



MEMORANDUM

March 13, 2013

TO: Timothy H. Riordan
City Manager

FROM: John J. Danish
City Attorney

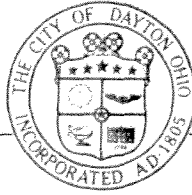
SUBJECT: Board of Elections Request for Opinion

Attached please find a copy of correspondence sent to the Board of Elections today in response to a request for an opinion on the improper notarization of an affidavit in nominating petitions for City of Dayton commissioner candidates. Please let me know if you have any questions or concerns.

C: Mr. Earley
Ms. Dickstein
Ms. Lavender
Mr. Gray

CITY OF DAYTON, OHIO

DEPARTMENT OF LAW
CIVIL DIVISION



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March 13, 2013

Mr. Steven P Harsman, Deputy Director
Board of Elections
14 West Fourth Street
Dayton, OH 45402

RE: Petitions for City of Dayton Candidates
Improper Notarization

Dear Mr. Harsman:

You requested an opinion March 11, 2013, with regard to petitions for election to the office of Commissioner of the City of Dayton. Specifically, you ask, pursuant to the Dayton Charter, what is the effect of an affidavit in which the notarization is improperly completed.

City of Dayton Charter Section 7(B) states that “[t]he signatures to a nominating petition need not all be appended to one paper, but to each separate paper there shall be attached an affidavit of the circulator thereof stating the number of signers of such paper, and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be.” In *State ex rel. Ditmars v. McSweeney*, the Ohio Supreme Court determined that the term “affidavit” in a charter requires a declaration “under oath before an officer authorized to administer oaths”. 94 Ohio St.3d 472, 475.

The Supreme Court has found that a part petition is void if it lacks a valid jurat. See *State ex rel. Allen v. Board of Elections of Lake County*, 170 Ohio St. 19 (1959). A jurat is the clause at the end of an affidavit showing when and before whom the actual oath was made. However, the Supreme Court qualified that finding by stating that “[t]he public policy which favors free competitive elections, in which the electorate has the opportunity to make a choice between candidates, outweighs the arguments for absolute compliance with each technical requirement in the petition form, where the statute requires only substantial compliance, where, in fact, the only omission cannot possibly mislead any petition signer or elector, where there is no claim of fraud or deception, and where there is sufficient substantial compliance to permit the board of elections, based upon prima facie evidence appearing on the face of the jurat which is part of the petition paper, to determine the petition to be valid.” *Stern v. Cuyahoga Cty. Bd. of Elections*, 14 Ohio St.2d 175, 184 (1968). In essence, clerical mistakes or errors that do not undermine the trustworthiness of the petition affidavit do not invalidate the petition part.

The petitions at issue here state in the jurat; “[s]ubscribed and sworn to before me”. It is the opinion of the Law Department that this requires the circulator to appear before a notary and both declare under oath and sign the affidavit in the presence of the notary. If the Board of Elections determines that these two requirements were not met, then the jurat is invalid and the petition part is void. The petition part is the petition associated with the invalidated affidavit, not the entire package of petition papers.

Of course, it remains within the Board’s authority to determine the validity or invalidity of any individual petitions. Please feel free to contact me if you have any additional questions or concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "John J. Danish". The signature is fluid and cursive, with the first name "John" being more prominent.

John J. Danish
City Attorney

C: Mr. Riordan
Ms. Lavender
Mr. Gray