



Richard C. Pfeiffer, Jr.

CITY ATTORNEY

CITY ATTORNEY'S OFFICE • COLUMBUS OHIO

MEMORANDUM

TO: All Members of City Council
Andrea Blevins, City Clerk

FROM: Richard C. Pfeiffer, Jr., City Attorney *RCP/STC*

DATE: July 21, 2015

RE: Review of Charter Amendment Petition—"Columbus City Council Reform Amendment"

As required by Section 42-9 of the City Charter, the City Clerk has forwarded to me a copy a charter amendment petition filed with her office on July 7, 2015, entitled by the petitioners as "Columbus City Council Reform Amendment." I am required by that same section to "advise on the legal sufficiency of the petition, based upon any applicable local, state or federal laws, rules or regulations." Further, Section 42-11 provides that "[n]o city officer may consider the subject matter of a petition when determining the legal sufficiency thereof, except as required to assure compliance with applicable provisions of this charter, general laws of the state, or ordinance of council."

Section 42-2 of the City Charter, which sets forth the requirements as to petition forms, provides as follows:

Petition forms.

Each petition for a proposal initiated by a citizen shall comply with the following as to form and with general laws of the state, unless otherwise provided by this charter or ordinance of council:

- (a) A petition may be circulated in separate part-petitions, but shall be uniform in character.
- (b) Each part-petition shall be circulated and submitted as a single instrument.
- (c) The petition and parts thereof shall be printed in a single, uniform color.
- (d) A petition may only contain one proposal, which shall not address multiple or unrelated subject matters or questions of law.

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(e) The title of the proposal shall clearly and without argument describe the proposed ordinance, referendum, recall, or charter amendment, and such title shall be placed, in at least fourteen-point font, on the top of each page of a part-petition, which pages shall be numbered sequentially.

(f) A petition shall contain a full and correct copy of any proposed ordinance, referendum, or charter amendment, with no summary, argument or other ancillary information regarding the proposal placed thereon, unless otherwise required by this charter or ordinance of council.

(g) On each page of a part-petition where voters' signatures may be placed, the following shall be printed, in at least twelve-point font, below the title of such proposal: "NOTICE: Whoever knowingly signs this petition more than once; signs a name other than one's own on this petition, except as provided by general laws of the state; or signs this petition when not a qualified elector of the City of Columbus, is liable to prosecution."

(h) The following sentence shall appear in the circulator's statement provided for by general law: "I am provided or promised moneys or things of value to circulate this petition by (Name and address of employer)."

In accordance with Section 42-5 of the City Charter, I have previously reviewed the subject petition and concluded that it addressed more than a single subject and did not meet two other requirements as to form; namely, language required to be included in the circulator's statement was omitted and the title failed to clearly and without argument describe the proposed charter amendment.¹

Dealing first with the defect as to the circulator's statement, the required language that was missing from the pre-circulation petition filing has been inserted into the version of the petition filed with the City Clerk on July 7, 2015 so that the petition now includes the required language. Section 42-7 of the City Charter provides that "[n]o alterations, corrections, or additions may be made to a petition after it is filed in a public office." So it must be determined whether this provision prohibits alteration of the circulator's statement after the pre-circulation copy of the petition has been filed. In *State ex rel. Miles v. McSweeney*, 96 Ohio St. 3d 352, 2002-Ohio-1317, the Ohio Supreme Court considered the identical language in R.C. 3501.38(I) and determined that this language "should be construed to refer only to changes in the information assented to by the petition signers," and that "no assent to the circulator affidavits was given or necessary." *Id.* at ¶¶20-21. Applying the *Miles* decision to the facts here, it is my opinion that the correction of the circulator statement after the pre-circulation filing but prior to the filing of the petition pursuant to Section 42-7 would not violate that section's prohibition against altering a petition after filing. That is, this defect has been cured.

¹ Memorandum dated May 20, 2015 to Andrea Blevins, City Clerk, and All Members of City Council, copy attached hereto.

However, the petitioners chose not to correct the other defects identified in my May 20, 2015 memorandum, and those defects remain in the petition as filed. First, as to the single-subject requirement, that memorandum identified the case law addressing the single-subject rule applicable to state legislation as providing general guidance as to the City Charter's restriction. Upon further review, a state statute dealing with statewide initiative petitions is more comparable to the City Charter's provision. R.C. 3519.01(A) provides, in pertinent part, that "[o]nly one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately." In construing this separate-petition requirement, the Ohio Supreme Court looked to its precedent with respect to the similar separate-vote requirement imposed on the General Assembly in the Ohio Constitution as instructive. *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St. 3d 315, 2010-Ohio-1845. The Court had previously set forth the following test for determining satisfaction of the separate-vote requirement:

"[T]he applicable test for determining compliance with the separate-vote requirement of Section 1, Article XVI is that 'a proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single *general* object or purpose.' (Emphasis sic.) 'Thus, where an amendment to the Constitution relates to a single purpose or object and all else contained therein is incidental and reasonably necessary to effectuate the purpose of the amendment, such amendment is not violative of the provisions of Section 1, Article XVI'. Courts have generally taken a 'liberal [view] in interpreting what such a single general purpose or object may be.'"

Id. at ¶42, quoting *State ex rel. Willke v. Taft*, 107 Ohio St. 3d 1, 2005-Ohio-5303, at ¶34 (internal citations omitted).

Applying this test to the subject petition leads to the conclusion that it contains more than one proposal because requiring that City Council establish a publicly funded campaign finance program and mandating that City Council appropriate a certain percentage of casino tax revenue to fund that program² is not "incidental and reasonably necessary to effectuate the purpose of the amendment," which purpose in this case is to enlarge City Council from seven to eleven members and to change Council's composition from its current at-large elected membership to the election of seven of the eleven members by districts. Rather, as evidenced by the petitioners' prior submission of an initiative petition dealing exclusively with the issue, public financing of campaigns is a separate and distinct proposal.³ Even taking a liberal view of the City Charter's

² Proposed new section 200-1 ("Fair Campaigns Code").

³ Also included in the previously submitted campaign finance initiative petition and now included in the subject petition is proposed new section 200-2 ("Public Access Television"), which would require that City Council pass an ordinance requiring "significant access" to public access television stations for candidates.

single-subject requirement, it is my opinion that the inclusion of such a significant stand-alone proposal in this petition would be violative of both the letter and intent of that requirement.

I note that in their letter accompanying the petition, petitioners argue that the City Charter amendment ballot issues submitted to, and approved by, the voters last November contained multiple subjects, so they should be entitled to the same latitude. This comparison is inapposite for several reasons. First and foremost, there was no single-subject petition requirement in the Charter prior to the adoption of Section 42-2 in November, so how amendments may have been submitted to voters previously, whether by petition or by action of City Council, is irrelevant to the legal sufficiency of this petition. Also, the Ohio Supreme Court long ago found that it is within the power of municipalities, as a matter of local self-government, to decide whether city charter amendments shall be submitted separately or *en bloc*, *Reutener v. Cleveland*, 107 Ohio St. 117, 133 (1923), and Council's submission of the amendments recommended by the Charter Review Commission grouped together into three ballot issues did not violate any City Charter provision. The voters having now adopted the recommendation of the Charter Review Commission to institute a single-subject requirement as to petitions, both the City Attorney and City Council have legal duties they are required to perform related to ensuring that this requirement is satisfied as to any petition filed after the adoption of Section 42-2.

Finally, Section 42-2(e) of the City Charter requires that the title of the proposal "shall clearly and without argument describe the proposed...charter amendment...." Here, the title chosen by the petitioners, "Columbus City Council Reform Amendment," does not clearly describe the proposed amendment. As noted above, the proposed amendment would enlarge City Council from seven to eleven members and change Council's composition from its current at-large elected membership to the election of seven of the eleven members by districts. "Columbus City Council Reform Amendment" does not describe this amendment, clearly or otherwise. And the use of "reform" is argumentative in that it indicates the proposed amendment would be an improvement. "Reform" means "to put or change into an improved form or condition: to amend or improve by change of form or removal of faults or abuses: to put an end to (an evil) by enforcing or introducing a better method or course of action." <http://www.merriam-webster.com/dictionary/reform>. Particularly in the absence of any description of what the proposal actually is, the use of "reform" as the sole descriptor of the proposal would be contrary to the Charter's requirement that the title of the proposal "shall clearly and without argument describe" the proposed charter amendment.

The settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly states that it is. *State ex rel. Ditmars v. McSweeney*, 94 Ohio St. 3d 472, 476 (2002). Section 42-2 of the City Charter does not allow for substantial compliance; thus, its provisions are mandatory and require strict compliance.

For the foregoing reasons, it is my opinion, and City Council is so advised, that the charter amendment petition filed with the City Clerk on July 7, 2015, entitled by the petitioners as

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“Columbus City Council Reform Amendment,” fails to comply with the requirements of Section 42-2 of the City Charter and therefore the petition is not legally sufficient.

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