



Zach Klein

CITY ATTORNEY

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MEMORANDUM

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

FROM: Zach Klein, City Attorney *ZK/jrc*

DATE: June 27, 2019

RE: Review of Initiative Petition—"Clean Energy"

As required by Section 42-9 of the City Charter, the City Clerk has forwarded to me a copy of an initiative petition filed with her office on June 12, 2019, entitled by the petitioners as:

"To authorize and direct the City Auditor to establish [bold in original] an Energy Conservation and Energy Efficiency Fund, a Clean Energy Education and Training Fund, a Minority Business Enterprise Clean Energy Development Fund and to transfer \$5,000,000 to each of these funds for a total of \$15,000,000 for the appropriate purposes; to establish a Columbus Clean Energy Partnership Fund and to authorize the expenditure of \$42,000,000 for the purpose of funding a electricity subsidy program for residents of the City of Columbus; to establish a transparency and accountability reporting requirement for the City Auditor for all uses of funds in section [sic] 1, 2, 3, and 4; to waive the competitive bidding provisions of the Columbus City Codes."

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."

In a memorandum dated July 30, 2018, I reported to Council that I had conducted the initial review of the pre-circulation filing of this petition as required by Section 42-5 of the City Charter and I opined that it appeared to address a single subject and meet the requirements as to form set forth in Section 42-2 of the City Charter. In concluding only that the petition appeared to be in compliance, I noted that the lack of clarity and

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specificity in both the title and body of the proposed ordinance made it nearly impossible to render a definitive opinion. Particularly with regard to Sections 1, 2, and 3 of the proposed ordinance, the stated purposes of the funds to be established by the ordinance lacked any specificity as to what they would be used for other than what was suggested in the name of the fund itself (e.g., the “Clean Energy Education and Training Fund”). Unfortunately, petitioners made no revisions to their petition to clarify their proposal as a result of my initial review, and the form and content of the petition as filed on June 12, 2019 are the same as the pre-circulation filing. Accordingly, my opinion as to the sufficiency of the form of the petition is again qualified due to the vagueness of the proposal.

With respect to the substance of the petition, I again note that consideration of the subject matter of a petition is prohibited by City Charter Section 42-11 “except as required to assure compliance with applicable provisions of this charter, general laws of the state, or ordinance of council.” Determination of compliance with the single subject requirement would fall under this exception language. However, Section 42-11 does not alter the long-established law that a city council's constitutional authority to review the sufficiency of petitions is limited to matters of form, not substance. See, e.g., *Morris v. City Council of Macedonia*, 71 Ohio St. 3d 52, 55 (1994). In this respect, a city council's authority to determine if all applicable statutory requirements have been met is therefore more restricted than that of a board of elections. *Id.*; see also, *State ex rel. Norwood v. Hamilton Cnty. Bd. of Elections*, 2016-Ohio-5919, ¶7. Thus, substantive issues such as the constitutionality of a proposal, whether the subject is one a municipality is authorized by law to control by legislative action, or the petition circulator's compliance with R.C. 3501.38(F), are not within the scope of municipal officials.

In sum, with the above-noted lack of clarity in the petition limiting my ability to render a definitive opinion, the initiative petition filed with the City Clerk on June 12, 2019 dealing with “Clean Energy” appears to be legally sufficient as to form for purposes of Section 42-9 of the City Charter, provided the Franklin County Board of Elections determines that it contains the requisite number of valid signatures in accordance with Section 43 of the City Charter.