proposed ordinance. Where no consequences for noncompliance are stated in the statute, this may be considered as a factor in determining that a statute is merely directory. Corbett v. Bradley, 7 Nev. 784 (1871); Sullivan v. Credit River Tp., 217 N.W.2d 502 (Minn. 1974); Fallon v. Hattemar, 229 App.Div. 397, 242 N.Y.S. 93 (1930); State v. Heath, 345 Mo. 226, 132 S.W.2d 1001 (1939).

CONCLUSION TO QUESTION ONE

Taking the above considerations into account, it is the opinion of this office that NRS 244.100, subsection 1, is directory in nature with respect to the matter of the time for performing the final action of the board of county commissioners in enacting proposed county ordinances. Thus, in the opinion of this office, it would be permissible for a board of county commissioners to take its final action on proposed county ordinances at a reasonably later time than the next regular meeting of the board after a proposed ordinance is introduced and has its first reading. If anything, this will allow the public more time to devote their attention and input into county ordinances before they are enacted.

QUESTION TWO

If an ordinance is enacted at a later time than the next regular meeting of the board of county commissioners after the proposed ordinance's introduction, is that ordinance legally defective so as to be considered void or violable?

ANALYSIS TO QUESTION TWO

With respect to this question, Sutherland's *Statutory Construction* states:

> The important distinction between directory and mandatory statutes is that violation of the former is attended with no consequences, while the failure to comply with the requirements of the latter either invalidates purported transactions or subjects the noncomplier to affirmative legal liabilities. 1A Sutherland, *Statutory Construction* § 25.03.

See also State v. Whittington, 290 A.2d 659 (Del. 1972); Hester v. Kamykowski, 13 Ill.2d 481, 150 N.E.2d 196 (1958).

CONCLUSION TO QUESTION TWO

Considering the above analysis and our opinion that NRS 244.100, subsection 1, is directory with respect to the time for performing the final action of the board of county commissioners in enacting a county ordinance, it would be the opinion of this office that an ordinance which was enacted at a time later than the next regular meeting of the board after the introduction of the proposed ordinance would not be legally defective so as to be void or voidable.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By DONALD KLASIC, *Deputy Attorney General*

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227 Initiative Petitions—Persons signing initiative petitions may not remove their names from the petitions after they have been officially filed with the appropriate filing officer.

CARSON CITY, November 28, 1978

THE HONORABLE STEVEN D. MCMORRIS, *District Attorney*, Courthouse, Minden, Nevada 89423

Attention: BRENT KOLVET, *Deputy District Attorney*

DEAR MR. MCMORRIS:

You have requested advice concerning NRS 295.115.

FACTS

An initiative petition has been filed with the county clerk pursuant to the provisions of NRS 295.035 to 295.125, inclusive. Under NRS 295.115, the board of county commissioners must consider the proposed initiative ordinance and either enact it or put the question to the ballot. However, several persons who signed the petition have requested that their names be removed and this, if enough people were to make similar requests, would put the question of the sufficiency of the petition in doubt.

QUESTION

May a person who signs an initiative petition have his name removed from said petition after it has been officially filed with the appropriate filing officer and, if so, what procedure for removal should be followed?

ANALYSIS

This exact question has not been considered before with respect to initiative petitions, but has been considered with respect to recall and referendum petitions.

In State ex rel. Matzdorf v. Scott, 52 Nev. 216, 285 P. 511 (1930), the question of whether persons signing a recall petition could remove their names from the petition after it was filed was considered. The court noted there was nothing in the statute which permitted withdrawal of names. Matzdorf v. Scott, supra, at 229. The clerk was required to judge the sufficiency of the petition only from the face of the document and could not consider matters outside the form of the petition as it was filed with him. Matzdorf v. Scott, supra, at 229.

The court then quoted from an Iowa Supreme Court case, Seibert v. Lovell, 92 Iowa 507, 61 N.W. 197, 199 (1894), in which a board was required to take action after a petition was filed:

> We hold, then, that the question of jurisdiction is to be determined from the petition as it was when filed, and without regard to the subsequent acts of the petitioners * * *[.] So far as affecting the jurisdiction which had already attached was concerned, the protests and remonstrances were of no effect * * *[.] It must be remembered that jurisdiction did not attach as of the date when the board acted, but as of the date when the *legal* petition was filed. The power to act having been conferred upon the board by virtue of a *legal* petition, it could not be impaired or taken away by the protests, remonstrances, or attempted withdrawals of some of the petitioners. (Nevada Supreme Court's emphases.) Matzdorf v. Scott, supra, at 230.

Finally, the court noted that before the petition was filed, it was still in the control of the signers and they could control their own signatures. After filing, however, the public has an interest in the petition and the signees, after initiating statutory procedures, should not be permitted to "capriciously" undo the work. Matzdorf v. Scott, supra, at 230.[1]

An opinion similar to this was reached in Attorney General's Opinion No. 379, dated July 14, 1930, in which the Attorney General considered the question of whether persons signing a referendum petition could withdraw their signatures after the petition was filed. Relying on the reasoning stated in the case of Matzdorf v. Scott, supra, the Attorney General concluded that persons signing referendum petitions could not remove their names from such petitions after they were officially filed.

CONCLUSION

NRS 295.075 to 295.125, inclusive, makes no provision for the removal of names from an initiative petition at the request or demand of its signers. Therefore, relying on the Supreme Court's reasoning in Matzdorf v. Scott, supra, and upon the reasoning of Attorney General's Opinion No. 379, supra, it is the opinion of this office that persons signing initiative petitions may not remove their names from the petitions after they have been officially filed with the appropriate filing officer.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By DONALD KLASIC, *Deputy Attorney General*

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[1]As a result of the reasoning in this case, NRS 306.040 was amended to permit the signers of a recall petition to withdraw their names at a court hearing to be held on the sufficiency of the petition. No similar provision was added to Chapter 295 of Nevada Revised Statutes, pertaining to initiative and referendum petitions.
