STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

February 13, 1995

Mr. Robert S. LaBrant, Treasurer
Bingo Coalition for Charity-Not Politics
12411 Pine Ridge Drive
Perry, Michigan 48872

Dear Mr. LaBrant:

This is in response to your request for a declaratory ruling concerning the application of the Michigan Election Law, 1954 PA 116, as amended (the Law), to the processing of petitions submitted to the Secretary of State seeking a referendum on 1994 PA 118.

The specific question you raise is:

> Does Bureau of Elections staff in conducting a face check of submitted referendum petition sheets follow the precedent in Hamilton v. Secretary of State and OAG No. 4880, July 3, 1975 and not count those signatures that were collected by B.I.N.G.O. on or before November 8, 1994, the date of the last general election at which a Governor was elected, to determine whether there are sufficient signatures in number to equal at least five percent of the total vote cast for all candidates for Governor on November 8, 1994?

You submit a recitation of the facts with respect to the issues. Since you submitted your request there have been some changes in the facts resulting from the submission of a referendum petition on Senate Bill 3 which became 1994 PA 118. The following is a brief outline of the relevant facts:

1. Senate Bill 3 was signed by Governor Engler on May 12, 1994 and became 1994 PA 118.

2. The last general election at which the Governor was elected was held on November 8, 1994.

3. The Michigan Legislature adjourned sine die on December 29, 1994. The 90 day period for invoking referendum following the final adjournment of the 1994 legislative session in which 1994 PA 118 was enacted expires on March 29, 1995.

4. On January 31, 1995, a petition seeking to invoke a referendum on 1994 PA 118 was submitted to the Secretary of State.

5. A preliminary review of the petition disclosed that up to 85,441 signatures were collected before November 8, 1994 and a maximum of 157,238 signatures were secured after November 8, 1994.

Law

Michigan's Constitution sets forth the basic requirements governing the use of the power of referendum. Article 2 section 9 of the Constitution provides in part:

> "To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required."

The Michigan Constitution of 1908 included provisions with respect to initiative, referendum and constitutional amendment that in many respects paralleled the provisions of the current Constitution. In 1923 the Michigan Supreme Court issued a decision in a case involving the power of initiative and whether the intervention of a general election operates to kill the signatures gathered prior to the election. The decision in Hamilton v Secretary of State, 221 Mich 541; 191 NW 829 (1923), concluded that the constitutional provision using the vote for governor as the basis for determining the number of signatures establishes a period of time during which the petition is viable. The Court in its opinion said:

> "' . . . The vote for governor . . . fixes the basis for determining the number of legal voters necessary to *sign* an initiatory petition and start designated official action.' p 544 [Emphasis of the Court]
>
> 'This primary essential to any step at all fixes distinct periods within which initiary action may be instituted. A petition must start out for signatures under a definite basis for determining the necessary number of signatures and succeed or fail within the period such basis governs.'

* * *

'The identity of the petition was inseparably linked with the basis it sought to comply with, and as an initiatory petition it could not and did not survive the passing of such basis and then identify itself with a new basis wholly prospective in operation. It would be anomalous to say that a failure to comply with a former basis may constitute full compliance with a later basis. The Constitution plainly intends an expression of an existing sense of a designated percentage of the legal voters.' p 546"

In 1975 the Attorney General concluded that the gubernatorial election is the cutoff date for signatures on a petition to place a constitutional amendment on the ballot under Article 12 section 2 of the Constitution of 1963. OAG, 1975-76, No. 4880, p 111 (July 3, 1975), relied extensively on the Hamilton opinion. In his opinion the Attorney General summarized as follows:

"Thus, if a petition to amend the constitution lacked a sufficient number of signatures up to and including November 4, 1974, that amendatory petition died and no petition signatures procured prior to that date may be considered. However, petition signatures procured on or after November 5, 1974 are valid for the duration of the current gubernatorial term." p 113

Both the Hamilton case and the Attorney General Opinion cited above deal with the requirements for petitions that propose constitutional amendments. The petition in question seeks a referendum on legislation. Initiative and referendum are found in Article 2 section 9 of the Constitution. Initiation of constitutional amendments is found in Article 12 section 2 of the Constitution. However, although they are found in separate places in the Constitution each provision setting the number of signatures required has as a base the "total vote cast for all candidates for governor at the last preceding general election at which a governor was elected . . . ."

Conclusion

In light of the case law and Attorney General's opinions previously cited, the same principles govern the validity of signatures for each type of petition. In counting signatures to ascertain whether the right of referendum has been invoked, the staff of the Department of State will count as valid only signatures gathered on or after November 8, 1994, the date of the last preceding general election at which a governor was elected. The total vote cast for governor will be the

basis for determining if five percent of the registered electors signed the petition. I have instructed the Bureau of Elections to begin processing the petition accordingly.

It is my understanding a legislator has requested that the Attorney General issue an opinion on this issue. I recognize that this Attorney General's opinion may conclude differently, and that the issue may also be reviewed by the courts.

The Department of State staff will proceed counting the signatures in a manner that will allow for review of my decision in this declaratory ruling without unnecessary delay, so that the sufficiency of the referendum petition can be determined in advance of the effective date of 1994 PA 118.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

CSM:rlp