

ELECTIONS:
NONPARTISAN COURT PLAN:
PETITIONS:
ELECTION PETITIONS:

Petition for adoption of nonpartisan court plan in 21st judicial circuit, August 6, 1968, follows form set out in Section 1, House Bill No. 27 of the 74th General Assembly and is sufficient.

OPINION NO. 377

October 3, 1967



Honorable Kenneth J. Rothman
State Representative - 38th District
Missouri House of Representatives
6815 Plymouth Avenue
University City, Missouri 63130

Dear Representative Rothman:

This is in answer to your letter of recent date concerning House Bill No. 27 of the 74th General Assembly with which letter you enclose a petition asking that the question of the adoption of the non-partisan court plan be voted on by the voters of the 21st Judicial Circuit at the Primary Election to be held August 6, 1968, together with two proposed Addendums to such petition.

The petition and the proposed addendums read as follows:

"TO THE HONORABLE OFFICIALS IN general charge of elections for the County of St. Louis for the State of Missouri:

We, the undersigned, legal voters of the State of Missouri and of the County of St. Louis, respectfully demand that the question of the adoption of the non-partisan selection of the Circuit and Probate Judges be submitted to the legal voters of the Twenty-First Judicial Circuit, for their approval or rejection, at the general primary election to be held on the 6th day of August, A.D. 1968.

Name

Adress

"

"ADDENDUM 1 -----

It is understood by the undersigned legal voters of the State of Missouri and of the County of St. Louis, that this petition may be submitted to the officials in general charge of elections for the County of St. Louis for the State of Missouri in multiple counterparts which may be signed by different and varying numbers of petitioners and that all such counterparts so signed and so submitted shall be taken and considered collectively and as one petition.

"ADDENDUM 2 -----

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

I, _____, residing at _____, St. Louis County, Missouri, state upon my oath that the signatures on this page of the above and foregoing petition were affixed in my presence.

Subscribed and sworn to before me, a Notary Public, within and for the County of St. Louis, Missouri, on the _____ day of _____, 1967.

My term expires: _____ "

Your first question reads as follows:

"A. Is the Petition by and of itself sufficient under the law?"

House Bill No. 27, of the 74th General Assembly which will become effective October 13, 1967, provides in part as follows:

Section 1. Upon the filing with the officials in general charge of elections in each county of the first class having a charter form of government in any judicial circuit not having the nonpartisan selection of judges as provided for in article V, section 29(b) of the constitution of 1945 of a petition praying that the nonpartisan selection of judges be adopted for the circuit court and probate court in such judicial circuit signed by the legal voters in such number as shall equal five per cent of the total vote

cast in each county in said judicial circuit at the last general election for governor, the officials in general charge of elections in each such county shall determine the legal sufficiency thereof and certify the same to the secretary of state.

"Section 2. The petition shall be in substantially the following form:

To the Honorable Officials in general charge of elections for the county of
for the state of Missouri:

We, the undersigned, legal voters of the state of Missouri and of the county of, respectfully demand that the question of the adoption of the nonpartisan selection of the circuit and probate judges be submitted to the legal voters of the judicial circuit, for their approval or rejection, at the general primary election to be held on the day of, A.D. 19.."

In answer to your first question, it is our view that the petition which you enclosed and which follows the form provided for in Section 2 in House Bill No. 27 of the 74th General Assembly is sufficient under the provisions of such Bill to authorize a vote on the adoption of a nonpartisan court plan by the voters of the 21st Judicial Circuit. Such Bill makes no further requirements concerning the petition and it is our view that such petition if signed by the requisite number of voters would authorize the submission of such question to the voters at the August 1968, Primary Election.

Your second question reads as follows:

"B. Would the Petition be sufficient by and of itself and Addendum No. 1?"

We believe that the petition alone is sufficient without the proposed first Addendum. However it might be held by the courts of this State, that House Bill No. 27 and Chapter 126, RSMo, relating to initiative and referendum generally are in pari materia and must be construed together. If House Bill No. 27 and Chapter 126 of the RSMo are considered together, the provisions of Section 126.030, RSMo, would be applicable to the petition filed under House Bill No. 27 and since such Section provides that petitions for any law or amendment to the Constitution of Missouri proposed by the initiative may be filed in several sheets or sections, provided every sheet contains a copy of the title and text of the measure proposed such Section would authorize the submission of the petition on several sheets each of which contains the statutory form and make unnecessary the inclusion of Addendum.

Further, the general rule is that petitions required under election laws may be submitted in several sheets or sections as long as each sheet contains the petition form required by statute. This rule is succinctly set out in the case of *Jordan v. Overstreet*, 352 S.W.2d 296 in which case the Court of Civil Appeals of Texas at Beaumont held l.c. 299,300:

"As a basis for the order calling the election by the county judge there was submitted to him three different sheets of paper at the top of each of which there appears identical language addressed to the County Judge of Hardin County, Texas, requesting him to call an election in the two districts for the purpose of determining whether they should be consolidated for school purposes. Each of these pages was dated November 19, 1960, and bore the signatures of different qualified voters of the Batson district, and no one page contained as many as 20 signatures. The three pages were fastened together and submitted to the County Judges as 'the petition' as a basis for calling the election. Appellant's 6th point contends that since Article 2806, V.A.T.S., provides that on 'the petition' of 20 or a majority of the legally qualified voters of each district the county judge shall call such election and since no one of the pages or sheets had the requisite number of signatures, the election was improperly called. To sustain this point we would give precedence to form over substance. We decline to do this. *Sanders v. Mason*, 197 Ga. 522, 29 S.E.2d 780; 18 Am.Jur. 244."

However, including Addendum 1 on each sheet of the petition in addition to the statutory petition form could not in any way affect the validity of such petition and might preclude an attack on such petition on such point.

Your third question reads as follows:

"C. Would the Petition be sufficient in and of itself or in addition to Addendum No. 1 and No. 2 or just Addendum No.2?"

As stated above, it is our view that the statutory form of the petition is all that is required by House Bill No. 27. The reason for proposed Addendum 2, apparently would be to provide a sworn statement of the authenticity of the signatures on the petition.

We are informed by the Secretary of the St. Louis County Election Board that each signature on all petitions submitted to the Election Board is compared with the signature of the person

allegedly signing the petition found on the registration records of the County. This would appear to be the most certain and effective way possible to determine whether the petition actually is signed by the requisite number of voters. However, if it were held that House Bill No. 27 and Chapter 126 RSMo, are in pari materia and must be construed together, the provisions of Section 126.040, RSMo would be applicable, and the form provided in such Section for the affidavit of the circulators of the petition would be applicable. Of course, such statute provides that the statutory form is not mandatory but it is sufficient if the statutory form is substantially followed.

The addition of Addendum 2, or the addition of the form set out in Section 126.040 to the petition could not in any way affect the validity of such petition and it might preclude an attack on the petition on such point.

Under the provisions of Section 1 of House Bill No. 27, the officials in general charge of elections in St. Louis County which County contains the 21st Judicial Circuit shall determine the legal sufficiency of the petition and certify the same to the Secretary of State.

CONCLUSION

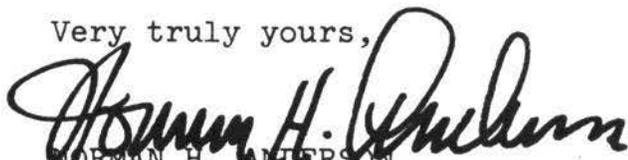
The petition form submitted to the Attorney General which follows the statutory form set out in Section 2, of House Bill No. 27, of the 74th General Assembly is sufficient to authorize a vote on the adoption of the nonpartisan court plan by the voters of the 21st Judicial Circuit at the Primary Election, August 6, 1968, if the requisite number of voters sign such petition.

The addition to each sheet of such petition of a provision that the petition may be submitted in several sheets containing such petition and that the signers of the petition understand such fact, could not affect the validity of such petition.

The addition of an affidavit on each sheet of the petition by the circulators of such petition either in the form set out in Section 126.040 RSMo, or in a form substantially following the form set out in such Section, could not affect the validity of such petition.

This opinion which I hereby approve was prepared by my assistant Mr. C. B. Burns, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General