

VOLUME NO. 38

OPINION NO. 37

ELECTIONS - Initiatives, local government procedures;  
INITIATIVE PETITIONS - Local government procedures;  
LOCAL GOVERNMENT - Initiative petitions, procedures, pre-filing requirement.

HELD: A petition for a municipal initiative, filed prior to July 1, 1979, cannot be considered valid unless it was pre-filed with the city clerk for approval as to form.

22 August 1979

Gerald Navratil, Esq.  
Glendive City Attorney  
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Glendive, Montana 59330

Dear Mr. Navratil:

You asked my opinion concerning the following question:

May a petition for a municipal initiative which has not been submitted to the City Clerk for approval as to form be considered valid?

The petition in question was filed with the Glendive City Clerk on June 25, 1979. The law in effect at that time, section 7-5-4218, MCA, required petitions to be processed in the same manner required for petitions submitted at the state level.

7-5-4218. Form of petitions and conduct of proceedings. The form of petitions and proceedings under this part relating to initiative and referendum shall conform, as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum and shall be regulated by such laws except as otherwise provided in this part. The city clerk shall perform the duties which, under the state laws, devolve upon the county clerk and secretary of state insofar as the provisions relating thereto may be made to apply to the case of the city or town clerk. It shall not be necessary to mail or distribute copies of the petitions or measures to the electors of the city or town.

State laws relating to petition form and procedure are found in Title 13, chapter 27, MCA. The requirement of state law in issue here is approval of a petition's form, which is set forth in section 13-27-202, MCA:

Before a petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. The secretary of state shall refer a copy of the sheet to the attorney general for his

approval. The secretary of state and attorney general must each review the sheet for sufficiency as to form and approve or reject the form of the petition stating his reasons therefor. The attorney general shall return the sheet together with his comments within 3 working days after receiving it. The secretary of state shall review the comments of the attorney general and make a final decision as to the approval or disapproval of the form of the sheet. The secretary of state must notify the person who submitted the sheet of the approval or rejection together with reasons for rejection, if applicable, within 1 week of receiving the sheet.

This pre-filing requirement has three purposes: (1) administrative convenience; (2) detection of flaws which could cause invalidity of the petition; and (3) fraud prevention. As applied at the local level, pre-filing aids the administrative process in that it notifies the local government of pending petitions and eases clerical handling. The local clerk or city attorney may detect errors in the form of the petition which could save the petitioner the trouble of going through a lengthy petition drive only to later find the petition is flawed. It may also protect the signer from being misled by an improper or possibly deceptive style. Finally, it protects against fraud by insuring that the petition signed is the same one submitted to the clerk.

An Oklahoma decision construing a statute substantially the same as section 13-27-202, MCA, [See 34 O.S. §§ 8, 51 (1941)] held that failure to submit a petition to the city clerk prior to circulation was fatal. In Re Referendum No. 1, City of Guymon, 167 P.2d 881 (Okla. 1946). The court noted that the major purpose of the statute was to prevent fraud and insure that the petition filed was identical with the one pre-filed. The court rejected the argument that the sole purpose of pre-filing statutes is to fix the time within which the petition must be filed, and held that the power to require pre-filing of a copy was within the power of the Legislature.

It is noteworthy that the petition in question here contains a substantial flaw. The petition calls for a special election within three weeks following council action on the proposed ordinance. Section 7-5-4221, MCA, however, requires four weeks prior notice of the election. Had the petition been submitted before circulation, such an error

could have been detected in the city attorney's review. Petition proponents could then have remedied the error and a legally sufficient petition could have been prepared.

The petition should have been submitted to the city clerk for pre-circulation review of its form as required pursuant to sections 7-5-4218 and 13-27-202, MCA. In my opinion the failure to submit the petition prior to circulation invalidates the petition.

In its last session the Legislature passed a major bill which substantially changed many of the state election laws, (SB 65, enacted as 1979 Montana Laws, chapter 571). The Legislature repealed the local procedural requirements embodied in sections 7-5-4211 through 7-5-4225, MCA, and amended section 7-5-132, MCA, as follows:

7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;  
(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, Chapter 27, except as specifically provided in this part; and

(d) contain the signatures of 15% of the registered electors of the local government.

(Amended portion emphasized.)

All local petitions filed after July 1, 1979 are not required to be submitted to the clerk prior to circulation but still must be in the form prescribed by section 13-27-201 and 13-27-204, MCA. The other major change is that the amount of time between determination of the petition and the special election is now 60 days.

7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

1979 Montana Laws, ch. 571, § 300. (Amended portion emphasized.)

The provisions in Title 7, chapter 5, part 1, MCA, now control the procedure to be followed at the local level. Please be advised of these statutory changes so that your policies can be altered accordingly.

THEREFORE, IT IS MY OPINION:

A petition for a municipal initiative, filed prior to July 1, 1979, cannot be considered valid unless it was pre-filed with the city clerk for approval as to form.

Very truly yours,

MIKE GREELY  
Attorney General