



Lakewood
Colorado

City Clerk's Office
Bruce Roome
City Clerk

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August 27, 2021

Michael Gunstanson
8994 W. LaSalle Avenue
Lakewood, CO 80227
Dear Gunstanson,

As you are aware, the independent hearing officer has ruled that you have violated Lakewood Municipal Code ("LMC") section 2.54.030(A)(1) as you circulated petitions prior to certifying and filing an affidavit with the Lakewood City Clerk's Office acknowledging that you are familiar with the provisions of LMC Chapter 2.54. In fact, you submitted both the affidavit and the petitions on the same day, August 23, 2021.

As a result, it is my responsibility, as the Lakewood City Clerk, to decide what the effect of this failure is and the proper sanction.

The first question I must resolve is whether a violation of section 2.54.030(A)(1) requires me to invalidate what are otherwise valid signatures. The language of section 2.54.030(A)(1) is as follows:

Affidavit. Within ten days after an individual becomes a candidate and before circulating any petition, such individual shall certify, by affidavit filed with the City Clerk, that the candidate is familiar with the provisions of this chapter.

This language of the ordinance is absolute, in that it states, 'shall certify'. Thus, there is no 'wiggle room' for substantial compliance equating to actual compliance. However, the ordinance is silent as to the effect of such a lack of compliance.

Under Colorado law, section 1-1-3 of the Colorado Revised Statutes ("C.R.S.") states that the election code is to be liberally construed. Subsection (3) states:

Substantial compliance with the provisions or intent of this code shall be all that is required for the proper conduct of an election to which this code applies.

Additionally, C.R.S. § 31-10-302 covers the nomination of municipal officers. The sole provision of this state statute for a municipal candidate are that petitions be circulated and properly signed by twenty-five registered electors within the candidate's ward between ninety-one and seventy-one days before an election.

Thus, under state law, your collection and submission of signatures was valid. Absent an express provision within the LMC stating that a lack of strict compliance with section 2.54.030(A)(1) invalidates signatures, I cannot find that non-compliance with this ordinance was intended to disqualify otherwise qualified candidates. As a result, **I am finding that the language of LMC section 2.54.030(A)(1) does not automatically result in the invalidation of signatures and does not create a condition precedent to candidacy. Thus, I am certifying your candidacy for the upcoming municipal election as a candidate in Ward 5.**

The next question is then what, if any, sanction should be issued for your violation. There are sanction provisions within section 2.54.050 which call for economic penalties (fines) for violations of LMC Chapter 2.54. However, the sanctions set forth in section 2.54.050(C) are limited to the following: (C)(1) prohibited contributions and acceptance thereof; (C)(2) failure of a *committee* to file reports or disclosures on reports; (C)(2.2) failure to include a disclaimer on a communication; (C)(2.3) failure of an *exploratory committee* to file reports or disclosures on reports. This violation does not fit within any of those above categories. As a result, **I am finding that there is no sanction provided by LMC Chapter 2.54 for this violation and therefore no sanction is ordered.**

Should you or anyone else wish to appeal this order, LMC 2.54.050(B)(1.2) allows for appeal to the District Court.

Sincerely,



Bruce Roome, City Clerk

cc: Amanda Karger
Sandie Weathers