

## **Opinion No. 64-108**

August 18, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Nestor Gallegos, City Clerk, Belen, New Mexico

### **QUESTION**

#### QUESTIONS

1. On petitions seeking an election on a municipal sales tax ordinance do the requirements of Section 3-7-12 et seq., N.M.S.A., 1953 Compilation apply?
2. In order to be eligible to sign a petition does the signer have to be a registered voter?
3. Are forged signatures valid?
4. If a person signs his own name more than once, do any of the signatures count?
5. If a person signs three or four different names, do any of the signatures count?
6. Is a signature invalidated if the person circulating the petition misrepresented the purpose of the petition?
7. Is the number of signatures required ten percent of the registered voters in the municipality or is it ten percent of the registered voters in all precincts which are at least partially within the city limits?

#### CONCLUSIONS

1. No
2. Yes
3. No
4. One signature counts
5. No
6. No
7. Ten percent of the registered voters in the municipality.

## OPINION

### ANALYSIS

The statutory sections on referendum petitions, Sections 3-7-12 through 3-7-23, N.M.S.A., 1953 Compilation, contain a number of requirements. For example, the signer's name and precinct must be listed. Each page must be certified on the back by the person who circulated the petition.

You ask whether these provisions, as well as the others contained in these sections, apply to petitions calling for an election on a municipal sales tax ordinance.

The answer is negative. These sections make it clear that the provisions contained therein are applicable only to referendums which are permitted by Article IV, Section 1 of our constitution, namely to annul or suspend laws enacted by the legislature. Section 3-7-14, supra, setting forth the form of the petition makes this clear. The petition is to the secretary of state and is signed by qualified electors "who disapprove Chapter \_\_\_\_ of the New Mexico Session Laws of \_\_\_\_, approved on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, entitled 'An Act \_\_\_\_'."

It is to the statute providing for a municipal sales tax that we must look. This is Section 14-42-25, N.M.S.A., 1953 Compilation, which provides that an election will be held on the issue of a municipal sales tax if at any time within sixty days after the adoption of a municipal sales tax ordinance by the governing body "a petition signed by ten percent (10%) of the registered voters is presented to the governing body . . ."

Unlike the statewide referendum law there is no requirement that the signer give his address and precinct number and there is no requirement that each page be certified. We cannot read into this statute something that is not there. The only requirement for signers is that they be registered voters in the municipality. This answers your second question.

In answer to your third question, a forged signature is not valid. An individual must sign the petition personally.

You next ask whether the fact that a person has signed his own name more than once invalidates each of his signatures. If the person is a registered voter in the municipality, one of his signatures should be counted. There is a presumption that persons are acting in accordance with the law and not in an attempt to evade it. A person could sign his own name on a petition more than once in good faith. He might sign at different times without realizing the second petition was on the same subject.

You next ask whether all the signatures should be invalidated when it is properly determined that the same person signed several different names. Our answer is yes. You cannot determine what person actually signed the several names. Here the situation is different from that just discussed. The presumption of legality has been

replaced with a presumption of fraud. Consequently, every name signed by that individual should be invalidated.

If a signer is a registered voter in the municipality, his signature should not be invalidated simply because the person circulating the petition misrepresented the purpose of the petition. The petitions in question had a heading which stated the purpose of the petition. While such an oral misrepresentation is to be condemned, the signer had only to read the petition. Having not done so, and having affixed his signature on the petition, it should be counted.

In your last question you ask whether the required number of signers is to be ten percent of the registered voters in city precincts even though some of these precinct limits may extend beyond the municipal limits, or whether it is to be ten percent of the registered voters in the municipality. The number of signatures required is ten percent of the registered voters **in the municipality**. We are here dealing with a proposed election on a municipal sales tax and someone who resides beyond the municipal limits is neither eligible to vote on such issue nor to sign a petition for an election thereon. The situation is the same as a resident of one county or state attempting to seek an election in another county or state. The fact that the tax may actually affect the non-city resident does not alter the statutory requirements.

As city clerk it behooves you to check the names on the petitions to see that each signer is a registered voter in the municipality. We would also advise that you should exercise care in invalidating signatures on the ground that they were forged, because should the question go to court the burden will be upon you to so establish.