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February 14, 1989

The Honorable Dave Carson  
State Representative  
State Capitol - House Wing  
Phoenix, Arizona 85007

Re: I89-018 (R88-131)

Dear Representative Carson:

You have asked whether a county board of supervisors ("county board") on advice from a county attorney, has the authority to require notarization of signatures entered on a petition which was mailed to the signatories in connection with the formation of a special taxing district.<sup>1/</sup> You also have inquired whether a county board has the authority to find such petitions invalid or unacceptable merely because the signatures obtained by mail lack notarization. We conclude with regard to both questions that a county board has no such authority.

A "person proposing the [special taxing] district may circulate and present petitions to the board of supervisors of the county in which the district is located." A.R.S. § 48-261(A)(5).

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1. A.R.S. §§ 48-261 and -262 prescribe the manner in which certain special taxing districts are created. These provisions apply to fire districts, community park maintenance districts, sanitary districts, hospital districts and health services districts. See A.R.S. § 48-261(A).

The petitions presented pursuant to [A.R.S. § 48-261(A)(5)] shall:

(a) At all times, contain a description of the boundaries of the proposed district and a detailed, accurate map of the proposed district and the names, addresses and occupations of the proposed members of the district's organizing board of directors. No alteration of the proposed district shall be made after receiving the approval of the board of supervisors as provided in paragraph 4.

(b) Be signed by more than one-half of the property owners in the area of the proposed district.

(c) Be signed by persons owning collectively more than one-half of the assessed valuation of the property in the area of the proposed district.

(d) Be signed by more than one-half of the qualified electors within the boundaries of the proposed district.

A.R.S. § 48-261(A)(6). A county board has the responsibility to "determine the validity of the petitions presented." A.R.S. § 48-261(A)(8) (emphasis added). In fact, a county board may not order the creation of a district until after it determines the petitions to be valid. A.R.S. § 48-261(A)(9).

The legislature has set forth the criteria to be utilized by a county board in determining the validity of submitted petitions:

For the purpose of determining the validity of the petitions presented pursuant to [A.R.S. § 48-261(A)(5)]:

1. Qualified electors shall be those persons qualified to vote pursuant to title 16.

2. The value of the property shall be determined as follows:

(a) In the case of property assessed by the county assessor, values shall be the same as those shown on the last assessment roll of the county containing such property.

(b) In the case of property valued by the department of revenue, the values shall be those determined by the department in the manner provided by law, for municipal assessment purposes. The county assessor and the department of revenue, respectively, shall furnish to the board of supervisors, within twenty days after such a request, a statement in writing showing the owner, the address of each owner and the appraisal or assessment value of properties contained within the boundaries of the proposed district as described in subsection A of this section.

A.R.S. § 48-261(B).

We do not believe that either the special taxing district provisions or the provisions relating to a county board's powers and duties,<sup>2/</sup> give a county board authority to require notarization of petition signatures or to find such petitions invalid when such notarization is lacking.<sup>3/</sup> A county board has only those powers which are expressly conferred or expressly implied by statute. Davis v. Hidden, 124 Ariz. 546, 548, 606 P.2d 36, 38 (App. 1979).

Although A.R.S. § 48-261(A)(8) provides that a county board is to "determine the validity of the petitions presented," we see nothing in this provision which gives a county board express or implied authority to require notarization.<sup>3/</sup> Rather, this provision requires a county board to determine that the appropriate number of signatures in each category of signatures as specified in the statute has been obtained. We reach this conclusion by considering A.R.S. § 48-261 in its entirety. See Long v. Dick, 87 Ariz. 25, 27, 347 P.2d 581, 583 (1959) ("[s]tatutes must be construed as a whole").

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2. See e.g., A.R.S. §§ 11-251 to -268.

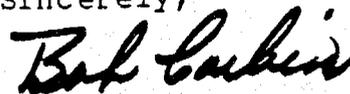
3. A county attorney may advise the county board on questions relating to such petitions in his or her capacity as "the legal advisor to the board of supervisors." A.R.S. § 11-532(A)(9). A county attorney, however, has no inherent authority, or authority prescribed by law, to require notarization of the petitions, or to declare any petition invalid. Ariz. Const. art. XII, § 4; A.R.S. § 11-532.

The legislature in A.R.S. § 48-261(B) sets forth the criteria for determining how the validity of the petition is to be determined. A county board receiving a petition and charged with the responsibility for determining the validity of the petition, pursuant to this provision should compare the names on the petition with the list of qualified voters and with the information received from the Department of Revenue and from the county assessor. If, based upon such comparisons, the petition contains enough names of qualified electors and property owners, and meets any other legally applicable requirements, the petition is valid.

The statute does not give the county board express or implied authority to create any additional criteria for determining the validity of the petitions. Indeed, in the same enactment in which A.R.S. §§ 48-261 and -262 were adopted, the legislature repealed various provisions which had required certification or verification of petitions. See A.R.S. § 48-801 (repealed by Laws 1986 (2nd Reg. Sess.) Ch. 390, § 25(A)) (petitions to be signed and certified under oath by three or more qualified electors attesting that the petitions contain signatures of at least ten percent of the qualified voters in the proposed district); see also, A.R.S. §§ 48-1203 and 2002 (repealed by Laws 1986 (2nd Reg. Sess.) Ch. 390, § 25(A)) and A.R.S. § 48-2202(D) (repealed by Laws 1986 (2nd Reg. Sess.) Ch. 390, § 22) (petition to be verified by one of the petitioners). The legislature by repeal of these provisions has reduced rather than increased the requirements placed upon those who circulate petitions. Given this fact, we believe it would be inconsistent to conclude that a county board has the authority to impose an even more onerous burden on the petition circulation process by requiring notarization of signatures obtained by mail. In interpreting statutes it is the spirit of the law that prevails. State Farm Automobile Insurance Co. v. Dressler, 153 Ariz. 527, 531, 738 P.2d 1134, 1138 (App. 1987).

We conclude that a county board of supervisors has no authority to require notarization of signatures obtained by mail or to find such petitions invalid or unacceptable merely because the signatures obtained by mail lack notarization.

Sincerely,



BOB CORBIN  
Attorney General