



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-085

September 19, 2016

Ms. Sonya Ryburn, Chairperson
Drew County Election Commission
127 Leggett Drive
Monticello, AR 71655

Dear Ms. Ryburn:

This is in response to your request for an opinion concerning the computation of signatures required for removal of a municipal officer pursuant to Ark. Code Ann. § 14-42-119(b)(1)(A) and -119(b)(2). In this regard, you have posed the following questions:

Question 1: Since the 25% requirement provided by Ark. Code Ann. § 14-42-119(b)(1)(A) exceeds the 15% requirement provided by the Arkansas Constitution, is the 25% requirement unconstitutional?

Question 2: If the people present a petition to the county clerk with a number of signatures equal to 15% of the total votes cast for the office of mayor at the last preceding general election, must the county clerk deem the petition sufficient and certify it to the county board of election commissioners as provided by Ark. Code Ann. § 14-42-119(b)(2)?

RESPONSE

These questions appear to assume that petitions filed pursuant to Ark. Code Ann. § 14-42-119 are governed by Ark. Const. art. 5, § 1.¹ In my opinion, that assumption is misplaced. I believe it is clear that art. 5, § 1 does not apply to the procedures under section 14-42-119 for removing a municipal officer. It is therefore my opinion in response to your first question that the 25% petition requirement under this statute is not unconstitutional. It necessarily follows that the answer to your second question, in my opinion, is “no.” A petition containing signatures of 15% of the votes cast in the last mayoral election does not satisfy section 14-42-119’s 25% petition requirement.

DISCUSSION

Question 1: Since the 25% requirement provided by Ark. Code Ann. § 14-42-119(b)(1)(A) exceeds the 15% requirement provided by the Arkansas Constitution, is the 25% requirement unconstitutional?

Under section 14-42-119, “[a] person who holds an elected office in a municipality for a term of four (4) years in a mayor-council form of government”² is subject to removal following the acquisition of a petition signed by 25 percent of qualified electors.³ This statute establishes specific procedures regarding removing certain elected municipal officials.⁴ This statute is clearly a permissible exercise of power by the General Assembly, given the nature of our Constitution.

¹ Article 5, section 1 authorizes city voters to initiate local measures by petition of 15% of the vote in the last mayoral election. Ark. Const. art. 5, § 1 (Supp. 2015) (under Local for Municipalities and Counties).

² Ark. Code Ann. § 14-42-119(a) (Repl. 2013).

³ *Id.* at § 14-42-119(b)(1)(A).

⁴ This statute is a permissible exercise of the General Assembly’s constitutional authority to “provide, by general laws, for the organization of cities ... and incorporated towns.” Ark. Const. art 12, §3. To be clear, however, the statute only applies to the removal of elected *municipal* officers in a city with the mayor-council form of government. *See also* Ark. Code Ann. §§ 14-47-112 and 14-48-114 (Repl. 2013) (regarding removal of municipal officers in cities with the city manager and city administrator forms of government, respectively). The removal of *state officers* is governed by the Arkansas Constitution. *See Speer v. Wood*, 128 Ark. 183, 193 S.W. 785 (1917). The Arkansas Constitution has provided the exclusive methods for the removal of state officers, and the General Assembly consequently cannot enact legislation regarding the same. *Id.*

Your reference to the 15% requirement under the Constitution presumably refers to Ark. Const. art. 5, § 1 and the authority thereunder for city voters to initiate local measures.⁵ Your question suggests an assumption that art. 5, § 1 applies to the signature requirement under section 14-42-119. That assumption is unwarranted, in my opinion.

Article 5, section 1 reserves to the people the “power to propose legislative measures, laws and amendments to the Constitution.”⁶ It further specifically reserves these powers to the legal voters of municipalities and counties regarding “all local, special and municipal *legislation* of every character in and for their respective municipalities and counties.”⁷

But a section 14-42-119 recall election does not enact “legislation.” The Arkansas Supreme Court has confronted similar questions with regard to local option elections.⁸ In the face of such questions, the Court has consistently held that “Amendment 7 [now codified at Ark. Const. art. 5, § 1] has no application to local option petitions, which are governed by statute.”⁹ The Court has reasoned that elections held under the local option statutes merely execute these prescribed statutory schemes, and therefore do not enact new legislation that would fall under art. 5, § 1’s purview. The analysis was succinctly stated in one of the earlier cases:

Amendment No. 7 to the Constitution has no application. This is not an initiated act as provided for in that amendment. It is merely a submission to the legal voters of the county on the question of the sale of liquor, and is more in the nature of a referendum than an

⁵ See note 1, *supra*.

⁶ Ark. Const. art. 5, § 1 (under Initiative and Referendum).

⁷ *Id.* (under Local for Municipalities and Counties) (emphasis added). A “measure” encompasses “any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character,” and must not contravene the Constitution or general state laws. *Id.* (under General Provisions).

⁸ See, e.g., *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979); *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956); *Winfrey v. Smith*, 209 Ark. 63, 189 S.W.2d 615 (1945); *Mondier v. Medlock et al.*, 207 Ark. 790, 182 S.W.2d 869 (1944); *Johnston v. Bramlett*, 193 Ark. 71, 97 S.W.2d 631 (1936).

⁹ *McFerrin*, 265 Ark. at 660, 580 S.W.2d at 464 (internal citation omitted).

initiative petition. The law requires that the county court, when a petition containing 35 per cent of the legal voters is signed and filed, make an order for an election for the purpose of taking the sense of the legal voters of the county who are qualified to vote at elections of county officers.

* * *

While the Legislature cannot delegate the power to make a law, it can make a law to delegate the power to determine certain facts. We are of opinion that in Act No. 108 [the act providing for local option] the Legislature did not delegate the power to make a law and did not intend to do so, but that it made a law and delegated the power to the people of the county to ascertain certain facts upon which the law makes its action depend. There is no conflict between this law and the Constitution. This is not an election provided for by the Constitution, and the provisions of the Constitution cited have no application.¹⁰

Akin to the local-option-election statutes, section 14-42-119 does not involve the enactment of legislation. Section 14-42-119 is complete in and of itself in establishing the procedure for removing certain elected municipal officials. The steps taken in accordance with this established procedure are the comprehensive means of removing these certain elected municipal officials. The qualified voters, therefore, are merely acting pursuant to the established statutory scheme.

In sum, the city's qualified electors are not proposing any legislation when they petition for a recall election pursuant to section 14-42-119. As such, the recall election is not an election provided for by Ark. Const. art. 5, § 1. Therefore, it is my opinion, with respect to your question, that the 25% requirement under section 14-42-119 is not unconstitutional.

Question 2: If the people present a petition to the county clerk with a number of signatures equal to 15% of the total votes cast for the office of mayor at the last preceding general election, must the county clerk deem the petition sufficient and certify it to the county board of election commissioners as provided by Ark. Code Ann. § 14-42-119(b)(2)?

¹⁰ *Johnston*, 193 Ark. at 74-75, 97 S.W.2d at 632 (internal citations omitted).

The answer to this question is “no” because, as explained above, the 15% petition requirement under Ark. Const. art. 5, § 1 does not apply to petitions filed under section 14-42-119. This recall statute requires a petition signed by 25% of the electors who are qualified to vote for the incumbent’s successor.¹¹

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹¹ Ark. Code Ann. § 14-42-119(b)(1)(A).