



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

March 18, 2003

A statute addressed in this opinion has changed.
Please consult current Florida law.

Mr. John Hedrick, Chair
Panhandle Citizen's Coalition
Post Office Box 6683
Tallahassee, FL 32314-6683

RE: DE 03-04
Random Sample Petition Signature Verification Method;
and, Gathering of Petition Signatures Outside of Polling
Places §99.097, §102.031(3), Florida Statutes

Dear Mr. Hedrick:

This is in response to your request for an advisory opinion. As chairman of a registered political committee, Panhandle Citizen's Coalition, the Division of Elections has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

You ask essentially the following questions:

1. If your organization presents more than 115% of the required number of petition signatures for verification and you request the use of random sample verification, is the supervisor of elections required under section 99.097(2), Florida Statutes, to use that method?
2. May petition signature gatherers stand on the sidewalk outside the doors to a polling place and speak to voters entering the polling place as long as they do not harass the voters or obstruct the voters' entry to the polling place?

The short answer to Question 1 is a qualified yes. The short answer to Question 2 is yes.

The pertinent subsections of section 99.097, Florida Statutes, read as follows:

- (1) As determined by each supervisor, based upon local conditions, the checking of names on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

(a) A name-by-name, signature-by-signature check of the number of authorized signatures on the petitions; or

(b) A check of a random sample, as provided by the Department of State, of names and signatures on the petitions. The sample must be such that a determination can be made as to whether or not the required number of signatures have been obtained with a reliability of at least 99.5 percent. Rules and guidelines for this method of petition verification shall be promulgated by the Department of State, which may include a requirement that petitions bear an additional number of names and signatures, not to exceed 15 percent of the names and signatures otherwise required. If the petitions do not meet such criteria, then the use of the verification method described in this paragraph shall not be available to supervisors.

(2) When a petitioner submits petitions which contain at least 15 percent more than the required number of signatures, the petitioner may require that the supervisor of elections use the random sampling verification method in certifying the petition.

The answer to Question 1 varies dependent on the type of petition in question. Section 99.097(2), Florida Statutes, generally requires a supervisor of elections to use the random sampling method when both the number of petitions submitted contain at least 15 percent more signatures than are required and the petitioner asks the supervisor to use the random sampling method. However, pursuant to Division of Elections Opinion DE-78-7 and the First District Court of Appeals in Let's Help Florida v. Smathers, 360 So. 2d (Fla. 1st DCA 1978), random sampling cannot be used for constitutional initiative petition signature verification. The Court reasoned that the Legislature only had the authority to apply the random sampling method, thereby permitting a lesser number of signatures than was specified to actually be verified, to petition procedures that the Legislature statutorily created. The Legislature did not have the authority to reduce the number of actual verified signatures required by the Florida Constitution. Applying the Court's reasoning as outlined in the Let's Help Florida case, section 99.097(2), Florida Statutes, would certainly be applicable to the verification of petition signatures where the right to petition stems from some provision of the Florida Statutes.

Additionally, there may be another very limited circumstance in the area of municipal elections in which section 99.097(2), Florida Statutes, possibly might not apply. Section 100.3605, Florida Statutes, provides that all portions of the Florida Election Code (Chapters 97-106) apply to the conduct of municipal elections except where there is an applicable special act, charter, or ordinance provision relating to that subject. Further, a municipality cannot exempt itself from any provision of the Florida Election Code that expressly applies to municipalities. However, section 99.097, Florida Statutes, does not by its language specifically apply to municipalities.

Therefore, a determination would have to be made as to whether a right to petition stemming from a municipal charter provision or ordinance has exempted the petition signature verification process from section 99.097(2), Florida Statutes. Such a determination would be outside the purview of the division.

As to Question 2, section 102.031(3)(c), Florida Statutes, specifically states:

(c) No person, political committee, committee of continuous existence, or other group or organization may solicit voters within 50 feet of the entrance to any polling place, or polling room where the polling place is also a polling room, on the day of any election.

1. Solicitation shall not be restricted if:

a. Conducted from a separately marked area within the 50-foot zone so as not to disturb, hinder, impede, obstruct, or interfere with voter access to the polling place or polling room entrance; and

b. The solicitation activities and subject matter are clearly and easily identifiable by the voters as an activity in which they may voluntarily participate; or

c. Conducted on property within the 50-foot zone which is a residence, established business, private property, sidewalk, park, or property traditionally utilized as a public area for discussion.

2. Solicitation shall not be permitted within the 50-foot zone on a public sidewalk or other similar means of access to the polling room if it is clearly identifiable to the poll workers that the solicitation is impeding, obstructing, or interfering with voter access to the polling room or polling place.

Therefore, petition signature gatherers may stand in public areas such as a sidewalk outside the door to a polling place, even within the 50-foot restricted area designated by section 102.031(3)(c), Florida Statutes, as long as they do not impede, obstruct, or interfere with voter access to the polling place.

SUMMARY

Section 99.097(2), Florida Statutes, generally requires a supervisor of elections to use the random sampling method when both the number of petitions submitted contain at least 15 percent more signatures than are required and the petitioner asks the supervisor to use the random sampling method. However, random sampling cannot be used for constitutional initiative petition signature verification.

Mr. John Hedrick

March 18, 2003

Page 4

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Sincerely,

Edward C. Kast
Director, Division of Elections

Prepared by:
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