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OPINION NO. 95-01

**TO:** Janice L. Graziano, City Clerk  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** January 20, 1995  
**SUBJECT:** Opinion Request Regarding Initiative/Referendum Form and Signatures

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**QUESTIONS:**

1. Does failure to indicate whether the Petition seeking to place an Initiative on the ballot is being circulated by a paid or volunteer circulator result in the form of the petition being improper and not subject to further processing by the City Clerk.
2. Must a signature be removed that contains a clearly erroneous date that is either previous or after the petition was signed.

**OPINION:**

For purposes of this opinion, I will provide some background on initiatives. The initiative power is reserved to the people under the Arizona Constitution.<sup>1</sup> An initiative is the ability to propose a measure to the statutes or codes or to the state constitution or city charter. A similar form of legislative power is the referendum. A referendum is the power to refer a law

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<sup>1</sup>See, Article 4, Part 1, Section 1, (2); (4); (7), Arizona Constitution.

previously passed by the legislature, board of supervisors or city council.

While the initiative and referendum are similar in format, there are different standards of review. In the case of referenda, there must be strict compliance with all provisions of the statute, while with initiatives, substantial compliance is all that is required. See, Western Devcor, Inc. v. City of Scottsdale, 168 Ariz. 426, 814 P.2d 767 (1991).

The Arizona Supreme Court outlined the minimum requirements for initiatives in Kromko v. Superior Court, 168 Ariz. 51, 811 P.2d 12 (1991). Kromko involved an initiative measure to authorize numerous changes in Arizona's automobile insurance laws. Upon receipt of the petitions and attached signature sheets, the secretary of state completed the required review and forwarded the signature sheets to the various county recorders for random sampling. The county recorders ultimately determined that sufficient signatures existed to place the initiative on the ballot.

Subsequently, a citizen filed suit against the secretary of state seeking an injunction to order the secretary of state to revoke the certification of the initiative on the grounds that the petition sheets contained extra material that was not authorized by the secretary of state or the provisions of A.R.S. §19-121.

The Arizona Supreme Court addressed the authority of the courts to intervene in the initiative process. The court noted:

Although courts have the duty of "ensuring that the constitutional and statutory provisions protecting the electoral process (i.e., the manner in which an election is held) are not violated," they "are powerless to pre-determine the validity of the substance of an initiated measure." citing, Tilson, 153 Ariz. at 470, 737 P.2d at 1369.

Thus our authority to intervene and enjoin an initiative measure is limited to those instances in which a petition is legally insufficient in form, prescribed procedure, or the number of qualified electors. Id. (citing Iman, 98 Ariz. at 365, 404 P.2d at 709)

The court further set forth the three minimum requirements for initiative petitions:

1. Be in the form prescribed by law.
2. Have printed on its lower right hand corner on each side of such sheet, the number assigned to the petition by the

secretary of state.

3. Be attached to a full and correct copy of the title and text of the measure, or amendment to the constitution, proposed or referred by the petition, which shall be printed on pages fourteen inches in width by eight and one half inches in length, with a margin of at least one-half ( $\frac{1}{2}$ ) inch at the top and one-quarter ( $\frac{1}{4}$ ) inch at the bottom of each page.

The form prescribed by law is contained in A.R.S. §19-102, which is attached as Appendix "A" to this opinion. Subsection B of A.R.S. §19-102 states:

- B. A circulator of an initiative petition shall state whether he is a paid circulator or volunteer by checking the appropriate line on the petition form.

This requirement was added to the form requirements by the legislature in 1992 to deal with the issue of voters being imported from other states to reside temporarily in Arizona and circulate petitions for payment. The concept behind the requirement is to allow each voter being provided a petition to determine if such circulators are being used.

The question then becomes whether the failure to indicate the status of the circulator on the appropriate line of the petition form is a fatal defect in form, or a minor non-compliance with the statute. The Arizona Supreme Court in Tilson v. Mofford, 153 Ariz. 468, 737 P.2d 1367 (1987) defined the difference. If the question pertains to the substance of the matter, the court will not rule on the question and will let the voter's decide.

In this case, it is my conclusion that the failure to indicate the status of the circulator on the appropriate line of the petition form is a fatal defect in form. The status of the circulator requirement is contained in the same statute as the requirement that the entire text be attached to the petition and that they contain a description of the measure. These are mandatory minimum requirements for the initiative petitions to be valid. See Ariz. Atty.Gen.Op. No. 78-19.

Therefore it is our opinion that the signature sheets that do not contain the indication of paid or unpaid circulator are fatally defective in form and must be returned to the circulator. The remaining sheets should be then reviewed in the manner provided by A.R.S. §19-121.01.

Your second question is whether a signature on an initiative petition must be removed that contains a date of signature prior to the date of circulation or a future date. The answer is found

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in A.R.S. §19-121.01.A.3.(c). The date on which the petitioner signed must be indicated. If the date on which the petitioner signed does not exist, either because the date has not occurred yet, or it occurred prior to the date of issuance of the initiative number, the signature should be treated as if it were submitted undated and must be removed.

Once removed, the remaining signatures should be counted to determine if sufficient signatures exist on the petitions submitted for random sampling by the County Recorder. If sufficient signatures do not exist, then the petitions should be handled in the manner provided by A.R.S. §19-121.04.D.

I trust that this answers your submitted questions, If you should have any additional questions, please do not hesitate to contact me.

SMK:ei

cc: Honorable Mayor and Council