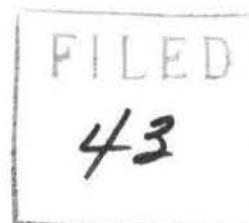


ELECTIONS: (1) A person who wilfully and falsely
INITIATIVE & REFERENDUM: executes a verification affidavit on
PETITION: a referendum petition may be punished
therefor by a fine not exceeding \$500
or by imprisonment in the penitentiary not exceeding two years, or
by both such fine and imprisonment. (2) The Secretary of State is
not under a statutory duty to forward such information as he might
possess regarding the wilful and false execution of a verification
affidavit on a referendum petition to appropriate prosecuting officials.

OPINION NO. 43

March 30, 1970

Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This opinion is issued in response to your request for an official opinion on the following questions relating to referendum petitions:

" * * * * *

c. What is the penalty for falsely executing the verification affidavit?

* * * * *

(3.) Is it the duty of this office (the Office of the Secretary of State) to forward such information (as might be received by the office indicating that the verification affidavits have been incorrectly or falsely made) to appropriate authorities for possible criminal proceedings."

In answer to your first question, it is the opinion of this office that the penalty for wilfully and falsely executing a verification affidavit is set forth in Section 126.100, RSMo 1959, which provides for a fine not exceeding \$500 or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Section 126.040, RSMo 1959, provides:

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"Each and every sheet of every such petition containing signatures shall be verified in substantially the following form by the person who circulated said sheet of said petition, by his or her affidavit thereon and as part thereof:

State of Missouri,)
) ss.
County of _____.)

I, _____, being first duly sworn, say (here shall be legibly written or typewritten the name of the signers of the sheet), signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, post office address and residence correctly, and that each signer is a legal voter of the state of Missouri and county of _____.

(Signature and post office address of affiant.)

Subscribed and sworn to before me this ____ day of _____, A. D. 19__.

(Signature and title of officer before whom oath is made and his post office address.)

The forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors."

Section 126.100, RSMo 1959, provides:

"Every person who is a qualified elector of the state of Missouri may sign a petition for the referendum or for the initiative of any measure on which he is legally entitled to vote. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person willfully violating any provision of this chapter, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment." (Emphasis ours.)

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We conclude that one who wilfully and falsely executes a verification affidavit under Section 126.040, RSMo 1959, is a person who wilfully violates a provision of such chapter within the meaning of Section 126.100, and is, therefore, subject to the penalty prescribed therein.

In reaching this conclusion, we have considered the possible application of Section 557.070, RSMo 1959, relating to making a false affidavit, which provides:

"Every person who shall willfully, corruptly and falsely, before any officer authorized to administer oaths, under oath or affirmation, voluntarily make any false certificate, affidavit or statement of any nature, for any purpose, shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars."

As previously indicated, we find that the penalty prescribed in Section 126.100, supra, is applicable as a specific penal provision rather than the general prohibition of Section 557.070, supra. Our determination has been predicated upon the principles set forth by the Supreme Court of Missouri in *State v. Richman*, 347 Mo. 595, 148 S.W.2d 796, 799 (1941), which quoted with approval the following from *State ex rel. County of Buchanan v. Fulks*, 296 Mo. 614, 247 S.W. 129, 132:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; . . ."

Therefore, we find and conclude that the provision of Section 126.100, RSMo 1959, constitutes a special statute applicable, in part, to situations where a person has wilfully and falsely executed a verification affidavit on an initiative or referendum petition.

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Your second question is whether it is the duty of the Office of the Secretary of State to forward such information concerning the false execution of a verification affidavit to appropriate authorities for possible criminal proceedings. We have examined the various statutory provisions relating to the duties of the Secretary of State and can find no provision which imposes a mandatory duty upon the Secretary of State to forward such information to the appropriate prosecuting officials. The failure to specifically impose such a duty by statutory provision does not preclude the Secretary of State from forwarding such information to appropriate prosecuting officials. Obviously, the basic tenets, of citizenship in general, and, proper fulfillment of a public official's responsibilities in particular, would dictate that a person having knowledge of such a violation would forward that information to the appropriate prosecuting officials.

CONCLUSION

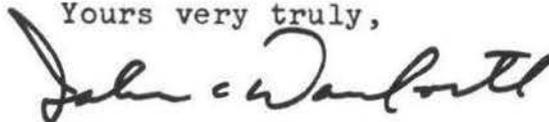
It is therefore the opinion of this office that:

(1) A person who wilfully and falsely executes a verification affidavit on a referendum petition may be punished therefor by a fine not exceeding \$500 or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

(2) The Secretary of State is not under a statutory duty to forward such information as he might possess regarding the wilful and false execution of a verification affidavit on a referendum petition to appropriate prosecuting officials.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Warren K. Morgens.

Yours very truly,



JOHN C. DANFORTH
Attorney General