**DE 78-07 - Jannary 23, 1978**

## Random Sampling; Application To Constitutional Amendments; Cost Of Verification
## Art. XI, s. 3, Fla. Const.; ss. 98.212 & 99.097, F.S.

*To: Honorable Wilma S. Sullivan, Supervisor of Elections, Leon County Courthouse, Tallahassee, Florida 32301*

*Prepared by: Division of Elections*

This is in response *to* your recent letter in which you requested the opinion of this office in answer to the following:

1. "Does F.S. 99,097 apply to petitions submitted under the provisions of Article XI,Section 3 of the Constitution, or must a signature-by-signature check of the petition be carried out?"
2. "Does 98.212(3) apply to petitions submitted under the provisions of Article XI, Section 3 of the Constitution?"
3. "If F.S. 98.212(3) does apply to such petitions, may the supervisor require the $.10 per name be paid when the petition is submitted, and refund any amount over the actual cost?"

Florida's Constitution may be amended by adoption of amendments in referenda of the people on proposals submitted by the legislature or by petition. The latter process, known as initiative, is outlined in s. 3, Article XI of the Florida Constitution. In order to be placed on the ballot for vote of the people, the initiative petition must be signed by at least eight percent of the state's registered voters with a like number in half of the state's congressional districts.

The number of signatures required to place a constitutional amendment on the ballot by initiative is specifically and exactly spelled out. It cannot be altered by statute. Regardless of what the statutorily established percentage required for candidates may be, the strict constitutional mandated prerequisites to place an amendment on the ballot remain.

The legislature has seen fit to provide a random sampling method for the verification of petition signatures submitted to county supervisors of elections seeking ballot position for candidates or certain issues, *s.* 99.097, F.S. (1977). The Division of Elections has by rule promulgated the procedures to be followed in implementing such a system within the prescribed accuracy standard (1CLR77-12 and 1CLR78-1).

The random sampling method permits the supervisor to check only a certain statistically determined number of petition signature cards (form DS-DE-20) rather than the total number of signatures submitted. By use of statistically proven methods of analysis it can more quickly and less expensively be determined if the requisite number of signatures has been achieved. In the case of candidates this number is equal to three (3) percent of the registered voters in the appropriate geographical area at the time of the immediately proceeding general election, s. 99.097, F.S., et. seq.

However, the legislature has permitted some very slight inaccuracy (.05% to be exact) in the random sampling method. Being that the petition method of qualifying is statutorily created, it may be altered, revised, or certain deviation therefrom permitted by the legislature. Such cannot be the case with the constitutional initiative. Its provisions are exact and cannot be altered by or deviated from in any manner, however slight, by legislature enactment.

Therefore, in answer to your first question, petition signature cards for constitutional amendments being proposed pursuant to the initiative provision of the state constitution must, upon submission to the county supervisor of elections, be verified individually in a signature-by-signature check. A verification by the random sampling method may not be used for constitutional amendments.

In answer to your second and third questions, s. 98.212(3), F.S., appears to be redundant to s. 99.097 (4), F.S. Both provide that the amount to be charged by the supervisor of elections for verifying signatures shall be ten cents ($0.10) per name, or at cost, whichever is less. However, the latter statute is much more detailed in the procedure to be utilized and clearly indicates that it applies to signatures as well as lists of names.

The amount to be charged is based on the actual number of signatures checked. In the case of random sampling, only the actual number of signatures individually verified may be the basis for the supervisor's fee. See s. 99.097(5), F.S. Such number cannot be determined until the random sampling has been completed. The cost of verification is to be determined by the supervisor. If less than ten cents, actual cost must be assured. Ten cents per name is the maximum permissible charge.

Regardless of whether the random sampling or individual method of verification is used, the exact number of signatures on which the fee is to be based cannot be determined until after the verification procedure has been completed. Even in an individual signature verification situation in which the total number of signatures being submitted is initially reported to the supervisor, the accuracy of this number cannot be determined until completion. There is nothing in the election statutes to prohibit a prepayment of the supervisor's fee for verifying signatures.

In fact such prepayment is mandated by s. 106.14(1), F.S. which states in part:

> "Any provider of goods or services who knowingly renders such goods or services without first receiving payment for such goods or services or knowingly renders goods or services in excess of the amount of goods or services for which payment is made shall be in violation of this chapter."

The verification of signatures constitutes a "service" provided by the supervisor of election to the candidate. The payment for such service must be by a check drawn on the campaign account as it is a campaign expenditure, s. 106.11(1), F.S. The above quoted statute is applicable and the supervisor must receive payment in advance of providing the "service". The supervisor may not verify any petition signatures in excess of the number of verifications prepaid.

The second and third questions you have asked are answered accordingly.

## SUMMARY

Signatures seeking to place a constitutional amendment to the ballot by the initiative process may not be verified by the random sampling method, but must be by a signature-by-signature verification. The supervisor's fee for checking such signatures shall be ten cents per name or the cost thereof, whichever is less. The determination of the cost of verifying signatures is made by the supervisor. The fee assessed for verification by the random sampling method shall be based on the actual number checked and not the number submitted. The supervisor shall require prepayment of such fee.