DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

January 27, 2010

County Clerk/Registrar of Voters (CC/ROV) Memorandum #10038

TO: All County Clerks/Registrars of Voters

FROM: Rachelle C. Delucchi
Rachelle Delucchi
Elections Counsel

RE: Candidate Filing: Verification of Candidacy Paper Signatures

---

A county elections official has recently asked if a person circulating nomination documents or signature in lieu of filing fee petitions is not in compliance with Elections Code section 8066 or 8106(b)(4), whether the signatures gathered on those documents or petitions from otherwise qualified individuals should be invalidated.

Pursuant to the attached legal opinion the Secretary of State's office issued in 1980, the answer to that question is that signatures on any candidacy paper (which includes nomination documents and signature in lieu of filing fee petitions) should not be marked insufficient solely because the circulator of the candidacy paper is not a registered voter.

If you have any questions please contact our office at (916) 653-7635.

Attachment

Office of the Secretary of State
March Fong Eu

1230 J Street
Sacramento, California 95814

Elections Division
(916) 445-0820

April 8, 1980

Opinion No. 80 SOS 1

RE: ELECTION PETITION CIRCULATORS

QUESTION

Should signatures on a petition or candidacy paper be marked insufficient solely because the circulator of the petition or paper is not a registered voter?

CONCLUSION

Signatures on a petition or candidacy paper should not be marked insufficient solely because the circulator of the petition or paper is not a registered voter.

ANALYSIS

Introduction:

Circulators of petition and candidacy papers are required by the Elections Code to be registered voters [Elections Code § 42] and must, inter alia, affirm to such registration in the circulator's affidavit which must be attached to the petition or paper [Elections Code § 44. See also sections dealing with specific papers and petitions].

On occasion, proponents or candidates submit petitions or papers for signature verification which have not been circulated by registered voters notwithstanding the provisions of the Elections Code. In these cases, California law does not specify whether the nonqualification of the circulator also invalidates otherwise sufficient signatures on the petition or paper. A recent survey of several

county clerks and registrars indicates that there is no uniform practice in this regard. Some local elections officials treat the entire petition section as invalid, whereas other officials disregard the deficiency for purpose of signature verification but transmit the information to the local district attorney for possible criminal prosecution of the circulator.[1] We believe that the latter course of action is the more consistent with statutory law, judicial decisions, and public policy.

Statutory Law:

The statutory duties of clerks[2] with respect to signature verification are substantially the same with respect to all the petitions and papers authorized by the Elections Code. In general, the clerk is required to verify the signatures to determine whether they are those of signers qualified to sign the respective petition or paper. No statute requires the clerk to verify the qualifications of the circulator. For example, Elections Code § 6506 requires the clerk to:

> ". . . verify the signatures and the political affiliations of the signers of the nomination paper with the registration affidavits on file in the office of the county clerk. The county clerk shall mark 'not sufficient' any signature which does not appear in the same handwriting as appears on the affidavit of registration in his office or which is accompanied by a declaration of party affiliation which is not in accordance with the declaration of party affiliation in the affidavit of registration. The county clerk may cease to verify signatures once the minimum requisite number of signatures has been verified."

See, also, Elections Code §§ 3520, subdivision (d), and 3521, subdivision (b).

With respect to statewide initiative and referendum petitions, Elections Code § 3511 does preclude the clerk from receiving or filing any ". . . petition which does not conform to the provisions of this article" [article 1, chapter 1, of division 5]. However, article 1 relates primarily to the preliminary procedural steps for petition circulation and certain elements required to be included in the petition rather than circulator's qualifications

---

1. See discussion of criminal penalties, infra.

2. "Clerks," as used herein, includes county, city, and district clerks and county registrars of voters.

or signature verification. Thus, it provides no authority for the clerk to disregard petition signatures based on the nonregistration status of the circulator.

Judicial Decisions:

California courts have uniformly held that a clerk's duty relative to examining petitions or candidates' papers is limited to two responsibilities: (1) to determine whether the petition or paper contains the requisite elements specified by the law; and (2) to determine the number of qualified signers who have signed the petition or paper by comparing the signatures on the petition or paper with signatures on valid affidavits of registration.

As to the first duty, for example, the court in Dodge v. Free, (1973) 32 Cal.App.3d 436, held that the clerk need not verify a petition section that does not contain a circulator's affidavit, one of the elements required by law to be included in a petition. In upholding the clerk's refusal to verify petition signatures, the court concluded that the required affidavit was lacking in the absence of a subscription and date. See, also, Conn v. City Council, (1911) 17 Cal.App. 705, 713.

As to the second duty, Truman v. Royer, (1961) 189 Cal.App.2d 240, 243, is typical. In that case the court said:

> "It has been held that the clerk's duties in matters of this character are purely ministerial and not judicial (Reites v. Wilkerson, (1950) 95 Cal.App.2d 827, 829 [213 P.2d 773]; his duty is to examine the individual signatures to ascertain if they comply with the requirements of law, and if an adequate number are filed, he must certify the petition as sufficient. (Tilden v. Blood, (1936) 14 Cal.App.2d 407, 413 [58 P.2d 381].) A clerk may refuse to certify petitions because of noncompliance with such provisions." 189 Cal.App.2d at 243.

See, also, Conn v. City Council of the City of Richmond, (1911) 17 Cal.App. 705, 714; Wright v. Engram, (1921) 186 Cal. 659, 659-660; Williams v. Gill, (1924) 65 Cal.App. 129, 132; Tilden v. Blood, (1936) 14 Cal.App.2d 407, 413.

As to the issue at hand, Truman v. Royer, supra, is particularly instructive. In that case, the clerk initially invalidated enough signatures because of unqualified circulators to declare a referendum petition insufficient. After the superior court ruled that signatures should not

be invalidated based on the nonqualification of the circulators, the clerk reverified the signatures previously invalidated for that reason and declared the petition sufficient. The appellate court upheld the clerk's action declaring, in reference to the challenged signatures:

> ". . . the propriety of the city clerk's action in . . . accepting them [the challenged signatures] as valid signatures has long been settled in the law of California . . . . The clerk was duty bound to certify the petition as sufficient when his investigation disclosed an ample number of qualified signers." 189 Cal.App.2d at 243-244.

Thus, the only case which we have discovered which has considered the issue in California holds the clerk should not invalidate signatures based on the nonqualification of the circulator.[3]

The holding in Truman v. Royer, supra, is consistent with the judicial tradition of liberally construing elections statutes in order to favor the implementation of the important rights of recall, initiative, referendum, and candidacy. The basis for such tradition is articulated in Laam v. McLaren, (1915) 28 Cal.App. 632 wherein the court said:

> "The theory on which the modern system of government under the initiative, referendum, and recall statutes is founded, is that the people reserve to themselves the right to propose legislation, to pass upon legislative measures enacted by their representatives, and to remove elective officers whenever the people, in their judgment, deem such action necessary. This power is given them by the constitution and statutes enacted in aid of this power should be liberally construed and should not be interfered with by the courts except upon a clear showing that the law is being violated." 28 Cal.App. 632,638.

---

3. Ley v. Dominguez, (1931) 212 Cal. 587, refers to the qualifications of circulators. In that case, the parties and the court apparently assumed that signatures could be invalidated when obtained by an unqualified circulator, and thus the question posed by this opinion was not at issue. See 212 Cal. at 593, 601, 602. See, also, Fraser v. Cummings, (1920) 48 Cal.App. 504, 505-6, where the court referred to the issue. However, petitioner did not raise the issue in pleadings, and the court specifically declared that the signatures were not before the court, and the petitioner did not controvert issue.

The courts' continued insistence on granting a liberal interpretation to statutes regulating election petitions in favor of exercising the rights the petitions represent provides a compelling reason not to read into the law restrictions on the use of the petitions that are not specifically provided for. The Elections Code does not prescribe invalidating petition signatures as the penalty for failure of the circulator to be qualified. Such a penalty should not be administratively created.

Public Policy:

We believe that the rule set forth in Truman v. Royer is consistent with furthering the public policy of encouraging citizen participation in governmental affairs. A signer of a petition or paper seldom knows with any certainty whether the circulator is indeed qualified to solicit signatures, and it is unreasonable to expect such signer to be able to make such a determination prior to signing. To nevertheless invalidate signatures of qualified voters on petitions and candidacy papers based on the nonregistration of the circulator would significantly interfere with the rights of such voters in petitioning their government and proposing candidates for office. What is known by the affirmative act of signing is that the voter has expressed his or her view relative to the subject of the petition or paper as provided by law. See Willett v. Jordan, (1934) 1 Cal.2d 461, 464. To thwart that expression by invalidating the voter's signature is not only patently unfair to the voter but significantly diminishes rights protected by the Constitution and the Elections Code.

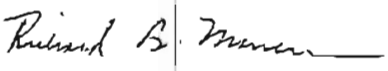
On the other hand, we are not aware of any reason, compelling or otherwise, for reading into the statute a rule which would result in the invalidation of signatures in such a case. The circulator's duties are ministerial in nature, and we can perceive no rationale why his registration status would have any effect on the performance of those duties.

This is not to say, however, that the specific requirements of the Elections Code can be ignored. The Code clearly contemplates that circulators be registered voters and otherwise qualified and state the qualifications in the circulator's affidavit. A circulator who completes a false affidavit is subject to criminal prosecution for perjury or, where applicable, violating Elections Code § 29780, and suspected violators should be reported by local elections officials to the proper authorities.

Such a procedure properly punishes the errant circulator rather than the innocent petition or paper signer.[4]

MARCH FONG EU
Secretary of State

ANTHONY L. MILLER
Chief Counsel



RICHARD B. MANESS
Staff Counsel

---

4. Similar rules have been fashioned in related areas of law governing petitions in which requirements similar to the ones regarding circulators qualifications discussed in this opinion have been found mandatory as to the signers or circulators, but not on the clerks. For example, the Attorney General ruled that statutes made mandatory the printing of petition signers' full names, but recommended that, where reasonably possible, clerks should verify signatures not accompanied by the signers' printed full name. 58 Ops.Cal.Atty.Gen. 218 (1975). See, also, Chester v. Hall, supra, 55 Cal.App. at 618. Worth v. Downey, (1925) 74 Cal.App. 436; People v. City of Belmont, (1929) 100 Cal.App. 537, 541. Similarly, McDonald v. Curry, (1910) 158 Cal. 160, held that it was mandatory that nominating petition signers can sign the petition of not more than one candidate for an office, but it was not within the clerk's duty to check between petitions to determine that each signer signed only once. And, the Attorney General has declared that clerks did not have a duty to investigate and verify the truth of campaign statements filed with them. 32 Ops.Cal.Atty.Gen. 93-94 (1958).