



IN RE CITY OF EUFAULA INITIATIVE PETITION NO. 3

2022 OK CIV APP 29

Case Number: 119419

Decided: 07/21/2022

Mandate Issued: 08/17/2022

DIVISION II

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II



Cite as: 2022 OK CIV APP 29, ___ P.3d ___

IN RE CITY OF EUFAULA INITIATIVE PETITION NO. 3:

MARTHA SELLERS, Petitioner/Appellant,

v.

CARL GRAUBERGER, Respondent/Appellee.

APPEAL FROM THE DISTRICT COURT OF
MCINTOSH COUNTY, OKLAHOMA

HONORABLE MICHAEL W. HOGAN, TRIAL JUDGE

AFFIRMED

David L. Weatherford, Tulsa, Oklahoma, for Petitioner

John Tyler Hammons, Anastasia Mahoney, HAMMONS HAMBY & PRICE, PLLC, Muskogee, Oklahoma, for Respondent

GREGORY C. BLACKWELL, JUDGE:

¶1 Martha Sellers appeals a decision of the district court interpreting a municipal election statute, 11 O.S. 2011, § 18-101. The court found that § 18-101 requires that only the pre-circulation copy of an initiative petition need be filed 120 days before the candidate filing date for the next municipal general election, and that the circulated and signed petition may be filed up to 90 days after that date. Based on this reading, the petition was timely filed. On review, we agree and affirm.

BACKGROUND

¶2 On September 30, 2020, Carl Grauberger, whom we will refer to as the proponent, filed a pre-circulation copy of an initiative petition with the Eufaula City Clerk. The petition sought a vote on changing Eufaula's statutory form of government (a "form of government" initiative).¹ On December 21, 2020, the proponent filed the circulated version of the petition with the required signatures. On January 8, 2021, Martha Sellers, whom we will refer to as the contestant, filed a protest to the initiative arguing that the petition was untimely because 11 O.S.2011, § 18-101 requires the *circulated and signed* petition to be submitted 120 days before the candidate filing date for the next municipal general election. Although the proponent's pre-circulation petition was arguably submitted 120 days before the filing date, it is uncontested that his circulated and signed petition was not.

¶3 The district court ruled on March 8, 2021, that § 18-101 requires only that the unsigned petition be filed 120 days before the candidate filing date for the next municipal general election, and hence, the proponent's petition was timely.² The contestant now appeals that decision.

STANDARD OF REVIEW

¶4 This question is one of statutory interpretation. Statutory interpretation is a question of law subject to *de novo* review. *Fraternal Order of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman*, 2021 OK 20, ¶ 2, 489 P.3d 20, 22. When reviewing a challenge that would overturn an initiative, "[a]ny doubt as to the construction of pertinent provisions is resolved in favor of the initiative. The initiative power should not be crippled, avoided, or denied by technical construction by the courts." *In re Initiative Petition No. 426, State Question No. 810*, 2020 OK 44, ¶ 4, 465 P.3d 1259, 1262 (citing *In re Initiative Petition No. 403*, 2016 OK 1, ¶ 3, 367 P.3d 472); *In re Initiative Petition No. 382*, 2006 OK 45, ¶ 3.

¶5 However, while the right of initiative petition is zealously protected by this Court, it is not absolute. Any citizen can protest the sufficiency and legality of an initiative petition. *In re Initiative Petition No. 409*, 2016 OK 51, ¶2, 376 P.3d 250; *In re Initiative Petition No. 384, State Question No. 731*, 2007 OK 48, ¶2, 164 P.3d 125. Upon such protest, this Court must review the petition to ensure that it "complies with the parameters of the rights and restrictions [as] established by the Oklahoma Constitution, legislative enactments and this Court's jurisprudence." *In re Initiative Petition No. 426, State Question No. 810*, ¶ 4 (internal quotation marks omitted).

ANALYSIS

¶6 A single question of statutory interpretation is presented here. Title 11 O.S. § 18-101 sets timing limits on when a form of government initiative must be filed. It requires that "[t]he initiative petition ... shall be filed at least one hundred twenty (120) days before the filing date for the next municipal general election."³ The question presented is whether the deadline is satisfied with the filing of an *unsigned, pre-circulation* petition or if it requires the filing of a petition that has been *circulated and signed* by the requisite number of qualified voters. The answer disposes of this case because the uncirculated petition here was filed 126 days before the candidate filing date, but the circulated and signed petition was filed only 44 days before the candidate filing date. Thus, if it is only an unsigned, pre-circulation petition that is subject to the filing deadline, the proponent wins and the district court must be affirmed.

THE HISTORY AND TEXT OF 11 O.S. § 18-101

¶7 Although both parties make various arguments that their interpretation should prevail because it avoids significant practical difficulties in the running of municipal elections, we believe the answer to the question flows directly from the text of the statute in question. This is especially true when that text is viewed in the light of its history. Thus, a brief recitation of the history of the relevant statutory sections is required.

¶8 Prior to 1977, all questions of "initiative and referendum" were addressed in Title 34 (Initiative and Referendum) of the Oklahoma Statutes, and there was no special procedure for a municipal initiative dealing with a change in the statutory form of government.⁴ In 1977 the law regarding local initiatives and referenda was moved from Title 34 to Title 11. Much of the current Article 15 of Title 11 ("Initiative and Referendum - Municipal Questions") is similar to the prior Title 34 law.

¶9 With this move to Title 11, the 1977 legislature also added two new articles to Title 11--Articles 18 and 19. These concern two specific types of initiative: those seeking to change the form of government and those seeking to change the name of the municipality. These articles set different requirements from the general municipal initiative petition statutes set out in Article 15. Article 18 concerns a change to the statutory form in government and is our focus here.

¶10 As enacted in 1977, § 18-101 allowed "[a]ny city operating pursuant to a statutory form of city government" to "change to any one of the other statutory forms of city government." 11 O.S.Supp.1977, § 18-101. In order to make the change, the statute required the following procedure:

The mayor shall issue an order calling for an election on the question of whether or not the city shall change its form of government if:

(1) a petition signed by not less than twenty percent (20%) of the registered voters of the municipality as shown by the preceding general election is filed with the governing body; or

(2) The governing body, by resolution, so directs.

The petition or resolution of the governing body shall be filed at least one hundred twenty (120) days before the next municipal primary election and must include the form of government which is proposed for adoption. The order calling for the election shall be issued within ten (10) days after a petition has been filed with the governing body or within ten (10) days after the effective date of the governing body resolution.

11 O.S.Supp.1977, § 18-101. Additionally, § 18-102 required that the question "shall be submitted to the registered voters of the city at a general or special election" within 30 to 60 days "after the date of the order calling for the election." *Id.* § 18-102. 5

¶11 This 1977 version of § 18-101 and § 18-102 introduced several relevant changes from the general procedure for municipal initiatives as outlined in Article 15, specifically § 15-103. Most notably, § 18-101 required the signatures of only *twenty* percent of the voters as necessary to put the question to the vote, instead of the more usual *twenty-five* percent stated in § 15-103. It also required that a form of government petition be filed 120 days before the "next municipal primary election." No such deadline appears in Article 15. Section 15-103 also contemplates the filing of a petition prior to circulation, stating "[a] true copy of each measure proposed shall be filed with the clerk of the municipality before it is circulated and signed by the registered voters." 11 O.S.Supp.1977, §15-103. Article 18 does not reference any such procedure. Section 18-102 also did not wait until the next general municipal election to put the initiative to a vote, as stated in § 15-103. Instead, it set time limits requiring an election to vote on the initiative be held 30 to 60 days after an order for an election, and provided for special elections to do so. 6

¶12 Notably, under the 1977 version of § 18-101 it was the "signed" petition that must be filed "at least one hundred twenty (120) days before the next municipal primary election." This stood in stark contrast to the general procedure set forth in Article 15, which clearly contemplated two separate filings of the petition, with only the second filing needing to contain the signatures of the requisite number of voters. 11 O.S.Supp.1977, § 15-103(A) ("A true copy of each measure proposed shall be filed with the clerk of the municipality *before it is circulated and signed by the registered voters.*) (emphasis supplied)); *Id.* § 15-103(C) ("Signed copies of an initiative petition shall be submitted to the clerk within ninety (90) days *after the initial filing of the measure with the clerk.*" (emphasis supplied)). 7

¶13 However, in 1984, the legislature made significant amendments to the Article 18 procedure. As relevant, they made the following specific changes to § 18-101:

The mayor shall issue an order calling for an election on the question of whether or not the city shall change its form of government ~~when~~ if:

~~1. A an initiative petition signed by not less than twenty percent (20%) of the voters" of the municipality as shown by the preceding general election is filed with the governing body; or~~

2. ~~The~~ the governing body, by resolution, so directs.

The initiative petition; or resolution of the governing body, ~~must shall~~ be filed at least one hundred twenty (120) days before the filing date for the next municipal primary general election and ~~must shall~~ include the form of government which is proposed for adoption. The order calling for the election shall be issued by the governing body of the municipality within ten (10) days after ~~a petition has been filed with the governing body~~ a decision has been made on the ballot title, or within ten (10) days after the effective date of the resolution of the governing body resolution.

Laws 1984, HB 1669, c. 126, § 33, eff. November 1, 1984. This statute has not been modified since.

¶14 Various changes from the 1977 statute are evident, but two stand out, and in our view, decide this case. First, the requirement of a "petition signed by not less than twenty percent (20%) of the registered voters" was entirely removed. Second, the word "initiative" was inserted each time before the word "petition" was used. We believe the clear import of these changes was to direct a municipality, when presented with a request to change the form of government, to use the general procedures for initiative petitions as already set forth in Article 15, unless those procedures conflicted with a procedure that remained in Article 18. Even the contestant must admit this reading when it comes to the percentage of voters that must, eventually, sign the proposed measure. The contestant admits that number must now be borrowed from Article 15. We think the argument that Article 18, even after this change, continues to make any requirement that the initial petition must arrive already circulated and signed is rebuffed by the clear statutory change as well. Having entirely deleted the prior signature requirement, it is clear that the legislature intended that the procedures of Article 15 as to the timing of the filing of copies of the circulated and signed petition prevail. As such, we hold that it is only the unsigned, pre-circulation copy of the petition--"[a] true copy of each measure proposed," pursuant to Article 15--that must be filed with the city clerk 120 days prior to the filing date for the next municipal general election.

¶15 We note that each party raises various questions about the practical effects of the other's reading of the statute in an effort to call that reading into doubt.⁹ In our view, none of these arguments overcome what appears to be the clear intent of the legislature's 1984 amendment to § 18-101. Certainly, each side's reading raises various other questions, but those questions are hypothetical and need not be answered here. Because we view the legislative intent of the 1984 amendments to § 18-101 as clear, we decide the question presented on that basis alone.

THE REFILING OF THE PETITION

¶16 The contestant also argues that, even if it is only the pre-circulation petition that must be filed before or at the 120-day mark, the petition here was still untimely. The proponent filed the pre-circulation petition and ballot title on September 30.⁹ As to the filing of the ballot title, the city attorney found it was not in proper form, and, on October 1st, wrote to the proponent "suggesting revision." The proponent then filed a "corrected initiative petition" on October 8th. The contestant correctly states that the last date to file before the 120-day deadline was October 4, 2020. Thus, if the September 30th date is used, the petition was timely, but if the October 8th date is used, it was not.

¶17 The contestant's argument rests on a misunderstanding of the law in this area. First, there is no statutory requirement that a *ballot title* be filed 120 days before the candidate filing date. The ballot title "may be filed with the clerk prior to circulating the petition, but it must be submitted no later than the time that the signed copies of the petition are filed with the clerk." 11 O.S. § 15-105. Hence, a pre-circulation petition may be submitted at the 120-day mark with a defective ballot title, or no ballot title whatsoever, and still comply with the timing requirements of § 18-101.

¶18 Second, there is no statutory requirement that the *petition* be refiled if the ballot title is not found to be in the proper form. Section § 15-105 is clear that, if the ballot title is not in proper form in the opinion of the city attorney, it is the *attorney*, not the proponent, that must file a revised *ballot title*, not a revised petition. As such, any revised petition filed by the proponent on October 8th was not required and the September 30th petition was timely.

CONCLUSION

¶19 The legislature created a special procedure for form-of-government questions in 1977 and revised this procedure in 1984 with the intent to harmonize these procedures more closely with the general laws regarding municipal initiatives. The issues and concerns raised by the parties here indicate that the Article 18 procedure is not free from complications and may be ripe for a legislative fix. We find, however, that it is the unsigned, pre-circulation petition that must be submitted 120 days before the candidate filing date, and that the signed petition may be submitted up to 90 days later. Under this reading, the proponent's petition was timely filed and the judgment of the district court is therefore affirmed.

¶20 AFFIRMED.

WISEMAN, P.J., and FISCHER, C.J. (sitting by designation), concur.

FOOTNOTES

GREGORY C. BLACKWELL, JUDGE:

¹ Title 11 provides for four alternate statutory forms of local government: the "Aldermanic Form of Government" (Article IX); the "Council-Manager Form of City Government" (Article X); the "Statutory Strong-Mayor-Council Form of City Government" (Article XI) and the "Statutory Town Board of Trustees Form of Government" (Article XII).

² The record indicates that the question was not placed on an election ballot after this ruling, however, possibly because the deadline to send the question to the election board expired before the court made its decision. The contestant asked the Oklahoma Supreme Court to retain the appeal, but the request was denied. No party has suggested the controversy is moot.

³ The "filing date" referred to in § 18-101 is the pre-election date by which local office seekers must declare themselves as candidates in order to be included on the ballot. In this particular case, the candidate "filing period" was established by 11 O.S. § 16-110 as February 1-3, 2021, but we will use February 1st in our calculations. Technically, there is no one candidate filing date, but rather a candidate filing period. It begins "no earlier than 8:00 a.m. on the first Monday in February" and ends "no later than 5:00 p.m. on the next succeeding Wednesday." 11 O.S. § 16-110. However, because § 18-101 references a filing *date*, we must resolve the ambiguity between the statutes and select a date from which begin counting. The parties' briefs appear to use the first day for their calculations. Further, another statute, 26 O.S. § 13-102, uses the first day of the filing period to condition other statutory requirements. As such, for purposes of this opinion, we will assume that the first day of the filing period is the "filing date." In 2021, that date was February 1st.

⁴ "Municipal [q]uestions" were, at this time, addressed in §§ 51-54 of Title 34. 34 O.S.1971 §§ 51-54.

⁵ Three additional sections of Article 18 concern the form of the ballot title, the effective date of the new form of government if the measure passes, and how to officially record the change. 11 O.S.Supp.1977, §§ 18-103--18-105. Those sections are not at issue here.

⁶ In 1993 this 30 to 60 day time frame was changed to 60 to 90 days. Laws 1993, SB 150, c. 316, § 1, eff. September 1, 1993. The statute has otherwise been unchanged since 1977.

⁷ There have been amendments to § 15-103 since 1977, but the referenced language remains unchanged.

8 The proponent argues, for example, that if the signed petition must be submitted 120 days before the candidate filing date it is mathematically impossible for a form of government initiative to be voted on at a general election. The proponent appears to be correct on this point. Likewise, the contestant argues that our interpretation leaves very little time to give notice of the initiative question to the state election board (two days, in the worst case scenario) or to resolve challenges to a proposal that are otherwise permissible by law. Additionally, §§ 15-105 and 18-101 may require an order for a form-of-government election to issue before the required signatures have been gathered because it requires an order to issue within approximately 13 days of the filing of a *ballot title*, not the signed petition. We question the advisability of this procedure. (And we are apparently not alone in this regard, as no order for the election in this case appears to have issued at all. The parties appear to have partially followed the general provisions of Article 15, rather than the specific procedures of Article 18 on this point.)

While each of these claims of practical problems may have merit, they only reveal that the legislature's 1984 amendments may have had unintended consequences that must be resolved in some future case, or, preferably, by corrective legislation. They do not overcome the clear import of the 1984 amendments which, as we have held, was to default to the Article 15 procedures for general municipal initiative petitions to the extent Article 18 does not directly conflict. Because there is no conflict with our reading of the provisions as to the question presented here, we need not evaluate the statutes further.

9 The parties stipulated that the pre-circulation petition was first filed on September 25th, then "refiled" on the 30th. Both parties agree as to some deficiency in the September 25th filing. Thus, we consider the filing on the 30th as the first filing.

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Oklahoma Supreme Court Cases

Cite	Name	Level
2006 OK 45, 142 P.3d 400,	IN RE: INITIATIVE PETITION NO. 382, STATE QUESTION NO. 729	Cited
2007 OK 48, 164 P.3d 125,	IN RE: INITIATIVE PETITION NO. 384, STATE QUESTION NO. 731	Discussed
2016 OK 1, 367 P.3d 472,	IN RE INITIATIVE PETITION NO. 403 STATE QUESTION NO. 779	Discussed
2016 OK 51, 376 P.3d 250,	IN RE INITIATIVE PETITION NO. 409, STATE QUESTION NO. 785	Discussed
2020 OK 44, 465 P.3d 1259,	IN RE: INITIATIVE PETITION No. 426 STATE QUESTION No. 810	Discussed
2021 OK 20, 489 P.3d 20,	FRATERNAL ORDER OF POLICE v. CITY OF NORMAN	Discussed

Title 11. Cities and Towns

Cite	Name	Level
11 O.S. 15-103,	Petition - Form - Signatures - Time for Filing	Discussed
11 O.S. 15-105,	Ballot Title	Cited
11 O.S. 16-110,	Filing as a Candidate in a Nonpartisan Municipal Election	Discussed

Cite Name

11 O.S. 18-101,

11 O.S. 18-103,

Title 26. Elections

Cite

26 O.S. 13-102,

Level

Procedure for Changing Form of Government - Petition or Governing Body Resolution

Ballots - Certification of Results - Order

Name

Notice of Elections

Discussed at Length

Cited

Level

Cited