

OPINION NO. 71-052

Syllabus:

A board of township trustees has a duty to determine whether petitions requesting a referendum on the zoning amendment filed with the board are valid on their face for presentation to the board of elections, but does not have power to inquire into other matters respecting said petitions.

To: Roy H. Huffer, Jr., Pickaway County Pros. Atty., Circleville, Ohio
By: William J. Brown, Attorney General, September 10, 1971

I have before me your request for my opinion which reads as follows:

"1. Does the Board of Township Trustees have any duty to determine whether or not the petitions requesting a referendum on the zoning amendment filed with the board are valid for presentation to the Board of Elections, ultimately to be submitted to the electors within the unincorporated territory of the township?

"2. If you decide the Board of Township Trustees does have a duty to determine the validity of said petitions, my next question is: Is such duty mandatory or permissive, and solely the Board of Trustees, or shared with the Board of Elections?

"3. My next question is: If you determine that the Board of Trustees has a duty to determine these petitions' validity, are these petitions in question valid?"

Section 519.12, Revised Code, reads, in pertinent part, as follows:

"Such amendment or supplement adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment or supplement there is presented to the board of township trustees a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board of township

trustees to submit the amendment or supplement to the electors of such area for approval or rejection at the next primary or general election."

The above section describes the manner in which a referendum is to be initiated. However, it does not clearly enunciate the role of governmental bodies in determining the validity of the referendum petition. A comparison of the township referendum process with those of counties and municipalities provides an insight into the workings of this mechanism. Section 303.12, Revised Code, governs the county referendum process and reads, in pertinent part, as follows:

"Such amendment or supplement adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment or supplement there is presented to the board of county commissioners a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to submit the amendment or supplement to the electors of such area, for approval or rejection, at the next primary or general election."

The courts, through their interpretation of this statute, have held that the obligation of the board of county commissioners is only to satisfy itself that the petition is in proper form and that it contains the requisite number of signatures. State ex rel v. Lauderbaugh, 77 Ohio L. Abs. 93 (1957). It is important to note that the court was addressing itself to the number and not the validity of the signatures. It is the function of the board of elections to certify that there are sufficient valid signatures on such petition. Fried v. Augspurger, 11 Ohio Op. 2d 444 (1959).

A similar statute relating to municipal referendums is found in Section 731.29, Revised Code, and reads, in pertinent part, as follows:

"When a petition, signed by ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village, or in case the mayor has vetoed the ordinance or

any measure and returned it to council, such petition may be filed within thirty days after the council has passed the ordinance or measure over his veto, ordering that such ordinance or measure be submitted to the electors of such municipal corporation for their approval or rejection, such auditor or clerk shall, after ten days, and not later than four p.m. of the ninetieth day before the day of election, certify the text of the ordinance or measure to the board of elections. The auditor or clerk shall retain the petition. The board shall submit the ordinance or measure to such electors, for their approval or rejection, at the next succeeding general election, occurring subsequent to ninety days after the certifying of such petition to the board of elections."

The nature and scope of authority of the clerk to determine whether the referendum petition complied with the provisions of law had been a source of misunderstanding. The courts have interpreted this section to mean that he is only a ministerial officer, and while he is required to exercise an intelligent discretion in the performance of this duty, the discretion is not judicial; it is ministerial only. Hence he cannot go into questions not apparent on the face of the petition itself, and which require the aid of witnesses to determine. He could count the number of names, and go into similar matters apparent on a superficial examination. State ex rel. v. Lemmon, 26 Ohio N.P. (n.s.) 151 (1925).

The statutes relative to referendum petitions - township, county and municipal - are of the same general form and there appears to be no valid reason for not construing them similarly. The common factor running through these statutes in reference to the responsibility of local government is that in determining the sufficiency of the petition, shortcomings which are apparent on the face of the petition would be sufficient grounds for rejection. All questions not apparent on the face of the petition are to be investigated by the local board of elections.

Since these determinations are the responsibility of the local authorities, I cannot undertake to substitute my views for theirs and accordingly cannot reply to your third question.

Therefore, in specific response to your questions it is my opinion and you are advised that a board of township trustees has a duty to determine whether petitions requesting a referendum on the zoning amendment filed with the board are valid on their face for presentation to the board of elections, but does not have power to inquire into other matters respecting said petitions.