



Memo

February 27, 2020

To: Members of the Citizen-Initiated Charter and Ordinance Amendment Process

From: Patrick Brackins

CC: charter2020@occompt.com

Issue: Is the Supervisor of Elections' *Petition Timeline* accurate where it states the “Board” will render a decision on a petition twenty (20) days after being notified by the Supervisor of Elections that the sponsor has reached the 1% threshold?

Answer: No. The decision being referenced in the memo is actually a reference to the decision to be rendered by the legal review panel, which the Supervisor incorrectly calls “the board.”

At the February 19, 2020 meeting of the Citizen-Initiated Charter and Ordinance Amendment Process Committee (the “Committee”), it was provided with a December 2, 2019 letter and package from Bill Cowles, the Orange County Supervisor of Elections (the “SOE”). Included within the package, at Attachment H, is a “Petition Timeline” setting forth the scheduling milestones contained in the 2016 Charter Revisions. The Petition Timeline is **not** part of the charter or an ordinance, but is simply a document prepared by the SOE describing the charter’s deadlines and requirements for citizen initiatives. Attached hereto as Exhibit 1 is a composite exhibit containing the SOE’s correspondence and the Petition Timeline.

A question arose from the Committee regarding the following language in the Petition Timeline: “Upon reaching the 1% threshold, the SOE shall notify the board. The board shall render its decision within twenty days after notification.” The Committee appeared to believe that the Petition Timeline’s use of the term “board” in the above excerpt meant the Board of County Commissioners (the “BCC”). This was a reasonable interpretation because two lines later the Petition Timeline’s use of the term “board” unquestionably refers to the BCC. The Committee presumed that the Petition Timeline accurately

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reflected the law as it exists in the charter and questioned why the BCC would render a decision early in the process and then hold a public hearing later in the process.

At the meeting, general counsel advised the Committee that it appeared the SOE's Petition Timeline used imprecise language when describing the legal review process contained in the charter. The Committee asked general counsel to examine the accuracy of the language contained in the SOE's Petition Timeline and to provide a memorandum regarding same.

The language used by the SOE, specifically the reference that "[t]he board shall render its decision within twenty days after notification," is incorrect. Section 602(E)(1) of the Charter provides:

One (1) percent threshold: Upon verification by the [SOE] that a petition has been signed by at least one (1) percent of the county electors in each commission district, the [SOE] shall so notify the board, the comptroller and the legal review panel. (Emphasis added).

The Petition Timeline accurately states that SOE will notify the board, meaning the BCC, but then skips over the precise role played by the Legal Review Panel. Immediately thereafter, subsection (E)(2) of the charter provides that the Legal Review Panel (not the BCC):

[S]hall meet and render a determination, within twenty (20) days after notification [from the SOE] whether the proposed initiative petition, including ballot title, ballot summary, proposal language, and ballot language translations, embraces but one (1) subject and matter directly connected therewith and is not inconsistent with the Florida Constitution, general law, or the restriction of the Charter.

Sec. 602(E)(2) (emphasis added). Thus, when the SOE's Petition Timeline refers to the "board" in the statement "[t]he board shall render its decision within twenty days after notification," the SOE meant to refer to the Legal Review Panel, rather than the BCC, which renders its decision on legal sufficiency under the charter within twenty (20) days after being notified by the SOE that a sponsor has reached the 1% threshold.

The Legal Review Panel consists of "a panel of three (3) persons licensed to practice law in the State of Florida who have demonstrated experience in Florida local government law, and who shall

be selected on a bi-annual basis through the county's procurement process applicable to legal services." *Id.* The Charter further provides:

If at least two (2) members of the legal review panel determine that the proposed initiative petition does not embrace but one (1) subject and matter directly connected therewith, or is inconsistent with the Florida Constitution, general law, or the restrictions of the Charter, then the legal review panel shall render a written opinion setting forth its determination and the reasons therefor, and shall so notify the [BCC], the [SOE], and the sponsor of the petition.

Id. In the event the Legal Review Panel issues a negative opinion as to legality, then "the petition drive shall thereafter terminate, and no of the signatures acquired in such a petition drive may be carried over onto another petition." *Id.*

The BBC does not become involved until after the SOE, Legal Review Panel, and Comptroller conduct their respective responsibilities under the Charter. Then, "[w]ithin sixty (60) days after notification of legality by the legal review panel, the [BCC] shall hold a public hearing on the petition, at which the sponsor of the initiative petition, the [BCC], and the public may comment on the petition." *Id.* at Sec. 602(E)(4). The Charter does not provide further details regarding the public hearing. However, the charter is clear that BCC only holds one (1) public hearing sixty (60) days after being notified of the Legal Review Panel's legality determination and the BCC does not render a separate decision twenty (20) days after it receives notification that the sponsor has reached the 1% threshold. Accordingly, the "board" referred to in that portion of the SOE's Petition Timeline quoted above refers to the Legal Review Panel and not the BCC.

Exhibit 1

BILL COWLES
Supervisor of Elections
Orange County, Florida



OUR MISSION IS TO:

Ensure the integrity of the electoral process.
Enhance public confidence.
Encourage citizen participation.

To: Cliff Sheppard, Orange County CRC Legal Counsel

From:  Bill Cowles, Orange County Supervisor of Elections

Date: December 2, 2019

Re: Orange County Initiative Petition History

Prior to the 2016 Charter Revisions-

1. July 1, 1997, "Petition to Enact an Ordinance in Orange County, FL." **(Attachment A)**
Petition was not approved. See memo from County Attorney's office.
2. February 18, 2004, "To elect the office of Chief of Orange County Jail." **(Attachment B)**
Petition was approved. No petitions were submitted.
3. May 31, 2012, "Petition to Place Orange County Ordinance for Earned Sick Time for Employees of Business in Orange County." **(Attachment C)**
Petition was approved. A total of 73,841 petitions were submitted.
4. October 16, 2012, "Changing Elections for Charter Office from Nonpartisan to Partisan Elections and Removing Run-off Provision." **(Attachment D)**
Petition was approved. A total of 15,745 petitions were submitted prior to disbandment.
5. December 19, 2013, "Petition to Place Orange County Charter Amendment on Use of Tourist Development Tax on Ballot." **(Attachment E)**
Petition was approved. No petitions were submitted.
6. February 24, 2014, "Petition to Place Orange County Charter Amendment Regarding Save Our Children from Common Core." **(Attachment F)**
Petition was approved. No petitions were submitted.

After the 2016 Charter Revisions-

1. April 26, 2018, "R.U.R.A.L. Boundary Petition Initiative." **(Attachment G)**
Petition was approved. No petitions were submitted.

Also find enclosed charter initiative petition forms and petition timelines effective subsequent to the 2016 Charter Revisions. **(Attachment H)**.

Cc: Soraya Smith, Chair, CRC Citizen Initiative Subcommittee
Katie Smith, Deputy Clerk, Orange County Comptroller Office

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Attachment H

Petition _____

Ballot Title _____

Sponsoring Political Committee _____

Petition Timeline-

Initiative petition sponsors must register as a PAC and, prior to obtaining any signatures, shall submit the text of the proposed petition to the SOE, with the form on which signatures will be affixed, and shall obtain the approval of the SOE of such form. **Text Submittal Date-** _____

SOE shall make a determination regarding the approval of the form within fifteen days. **SOE Approval Date-** _____

The date of approval by the SOE marks the beginning of the 180 day time frame for the petition drive, after which the petition drive shall terminate. **180 Day Termination Date-** _____

If sufficient signatures are submitted, the SOE shall within thirty days thereafter verify the signatures therein and submit a written report to the board. **SOE Written Report Submittal Date-** _____

The sponsor shall submit all signed petitions gathered by petition gatherers during a month or otherwise received by the sponsor during such month to the SOE for signature no later than the fifth day of the following month. The SOE shall verify the validity of signatures for each signed petition within thirty days after submittal.

Upon reaching the 1% threshold, the SOE shall notify the board. The board shall render its decision within twenty days after notification. **SOE Board Notification Date-** _____ **Board Decision Date-** _____

After notification by the SOE regarding the 1% threshold, the comptroller shall, within twenty days after notification, prepare and transmit a financial impact statement. The sponsor of the petition shall then submit a revised petition form containing the financial impact statement to the SOE. The SOE shall, within fifteen days after submittal of the revised petition containing the financial impact statement, render a determination.

Comptroller Financial Impact Statement Date- _____ **SOE Revision Determination Date-** _____

Within sixty (60) days after notification of legality by the Legal Review Panel, the board shall hold a public hearing on the petition. **Public Hearing Date-** _____

Referendum

Charter- After the requisite number of signatures have been verified by the SOE, a referendum shall be held on the question of adoption of the proposed petition at the next primary, or general election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the SOE.

Ordinance- Within thirty (30) days of the requisite number of signatures have been verified by the SOE, the board shall notice a public hearing on the proposed petition and vote on it. If the board fails to adopt the proposed petition, the board shall notify the SOE a referendum shall be held on the adoption of the proposed petition at the next primary or general election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the SOE.