

required to install meters at the point of delivery of the water for the purpose of measuring the volume of water delivered.

Respectfully,
GILBERT BETTMAN,
Attorney General.

698.

REFERENDUM PETITION—FILED BY REQUISITE NUMBER OF MUNICIPAL ELECTORS—SEVERAL NAMES WITHDRAWN—WHEN VALIDATED BY SIGNATURES ON SUPPLEMENTAL PETITION.

SYLLABUS:

When a petition has been filed pursuant to Section 4227-2, General Code, seeking to refer an ordinance or other measure of council of a village, additional parts of such petition may be filed pursuant to the provisions of Section 4227-4, General Code, within thirty days after such ordinance or measure has been filed with the mayor or passed by council of such village. The withdrawal of names from the first part of such petition filed does not invalidate such part of the petition so as to prevent the remaining names appearing thereon from being taken into consideration in ascertaining the total number of signatures to such petition appearing in its various parts and which have been filed within such thirty day period.

COLUMBUS, OHIO, July 31, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“The State Highway Department, the Franklin County Commissioners and the village of Westerville wish to join in paying the cost of improving the ‘3C’s’ Highway through the village. On June 25th a referendum petition in reference to the resolution of the village council was filed with the clerk of the village, signed by 214 electors, of which number 89 later withdrew their names, presumably voiding the petition which must be signed by 164 electors.

On July 10th a supplemental referendum petition was filed, signed by 138 electors.

Is the supplemental petition to be considered as an addition to the original petition requiring the submission of a resolution of council to vote of the electors at the next general election?”

Sections 4227-1 to 4227-13, inclusive, of the General Code, contain the statutory provisions relative to the initiative and referendum, as applicable to municipalities. Section 4227-4, General Code, provides in part as follows:

“Any initiative or referendum petition may be presented in separate parts but * * * each part of any referendum petition shall contain the number and a full and correct copy of the title of the ordinance or other measure sought to be referred. * * * ”

Unquestionably, under these provisions the referendum petition need not be presented in one part and if such petition were originally filed in one part under the

mistaken impression that such petition contained ten per cent of the electors of a municipality, as provided in Section 4227-2, and it should be discovered after filing that such petition did not in fact contain the required number of signatures. either by reason of some of the petitioners having removed their names therefrom, as mentioned in your letter, or by reason of an error in computing the required number of petitioners necessary, the electors should not thereby be precluded from presenting additional parts of such petition, as provided in Section 4227-4 of the General Code. There are no provisions in the General Code to the effect that the removal of certain signatures from a referendum petition invalidates such petition. I am of the opinion that, in the absence of any judicial authority to the contrary, if a referendum petition is filed in one part, containing, for instance, one hundred signatures more than the stipulated ten per cent, and all or any part of such petitioners in excess of the required ten per cent see fit to withdraw their signatures, such petition would not thereby be invalidated. It seems to me to be equally logical to conclude that if a sufficient number of names are withdrawn from the petition by the signers thereof, so that the remaining names appearing thereon are not equal to ten per cent of the electors, and one or more separate parts of such referendum petition are filed pursuant to the provisions of Section 4227-4, within thirty days after an ordinance sought to be referred has been filed with the mayor or passed by council, the original petition from which names may have been withdrawn is entitled to the same consideration as any other parts of a petition to the extent of the number of names remaining thereon.

If it were held that the withdrawal of names from a referendum petition completely invalidates the act of all other electors who may have signed such petition, the way would be open to nullify, in many instances, the provisions of the General Code providing for a referendum, which were enacted pursuant to the constitutional amendment of 1912, for the reason that any individual elector who is opposed to a referendum being had on a certain question may sign a petition for such referendum and then withdraw his name, completely nullifying the signatures of all other persons thereon. Such holding would require that electors who have already signed a part of such petition from which names have been withdrawn, would be compelled to resign other parts thereof in order to express their will in such an instance. Upon resigning a referendum petition, the question may arise as to whether or not such act was in violation of Section 4227-7, General Code, which is as follows:

“At the top of each part of the petition the following words shall be printed in red.

NOTICE.

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.”

Specifically answering your question, I am of the opinion that when a petition has been filed pursuant to Section 4227-2, General Code, seeking to refer an ordinance or other measure of council of a village, additional parts of such petition may be filed pursuant to the provisions of Section 4227-4, General Code, within thirty days after such ordinance or measure has been filed with the mayor or passed by council of such village. The withdrawal of names from the first part of such petition filed does not invalidate such part of the petition so as to prevent the remaining names appearing thereon from being taken into consideration in ascertaining the total number of signatures to such petition appearing in its various parts and which have been filed within such thirty day period.

Respectfully,
GILBERT BETTMAN,
Attorney General.