

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

OPINION NO. 2000-24 SECRETARY OF STATE; ELECTIONS; INITIATIVE:

The phrase “filed with the county clerk” in NRS 295.055(3) means submitted to the county clerk for signature verification in the context of the procedure for a person to remove his or her name from a statewide initiative petition.

Carson City, September 8, 2000

Susan Morandi, Deputy Secretary for Elections, Office of the Secretary of State,
101 North Carson Street, Suite 3, Carson City, Nevada 89701-4786

Dear Ms. Morandi:

You have requested an opinion from this office regarding the interpretation of an election statute relating to the removal of signatures from a statewide initiative petition.

QUESTION

What does the phrase “filed with the county clerk” in NRS 295.055(3) mean in the context of limiting a person’s ability to remove his or her name from a statewide initiative petition?

ANALYSIS

The procedure for circulating a statewide initiative petition and qualifying such a petition for the ballot is found in NRS 295.015–295.061. Before a petition is circulated for signatures, it must be filed with the Secretary of State. NRS 295.015. Then, after signatures are gathered, the petition must be submitted to the county clerks/registrars of voters for signature verification and the completed petition filed with the Secretary of State. NRS 295.056(1). The signature verification process is found in NRS 293.1276–293.1279.

A procedure also exists for a person to remove his or her name from the petition. NRS 295.055(3) states: “A person who signs a petition may remove his name from it by transmitting his request in writing to the county clerk at any time before the petition is filed with the county clerk.” Nowhere else in the statewide initiative petition statutes or in the signature verification statutes is there a requirement that the petition be filed with the county clerk.

Thus, the question arises, if a statewide initiative petition is not required to be filed with the county clerk/registrar of voters, what does the phrase “filed

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

with the county clerk,” mean in NRS 295.055(3)? Rules of statutory construction help in giving the proper meaning to this phrase.

“Generally, when the words in a statute are clear on their face, they should be given their plain meaning unless such a reading violates the spirit of the act.” *Lee R. v. State*, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997). The words “filed with the county clerk” appear to be clear until a complete reading of the signature verification statutes and the statewide initiative petition statutes reveal that statewide initiative petitions are not filed with the county clerk. They are submitted to the county clerk for signature verification and filed with the Secretary of State.

If the words of a statute are not clear or are ambiguous, the legislature’s intent in enacting the statute is used to determine the meaning of the statute. *See id.*

The leading rule for the construction of statutes is to ascertain the intention of the legislature in enacting the statute, and the intent, when ascertained[,] will prevail over the literal sense. The meaning of words used in a statute may be sought by examining the context and by considering the reason or spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and the policy of the law may also be involved to aid in its interpretation, and it would always be construed so as to avoid absurd results.

Id.

The procedure to remove a person’s name from an initiative petition was added to NRS 295.055 in 1985. Act of May 1, 1985, ch. 132, § 2, 1985 Nev. Stat. 550. A review of the testimony before the Assembly Committee on Elections clarifies the meaning that was intended. According to the committee minutes, Mr. Swackhamer, the Secretary of State in 1985, testified:

Another problem . . . was people who had signed a petition and then wanted to remove their name and there was no authority for that. This would give somebody the authority to go out in the county clerk’s office and remove their name

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

up until such time as [the petition] was submitted to the clerks for verification and that would be the end.

Hearing on S.B. 220 Before the Assembly Committee on Elections, 1985 Legislative Session, 156 (March 28, 2985).

Clearly, the Legislature intended for the removal of signatures from an initiative petition to stop once the petition had been submitted to the county clerks for signature verification. Therefore, it is the opinion of this office that the phrase “filed with the county clerk” as found in NRS 295.055(3) means when the initiative petition is submitted to the county clerk for signature verification.

It is the suggestion of this office that the Secretary of State seek an amendment to this statute in the 2001 Legislative Session to clarify this meaning.

CONCLUSION

The phrase “filed with the county clerk” in NRS 295.055(3) means submitted to the county clerk for signature verification in the context of the procedure for a person to remove his or her name from a statewide initiative petition.

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Senior Deputy Attorney General
