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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

July 7, 2014

Honorable Don Milligan
Chairman, Marshall County Board of Registrars
424 Blount Avenue
Guntersville, Alabama 35976

Registrars, Board of – Signatures – Petitions – Referendum Election

Section 5(a) of Act 2013-403 requires a valid petition to contain the signatures of five percent of the total number of qualified voters in the district who cast a vote in the last general election. The person signing the petition is not required to have actually cast a vote in the last general election.

Dear Mr. Milligan:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Whether the "qualified electors" by name and address who sign a petition, as required in Section 5 of Act 2013-403, must have cast a vote in the last general election in order for the signature to count toward the five percent requirement in the said section, or is it five percent of the total number of qualified voters in the district who cast a vote in the last general election in order for the signature to count toward the five percent requirement?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Marshall County Commission will be considering the establishment of four different fire districts. Once a fire district is established, the volunteer fire district will then

begin the petition process that will result in a call for a referendum. The Marshall County Board of Registrars will be required to certify that the petition contains the requisite number of qualifying signatures for the probate judge to order a referendum to be held in the fire district.

Your particular inquiry seeks clarification regarding the proper interpretation to be given to Section 5(a) of Act 2013-403. This provision states as follows:

> After the county commission establishes a fire district, the qualified electors of that district may file a petition, ***signed by at least five percent of the qualified electors in the fire district who voted in the last general election***, with the office of the judge of probate who shall then order a referendum to be held in the fire district on the question of establishing a fire protection service fee for the fire district. The provisions of Section 9 shall apply to all elections provided by this act.

2013 Ala. Acts No. 2013-403 (emphasis added).

In analyzing provisions similar to the one highlighted above, this Office has determined that such provisions do not require a petitioner to have actually voted in the last general election. Instead, the law requires that a petitioner be a qualified elector of the municipality and that the number of valid signatures must equal the specified percentage of the number of qualified voters who voted in the last general municipal election. *See* opinion to Honorable Milton Carver Davis, Attorney, City of Tuskegee, dated November 26, 2003, A.G. No. 2004-034 and opinion to Honorable Lamar Turner, Henry County Probate Judge, dated August 24, 2000, A.G. No. 2000-220.

This Office has also stated that, in verifying signatures on a petition, the probate judge may include in the total signature count those persons who are registered voters at the time the petition is verified. As such, a person signing the petition is not required to be a registered voter at the time the person signs the petition, as long as he or she is a registered voter when the verification process takes place. *See Davis* at 3.

Based on the foregoing, it is the opinion of this Office that persons signing a petition pursuant to Act 2013-403 need not have cast a vote in the last general election for that signature to count toward the five percent requirement set out in Section 5(a) of the act. Further, the Marshall County Board of Registrars may certify any petition that contains five percent of the total qualified voters in the district who cast a vote in the last general election. Signatures of unregistered petitioners may be counted towards the total

signature count, as long as that person becomes a registered voter by the time the verification process takes place.

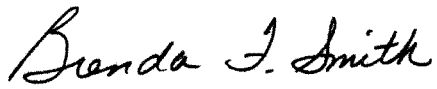
CONCLUSION

Section 5(a) of Act 2013-403 requires a valid petition to contain the signatures of five percent of the total number of qualified voters in the district who cast a vote in the last general election. The person signing the petition is not required to have actually cast a vote in the last general election.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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