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SPRINGFIELD

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FILE NO. 82-028

ELECTIONS:  
Meaning of the Term "Qualified Electors"; Date for Determining Requisite "Number of Registered Voters in the Governmental Unit" under Section 28-7 of The Election Code

Honorable Edward Litak  
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Dear Mr. Litak:

I have your letter wherein you ask (1) what are "qualified electors", as that term is used in section 28-7 of The Election Code (Ill. Rev. Stat. 1981, ch. 46, par. 28-7, as amended by Public Act 82-750, effective May 26, 1982), and (2) as of what date should the "number of registered voters in the governmental unit" be determined pursuant to that section. For the reasons stated below, it is my opinion that qualified electors, within the meaning of section 28-7 of The Election Code, are persons who have met all the statutory requirements for voting in the election for which the petition is submitted,

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including registration. In response to your second question, it is my opinion that the appropriate date for determining the "number of registered voters in the governmental unit" is the date on which voter registration was terminated for the regular election next preceding the last date on which the petition can be filed under The Election Code.

Section 28-7 of The Election Code (Ill. Rev. Stat. 1981, ch. 46, par. 28-7 as amended by Public Act 82-750, effective May 26, 1982) provides in pertinent part:

"In any case in which Article VII or paragraph (a) of Section 5 of the Transition Schedule of the Constitution authorizes any action to be taken by or with respect to any unit of local government, as defined in Section 1 of Article VII of the Constitution, by or subject to approval by referendum, any such public question shall be initiated in accordance with this Section.

Any such public question may be initiated by the governing body of the unit of local government by resolution or by the filing with the clerk or secretary of the governmental unit of a petition signed by a number of qualified electors equal to or greater than 10% of the number of registered voters in the governmental unit, requesting the submission of the proposal for such action to the voters of the governmental unit at a regular election.

\* \* \*

This Section is intended to provide a method of submission to referendum in all cases of proposals for actions which are authorized by Article VII of the Constitution by or subject to approval by referendum and supersedes any conflicting statutory provisions except those contained in the 'County Executive Act'.

\* \* \*

(Emphasis added.)

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The term "qualified electors" is not defined in article 28 or anywhere else in The Election Code.

Although there are no Illinois judicial decisions construing the term "qualified electors", court opinions construing similar terms are helpful in determining the meaning of the term at issue. In People ex rel. Jordan Co. v. Village of Forest View (1961), 21 Ill. 2d 384, the Illinois Supreme Court construed the term "elector" under section 7-2 of the Revised Cities and Villages Act (Ill. Rev. Stat. 1951, ch. 24, par. 7-2) to mean persons meeting only the basic age, residency and citizenship eligibility requirements specified in section 3-1 of The Election Code. (Ill. Rev. Stat. 1981, ch. 46, par. 3-1.) Therefore, the court held that the trial court had erred in holding that only persons registered to vote under The Election Code were eligible to sign the petition requesting annexation of territory. (See Ciacco v. City of Elgin (1980), 85 Ill. App.3d 507.) Subsequent to this decision, however, the General Assembly amended the Revised Cities and Villages Act and expressly defined "elector", for purposes of annexation petition requirements, to mean "\* \* \* anyone registered to vote". (Ill. Rev. Stat. 1981, ch. 24, par. 7-1.1.)

In Stout v. Black (1972), 8 Ill. App. 3d 167, the court construed the term "qualified voter" in section 10-3 of The Election Code (Ill. Rev. Stat. 1981, ch. 46, par. 10-3), which sets forth the requirements for petitions nominating

independent candidates for State office, to mean any person who has met all the statutory qualifications to vote, including registration when registration is required in the election for the particular office for which the nomination is made. (See also Schumann v. Kumarich (1981), 102 Ill. App. 3d 454.) Other jurisdictions have construed the term "qualified elector" in similar statutes to require that petition signers be registered. Bjornson v. City of Aberdeen (S.D. 1980), 296 N.W.2d 896; Pike County School District No. 1 v. Pike County Board of Education (1969), 247 Ark. 14, 444 S.W.2d 75; State ex rel. Hubbard v. Lindsay (1958), 52 Wash. 2d 446, 326 P.2d 47; Johnson v. Reichenstein (1958), 50 N.J.Sup. 116, 141 A.2d 76.

The meaning of the term "qualified electors" in section 28-7 can be arrived at by considering section 28-7 in light of other provisions in article 28 which are in pari materia with section 28-7. (Stout v. Black (1972), 8 Ill. App. 3d 167.) The terms "qualified electors", "electors", and "registered voters" are used throughout article 28 of the Code, and, in some instances, those terms are used interchangeably. For example, section 28-3 of the Code (Ill. Rev. Stat. 1981, ch. 46, par. 28-3, as amended by Public Act 82-750, effective May 26, 1982), which sets forth the content requirements for a petition for the submission of public questions, provides that:

"\* \* \* Such petition shall be signed by the registered voters of the political subdivision or district in which the question of public policy is to

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be submitted in their own proper persons only, and opposite the signature of each signer his residence address shall be written or printed \* \* \* provided that the county or city, village or town, and state of residence of such electors may be printed on the petition forms where all of the such electors signing the petition reside in the same county or city, village or town, and state. \* \* \*" (Emphasis added.)

Similarly, although section 28-7 of the Code requires the petition authorized therein to be signed by a specified number of "qualified electors", section 28-9 of the Code (Ill. Rev. Stat. 1981, ch. 46, par. 28-9, as amended by Public Act 82-750, effective May 26, 1982) requires the petition authorized therein to be signed by a specified number of "electors". Petitions for the submission of advisory questions of public policy filed pursuant to section 28-6 of the Code (Ill. Rev. Stat. 1981, ch. 46, par. 28-6, as amended by Public Act 82-750, effective May 26, 1982) must be signed by a specified number of "registered voters".

Based upon these provisions and past construction generally accorded thereto, it is apparent that the General Assembly intended that the requisite qualifications for individual signers of petitions be determined by reference to a readily available source -- most usually, voter registration records. The fact that the General Assembly has over a period of several years used the differing terms "qualified electors", "electors" and "registered voters" in similar provisions contained in article 28 provides no basis for departing from a

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construction which furthers the plain purpose of these provisions -- that those reviewing petitions be able to verify names on petitions by reference to readily available records.

Further, this construction provides for an administratively feasible method for administering the section. Without the use of registration records, it would be extremely difficult to verify each contested signature on the petitions within the time limits imposed by the Code. A statute must be reasonably construed so as to be applied in a practical and common sense manner. (People ex rel. Singer v. Illinois Central Ry. Co. (1940), 373 Ill. 523, 526.) Therefore, it is my opinion that the term "qualified electors" in section 28-7 of The Election Code means persons who have met all the statutory qualifications for voting in the election for which the petition is being submitted, including registration.

You also inquire as to the date on which the "number of registered voters in the governmental unit" is to be determined for purposes of ascertaining the necessary number of signatures on petitions filed pursuant to section 28-7 of the Code. The statute is silent and there are no judicial decisions directly on this point.

As above, the answer to this question is provided by consideration of the structure and purpose of the statute. In some provisions of the Code, the General Assembly has provided a readily ascertainable date as of which the requisite number

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of petition signatures may be determined. For example, section 10-3 of the Code (Ill. Rev. Stat. 1981, ch. 46, par. 10-3) provides in pertinent part that:

"Nomination of independent candidates \* \* \* for any office to be filled by the voters of the State at large may also be made by nomination papers signed in the aggregate for each candidate by 1% of the number of voters who voted in the next preceding Statewide general election or 25,000 qualified voters of the State, whichever is less. Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district, or political subdivision, equaling not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater) of the number of persons, who voted at the next preceding regular election in such district or political sub-division in which such district or political sub-division voted as a unit for the election of officers to serve its respective territorial area \* \* \*.

\* \* \*

"

(Emphasis added.)

The purpose of this provision is apparent: by fixing the requisite number of signatures to a number of votes cast at a preceding election, prospective petitioners can ascertain the definite number of required signatures in advance.

The State Board of Elections, which is the agency entrusted with supervision of the administration of registration and election laws throughout the State (Ill. Rev. Stat. 1981, ch. 46, par. 1A-8), has considered the meaning of a provision contained in section 28-9 of the Code (P. A. 82-750, effective May 26, 1982, to be codified at Ill. Rev. Stat., ch.

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46, par. 28-9) which is similar to the language of section 28-7 in question. That provision, which is part of a section added by the same Public Act which cast section 28-7 in its present form, provides:

" \* \* \*

Petitions for advisory questions of public policy to be submitted to the voters of the entire State shall be signed by at least 10% of the registered voters in the State. \* \* \*"

In State Board of Elections advisory opinion No. 83-1, issued July 13, 1982, it was stated as follows:

\* \* \* [T]he total number of voters against which the 10% is to be applied should be that number of voters who are determined to be registered as of the termination of registration prior to the regular election next preceding the last day on which the petition can be filed in accordance with the general election law. In the case of a petition proposing to submit an advisory question of public policy for the November 2, 1982, General Election, the total number of registered voters in the State for the March 16, 1982, General Primary Election was 5,925,046. Therefore, 592,504 signatures (10% of the total of 5,925,046) are required for any petition seeking to place a statewide advisory referendum on the ballot for the November 2 General Election.

\* \* \*

"

Although it is not binding, an administrative agency's interpretation of a statute which it has the duty of enforcing is considered an informed source of guidance in determining the intent of the legislature. (National Transportation, Inc. v. Howlett (1976), 37 Ill. App. 3d 249.) Since the agency's interpretation in this circumstance conforms with the structure

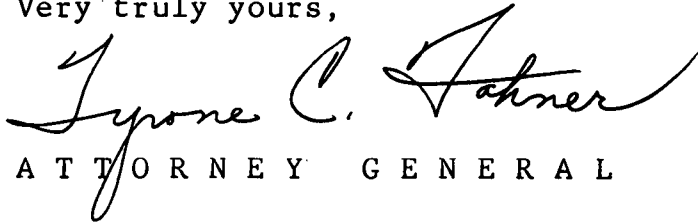


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and policy of the Act and provides a reasonable construction thereof, there is no apparent reason to depart from the agency's construction. See Andrews v. Foxworthy (1978), 71 Ill. 2d 13, 21; People ex rel. Singer v. Illinois Central Ry. Co. (1940), 373 Ill. 523, 526.

For these reasons, it is my opinion that the "number of registered voters in the governmental unit" referred to in section 28-7 of The Election Code is ascertained as of the date on which registration was terminated for the regular election next preceding the last date on which the petition can be filed under The Election Code.

Very truly yours,

  
A T T O R N E Y   G E N E R A L