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DIRECTIVE 2006-68

September 21, 2006

TO: BOARDS OF ELECTIONS
Members, Directors & Deputy Directors

RE: Supplemental Petition – Constitutional Amendment – Smoke Less

On September 11, 2006, this office notified the committee representing the petitioners of the proposed "Smoke Less Amendment" initiative that they had insufficient signatures to place the issue on the ballot. Petitioners have timely filed additional signatures. Enclosed for certification by your office are the supplemental part-petitions that were circulated in your county.

You must examine each part-petition in accordance with the enclosed instructions. **Please read those instructions carefully *before* you start your examination and have each examiner do the same.**

NOTE: Because this initiative petition was submitted to the attorney general under R.C. 3519.01 before Am. Sub. H.B. 3 became effective, the amendments made to R.C. 3519.05 (revising the form of the petition) <i>do not apply</i> to the enclosed part-petitions. (See SECTION 13 of Am. Sub. H.B. 3.) Therefore, in determining the validity and sufficiency of individual signatures and petition papers, you must apply the enclosed instructions, which are based on the provisions of law governing this petition.
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Am. Sub. H.B. 3 Provisions Applicable to This Petition

- R.C. 3503.06 requires any circulator of a state issue petition to be an Ohio resident. Consequently, you must confirm that the residence address provided in each circulator's statement is an Ohio address. If the circulator's address provided on a part-petition is not an Ohio address, you must invalidate that part-petition.
- Additionally, you must invalidate any part-petition that you know was circulated by a person who has been convicted of a felony under the laws of this state, any other state or the United States, because Ohio law now bars felons from circulating petitions; *see* R.C. 2961.01 and 2967.17 as amended by Am. Sub. H.B. 3.

- Any part of a state issue petition is invalid if the board determines that one person has affixed more than one signature to the part-petition, *unless* the person who signed the name of another elector did so as that elector's duly-appointed *attorney in fact* in accordance with R.C. 3501.382.

Generally

Since no person may sign a petition more than once, it is imperative that boards check the names of those persons who signed the original part-petitions in order to properly verify the signatures on the supplemental part-petitions and determine that a person has not signed both the original part-petition and the supplemental part-petition.

In addition to verifying the validity of the individual signatures, you also must verify the validity of each part-petition. Check each part-petition to determine that the circulator's statement on the last page of the part-petition has been properly completed; a part-petition is invalid if the circulator's statement is not completed properly.

Do not invalidate a part-petition because the issuance statement, the circulator compensation statement, or the employer identification statement is blank, incomplete, or improperly filled out, or because the circulator is not an Ohio elector.

Protests

It continues to be prudent for boards to anticipate that their findings will be protested. Therefore, as soon as you complete (1) your certification of the part-petitions and (2) the attached certification form, **photocopy for your files the original part-petitions marked with your notations.** If a protest is filed, you will have a record of your individual and collective findings to review with your legal counsel.

Please notify the Elections Division immediately when a protest has been filed. Fax a copy of the protest to the Division (614-752-4360) and keep the Division informed of the progress of the court action.

Deadline

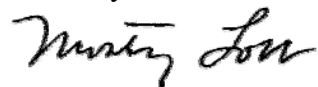
You must determine the validity and sufficiency of these part-petitions and return the originals to this office, together with your certification, **no later than September 26, 2006.**

Return your completed certification form and all the part-petitions to this office in person or using a trackable method, such as certified U.S. mail, UPS or FedEx.

* * *

If you have any question concerning the handling of part-petitions or the procedures set forth in this directive, please contact the Elections Division at (614) 466-2585.

Sincerely,



Monty Lobb
Assistant Secretary of State

Attachments

Ohio Secretary of State's Instructions to County Boards of Elections re: Examination of State Initiative Petition

(Ohio Constitution Art. II §§ 1-1g; Revised Code Chapters 3501., 3503., and 3519.)

CIRCULATORS

A. Qualifications

The circulator of a state initiative or referendum part-petition need not be an Ohio elector but must be an Ohio resident in accordance with R.C. 3503.06(B).

No individual convicted of a felony under the laws of this state, any other state or the United States may circulate a petition (R.C. 2961.01(B), 2967.17(B)).

B. Circulator's Statement

Each part-petition must contain a properly completed circulator's statement (may be identified on the part-petition as the "statement of the solicitor") that:

1. Includes the number of signatures witnessed by that circulator,
2. Is signed by that circulator, and
3. Contains the circulator's address.

When the number of signatures on a part-petition appears to differ from the number reported in the circulator's statement, the board must examine that part-petition to determine the nature of the inconsistency. If the number of signatures reported in the circulator's statement is:

- **Equal to or greater than** the total number of signatures on the part-petition, do not reject the part-petition because of the inconsistent signature numbers.

Example: The circulator's statement indicates that the circulator witnessed 22 signatures, but there are only 20 signatures on the petition.

- **Less than** the total number of signatures submitted on the part-petition, reject the *entire* part-petition.

Example: The circulator's statement indicates 20 signatures witnessed, but there are 22 signatures on the petition, none of which were crossed out prior to the petition being filed.

SIGNERS

A. Generally

Signers of a state issue petition must satisfy the requirements of R.C. 3519.10:

Each signer of any initiative or referendum petition must be a qualified elector of the state. 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 in which such voting residence is located ***. Each signer may also print his name so as to clearly identify his signature. ***.

B. Qualifications

Each person who signs a petition must be:

1. A qualified elector of Ohio, and
2. Registered to vote at the address provided on the petition as of the date the state issue part-petition is *examined* by the board.

(R.C. 3501.38(A), 3519.10, and 3519.15.)

C. Signatures

Except as provided in R.C. 3501.382 (elector's named signed by an attorney in fact), each signature of an elector who signs an initiative or referendum petition must be an original signature of that voter and must be written in ink (R.C. 3501.38(B), 3519.051).

Authority to Appoint an Attorney in Fact – R.C. 3501.382:

A registered elector who, by reason of disability, is unable to physically sign his or her name to a petition, may authorize a qualified individual as an attorney in fact to sign that elector's name to a petition, in accordance with the procedures.

1. Marking valid signatures:

- a. If a signature is **valid**, place a red check mark in the margin to the left of the signature on the petition paper.
- b. If a signature is **invalid**, indicate why it is invalid, using the appropriate code symbol contained in these instructions (see below).
- c. No one may sign a petition more than once. **When checking signatures on the Supplemental petition, check to see that the signer did not sign the originally-filed petition.**

2. One county per part-petition:

Each part-petition should contain signatures of electors of only one county. However, if any part-petition containing signatures from more than one county is filed, the Secretary of State determines the county from which the majority of signatures came, and only signatures from that county are to be counted; signatures from any other county are invalid. (R.C. 3519.10)

3. Signature requirements:

- a. The signature must match the signature on file with the board of elections. A board should not invalidate a signature because an elector signed using a derivative of his/her first name, if the board can confirm the identity of the elector. For identification purposes, the elector may print his/her name on the petition *in addition to* signing in cursive his/her name to the petition. A printed signature alone, with no cursive signature, is allowed only if the elector's signature on file with the board is also printed. (R.C. 3501.011, 3501.38)
- b. The signature must be written in ink or indelible pencil. (R.C. 3519.05)
- c. The petition must contain the location of the elector's voting residence, which must:
 - Include the house number and street name or RFD, and the appropriate city, village, or township. A post office box does NOT qualify as an elector's residence address.
 - Match the elector's voting residence address on file with the board when the board examines the part-petition. If an elector's address given on the petition differs from that on file with the board, then the board must invalidate the signature.

Note: For this reason, the boards must process all new, valid voter registrations and changes of address on existing registrations before verifying the signatures on the part-petitions.)

- The petition should indicate the county in which the elector's address is located, but an elector's signature will not be invalidated if election officials can determine the proper county from other information provided on the petition paper. The elector's ward and precinct are **not** required.

4. Dates

R.C. 3501.38(C) and 3519.10 require that each signature be followed by the date it was affixed to the petition paper. Do **not** invalidate a signature solely because its date is out of sequence with other signatures.

5. Illegible Signature

A signature is illegible only if *both* the signature and address are unreadable, such that it is impossible for board personnel to check the signature against a voter registration record.

6. Restrictions on signing the name of another person

- a. Although a person having an elector's standard power of attorney cannot sign the elector's name to a petition, a qualified person who has been appointed as an elector's *attorney in fact* under R.C. 3501.382 may sign that elector's name to the petition paper in the elector's presence and at the elector's direction. You must compare the name signed on the petition by the attorney in fact to the document on file with your office.
- b. In each case where a person other than a duly-authorized attorney in fact signs a name other than his or her own to a petition, the board must invalidate the entire part-petition.
- c. An elector's "non-signature information" – e.g., the elector's address, county, or the date of signing – may be added by a person other than the elector, with the elector's permission.

7. Ditto marks

Ditto marks may be used to indicate duplicate information (e.g., date, address or county).

Reasons NOT to invalidate a part-petition:

1. Do not invalidate a part-petition solely because it contains no valid signatures. It may be a valid part-petition that containing zero valid signatures.
2. Do not invalidate a part-petition if the information about "issuance" at the beginning of the petition (e.g., the petition number, the name of the solicitor to whom it was issued, and the date of issuance) is blank, incomplete, or otherwise improperly filled out.
3. Do not invalidate a part-petition if the circulator compensation statement (the statement that appears before the signers' signatures calling for how much the circulator receives or expects to receive and from whom) is blank, incomplete, or otherwise improperly filled out.
4. Do not invalidate a part-petition if the employer information statement (the statement that appears at the bottom of the last page, directly below the statement of solicitor) is blank or incomplete, does not match or correspond with the information provided by the circulator in the compensation statement, or is otherwise improperly filled out.

CERTIFICATION

After you have examined all the parts of the state issue petition circulated in your county, you must certify your findings to the Secretary of State using the enclosed certification form.

After you make copies of the part-petitions marked with your notations and your certification form, return the original completed certification and part-petitions to this office by a trackable method: e.g., in person or by certified U.S. Mail, UPS, or Fed EX. Return the documents to:

Ohio Secretary of State
Elections Division
180 E Broad St - 15th Floor
Columbus OH 43215

Once all part-petitions and reports have been returned by the boards, the Secretary of State will determine the validity and sufficiency of the petition and provide the constitutionally- and statutorily-required notices to the committee for the petitioners. If the Secretary of State determines that the petition is insufficient, the committee will have 10 additional days after notification to file additional signatures.

PROTESTS - R.C. 3519.16

▪ **Who may protest**

Any of the following persons may protest a board's findings on the part-petitions:

- a. The circulator of any part-petition.
- b. The committee for the petitioners.
- c. Any elector.

▪ **Procedure**

A protest against the board's findings must be made in writing and filed with the board of elections. When such a protest has been filed, the board must, ***within three days*** after the protest has been filed, bring an action in the court of common pleas for the purpose of establishing the sufficiency or insufficiency of the signatures and the verification.

If a protest is filed, the board should contact the county prosecutor immediately; advise the prosecutor that time is of the essence. The findings of the court on a protest action should be certified, along with all petition papers, to the Elections Division as soon as possible after the protest has been finally determined.

Please notify the Elections Division immediately when a protest has been filed. Fax a copy of the protest to the Division (614-752-4360) and keep the Division informed of the progress of the court action.

INSTRUCTIONS & CODE SYMBOLS FOR VALIDATING SIGNATURES ON PETITIONS

Election officials must examine each individual signature.

- If a signature is **valid**, place a red check mark at the left margin beside it.
- If a signature is **invalid**, indicate at the left margin beside it why it is invalid by using the following initials or, if no set of initials fits, an explanatory notation:

CIR	Circulator signed the part-petition he or she was circulating. (This invalidates the circulator's signature as a signer, but not the entire part-petition.)
DUP	"Duplication." The person has signed more than one part of the same petition.
ILL	"Illegible;" applies only if both the signature and address are unreadable, so that it is impossible to check the signature against a voter registration record.
NA	"No Address." The signer must provide his/her complete address: house number and street name or RFD, and the appropriate city, village, or township. Failure to provide the name of the county of residence is not fatal <i>if</i> board officials can determine the county from the other information given. The ward and precinct information is not required.
ND	"No Date." The petition does not indicate the date on which the signature was affixed. (However, acceptable are: month-date-year, month-date, date of out sequence with other signers' dates, ditto marks.)
NG	"Not Genuine." The signature on the petition does not appear to be the genuine signature of the person whose signature it purports to be, or the elector's name as signed by the elector's attorney in fact, compared to the signature on file with the board of elections as of the date the board checks the petition.
NR	"Not Registered." The signer is not registered to vote. Each person who signs a petition paper must be a qualified elector as of the date the board examines the petition.
NRA	"Not Registered Address." The address provided on the petition paper is not the address on file with the board of elections as of the date the board examines the petition.
OC	"Other County." The signer is a resident of some other county. Do not cross out signature or address; instead, place code at left margin.
P	"Pencil." The signature was written using <i>other than</i> ink or indelible pencil.

After checking each petition paper:

- Place the number of VALID signatures on the RIGHT side of the FRONT page, below the Secretary of State's stamped petition number.
- Place the initials of the petition checker under the number of valid signatures.

When invalidating an entire part-petition:

- Indicate the reason for rejection on the front of the part-petition.
- Place the invalid part-petition(s) on the top of the part-petitions the board is returning.
- Do **not** invalidate a part-petition solely for the reason that it contains no valid signatures.

Finally, fill out the certification form and forward it, with the part-petitions, to the Secretary of State.

CERTIFICATION FORM

State Issue Petition:

Supplemental Petition Filed September 21, 2006

Proposed Constitutional Amendment Smoke Less

On behalf of the _____ County Board of Elections, I hereby certify that we have examined the enclosed supplemental part-petitions. The numbers of valid and invalid signatures on the supplemental part-petitions for the proposed constitutional amendment are as follows:

	PETITIONS	SIGNATURES
1. Number of valid part-petitions	_____	
Number of valid signatures		_____
Number of invalid signatures		_____
2. Number of invalid part-petitions	_____	
Number of signatures on invalid part-petitions		_____
3. Total number of <i>part-petitions</i> received (valid and invalid)	_____	
4. Total number of <i>signatures</i> on part-petitions (valid and invalid)		_____

Signed: _____
Director

Date

Return by September 26, 2006
Keep a copy of your completed Certification Form for your files.