, 127 Ohio St. 95, 186 N.E. 872 (1933). In the case of **Tyler v. Secretary of State**, 229 Md. 397, 184 A.2d 101 (1962), the Maryland high court held that the data required to be placed on the petition in connection with each signature is as important as the signature itself if that information indicates that the petitioner is qualified. Residency information such as address, post office box number, precinct, and representative district number as required by section 37-202, supra, clearly indicates whether or not such a petitioner is qualified and his signature valid.

Article XIV, Section 9, Constitution of Montana, 1972, supra, and Section 37-202, supra, clearly require that an initiative petition be personally signed by petitioners who are qualified electors of the state. Although the petition form requests the precinct and representative district in which the petitioner resides, my research reveals no constitutional or statutory requirement that such additional data must be personally supplied by the petitioner when he signs the petition.

In the **Patton v. Myers** case, supra, the Ohio Supreme Court distinguished between that state's requirement that the petitioners personally sign the petition and the requirement that the petitioners state their residency and other

information within the petition. While holding that additional residency information could be supplied by someone else who was authorized and directed by the petitioner to supply the needed additional information, the court stated at page 873:

These provisions seem to the majority of the court conclusive. They require the names of all signers to be written in ink, "each signer for himself," and hence signify that the name can be signed by no one except the elector sponsoring the petition. With reference to the township and the county, the municipality, the street number, the ward and precinct, section 1g simply requires that the signer shall "state" or "place" on the petition this information. This "stating" or "placing" is sharply distinguished both in word and in meaning from the signing of the name by "each signer for himself." Hence we hold that **it is not necessary for an elector himself to write out the date, his place of residence, the township and county, the municipality, the street number, or the ward or precinct.** He is required to sign his own name, and, **if the other information called for is properly filled in by someone else, at the direction and with the authority of the elector signing the petition, the Constitution has been complied with.** (Emphasis supplied)

In *State ex rel. Freeze v. Taylor*, 90 Mont. 439, 4 P.2d 479 (1931), the Montana Supreme Court held at page 447:

The people have reserved to themselves the right to the exercise of the powers of initiative and referendum. Statutes enacted in aid of **these powers" should be liberally construed**, and should not be interfered with by the court, except upon a clear showing that the law is being violated." (*Laam v. McLaren*, 28 Cal. App. 632, 153 P. 985, 988) (Emphasis supplied)

The law in Montana appears to be similar to that of Ohio as mentioned in the *Patton v. Myers*, case, supra. An initiative petitioner in Montana must assert that he has "signed" the petition. He must only assert, however, that the other data required, concerning his residency, "are correctly written" after his name.

The present confusion surrounding the reapportionment and redistricting of the state, the average elector's lack of understanding of that predicament, together with the importance of an initiative petition to amend the constitution, dictate that the Montana Supreme Court's doctrine that the powers of initiative of the people "should be liberally construed" must be applied in this situation. A qualified elector should be allowed to sign an initiative petition for a constitutional amendment and to supply his residential address, while allowing someone else whom he has authorized and directed to fill in the proper precinct and representative district number on the petition.

THEREFORE, IT IS MY OPINION:

1. A petition for a proposed constitutional amendment by initiative must be signed by ten percent (10%) of the qualified electors of the

OPINIONS OF THE ATTORNEY GENERAL

state, and that number shall include at least ten percent (10%) of the qualified electors in each of two-fifths of the house districts throughout the state pursuant to Article XIV, Section 9, Constitution of Montana, 1972.

2. The legislative districts referred to in Article XIV, Section 9, Constitution of Montana, 1972, dealing with amendment of the constitution by initiative are the same districts which existed at the time of the preceding general gubernatorial election.

3. Initiative petitions for a constitutional amendment must be filed with the secretary of state on or before one hundred twenty (120) days prior to the election at which they are to be voted upon by the people, pursuant to section 37-203, R.C.M. 1947.

4. A qualified elector may sign an initiative petition for a constitutional amendment and supply his residential address, while allowing someone else whom he has authorized and directed to fill in the proper precinct and representative district number on the petition.

Very truly yours,

ROBERT L. WOODAHL
Attorney General