



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2015-133

January 12, 2016

The Honorable Bob Johnson  
State Representative  
511 North First, Suite 8  
Jacksonville, AR 72076-4134

Dear Representative Johnson:

I am writing in response to your request for an opinion on the following question:

Would signatures collected under Act 1018 of 2013, but not presented to the Secretary of State, be submissible now and be governed by Act 564 of 2015, which amended the petition percentage requirements of the 2013 Act?

**RESPONSE**

Act 1018 of 2013<sup>1</sup> authorized local option elections (commonly referred to as “wet-dry” elections) in so-called “defunct voting districts”<sup>2</sup> upon petition of the voters of the district. I take the above question to be asking whether signatures that were collected on a local-option-election petition under Ark. Code Ann. § 3-8-602 as enacted by Act 1018 of 2013, will count in testing the sufficiency of a petition filed under Ark. Code Ann. § 3-8-602, as amended by Act 564 of 2015.<sup>3</sup>

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<sup>1</sup> Act 1018 of 2013, as amended by Act 564 of 2015, is codified at Ark. Code Ann. §§ 3-8-601 and -602 (Supp. 2015).

<sup>2</sup> A “defunct voting district” is a voting district that 1) existed when it was voted dry, 2) is no longer recognized by the state or county, and 3) is currently located in a wet county. Ark. Code Ann. § 3-8-601(2).

<sup>3</sup> Please note that these petitions are filed with the *county clerk*, rather than the Secretary of State. Ark. Code Ann. § 3-8-602(b)(2)(C).

The answer to this question is “no,” in my opinion.

## DISCUSSION

Act 1018 of 2013 added a new subchapter 6 to Arkansas Code Title 3, Chapter 8, to authorize a wet-dry election for an area within the boundaries of a defunct voting district if 38% of the qualified electors of the district signed a petition calling for the election.<sup>4</sup> Under Ark. Code Ann. § 3-8-602(a)(1) and (2), as added by Act 1018, the question at the election was whether to allow the “manufacture and sale of alcoholic beverages” for “off-premises” and “on-premises” consumption.<sup>5</sup>

Act 564 of 2015 amended Ark. Code Ann. § 3-8-602 in several respects. It deleted the word “manufacture,” so that the question at the election is whether to allow the “sale of alcoholic beverages” within the defunct voting district.<sup>6</sup> It also deleted the provision for “off-premises consumption” and limited on-premises consumption to “the corporate limits of a city of the first class or a city of the second class.”<sup>7</sup> And it changed the petition signature requirement from 38% to 15%.<sup>8</sup>

The question you have posed, in light of these amendments, is whether a petition that was circulated for signatures under Ark. Code Ann. § 3-8-602 prior to the enactment of Act 564 of 2015 will support holding an election under section 3-8-

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<sup>4</sup> Acts 2013, No. 1018, § 1. Act 1018 added new Ark. Code Ann. § 3-8-602(b)(2)(B), which referred to “signatures required under §§ 3-8-204 – 3-8-205.” At the time, section 3-8-205 contained the 38% requirement generally applicable to all local-option petitions.

<sup>5</sup> Acts 2013, No. 1018, § 1.

<sup>6</sup> Acts 2015, No. 564, § 1 (amending Ark. Code Ann. § 3-8-602(a)).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (amending Ark. Code Ann. § 3-8-602(b)(2)(B) to delete the reference to Ark. Code Ann. § 3-8-205 (which contained the 38% requirement), and to require instead that “[s]ignatures shall be obtained from fifteen percent (15%) of the qualified electors residing within the boundaries of a defunct voting district...”). The 38% requirement applicable to other local-option petitions is now codified at Ark. Code Ann. § 3-8-803 (Supp. 2015), which was enacted under Act 1251 of 2015. *See* Acts 2015, No. 1251, § 5.

602, as amended by Act 564. The answer to this question is governed, in my opinion, by Ark. Code Ann. § 3-8-602(b)(2)(A), which requires that “[t]he petition procedure for a local option election for a defunct voting district *shall be conducted under § 3-8-201 et seq.*”<sup>9</sup> (Emphasis added.) For our purposes, the most significant requirement under the referenced “§ 3-8-201 et seq.” is the requirement that signature sheets on the petition must include a copy of the ballot title and text of the measure. When Act 1018 of 2013 was enacted,<sup>10</sup> this requirement arose under Ark. Code Ann. § 3-8-204(c) (Repl. 2008), which incorporated by reference Ark. Code Ann. § 7-9-109. This latter provision of the Election Code requires the canvasser’s verification that “[a]t all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet.”<sup>11</sup>

Signatures collected under Act 1018 of 2013 were thus presumably collected on signature sheets that included a ballot title and text. And the ballot title presumably conformed to Ark. Code Ann. § 3-8-602(b)(3)(B), as enacted by Act 1018 of 2013, which stated: “The ballot title shall be in substantially the following form: ‘TO DETERMINE WHETHER OR NOT ALCOHOLIC BEVERAGES MAY BE SOLD OR MANUFACTURED AS AUTHORIZED BY ARKANSAS CODE § 3-8-602 WITHIN [“X” defunct voting district].’”

The Arkansas Supreme Court has previously addressed the Election Code’s requirement that the ballot title and text must be attached to the initiative petition.

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<sup>9</sup> This provision was enacted under Act 1018 of 2013. It was only slightly amended by Act 564 of 2015. It originally stated that the petition procedure “shall be conducted *pursuant to § 3-8-201 et seq.*” Acts 2013, § 1018, § 1 (emphasis added).

<sup>10</sup> Act 1018 contained an emergency clause and was effective April 9, 2013. Acts 2013, No. 1018, § 2

<sup>11</sup> Ark. Code Ann. § 7-9-109(a) (Supp. 2015). Section 3-8-204 was repealed by Act 1432 of 2013. But Act 1432 also amended Ark. Code Ann. § 3-8-205 to add a new subsection incorporating Ark. Code Ann. § 7-9-101 *et seq.* for local-option petitions. See Acts 2013, No. 1432, § 2 (adding what is now codified as Ark. Code Ann. § 3-8-205(e) (stating in relevant part that “a petition for a local option election shall be governed by § 7-9-101 et seq.”). The canvasser verification requirement was therefore in place in 2013 and applied to petitions circulated under Ark. Code Ann. § 3-8-602(b)(2)(A), as enacted by Act 1018 of 2013. Currently, the requirement also arises under Ark. Code Ann. § 3-8-205(a), which was amended by Act 1251 of 2015 to refer to Ark. Code Ann. § 3-8-801 *et seq.*, which requires, under § 3-8-808(a), the canvassers’ verification that “[a]t all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet.”)

The case most on point with your question is *Walmsley v. Martin*,<sup>12</sup> involving a challenge to the Secretary of State's certification of an initiative petition, where the ballot title for the measure had been altered after signatures were collected. The Court held that signatures collected under the revised ballot title could not support certification.<sup>13</sup> The Court explained that the Code requires the sponsor of an initiative "to provide potential signatories an opportunity to review the exact ballot title and complete measure."<sup>14</sup> The Court observed that the purpose of this requirement is "to inform voters of what they are signing before they sign it."<sup>15</sup> It demanded "strict compliance" with the requirement,<sup>16</sup> and it reiterated the rule that "the potential signatories to initiated amendments, referenda, and acts must receive the exact ballot title that will be certified and printed on the general election ballot."<sup>17</sup> The Court also noted that had the text of the measure materially changed from the one circulated for signatures, such a change might have been an additional basis for finding the petition insufficient.<sup>18</sup>

I believe this case paves the way to the resolution of your question regarding signatures collected under Act 1018 of 2013. The ballot title on those signature sheets will not be the same as the ballot title at an election held under Ark. Code Ann. § 3-8-602, as amended by Act 564 of 2015. The text will also be materially different. As explained above, Act 564 amended section 3-8-602 in several material respects. The question at an election held under section 3-8-602, as amended, is whether to allow the sale of alcoholic beverages for on-premises consumption within the defunct voting district. The voters will not be presented with the question whether alcohol may be "manufactured." Nor will they be voting on whether to allow off-premises consumption. The ballot title at the election will state substantially as follows: "TO DETERMINE WHETHER OR

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<sup>12</sup> 2012 Ark. 370, 423 S.W.3d 587.

<sup>13</sup> *Id.* at 10, 423 S.W.3d at 592.

<sup>14</sup> *Id.* at 8, 423 S.W.3d at 591.

<sup>15</sup> *Id.* (citation omitted).

<sup>16</sup> *Id.* (citations omitted).

<sup>17</sup> *Id.* at 11, 423 S.W.3d at 592.

<sup>18</sup> *Id.* at 10, 423 S.W.3d at 592 (discussing *Porter v. McCuen*, 310 Ark. 562, 839 S.W.2d 512 (1992)).

NOT ALCOHOLIC BEVERAGES MAY BE SOLD AS AUTHORIZED BY ARKANSAS CODE § 3-8-602 WITHIN [“X” defunct voting district].”<sup>19</sup>

Consequently, as was the case in *Walmsley*, the signatories to the petition will have reviewed a different ballot title than the one to be printed on the election ballot. Moreover, the text of the proposal will be materially different from the one circulated with the signature sheets. If faced with the question, therefore, I believe the Court would have little difficulty concluding that signatures collected on a petition under Ark. Code Ann. § 3-8-602 prior to its amendment in 2015 cannot support holding an election under the statute as amended.

Sincerely,



LESLIE RUTLEDGE  
Attorney General

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<sup>19</sup> Ark. Code Ann. § 3-8-602(b)(3)(B) (Supp. 2015).