

OPINION
71-372

June 18, 1971 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Statutes - Initiative and Referendum Petitions - Form of Affidav

This is in response to your letter in which you state that referendum petitions have been presented to your office for filing to refer subsection 9 of Senate Bill 2001 relating to the appropriation for the Department of Accounts and Purchases for the period beginning July 1, 1971, and ending June 30, 1973.

You also have set out the affidavit which is found on the petitions which reads as follows:

"STATE OF NORTH DAKOTA

COUNTY OF _____)

)

)

_____, being first duly sworn on oath deposes and says that he circulated the attached petitions containing _____ signatures, that each of the signatures to said petition is the genuine signature of the person whose name it purports to be; and that each person is a qualified elector of the State of North Dakota.

Subscribed and sworn to before me this _____ day of _____, 1971.

Notary Public

_____ County, State of North Dakota

My commission expires _____

You also call our attention to Senate Bill 2067 which is an emergency measure enacted by the Forty-second Legislative Assembly amending Section 16-01-11 of the North Dakota Century Code. You further note that the affidavit does not contain the language set out in Section 16-01-11 as amended.

You then request an opinion whether or not, under the statements set forth above, the affidavit in question is sufficient or if the petitions should be returned to the "committee for the petitioners"

for corrections or amendments as provided for in Section 25 of the Constitution of the State of North Dakota.

Senate Bill 2067 which, among other things, amends Section 16-01-11, was an emergency measure which was approved on March 19, 1971, and became law and was effective as of that day.

The pertinent provisions of Section 16-01-11 as amended are as follows:

"* * *Every qualified elector signing a petition pursuant to the Constitution and this section shall do so in the presence of the person circulating the petition. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit executed by the circulator to the effect that each signature to the paper appended is the genuine signature of the person whose name it purports to be, that it was signed in his presence and that each person is a qualified elector.* * *"

The underscored language is new material that came into being as a result of Senate Bill 2067. Section 16-01-11 as amended directs that each petition be supported by an affidavit covering certain specified material. The phrase "to the effect" implies that the exact language need not be used, but that the thought must be contained in the affidavit.

The affidavit on the referendum petition does not contain the exact language or language which expresses the thought as set out and required by Section 16-01-11 as amended.

We further note that Section 16-01-11 requires the elector to sign the petition in the presence of the person circulating the petition.

The Legislature, having given specific direction that the elector must sign the petition in the presence of the circulator and having specifically provided that the circulator must make an affidavit that the elector signed in his presence, this legislative provision cannot be ignored. We must therefore conclude that the affidavit is to be considered an integral part of the petition.

It is therefore our opinion that the affidavit contained on the referendum petition to refer subsection 9 of Senate Bill 2001 does not meet the statutory requirements of Section 16-01-11.

You, as Secretary of State, may so notify the committee that the petitions do not meet the requirements. The provisions of Section 25 of the North Dakota Constitution to which you refer in this respect would be applicable.

HELGI JOHANNESON

Attorney General