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1. PETITIONS—INITIATIVE, REFERENDUM OR SUPPLEMENTAL—EACH PART-PETITION AT TIME FILED WITH SECRETARY OF STATE IS PERMITTED TO BEAR SIGNATURE OF ELECTORS OF ONLY ONE COUNTY—SECTION 4785-177 G. C.
2. NO AUTHORITY FOR WITHDRAWAL OF SIGNATURE OF ELECTOR FROM PART-PETITION BY ANY ONE OTHER THAN ELECTOR WHO SIGNED IT—LINE DRAWN THROUGH NAME—INITIALS.
3. SECTION 4785-177a G. C. GIVES EXPRESS AUTHORITY TO WITHDRAW NAMES FROM PART-PETITIONS — WRITTEN REQUEST—PRESCRIBED TIME.
4. WITHDRAWAL OF SIGNATURE BY ELECTOR—RESIDES IN FOREIGN COUNTY—WITHDRAWAL MUST TAKE PLACE PRIOR TO TIME PART-PETITION FILED WITH SECRETARY OF STATE.

SYLLABUS:

1. Each part-petition, in case of initiative, referendum or supplemental petitions, at the time it is filed with the secretary of state, is permitted to bear signatures of electors of one and only one county, by the express provisions of Section 4785-177, General Code.
2. No authority has been found for the withdrawal of the signature of an elector from such part-petition by action of anyone other than the elector who signed it, whether by drawing a line through the name and initialing it, or otherwise.
3. Electors who sign such part-petitions are given express authority, by Section 4785-177a, General Code, to withdraw their names from such part-petitions, by written request in the manner and within the time prescribed in the section just cited.

4. Where the reason for the withdrawal of the signature of an elector is that he resides in a county other than that of the other signers of the part-petition, such withdrawal must take place prior to the time such part-petition is filed with the secretary of state.

Columbus, Ohio, July 27, 1949

Hon. Charles F. Sweeney, Secretary of State
Columbus, Ohio

Dear Sir:

I am in receipt of your letter requesting my opinion, which is as follows:

“General Code Section 4785-177 of the Ohio Laws pertains to the question of Initiative and Referendum Petitions.

“I would appreciate it if you would render me a formal opinion at your earliest opportunity in answer to the following question:

“In the event a part-petition contains signatures from more than one county and such name or names are stricken from this part-petition by drawing a line through the name or names so that only the names from one county remain on the petition; is this petition a valid petition, under provisions of General Code Section 4785-177?

“It is to be presumed that the name or names of signers from additional counties were stricken from the petition before being presented to the office of Secretary of State, and such name or names so stricken were initialed by the person who struck out the name.”

The answer to the question contained in your letter requires an examination of the provisions of the Ohio Constitution, wherein the people of the State of Ohio, in granting the legislative power of the state to the General Assembly, have reserved to themselves the power to propose laws and amendments to the Constitution and the power to subject to referendum of the people certain of the acts of the General Assembly. This is commonly referred to as the “Initiative and Referendum” and is set forth in Article II, Sections 1 to 16 of the Constitution of Ohio. By virtue of the provisions of Section 1a thereof it is provided that upon obtaining signatures of ten per cent of the electors, a proposed constitutional amendment may be submitted to the electors for approval or rejection and, in

this connection, Section 4785-177, General Code, being a part of the chapter entitled "Initiative and Referendum", provides as follows:

"Each signer of any such initiative or referendum petition must be a qualified elector of the state of Ohio. He shall place on such petition after his name the date of signing and the location of his voting residence, including the street and number, if any, and the ward and precinct in which same is located, if in a municipality, and the rural route or other postoffice address and township in which same is located, if outside of a municipality. *Each part-petition which is filed shall contain signatures of electors of only one county.*" (Emphasis added.)

The interpretation of any law applicable to the exercise of the power of initiative or referendum must be done in light of the express constitutional mandates authorizing laws to be passed which facilitate the operation of the constitutional provisions on this subject and forbidding enactment of laws in any way limiting or restricting such constitutional provisions. The Constitution, in Article II, Section 1g, at the end of said section, provides:

"* * * The foregoing provisions of this section shall be self-executing, 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."

It may be pointed out that the section quoted in part above authorizes the use of part-petitions, sets forth the matter required to appear in the heading of each part-petition, requires each signer to be an elector of the state, contains provisions with reference to the inclusion of residence, address and voting address of the signers, requires signatures in ink by each elector for himself, specifies the content of an affidavit of the person circulating the petition and otherwise contains detailed directions with respect to initiative, supplementary or referendum petitions.

Your letter speaks of the striking of a name or names from a petition "by drawing a line through the name or names so that only the names from one county remain." This gives rise to a consideration of the power to withdraw names from a petition when they have once been affixed thereto.

With reference to the right to withdraw names, there appears to be no doubt of the right of the individual elector to withdraw his signature before any official action on the petition has been taken. In 28 Am. Jur. 165,

under the general heading "Initiative, Referendum, and Recall," there appears in Section 23, Withdrawal, the following:

"The right of one who has signed an initiative or referendum petition to withdraw his name therefrom has been sustained in some instances, where no official action has been taken on the petition, but has been denied where the petition has been certified or otherwise acted upon. The circulator of a part of a petition cannot withdraw that part and the names upon it."

Again, we find that in 21 O. Jur., page 954, under the heading "Initiative and Referendum", Section 16, under a sub-paragraph entitled "Withdrawal of Signatures", there appears the following:

"It is well established in Ohio, as a general rule, that in the absence of statutory provision to the contrary, an elector signing a petition authorized by the laws of the state, invoking official action, has a right to withdraw his name therefrom at any time before official action has been taken thereon, or before the commencement of judicial proceedings to compel such official action. It does not appear, however, from any reported decision, that this general rule has been as yet specifically applied to initiative or referendum petitions of the character dealt with in this article, and it suggested that it is possible that the difficulties involved might be found by the courts to be of such magnitude or character as to render the application of such general rule in such cases impracticable."

The doubts which existed in the mind of the author of this article, however, have been laid to rest by specific provision of the election laws of Ohio which grant to an elector signing such a petition the right to withdraw his name up to the time the Secretary of State makes his official announcement of the number of signatures to such petition. Thus, we find in Section 4785-177a of the General Code the following:

"Any elector signing an initiative or referendum petition may withdraw his name therefrom at any time before the secretary of state records and announces the number of signatures to such petition in accordance with section 4785-179 of the General Code, by requesting the secretary of state in writing so to withdraw his name, or, at his option, by so requesting the board of elections of the county of his residence prior to the time the part-petition bearing his signature has been returned to the secretary of state."

It will be noted that the elector may exercise his right to withdraw his name at any time after he has affixed it to such part-petition up until

the time of official pronouncement by the Secretary of State. This he does by requesting the Secretary of State, in writing, to withdraw his name, or a similar request may be addressed to the board of election as in such section provided.

Construing Section 4785-177, *supra*, which requires such part-petitions to contain signatures from only one county, together with the provisions of Section 4785-177a, *supra*, authorizing the withdrawal of signatures, it would appear that where the ground for withdrawal was the fact that such signer resided in a county other than that of all or most of the other signers of the petition, such right to withdraw should be exercised at or before the filing of the part-petition with the Secretary of State; otherwise such part-petition would be contrary to the specific provision of said Section 4785-177.

It has heretofore been held by my predecessor in office, in an opinion addressed to the then Secretary of State, Hon. Edward J. Hummel (Informal Opinion No. 464, dated January 4, 1949), that a part-petition is invalid which contains signatures of electors residing in more than one county. The portion of said opinion dealing with this question is as follows :

“ ‘12. If the part-petition for “A” county bears a signature from “B” county, is the part-petition invalid. (See 4785-177)’

“ In Section 4785-177, General Code, to which you refer, it is provided :

‘ * * * Each part-petition which is filed shall contain signatures of electors of only one county.’

“In view of said statutory provision this question is answered in the affirmative.”

It is my opinion that the requirement that names on any part-petitions be limited to electors residing in one county tends to facilitate the operation of the initiative and referendum provisions of the Constitution and I concur in the above holding.

Not being aware of any express authority for the procedure suggested by your letter, it is my opinion that such action is not authorized but that the statutory method of withdrawal of names, as hereinabove set forth, must be followed to accomplish this result. It will be readily apparent

that more than one person might have the same initials and that such method of striking out might lead to confusion, whereas the statutory method would avoid such confusion.

Respectfully,

HERBERT S. DUFFY,
Attorney General.