

GAME & FISH: Signers on petition may make formal application and withdraw their names from petition before action has been taken on same.

10-19

October 18, 1934.



Miss Josephine Howell,  
Clerk of County Court,  
Vernon County,  
Nevada, Missouri.

Dear Madam:

This department acknowledges receipt of your letter of October 15, which is as follows:

"The county court has instructed the undersigned to write you and present to you a question which is now before the county court of Vernon County, Missouri.

In pursuance of the provisions of Section 8246, R.S. Mo. 1929, a petition was filed on August 22nd, containing 144 names of householders in Vernon County, Missouri, being more than sufficient to place the question of closed season for quails before the voters of Vernon County at the next general election. Subsequently, and on October 11th, a petition was filed by 54 of the petitioners on the other petition, asking that their names be withdrawn from the original petition. If this were done, it would leave less than a sufficient number of names on the original petition to place the question on the ballots. At the time of the filing of the second petition on October 11th, the county court had taken no official action upon the original petition whatsoever and had made no order requiring the question to be presented at the next general election or that ballots be printed therefore.

The county court would now like to know whether they have a legal right to withdraw the 54 names presented on the withdrawal petition from the original petition, and if they do so withdraw said names and the original then stands without sufficient names, should they make a court order so finding said original petition to be without sufficient names or should they disregard it altogether?"

We assume that the petition in question which was filed with the County Court was an attempt to comply with Section 8246, R.S. Mo. 1929, which is as follows:

\*\*\*\*\*Provided, that upon the filing of a petition signed by one hundred or more householders of any county and presented to the county court at any regular or special term thereof more than thirty days before any general election to be had and held in said county, it shall be the duty of the county court to order the question as to whether or not there should be a closed season upon quail for the next two years in their said county submitted to the qualified voters, to be voted on by them at the next election. Upon the receiving of such petition it shall be the duty of the county court to make the order as herein recited, and the county clerk shall see that there is printed upon all the ballots to be voted at the next election the following  
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This portion of the statute has been declared to be constitutional by the Supreme Court in the case of State v. Ward, 328 Mo. 658; however, as this has no bearing on the question, we will not quote same here.

The word "petition" as used in Section 8246, supra, is defined in that sense in the case of State ex rel. v. Tullock, 108 Mo. App. 1.c. 34, as follows:

"A formal request, written or printed and signed by one or many, preferred to a person in authority or to a legislative or administrative body, asking for the bestowal of some benefit or privilege, the concession or restoration of a right, the redress of a grievance, or such other special action as the applicants desire" Standard Dictionary.

"A legal lexicographer thus defines the word: 'A written address, embodying an application or prayer from the person or persons preferring it, to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favor, privilege or license.'

'An application made to a court ex parte, or where there are no parties in opposition, praying for the exercise of the judicial powers of the court in relation to some matter which is not the subject for a suit or action, or for authority to do some act which requires the sanction of the court; as for the appointment of a guardian, for leave to sell trust property, etc.' Black, Law Dictionary."

From the definitions above quoted, the names on a petition when submitted to a court, as in Section 8246, supra, constitute a prayer for the exercise of the duties or powers of the court. The petition does not bind the court unless it is in proper form, nor are the parties in any wise bound as in the case of a contract or the signing of a promissory note. In other words, there is no consideration for the petitioners signing the petition.

There is nothing in the statutes of Missouri which prevents persons signing a petition in the nature of or similar to the one under discussion which would prevent the signers from withdrawing their names. In the case of State v. Rupert, 122 N.E. 39, the court said:

"Unless provided otherwise by statute, the electors who have signed a petition may withdraw their names before official action has been taken thereon."

In the case of Dutton v. Hanover, 42 Ohio 215, the Court said:

"If as a result of the withdrawal, the petition fails to contain the requisite number of names, it should be dismissed."

In the case of State ex rel. Westhues v. Sullivan, 283 Mo., l.c. 592, the court in passing upon the question of withdrawing names from a petition, said:

"After the time for filing the petitions had expired, and after the petitions had been filed with the Secretary of State, there were a number of the signers who indicated their purpose to withdraw their names. A few had so indicated before the time of the filing had expired. These

These indications were in response to post cards sent out by relator and plaintiffs. Of the former there were 671; of the latter, 5559. The former class directed their card to the Secretary of State. The latter authorized Westhues and Wood to withdraw their names. Such is the situation of the attempted withdrawals.

To our mind a single proposition eliminates both classes of the alleged withdrawals. To obviate fraud the statute (Sec. 6749, R.S. 1909) requires that each sheet of the petition shall be verified by the affidavit of the circulator of such sheet of the petition, in which affidavit such circulator shall give the names of the signers thereon and make oath that they signed it in his presence and other matters named in the statute, supra. The very purpose of the statute in requiring this formality was to obviate fraud. To get off of such a petition the action of the signer should be at least as formal. His request should at least be verified by his affidavit before some officer. This to the end that the Secretary of State might know that the signature to the request was genuine. A mere postal card or letter purporting to be signed by a signer of the petition is not sufficient. Such course would open wide the gates for fraud. These alleged withdrawals cannot be considered."

#### CONCLUSION

If the 54 names now presented to the County Court on a withdrawal petition have formally signified their desire and intention of withdrawing from the original petition, it is the opinion of this department that said petitioners can, in the manner as aforesaid, withdraw their names, and as stated in the above citation, if the petition then lacks the required number of names, it can be dismissed by the County Court.

Respectfully submitted,

OLLIVER W. NOEEN,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General