

OFFICIAL OPINION NO. 99-01, Required Number of Signatures for Constitutional Initiated Measures

June 1, 1999

The Honorable Joyce Hazeltine
Secretary of State
State Capitol, Ste. 204
500 East Capitol Avenue
Pierre, SD 57501-5070

OFFICIAL OPINION NO. 99-01

Required Number of Signatures for Constitutional Initiated Measures

Dear Secretary Hazeltine:

You have requested an official opinion from this Office regarding the following factual situation:

FACTS:

Article XXIII, Section 1, of the South Dakota Constitution allows for an initiated constitutional amendment. On August 17, 1998, the full text of a constitutional amendment was filed with us. Based on SDCL 2-1-6.2, the sponsors were advised that they had one year to collect the needed signatures in order for the measure to be placed on the ballot for the November 7, 2000, general election. They were also told that the number of signatures needed was 31,162, which was 10% of the vote for governor in the last gubernatorial election (1994). Since then we had another gubernatorial election in November of 1998. Ten percent of the vote for governor in 1998 is 26,019.

Based upon the following you have posed the following question:

QUESTION:

If this petition is filed between now and August 17, 1999, is the signature requirement based upon the total number of votes cast in the 1994 or 1998 gubernatorial election?

IN RE QUESTION:

Article XXIII, Section 1, of the South Dakota Constitution provides:

Amendments to this Constitution may be proposed by initiative or by a majority vote of all members of each house of the Legislature. An amendment proposed by initiative shall require a petition signed by qualified voters equal in number to at least ten percent of the total votes cast for Governor in the last gubernatorial election. The petition containing the text of the proposed amendment and the names and addresses of its sponsors shall be filed at least one year before the next general election at which the proposed amendment is submitted to the voters. A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment.

Article XXIII, Section 3, of the South Dakota Constitution provides:

Any constitutional amendment or revision must be submitted to the voters and shall become a part of the Constitution only when approved by a majority of the votes cast thereon. The Legislature may provide for the withdrawal by its sponsors of an initiated amendment at any time prior to its submission to the voters.

In order to implement these provisions of the South Dakota Constitution, the Legislature has enacted several statutes setting forth the process to place an initiated constitutional amendment measure on the ballot for vote. As indicated in your statement of facts, the most relevant statute to your inquiry is SDCL 2-1-6.2, which provides:

The full text of any initiative petition, referred law petition, or initiated constitutional amendment petition complete with names and addresses of the petition sponsors shall be filed with the secretary of state prior to circulation for signatures. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The form of the petitions shall be prescribed by the state board of elections. Signatures may be collected on initiative petitions for one year following the filing of the full text. The petition signatures shall be filed no later than one year after filing the full text with the appropriate filing officer. All sections of any petition filed under this chapter shall be filed with the secretary of state simultaneously together with a sworn affidavit on forms promulgated by the state board of elections, signed by two-thirds of the sponsors stating that the documents filed constitute the entire petition and to the best of their knowledge contain a sufficient number of signatures.

I note that this statute is of fairly recent origin, being first enacted in 1989. This statute has not been interpreted by the courts or this Office in answer to your specific question. The only prior Attorney General's Opinion concerning the general subject matter is AGO 77-93, which has been superceded by the current legislative scheme.

The answer to your question is resolved by interpreting the following sentence in Article XXIII, Section 1: "An amendment proposed by initiative shall require a petition signed by qualified voters equal in number to at least ten percent of the total votes cast for Governor in the last gubernatorial election."

This issue is one solely of state constitutional construction. The recent Eighth Circuit decision in Dobrovolny v. Moore, 126 F.3d 1111 (8th Cir. 1997), cert. denied, 118 S.Ct. 1188, 140 L.Ed.2d 319 (1998) clearly holds that issues involving the necessary number of signatures for initiated measures are controlled by state law. The standards for construction of constitutional provisions were recently set forth by the South Dakota Supreme Court in Beals v. Pickerel Lake Sanitary District, 1998 S.D. 42, ¶ 25, 578 N.W.2d 134, 139 (1998), which stated:

The words and terms of a Constitution, like those of a statute, are to be interpreted and understood in their most natural and obvious meaning, unless the subject indicates or the text suggests that they have been used in a technical sense. The presumption is in favor of the natural and popular meaning in which the words are understood by the people who have adopted them; and where the same words are used in different parts of a Constitution or statute they are presumed to have a uniform meaning throughout the instrument, but this does not necessarily follow.

Applying the above standard of construction, I conclude that the number of required signatures by qualified voters must be based upon the gubernatorial election preceding the submission of the petition to the Secretary of State, not that preceding filing of the text of the measure. In most cases, of course, the signature requirement will be the same. Where, however, the initiative process begins and there is an intervening gubernatorial election during the signature gathering process under SDCL 2-1-6.2, the latest election controls the signature requirement. To construe this provision otherwise would be inconsistent with its plain language. The fact that the sponsors of the initiative measure do not know the exact number of signatures needed when the process begins is a burden that the sponsors must bear, since it is caused by their own timing of

events. The Eighth Circuit decision in Dobrovoly, 126 F.3d at 1112 makes clear that no federal constitutional issue is created by the fact that sponsors of an initiated measure are unaware of the number of signatures required until its submission.

Thus, the answer to your question is that the number of signatures required to place the petition in question on the ballot for the 2000 election is ten percent of the total votes cast for governor in the 1998 general election.

Respectfully submitted,

MARK BARNETT

ATTORNEY GENERAL

MB:JPH:clr