

Mr. Warren McCarthy
County Attorney
Maricopa County
Phoenix, Arizona

May 31, 1950

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Dear Mr. McCarthy:

ARIZONA ATTORNEY GENERAL

We have your letter asking our opinion on the following question:

"Is the nomination paper (of a candidate) a valid nomination paper where the signers have given their street addresses, but not their precincts?"

You have cited Section 55-1004, and point out that in the second paragraph it "appears to require that each person signing the nomination paper designate his precinct on the nomination paper", but that the third paragraph of said section requires only the address. Your question, of course, is particularly important and pertinent when the same petition is being circulated in more than one precinct for a candidate for an office which must be voted upon by qualified electors of more than one precinct.

Section 55-1004 reads in part as follows:

"In addition to the nomination petition as provided in the foregoing section, every candidate desiring to have his name printed upon the official ballot to be used at a primary election shall, within the like time and with the same officer, file a nomination paper, which shall be substantially in the following form:

I, the undersigned, a qualified elector of the _____ precinct of the county of _____, state of Arizona, and a member of the _____ party, hereby nominate _____, who resides at _____ in the county of _____ for the party nomination for the office of _____ to be voted for at the primary election to be held _____ as representing the principles of said party, and I declare that I have not signed, and will not sign, any nomination paper for more persons than the number of candidates necessary to fill said office at the next ensuing election.

Names of signers. Name of city or post office. Street No. Date of signing.

No signature shall be counted unless it is upon a sheet having such form at the top thereof.

* * * * *

W. J. ...

To each such nomination paper shall be appended a certificate by a qualified elector entitled to vote for the candidate whose nomination paper he certifies, stating that to the best of his knowledge and belief all the signers thereof are qualified electors of the precinct which they give as their residence, and that each signer is a member of the party the nomination of which the candidate whose name appears on such nomination paper is seeking. * * * (Emphasis supplied)

It is apparent that the signers of such petitions must be qualified electors, entitled to vote for the office for which the person desiring the nomination is a candidate. In some instances this is confined to a precinct, in others to a district, in others to a county and in others to the entire state. Obviously, the qualified electors of one precinct are not entitled to vote for a candidate for an office confined to another precinct. Equally obviously, the qualified electors registered and identified with one political party may not sign a petition for a candidate affiliated with a different political party.

✓ You will note that the statute provides that the nomination paper shall be "* * * substantially in the following form. * * *", and then proceeds to outline a general form. As you have pointed out, there is an apparent discrepancy between the wording of the second paragraph and that of the third in that the second paragraph mentions "* * * a qualified elector of the _____ precinct", and the third paragraph indicates that only the names of signers, name of city or post office, street number and date of signing are to be shown by the signers of the petition. The fourth paragraph in part reads: "* * * No signature shall be counted unless it is upon a sheet having such form at the top thereof." Since the "form" referred to is specifically permitted to be "substantially" as set out in the statute, and contains a number of blanks to be filled in, obviously it need not be literally in the form designated so long as it contains the necessary information required by the statute. The fourth paragraph also emphasizes that the certificate appended to each nomination paper by a qualified elector entitled to vote for the candidate must state that to the certificate signer's knowledge and belief all the signers of the petition are qualified electors of the precinct which they give as their residence. From this we believe that the fundamental purpose of the statute is to require that all signatures shall be those of qualified electors, and that the petition shall show on its face, by the most easily ascertainable method, that the signer is so qualified, viz., that he is a registered voter in a precinct which can only be determined by his residence address.

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Section 55-301, ACA 1939, provides that the Board of Supervisors of each county shall establish a convenient number of election precincts in the county, not less than twenty days prior to each general or primary election, defining and designating the boundaries thereof. Under such circumstances, if the precinct boundaries are changed at any time up to twenty days prior to a primary election, many of the qualified electors who have registered previous to that time may have no knowledge of the precinct within which their residence actually lies. However, the precinct in which such signer lives is readily ascertainable by comparing the address set opposite his name with the precinct map as designated by the Board of Supervisors, and thus, if any question as to whether he is qualified by registration arises, it can be verified promptly by seeking his registration in such precinct register in the office of the County Recorder.

In the case of Whitman vs. Moore, 59 Ariz. 211, 125 Pac. 2d 445, the actual subject in controversy was signatures on initiative petitions, and the Constitution, in setting forth requirements of signers of such petitions, makes no mention of the precinct in which such signer is registered. However, the court in the Whitman case was cognizant of the fact that its rulings might also be applicable to signatures to nomination petitions or papers, for it said:

"The question is one of considerable importance, not only as it involves the particular initiated measure, but as providing a guide in all future cases involving the sufficiency of initiative, referendum, recall and, perhaps, nomination petitions. For this reason, we discuss the question, both generally and specifically, at some length." (Emphasis supplied)

The court further stated:

"* * * We, therefore, think that when there is any doubt as to the requirements of the Constitution going only to the form and manner in which the power of an initiative should be exercised, every reasonable intentment is in favor of a liberal construction of those requirements and the effect of a failure to comply therewith, unless the Constitution expressly and explicitly makes any departure therefrom fatal." (Emphasis supplied)

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It then discussed the various technical points raised as invalidating signatures on the petitions. We quote further:

"It is, of course, absolutely necessary that every petitioner shall be a qualified elector who is entitled to vote upon the law for, unless he is, the most meticulous compliance with form cannot make him a legal petitioner. Ahrens v. Kerby, 44 Ariz. 269, 37 Pac. (2d) 375 * * *"

* * * * *

" * * * It is obvious that the purpose for requiring the address of the petitioner is to afford a convenient method of checking whether he is a qualified elector, and the date is for the purpose of ascertaining that this was true at the time he signed the petition for, as we have held, the test of whether one is a qualified elector must be applied as of the date when he performs the act. Lane v. Henderson, 39 Ariz. 457, 7 Pac. (2d) 588; Ahrens v. Kerby, supra. Following the rule of liberal construction, since the constitutional provision does not either directly or by necessary inference require that this information appear in the handwriting of the elector, as is required for his name on the petition, we think that the information on this point may be placed upon the petition by the circulator thereof, upon the instructions of the elector, given at the time the information is written thereon."

* * * * *

"The ultimate substantive question obviously is whether the signer is in all respects a qualified elector, and all the requirements in regard to residence, date of signing, verification and the like are to assist interested parties to ascertain this fact."

The court discusses various defects, such as whether or not a signature or an address which is illegible may be properly counted, etc. In practically every instance, the court reiterates that the purpose of all the requirements is to show on the face of the petition that the signer is in all respects a qualified elector at the time of signing.

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While this case involves signatures to initiative petitions, we believe the same fundamental principles laid down therein apply to signatures on nominating papers.

In the case of Hunt v. Superior Court, 64 Ariz. 325, 170 P. 2d 293, candidates for nomination for clerk of the superior court filed nomination papers, and one of the candidates questioned the sufficiency of the nomination papers of the other candidate, on the ground that some of the signers were not qualified. The court stated first that the "validity of a candidate's papers, when on their face they substantially comply with the terms of the statute", was a matter which was not for ministerial officers but was for the court to determine.

The court further said:

"Upon filing of nomination petition and papers as candidate for clerk of superior court, substantially in compliance with law, members and clerk of county board of supervisors had mandatory duty to proceed to have candidate's name printed upon official ballot and had no jurisdiction to determine whether persons who signed nomination papers were qualified electors."
(Emphasis supplied)

In Sims Printing Co. v. Frohmler, 47 Ariz. 561, 58 Pac. 2d 518, the secretary of state had incurred a bill for printing voters' registration cards for the purpose of checking signatures on nomination papers with the list of registered voters at that time required to be filed with the secretary of state. The court held that it was not for a ministerial officer to determine the validity of a candidate's papers " * * * when on their face they substantially comply with the terms of the statute * * *". The court discussed the requirements necessary for signers of nomination papers and cited Section 1276, RCA 1928 (now Section 55-1004, ACA 1939), emphasizing as follows:

"If this form of nomination paper, or 'substantially' this form, is used and the signatures thereon are certified to as required by section 1276, it is the duty of the Secretary of State to accept and file it.

* * * * *

If the candidate's nomination petition and his nomination papers substantially comply with the provisions of the law in form and substance, and are timely presented to the Secretary of State, such candidate is entitled

to have his name certified by the secretary to the different boards of supervisors so that his name may be printed upon the official ballot. Of course, if the nomination petition, for instance, should be presented to the secretary more than ninety days or less than forty days before the primary, or if it failed to designate the candidate's party or give his residence and postoffice address, the secretary might well refuse to accept it. Likewise, if the nomination papers should not be certified by a qualified elector 'stating that to the best of his knowledge and belief all the signers thereof are qualified electors of the precinct which they give as their residence, and that each signer is a member of the party the nomination of which the candidate whose name appears on such nomination paper is seeking,' or if the signers so certified be less than the requisite percentage of his party vote for Governor at the preceding general election, the secretary should refuse to accept such papers. However, if these different papers are substantially in the form and substance provided by the statute, it is no part of the duty of the Secretary of State to go further.

* * * * *

It will be noticed that the same form of nomination paper is prescribed for use by a candidate for a state-wide office, or subdivision of the state greater than a county, as for a county or municipal election. The residence to entitle one to a vote at an election in these different electoral units is not the same. While a person showing his residence to be outside a municipality clearly would not be entitled to vote or to be counted on a nomination paper for a city office, he would for a county or state office. The clear purpose of the statute in requiring the signers of nomination papers to give 'Name of city or post office' and 'Street No.' is not that such data will show the signer to be a qualified elector, but that if any question should subsequently arise as to his right to vote he may readily be located." (Emphasis supplied)

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Upon an analysis of the cases cited, it is our opinion that: There must be (1) "substantial" compliance with Section 55-1004; and (2) information from which can readily be ascertained the fact that the signer was qualified elector at the date of his signing by such designation of his place of residence as will indicate his precinct.

The simplest way to ascertain the precinct in which a qualified voter is registered is by his address and place of residence. We believe, therefore, that if the nomination paper contains language indicating that the signers live in the precinct indicated, or designated, by the address given opposite their names, this is substantial compliance with the statute.

Very truly yours,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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