

Office of the Attorney General
State of North Dakota

Opinion No. 82-60

Date Issued: August 12, 1982

Requested by: Hal Christensen
State Senator

--QUESTION PRESENTED--

Whether an incorrect statement of the number of signatures on the circulator's affidavit on an initiative petition invalidates the petition or any of its signatures.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that an incorrect statement of the number of signatures on the circulator's affidavit on an initiative petition does not invalidate the petition or any of its signatures.

--ANALYSIS--

Article III, Section 3 of the Constitution of North Dakota, sets forth the requirements for initiative petitions. That section states as follows:

Section 3. The petition shall be circulated only by electors. They shall swear thereon that the electors who have signed the petition did so in their presence. Each elector signing a petition shall also write in the date of signing and his post-office address. No law shall be enacted limiting the number of copies of a petition. The copies shall become part of the original petition when filed.

Section 16.1-01-09(1) of the North Dakota Century Code contains additional regulations governing the initiative petitions. That section states as follows:

16.1-01-09. REGULATIONS GOVERNING INITIATIVE, REFERENDUM, OR RECALL PETITIONS.

1. No person shall sign any initiative, referendum, or recall petition circulated pursuant to the provisions of article III of the Constitution of North Dakota unless he is a qualified elector. No person shall sign any petition more than once, and each signer shall add, after his signature, his post-office address, telephone number if he has one, and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit executed by the circulator to the

effect that each signature was signed in his presence, and that the petition was circulated in its entirety.

The statement contained in the affidavit of the circulator as to the number of signatures appearing on the petition states as follows:

I, being first duly sworn on oath, depose and say that I circulated the attached petition containing _____ signatures;

The above election laws were intended by the legislature to safeguard and facilitate the initiative process for the benefit of the people by discouraging fraud and abuse, by minimizing the number of mistakes that might occur, and to help the Secretary of State to review the sufficiency of the petitions. *Dawson v. Meier*, 78 N.W.2d 420 N.D. 1956); *Wood v. Byrne*, 232 N.W. 2d 303 (N.D. 1930). In *McCarney v. Meier*, 286 N.W.2d 780 (N.D. 1979), our Supreme Court reviewed a technically incorrect referendum petition and stated that the guiding principle was that the right of the people to be heard should be maintained.

We will not defeat the real intent of the signers on the basis of a petition that was not artfully drawn and was misleading. 286 N.W.2d 780, 786.

The circulator's statement as to the number of signatures appearing on the attached petition is not required by Article III, Section 3 of the Constitution of North Dakota nor by Section 16.1-01-09(1), N.D.C.C. The Constitution and the statute only require the circulator to swear that the petition's signatures occurred in their presence and that the petition was circulated in its entirety. The circulator's statement as to the number of signatures is surplusage as the Secretary of State counts each individual signature on the petition rather than relying upon the number stated in the circulator's statement.

As the statement as to the number of signatures on the petition contained in the circulator's affidavit is not required by North Dakota law, and in light of the guiding principle announced by our Supreme Court, an incorrect statement as to the number of signatures does not affect the validity of any of the signatures appearing on the petition nor does it affect the validity of the petition as a whole. Of course, laws and constitutional requirements as to minimum number of signatures needed to propose by initiative petition would still apply.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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