

CITY OF DAYTON, OHIO
DEPARTMENT OF LAW
CIVIL DIVISION



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March 8, 2013

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

RE: Petitions for City of Dayton Candidates

Dear Mr. Harsman:

You requested an opinion March 4, 2013, with regard to petitions for election to the office of Mayor of the City of Dayton. Specifically, you ask, pursuant to the Dayton Charter, 1) whether a candidate may notarize the affidavit of a petition circulator and 2) whether a candidate must sign and accept the candidacy on each petition submitted.

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. Williams v. Sullivan*, the Ohio Supreme Court found that petitions notarized by a candidate are invalid. 20 Ohio St.2d 8 (1969). See also *State ex rel. Reed v. Malrick*, 165 Ohio St. 483 (1956). Accordingly, it is the opinion of the Law Department that if a candidate notarizes the affidavit of a petition circulator, then the petition or petitions corresponding to that affidavit are invalid.

With regard to the acceptance of the candidacy, Section 7(F) of the City of Dayton Charter requires "[a]ny person whose name has been submitted for candidacy by any such petition shall file his acceptance of such candidacy with the election authorities not later than 55 days before the day of the primary election or special election, and in the absence of such acceptance the name of the candidate shall not appear on the ballot or voting machines." There is no requirement that a candidate accept the candidacy as part of the nominating papers. A candidate is permitted to either file his or her acceptance on a separate instrument with the Board of Elections or as part of the nominating papers, so long as it is filed timely. Accordingly, it is the opinion of the Law Department that a candidate is not required to sign and accept the candidacy on each petition submitted.

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,



John J. Danish
City Attorney

C: Mr. Riordan
 Ms. Lavender
 Mr. Gray