



TOOELE COUNTY CLERK/AUDITOR

TOOELE COUNTY ADMINISTRATION BUILDING

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*Stansbury Park Rezoning Referendum
Petition Sponsors*

This letter is to notify you that, unfortunately, I will be unable to certify the Rezone Petition in Stansbury Park. Let me recap what has happened:

- 1. 2,749 signatures were required, 2,799 were verified;*
- 2. Packet #22's total had to be taken out of the 2,799 total because the verification on the back of the last page had not been signed, leaving 2,755 verified signatures.*
- 3. The "Verification of Petition Circulator" states: "All the names that appear in this referendum packet were signed by persons who professed to be the persons whose names appear in it, and **each of them signed his name on it in my presence**". The Verifier was required to sign this form.*
- 4. After I notified the main sponsor, Erin Giles, that the number of signatures had been reached, the developer, Mr. Anderson, made allegations, claiming he had proof, that the verifiers had not watched each person sign the petition. I took this information to the County Attorney, Scott Broadhead, who asked the Sheriff's Department to investigate.*
- 5. The investigation showed there were more problems than just the verifiers signing for signatures they had not witnessed. Signers of the petition stated that they had signed individual pages of the petitions with persons other than the verifier.*

Utah State Code 20A-7-606(2)(b) states: The county clerk may not certify a signature under Subsection (3) on a referendum packet that is not verified in accordance with Section 20A-7-605. Section 20A-7-605 (2)(a) states: The sponsors shall ensure that the person in whose presence each signature sheet was signed: (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and (ii) verifies each signature sheet by completing the verification printed on the last page of each referendum packet.

Concerned citizens put so much work into this petition gathering, it is with heavy heart that I am unable to certify the petition, however, when I was sworn into office I took an oath to support, obey, and defend the law and discharge the duties of my office with fidelity. I do not have the authority to ignore this section of the Utah State Code. The only person that has the authority to do that is a Judge of the Court.

Sincerely,

MARILYN K. GILLETTE
Tooele County Clerk/Auditor

TOOELE COUNTY ATTORNEY'S OFFICE



Scott A. Broadhead, County Attorney
Gary K. Searle, Chief Deputy Attorney
Spencer P. Call, Deputy Attorney

Robert L. Clegg, Deputy Attorney
Wayne A. Freestone, Deputy Attorney
Scott Shields, Deputy Attorney

LEGAL OPINION

To: Marilyn Gillette, Tooele County Clerk
From: Scott A. Broadhead, Tooele County Attorney
Re: Petition for Referendum – Ordinance 2018-06
Date: July 25, 2018

Pursuant to Utah Code section 20A-7-606 when the county clerk receives a referendum packet the county clerk shall determine if the submittal meets the legal requirements to be certified. After all of the referendum packets are reviewed and signatures verified, the county clerk then determines if there are enough signatures to declare the referendum petition “sufficient” pursuant to UCA 20A-7-607. This memorandum is an outline of the pertinent facts, law, and basis of my legal opinion.

FACTS

1. A referendum petition was filed with the Tooele County Clerk’s Office in regards to Tooele County Ordinance 2018-06 which was “An Ordinance Amending the Official Zoning Map of Tooele County; Rezoning Approximately 5.38 Acres of Land in Stansbury Park, Adjacent to Country Club Drive and Just West of SR-36, From C-S and R-1-10 to R-M-15 ZC.” The petition was properly filed within five days of passage of the ordinance as required by UCA 20A-7-601(4).
2. Referendum packets were filed with the County Clerk over the next few weeks with many being filed on the last day allowed by law on July 9, 2018. UCA 20A-7-606(1) states that packets must be submitted no later than 45 days after the sponsors receive the packets from the Clerk’s Office.
3. On July 9, 2018, you issued a report regarding the number of signatures required and received. The signatures of 2,749 registered voters meeting all the legal requirements were needed in order for the referendum petition to be declared sufficient. The signatures of 3,428 people were submitted. The signatures of 628 people were declared invalid for the following reasons: the signature was illegible (49), the person was not a registered voter (533), there was a bad address given (2), the person’s signature didn’t match their voter registration signature (1), the signature

was a duplicate, i.e. the same person signed more than one packet (35), or other reasons¹ (9). In addition, after the report was completed, it was determined that a packet containing 44 valid signatures was submitted without the verification page being signed as required by UCA 20A-7-605(2). Therefore, 2,755 valid signatures were submitted which could potentially be certified by the County Clerk.

4. On July 10, 2018, Derald Anderson, the owner of the property subject to the zoning ordinance, contacted you and provided information about improprieties in the signature gathering process. I met with you about these allegations and we determined that the allegations were serious enough that an investigation was required. We called Sheriff Wimmer to discuss the allegations with him. We asked if he would assign a deputy to investigate the matter and he agreed.
5. On July 12, 2018, Lt. Wayman and Deputy White of the Tooele County Sheriff's Office began their investigation. I explained to the deputies that due to the short period of time the Clerk has to declare the referendum petition to be "sufficient" or "insufficient," the investigation needed to be completed by July 20, 2018.
6. The deputies interviewed Derald Anderson and reviewed his allegations and evidence of improprieties in the signature gathering process. Some of the allegations were that Patrick Willoughby collected signatures but did not sign the verification page on any of the packets, and that Erin Giles and Rachel Torzillo verified signatures that they did not witness.
7. The deputies then contacted Patrick Willoughby, Erin Giles, and Rachel Torzillo and requested interviews. All three declined to be interviewed or participate in the investigation. Erin Giles and Rachel Torzillo retained an attorney and declined both personally and through their attorney.
8. In reviewing the submitted packets, the deputies noticed the names of people that the deputies knew personally or professionally. The deputies interviewed Fred Ginter, an employee at the Tooele County Jail. Mr. Ginter stated that he was given a signature page by Rob Johnson which he took to work and obtained nine signatures from jail employees. He then gave the signature page back to Mr. Johnson. Of these nine people, seven have signed sworn statements verifying Mr. Ginter's account. This signature page was included on Page 5 of Packet 67 which was verified by Erin Giles. The verification page clearly states that Erin Giles verifies that "[a]ll the names that appear in this referendum packet were signed by persons who professed to be the person whose names appear in it, and **each of them signed his name on it in my presence.**" This verification is required by UCA 20A-7-603 and 605(2).

¹The "other" category includes signatures deemed invalid because of the following reasons: name was crossed out (3), blank line inserted in report (1), should have counted (1), name whited out (1), extra line at end of petition (1), signature only with no other information (1), and improperly registered voter (1).

9. The deputies interviewed Rob Johnson who corroborated Mr. Ginter's account. He added that he was given two signature pages. He gave one to Mr. Ginter and he used the other to obtain the signatures of some of his family and friends. He believes that he obtained nine other signatures. He stated that he turned one page in at a tent in Stansbury and placed one in his mailbox to be picked up by someone. He stated that he had no idea that he was doing anything wrong. Mr. Johnson's name appears on Page 1 of Packet 46 which was verified by Rachel Torzillo.
10. The deputies interviewed Hillary Chaney who stated she took a packet to her gym and obtained five signatures. Ms. Chaney did not verify any packets. She does not recall whose signatures she obtained and she turned her packet in to Rachel Torzillo. Further investigation determined that Heather Collings was one of those signatures obtained, and she verified Ms. Chaney's account. Mrs. Collings' name appears on Page 5 of Packet 26 which was verified by Rachel Torzillo.
11. UHP Trooper Andrew Prescott stated he signed a packet while outside a fireworks stand in the Cal Ranch parking lot. He stated that he signed in the presence of Patrick Willoughby and there was no one else present. Trooper Prescott's name appears on Page 3 of Packet 68 which was verified by Rachel Torzillo.
12. Donald Hicken stated he signed a packet along with his wife and son in the presence of Patrick Willoughby, and there was no one else present. The names of the three appear on Page 2 of Packet 13 which was verified by Erin Giles.
13. The deputies ran out of time before the July 20th deadline to investigate further. With a limited investigation due to time constraints, the investigators determined that no fewer than 20 signatures, and possibly as many as 27 signatures, were not properly witnessed and verified.

ANALYSIS

Pursuant to Utah Code Section 20A-7-606 when the county clerk receives a referendum packet the county clerk must determine whether each signer is a registered voter. In addition, under Subsection (2)(b) the county clerk "may not certify a signature" that is "not verified."

The sponsors of the referendum packet have duties regarding the obtaining of signatures outlined in UCA 20A-7-605(2) which states that the "sponsors shall ensure that the person in whose presence each signature sheet was signed (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105 and (ii) verifies each signature sheet by completing the verification printed on the last page of each referendum packet."

The verification page printed on the last page of the packet states as specified in UCA 20A-7-603(3):

"Verification
State of Utah, County of ____
I, _____, of _____, hereby state that:

I am a resident of Utah and am at least 18 years old;
All the names that appear in this referendum packet were signed by persons who professed to be the persons whose names appear in it, and each of them signed his name on it in my presence;
I believe that each has printed and signed his name and written his post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.

”

There is substantial evidence that at least 20, and up to 27, signatures were verified by Erin Giles or Rachel Torzillo which they did not actually witness as required by law. These two individuals submitted 26 and 28 packets respectively. The deputies would have continued their investigation if they had more than one week before the deadline. The investigation showed that the verification of signatures that Ms. Giles and Ms. Torzillo did not witness was a pattern of behavior, and it is likely that further investigation would uncover many more signatures that were improperly witnessed.

The requirement that signatures be verified is not just a “technicality.” It is an essential requirement of the signature gathering process. The language on the verification page is clear and simple. The verifier states that a signer did so “in my presence.” I believe that the Utah State Legislature intended that the verification of signatures be an essential element of the process because it mentions it numerous times in different code sections. It also provides for a criminal penalty for verifying a signature that was not witnessed and states that a prosecutor must prosecute a violation.

UCA 20A-7-612 (2)(b) states that it is unlawful for any person to sign the verification for a referendum packet knowing that . . . he has not witnessed the signatures of those persons whose names appear in the referendum packet.” Subsection (3) states that “[a]ny person violating this part is guilty of a class A misdemeanor. Further, Subsection (4) states that the “county attorney or municipal attorney shall prosecute any violation of this section.”

CONCLUSION

This particular referendum petition requires 2,749 certified signatures to be declared sufficient. I believe that you can certify only 2,735. I suspect that the true number of signatures that could be certified is likely much less. It is my legal opinion that the petition should be declared insufficient.

As county officers and members of the executive branch of government it is our duty to apply the law as it is written. The judicial branch of government has the authority to review the statutes and determine whether the verification of signatures is a necessary element of the referendum process. However, we do not have that authority.

It is unfortunate that the work of so many people will go for naught because of the carelessness of two people. Further, it is unfortunate that these two individuals did not take the opportunity to speak to investigators and accept responsibility for their actions, such actions causing the referendum petition to fail.