JULY 20, 1959

HON. EDWARD J. PATTEN
Secretary of State
State House
Trenton, New Jersey

FORMAL OPINION 1959—No. 15

DEAR MR. PATTEN:

We have been asked whether any public official has a duty to supply petition forms to be used in connection with the county-wide referenda on the application of L. 1959, c. 119, the new Sunday Closing Law, and whether such petitions need be executed or verified in any particular manner.

L. 1959, c. 119 provides generally for a Sunday Closing Law to become effective if approved by a majority of the voters at a general election. Section 8. The question is to be put on the ballot if the county clerk receives a petition signed by not less than 2,500 registered voters of the county 45 days prior to the election. Section 6.

The forms for petitions should be provided by the county clerks in the respective counties. R.S. 19:9-1 defines election supplies to include "all things other than ballots and equipment as may be necessary to enable the provisions of this title to be carried out properly." It seems clear that this includes petition forms. R.S. 19:10-1 provides that all petitions of nomination are to be preserved by the officer with whom they are filed for two years. R.S. 19:9-2 specifies which papers are to be supplied by the Secretary of State. These do not include petitions for use within a single county. Additionally, this same section provides that all other blank forms and supplies for the general election shall be "furnished, prepared and distributed by the clerks of the various counties * * *." Thus the forms are to be provided by the county clerks. However, the form is not specified. Therefore, the county clerks may use any reasonable form. County clerks may also accept petitions on forms which have been privately prepared.

With regard to your second question, it is our opinion that no verifications need be affixed to the petitions. The Sunday Closing Law under consideration does not contain any express requirement for verification but merely requires that the petition be signed by not less than 2,500 registered voters of the county. L. 1959, c. 119, section 6.

However, R.S. 19:1-4 provides the general rule for the application of the provisions of Title 19, Revised Statutes, subject to certain qualifications, to the determination of public questions by referendum. It is stated that:

> "Except as in this title otherwise provided, the provisions for the election of public and party offices shall also apply to the determination of public questions under the referendum procedure so far as may be."

A "public question" is defined in N.J.S.A. 19:1-1 as:

> "'Public question' includes any question, proposition or referendum required by the legislative or governing body of this State or any of its political subdivisions to be submitted by referendum procedure to the voters of the State or political subdivision for decision at elections."

The answer to the applicability of the provisions for the election of public and party offices to the referendum procedure depends upon whether there are any express provisions in Title 19 that deal with the requirements for verification of signatures of persons signing referenda petitions, and whether the general provisions of Title 19 dealing with the verification of nominating petition signatures of persons to party or public office may be applicable at all to the referendum procedure outlined in L. 1959, c. 119. There are no other provisions in Title 19 dealing with the verification of a referendum petition. And, while various requirements are outlined for the nomination by petition of persons to party and public office, it is our opinion that they do not govern the referendum signature procedure. The clear intent of the phrase "so far as may be" at the end of R.S. 19:1-4 is to make practical applicability the test.

The provisions for the election of public and party offices in Title 19 cover the manner of execution of petitions in two situations, the petitions nominating all candidates in primary elections, and the petitions for direct nomination of independent candidates for public office in the general election. R.S. 19:13-5 governs the number of signatures required on a petition for nomination of independent candidates in the general election. The general rule is that the petition must be signed by 2% of the voters in the district which the candidate would represent if elected. However, where the office is a State office, not more than 800 signatures are required. For all lesser offices, not more than 100 signatures are required. Signatures on such petitions must be verified by 5 of the voters signing the petition swearing that the petition is made in good faith and that the affiants saw all the signatures made and that they believe that the signers are duly qualified voters. R.S. 19:13-7. The requirement that the affidavit be made that the signatures are affixed in good faith is intended as a check on the creation of a profusion of candidacies of persons representing similar views by their political opponents in order to split the vote of the faction who would normally support its views. There is no analogous consideration in the case of the referendum on the Sunday Closing Law.

In the case of primary elections, different and more liberal provisions are made by statute. R.S. 19:23-8 fixes the number of signatures required. Where the candidate stands for a State office, a thousand signatures are required; for a congressional district, 200 signatures; for a county office, 100, and lesser numbers in the case of offices from smaller political subdivisions. In sharp contrast to the requirements for the nomination of independent candidates for public office in the general election, R.S. 19:23-10 provides that the signatures need not be on a single petition, but may be on several. Similar liberality is extended in R.S. 19:23-11 which requires only a single voter to verify each petition with no requirement that the same person verify the signatures on all petitions. R.S. 19:23-11 requires an oath similar to that in R.S. 19:13-7 that the petition is prepared and signed in good faith for the same reasons that R.S. 19:13-7 so provides. Again, these considerations are not analogous in the Sunday Closing Law referendum.

This analysis of the various sections in Title 19 dealing with petitions for nomination of candidates indicates that the several procedures outlined are peculiar to the particular legislative scheme of requirements for nomination to those offices only and are not applicable in any manner to petitions to place public questions on the ballot at the general election.

Thus, the language "so far as may be" contained in R.S. 19:1-4 excepting the applicability of Title 19 requirements to the referendum procedure imparts a sensible and rational result when the requirements for the verification of petitions for nomi-

nation of persons for public and party office differ. cf. *McCaskey* v. *Kirchoff*, 56 N.J. Super. 178 (App. Div. 1959).

Bearing in mind the safeguard provided by the Legislature in requiring 2,500 signatures to place the Sunday Closing Law on the ballot in each county, as contrasted with much less stringent requirements, as hereinbefore outlined, for the nomination by petition of persons to county-wide public and party offices where verification is necessary (100 signatures) it would be difficult, in absence of express or even general provisions to the contrary to impose the additional requirement of verification of each signature. See *McCaskey* v. *Kirchoff*, *supra*, at p. 182. The integrity of the election process would not be defeated. The proper official charged with the duty of insuring against falsification of signatures would not be afforded some of the additional means of affixing responsibility upon persons who verify signatures as is the case in the nominating procedure. But, the actual signatures may be examined as in other cases.

Therefore, petitions with 2,500 signatures without any verification may be accepted in order to place L. 1959, c. 119 on the general election ballot in the various counties this coming November.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

AUGUST 13, 1959

BUREAU OF TENEMENT HOUSE SUPERVISION
1100 Raymond Boulevard
Newark, New Jersey

FORMAL OPINION 1959—No. 16

GENTLEMEN:

We have been asked to define the scope of L. 1959, c. 12. This statute amends the definition of a tenement house in R.S. 55:1-24. The statutory definition delimits those premises which are subject to the jurisdiction of the Bureau of Tenement House Supervision. L. 1959, c. 12 narrows the prior definition to exclude detached dwelling houses constructed or converted before September 1, 1959 of not more than three stories and having central heating which are equipped for occupancy by three families living independently where the space provided for at least one of the families is not equipped with full cooking facilities. If any of these conditions is not met in a particular case, the building remains subject to the jurisdiction of the Bureau of Tenement House Supervision.

You have informed us that in attempting to apply the new statute two questions arise as to the meaning of terminology. The first is as to the meaning of the term "central heating," whether it means a system of heating a group of buildings from one plant or whether it means heating an entire building by the use of a single furnace or heating plant located within that building. The second question concerns the term