

Opinion No. 2012-139

January 30, 2012

The Honorable John T. Vines  
State Representative  
123 Market Street  
Hot Springs, Arkansas 71901-5308

Dear Representative Vines:

This is my opinion on your questions about a petition to change a city's form of government. Your request states background that I paraphrase in relevant part as follows:

The City of Hot Springs uses the city manager form of government.<sup>1</sup> On November 9, 2012, the mayor was presented a petition for an election to change to the aldermanic form.<sup>2</sup> The petition was made “in accordance with” a statute<sup>3</sup> that provides for such petitions and requires the signatures of

electors equal in number to fifteen percent (15%) of the aggregate number of ballots for all candidates for director in that position for which the greatest number of ballots were cast in the preceding general election.<sup>4</sup>

A general election was held November 6, 2012, three days before the petition was filed. Based on turnout in the director's race in which the

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<sup>1</sup> See generally A.C.A. §§ 14-47-101 to -140 (Repl. 1998, Supp. 2011).

<sup>2</sup> See generally A.C.A. §§ 14-42-101 to 14-43-611 (Repl. 1998, Supp. 2011).

<sup>3</sup> A.C.A. § 14-47-107 (Supp. 2011).

<sup>4</sup> A.C.A. § 14-47-107(a)(1).

most ballots were cast, about 450 petition signatures were required. The petition bears more than 450 signatures, but they have not yet been “verified with voter registration.” Six signatures are dated after November 6, 2012; the rest are dated between May 2012 and November 6, 2012.

The city attorney has opined that signatures dated before the preceding general election do not count toward the number required, and therefore that only six petition signatures are even potentially valid. Six being fewer than 450, the city attorney has concluded that the petition does not meet the statutory requirement.

Another statute, not referred to in the petition, generally authorizes petitions to change the form of municipal government.<sup>5</sup>

Your questions are:

1. Does A.C.A. § 14-47-107(a)(1) require that a presented petition, as contemplated therein, bear signatures of qualified electors dated subsequent to the last preceding election?
2. Would any signature dated prior to the general election held on November 6, 2012, count toward the requisite number of signatures needed under A.C.A. § 14-47-107(a)(1) for a petition presented on November 9, 2012?
3. Does the enclosed Petition comply with A.C.A. § 14-47-107(a)(1), if presented to the Mayor after the November 6, 2012, general election?
4. Given the reference to A.C.A. § 14-47-107 within the Petition, is A.C.A. § 14-38-113 applicable? If yes, can you provide your analysis of Questions 1, 2, and 3 with regard to A.C.A. § 14-38-113?
5. Is there an age requirement for a canvasser of a petition such as the subject Petition?

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<sup>5</sup> A.C.A. § 14-38-113 (Supp. 2011).

## RESPONSE

In my opinion, the answer to your first and fifth questions is “no,” the answer to your second question is a qualified “yes,” and the answer to the first part of your fourth question is “no.” I am unable to answer your third question because the answer depends on all the prevailing relevant facts, some of which I may not have.

***Question 1 – Does A.C.A. § 14-47-107(a)(1) require that a presented petition, as contemplated therein, bear signatures of qualified electors dated subsequent to the last preceding election?***

In my opinion, the answer to this question is “no.”

Statutes are construed just as they read, giving words their ordinary and usually accepted meanings, and legislative intent is gathered from the plain meaning of the language used.<sup>6</sup>

The statute requires signatures “equal in number to fifteen percent (15%) of the aggregate number of ballots cast [in a specified race] in the preceding general election.”<sup>7</sup> The reference to “the preceding general election” is in a sentence that specifies the number of signatures required. Neither that sentence nor any other part of the statute purports to restrict the time at which a petition may be signed.<sup>8</sup>

Additionally, the statute provides for the calling of a special election on the question.<sup>9</sup> The special election may, but need not in every instance, be held on the date of a general election.<sup>10</sup> That being the case, I see no reason to construe the

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<sup>6</sup> *E.g., Magness v. State*, 2012 Ark. 16, \*3-\*4, \_\_\_ S.W. 3d \_\_\_, 2012 WL 149765.

<sup>7</sup> A.C.A. § 14-47-107(a)(1).

<sup>8</sup> *Cf.* A.C.A. § 14-38-113(a)(4)(A) (providing that petition signatures older than 180 days at the time of filing are “void for the purposes of determining the adequate number of signatures required to call an election under this section”).

<sup>9</sup> A.C.A. § 14-47-107(a)(1).

<sup>10</sup> *See* A.C.A. § 7-11-205 (Repl. 2011).

statute to mean that proponents may not gather signatures before, during, and after a general election.

“[A] cardinal principle that runs through all our decisions is that the provisions reserving to the people the powers of initiative and referendum are to be given a liberal construction to effectuate the object and purpose thereby adopted.” *Washburn v. Hall*, 225 Ark. 868, 877, 286 S.W.2d 494 (1956) (Millwee, J., dissenting). While the statute at issue may not involve the initiative in a technical sense, it addresses a sufficiently similar procedure that any doubt about its meaning should be settled in favor of allowing the signatures. It is clearly the more liberal view to conclude that this statute does not restrict the time at which petition signatures may be affixed.

***Question 2 – Would any signature dated prior to the general election held on November 6, 2012, count toward the requisite number of signatures needed under A.C.A. § 14-47-107(a)(1) for a petition presented on November 9, 2012?***

In my opinion, the answer to this question is “yes,” subject to the qualifications stated below. As discussed above, there is no statutory requirement that petition signatures be dated after the preceding general election.

Because your question refers in the abstract to any signature dated before the 2012 election, and is not limited to signatures, like those on the subject petition, dated May 2012 or later, I note that a court probably would hold signatures of some age to be stale – *i.e.*, insufficient to evidence the signatories’ current desires on the question of an election.<sup>11</sup> An argument that petition signature are stale would, in my opinion, be unlikely to prevail regarding signatures, like those on the petition, that were no older than approximately five months at the time of filing.<sup>12</sup>

It is possible that a given petition is stated as a request that the question be put to a vote on a date certain, specified in the petition. Signatures on such a petition might be held inadequate to compel an election on any other day. While you did not

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<sup>11</sup> See, e.g., *State ex rel. Voss v. Davis*, 418 S.W.2d 163 (Mo. 1967) (petition signatures can become stale after some unspecified time).

<sup>12</sup> Recall that another statute, A.C.A. § 14-38-113, allows signatures up to 180 days old. See *supra* note 8.

include a copy of the subject petition with your opinion request, you did quote from the petition, and the quoted language suggests that it did not specify an election date.

***Question 3 – Does the enclosed Petition comply with A.C.A. § 14-47-107(a)(1), if presented to the Mayor after the November 6, 2012, general election?***

Your opinion request did not include a copy of the petition. Even if it had, I would be unable to render an opinion about the petition’s compliance with the statute in general, a conclusion that depends on all the prevailing relevant facts, some of which I may not have.

***Question 4 – Given the reference to A.C.A. § 14-47-107 within the Petition, is A.C.A. § 14-38-113 applicable? If yes, can you provide your analysis of Questions 1, 2, and 3 with regard to A.C.A. § 14-38-113?***

In my opinion, A.C.A. § 14-38-113 does not apply to the petition.

As noted in your opinion request, A.C.A. § 14-38-113 is another statute that provides for petitions and elections to change the form of municipal government. It purports to apply “[w]hen[ever] any municipality of this state is entitled by law to become reorganized under a different form of municipal government . . . .”<sup>13</sup>

This statute, applying to any municipality that might change its form of government, is unquestionably more general than is A.C.A. § 14-47-107, which applies only to cities having the city manager form of government. When two statutes deal with the same subject matter, the more specific will prevail over the more general. *E.g., Bakalekos v. Furlow*, 2011 Ark. 505, \_\_\_ S.W.3d \_\_\_, 2011 WL 5995243.

And the petition states that it is made “in accordance with [A.C.A.] § 14-47-107.” That statute’s provisions are “in addition to the right to change to the aldermanic or any other form of municipal government that may exist under present law.”<sup>14</sup>

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<sup>13</sup> A.C.A. § 14-38-113(a).

<sup>14</sup> A.C.A. § 14-47-107(h).

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The statutes at issue provide two separate procedures for a petitioner to achieve a desired result. The language quoted above clearly indicates a legislative intent to provide alternative procedures. Here, the petitioners chose to proceed under A.C.A. § 14-47-107, to the exclusion of A.C.A. § 14-38-113.

***Question 5 – Is there an age requirement for a canvasser of a petition such as the subject Petition?***

In my opinion, the answer to this question is “no.”

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:JMB/cyh