



Zach Klein

CITY ATTORNEY

CITY ATTORNEY'S OFFICE ■ COLUMBUS OHIO

MEMORANDUM

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

FROM: Zach Klein, City Attorney *ZMK*

DATE: November 6, 2020

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 October 16, 2020, entitled by the petitioners as:

To authorize and direct the City Auditor to establish an Energy Conservation and Energy Efficiency Fund and a Clean Energy Education and Training Fund and to take the necessary actions to transfer \$10,000,000 from the general fund of the City of Columbus to each of these funds for a total of \$20,000,000 for the appropriate purposes; and to authorize and direct the City Auditor to take the necessary actions to transfer \$10,000,000 from the general fund of the City of Columbus for the purpose of funding a minority business development program; to establish a Columbus Clean Energy Partnership Fund; and to authorize and direct the City Auditor to take the necessary actions to transfer of \$57,000,000 from the general fund of the City of Columbus for the purpose of funding an 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 declare this Ordinance to be an emergency measure and shall take effect and be in force from and after its passage.

(emphasis in original). I am required by that same Charter provision 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.”

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In a memorandum dated November 5, 2019, I reported to Council that I conducted the initial review of the pre-circulation filing of this petition as required by Section 42-5 of the City Charter and opined that it did address a single subject but did not meet the requirements as to form set forth in Section 42-2 of the City Charter. Specifically, the proposed title failed to comply with paragraph (e) of Section 42-2 in that it lacked reference to the establishment of a Minority Business Enterprise Clean Energy Development Fund as provided for in Section 3 and it lacked reference to the delegation of the City's contracting authority to a private party as described in Sections 3 and 4 of the petition. Further, such delegation would necessarily require waiver of the City Code's competitive bidding provisions which is also not disclosed in the title. The form and content of the part-petitions filed on October 16, 2020 are the same as that of the pre-circulation filing, and I find no new additional deficiencies in the form of the petition that would render it legally insufficient.

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, are not within the scope of municipal officials.

In sum, it is my opinion, and City Council and the City Clerk are so advised, that the initiative petition filed with the City Clerk on October 16, 2020, entitled by the petitioners "To authorize and direct the City Auditor to establish an Energy Conservation and Energy Efficiency Fund..." is legally deficient as to form for purposes of Section 42-9 of the City Charter. Further, the Franklin County Board of Elections has yet to determine that it contains the requisite number of valid signatures in accordance with Section 43 of the City Charter. To the extent this petition may have deficiencies related to the constitutionality of the proposal or to the inclusion of subjects that a municipality is not authorized by law to control by legislative action, those substantive issues are not within City Council's discretion to consider in your determination of the petition's sufficiency as required by City Charter Section 43-1.