

**Note from the Attorney General's Office:**

1950 Op. Att'y Gen. No. 50-1419 was questioned by 2001  
Op. Att'y Gen. No. 2001-042.

**1419**

1. PETITION, INITIATIVE—REQUIRED TO HAVE VALID SIGNATURES TOTALING THREE PERCENT OF TOTAL VOTE FOR GOVERNOR—LAST PRECEDING GENERAL ELECTION—NAMES FROM FORTY-FOUR COUNTIES—VALID SIGNATURE.
2. PETITION INSUFFICIENT—SIGNATURES BELOW LEGAL MINIMUM—NOTICE BY SECRETARY OF STATE TO COMMITTEE CHARGED WITH CIRCULATION OF PETITION.

3. WHERE DEFECT IN PART OF PETITIONS FROM PARTICULAR COUNTY—SUFFICIENT SIGNATURES REDUCED—COMMITTEE THAT CIRCULATED PETITION NOT ENTITLED TO FILE ADDITIONAL SIGNATURES TO CURE DEFECTS.

SYLLABUS:

1. A petition seeking to initiate a proposed law is required to have valid signatures totaling three per cent of the total vote for governor at the last preceding general election and in addition must include names from forty-four counties from each of which there must be valid signatures equal to or exceeding one and one-half per cent of the total vote for governor in such county at the last preceding general election.

2. Where such a petition contains a requisite total number of valid signatures for the state as a whole but contains the required totals in only forty-three counties of the state, and the number of signatures from the forty-fourth county is below the legal minimum, such petition is insufficient and the secretary of state is required by law to give notice of such insufficiency and the extent thereof to the committee charged with the circulation of the petition.

3. Where a defect in the part petitions from a particular county operates to reduce the number of sufficient signatures so that only in forty-three counties rather than forty-four are there the constitutional number of valid signatures and such deficiency arises from defects other than the number of valid signatures, the committee in charge of circulating such petition is not entitled to file additional signatures to cure such defects.

Columbus, Ohio, January 24, 1950

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

Dear Sir:

Your request for my opinion is as follows:

“On November 1, 1948, there was filed in this office an initiative petition for a proposed law, which petition consisted of a number of part-petitions purporting to contain more than the required minimum number of signatures from each of 44 counties. Upon receipt of such petition, the part-petitions comprising the same were transmitted to the boards of elections in such respective counties for the purpose of having each of said boards of elections ascertain whether each part-petition transmitted to it was properly verified, and whether the names on each part-petition were on the registration lists of a registration city, or on the polling lists of such county, or whether the persons whose names appeared on each part-petition were eligible to vote in such

county, the number of illegal signatures and the omission of any necessary details required by law.

“Each of said boards of elections made its report to the Secretary of State certifying in each case that the part-petitions submitted to it contained a sufficient number of valid signatures.

“Immediately upon the receipt of the report from the board of elections of Montgomery County by this office, there was filed with said board of elections a protest against its findings and within 3 days after said protest had been filed an action was commenced in the court of common pleas of Montgomery County, wherein the correctness of the findings of said board of elections was questioned.

“The report of said board of elections against which said protest was lodged was as follows :

“BOARD OF ELECTIONS

MONTGOMERY COUNTY  
DAYTON, OHIO  
January 18, 1949

“To Edward J. Hummel  
Secretary of State

Columbus, Ohio

“We hereby certify that the number of sufficient and insufficient signatures on the Initiative Petition proposing to initiate a law relative to county local option, is as follows :

“(1) Number of Sufficient Signatures.....	1,766
“(2) Number of Insufficient Signatures.....	247
“(3) Total number of Signatures of Electors from this county on such petitions—(Total of (1) and (2) should equal (3) ) .....	2,013

W. W. Helwig, Chairman  
Albert A. Horstman  
Albert H. Wetecamp  
Fred L. Van Allen”

“In said action the court found that aforesaid report was erroneous in that said board of elections certified therein that said part-petitions contained 1766 valid and sufficient signatures, when in truth and in fact said part-petitions contained only 931 valid signatures, and ordered said report amended to read as follows :

“(1) Number of Sufficient Signatures.....	931
“(2) Number of Insufficient Signatures.....	1,082
“(3) Total Number of Signatures of Electors from this County on such petitions—(Total of (1) and (2) should equal (3) ) .....	2,013”

“In arriving at aforesaid conclusion said court held that 8 of such part-petitions, containing 302 signatures, which signatures were previously, in its report to the Secretary of State, found and certified by said board of elections to be sufficient, were in fact insufficient for the reason that they were not properly verified; and 2 of such part-petitions containing 133 signatures, which signatures were previously, in its report to the Secretary of State, found and certified by said board of elections to be sufficient were in fact insufficient for the reason that said part-petitions contained signatures of electors of more than one county; that 5 of such part-petitions, containing 237 signatures, which signatures were previously, in its report to the Secretary of State, found and certified by said board of elections to be sufficient, were in fact insufficient for the reason that in each case the solicitor thereof failed to state what, if any, consideration was received by her for soliciting such part-petition and obtaining signatures thereon, and that 164 individual signatures were invalid for the reason that the signers failed to set out information concerning their respective residences as the law requires.

“The number of signatures required from Montgomery County on the basis of the total number of votes cast for the Governor at the election held in 1946, was 1482. It will be noted that if there is subtracted from 1766 signatures previously reported sufficient by such board of elections, the 302 signatures appearing on the part-petitions held by the court to have not been properly verified, the remainder will be less than the required 1482 signatures.

“On the above state of facts I am requesting a formal opinion from your office on the following two questions:

“1. Does the committee representing the petitioners for the above mentioned proposed law have *ten (10) additional days*, after the certification of the Secretary of State to the insufficiency of the petition, to file with the Secretary of State additional signatures, to qualify the forty-fourth (44th) county as required by Article II, Section 19 of the Ohio Constitution?

“2. If the answer to question No. 1 above is in the affirmative, does the committee representing the petitioners have to obtain the required additional signatures to such petition from Montgomery County or can the committee obtain the sufficient number of additional signatures from any one of the forty-four

(44) counties from which no petitions were filed with the office of Secretary of State on November 1st, 1948?"

The answers to your questions require an examination of the constitutional and statutory provisions with reference to the exercise of the power of initiative and referendum. The Ohio Constitution, Article II, Section 1, provides in part as follows:

"The legislative power of the state shall be vested in a general assembly \* \* \* but the people reserve to themselves the power to propose to the general assembly laws \* \* \*."

Article II, Section 1-b, of the Ohio Constitution provides in part as follows:

"When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, \* \* \*, the secretary of state shall transmit the same to the general assembly as soon as it convenes. \* \* \*"

Article II, Section 1-g, of the Ohio Constitution provides in part as follows:

"Any initiative, supplementary or referendum petition may be presented in separate parts, \* \* \*. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. \* \* \* The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be. \* \* \*

"The petition and signatures upon such petitions, so verified, shall be presumed to be in all respect sufficient, unless not later than forty days before the election, it shall be otherwise proved and *in such event ten additional days shall be allowed for the filing of additional signatures to such petition.* \* \* \* *Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from*

*each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. \* \* \**

“The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The fore-going 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.”  
(Emphasis added.)

You state in your letter that this petition was filed with you on November 1, 1948, which obviously was prior to the General Election in 1948. You further state that you are using as a basis for your computation the total vote for governor at the General Election in 1946. In doing so, you are following the correct rule. This was determined by the Supreme Court of Ohio in *State, ex rel. I lg v. Myers, Secretary of State*, 127 O. S. Page 171. In the I lg case, *supra*, the petition was filed with the Secretary of State one day prior to the General Election in 1932 and the court held that the “percentage required is fixed and determined at the time the initiative petition is filled.”

Your first question is whether, under the circumstances set forth in your letter, the committee for the petitioners may have ten additional days to obtain additional signatures of the present petition.

The constitution of Ohio, in Section 1-g of Article II, after establishing a presumption of sufficiency of such petitions “unless not later than forty days before the election it shall be otherwise proved” contains a provision that “in such event ten additional days shall be allowed for the filing of additional signatures to such petition.”

Implementing the foregoing constitutional provision, the election code in Section 4785-179, General Code, provides in part as follows:

*“\* \* \*. The secretary of state shall notify the chairman of the committee in charge of the circulation as to the sufficiency or insufficiency of the petition and the extent of the insufficiency, if any. If the petition is found insufficient because of an insufficient number of valid signatures, such committee shall be allowed ten additional days after such notification by the secretary of state for the filing of additional signatures to such petition. \* \* \*”*

(Emphasis added.)

In the fact situation set forth in your letter, it is obvious and it is my opinion that there is no authority to file additional names to cure the insufficiency found by you. You state that the petitions which were sent to Montgomery County were in the first instance found to be sufficient by the Board of Elections of that county. That is to say, the number of valid signatures for that county was greater than the constitutional minimum. I assume, and I believe rightly so, that the Board when it first examined the petitions determined the qualifications of the signers and found 1766 signers met the qualifications required by law. This, of course, is well in excess of the minimum of 1482 signatures which you have found to be the minimum for that county in order for it to be counted as one of the forty-four counties. The determination made by the Common Pleas Court was that eight part petitions containing 302 signatures were insufficient, not because of a lack of qualifications on the part of the signers, but because they were not properly verified. Two of the part petitions contained 133 signatures, and were found insufficient not because of lack of qualifications on the part of signers, but because they contained signers from more than one county. Five of such part petitions containing 237 signatures were found insufficient, not because of the lack of qualifications of the signers, but for the reason that the solicitor failed and neglected to state what consideration, if any, was received for soliciting such part petition.

Hence, it will be seen that the defects which reduced the total in Montgomery County were defects in parts of the part petitions other than the requirement as to the number of valid signatures.

In *State ex rel. Gongwer v. Graves, Secretary of State*, 90 O. S. 311, the Supreme Court of Ohio discusses the importance of a proper affidavit of verification at the end of a part petition. Your attention is invited to the discussion in the above case at page 322 to page 324. Suffice it to say that the court holds that part petitions "depend for their efficiency and their validity upon the affidavit of the circulator."

Therefore, as stated above, it is my opinion that the defects which caused this insufficiency are not within the terms of Section 4785-179, General Code, above set forth, and hence, that there is no authority for filing additional names to the petition now before you. In light of the above conclusion, it is unnecessary to answer your second question.

In conclusion, therefore, it is my opinion that :

1. A petition seeking to initiate a proposed law is required to have valid signatures totaling three per cent of the total vote for governor at the last preceding general election and in addition must include names from forty-four counties from each of which there must be valid signatures equal to or exceeding one and one-half per cent of the total vote for governor in such county at the last preceding general election.

2. Where such a petition contains a requisite total number of valid signatures for the state as a whole but contains the required totals in only forty-three counties of the state, and the number of signatures from the forty-fourth county is below the legal minimum, such petition is insufficient and the secretary of state is required by law to give notice of such insufficiency and the extent thereof to the committee charged with the circulation of the petition.

3. Where a defect in the part petitions from a particular county operates to reduce the number of sufficient signatures so that only in forty-three counties rather than forty-four are there the constitutional number of valid signatures and such deficiency arises from defects other than the number of valid signatures, the committee in charge of circulating such petition is not entitled to file additional signatures to cure such defects.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.