

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

August 2, 2012

Opinion No. 12-80

Electronic Signatures on Petitions for Municipal Formation and Annexation

QUESTIONS

Does the Uniform Electronic Transactions Act, codified at Tenn. Code Ann. §§ 47-10-101 to 123, require local governments to accept a petition with electronic signatures collected through internet social media as a valid petition submitted by citizens of a political subdivision of the State of Tennessee under the following statutes:

1. A petition filed with the county election commission to initiate a referendum to incorporate under the mayor-aldermanic general act charter pursuant to Tenn. Code Ann. §§ 6-1-101 to -220;
2. A petition filed with the county election commission to initiate a referendum to incorporate under the city manager-commission general act charter pursuant to Tenn. Code Ann. §§ 6-18-101 to -115;
3. A petition filed with the county election commission to initiate a referendum to incorporate under the modified city manager-council charter pursuant to Tenn. Code Ann. §§ 6-30-101 to -108;
4. A petition filed with the county election commission to initiate a referendum election on the merger of cities pursuant to Tenn. Code Ann. § 6-51-404;
5. A petition filed with the city recorder objecting to de-annexation of a territory and triggering a referendum under Tenn. Code Ann. § 6-51-201; and
6. A petition to a city council to annex territory by ordinance pursuant to Tenn. Code Ann. § 6-51-102(a)(1)?

OPINION

1-4. No. Pursuant to Tenn. Code Ann. § 2-5-201(k), any referendum petition filed with the county election commission under these referenced statutes must comply with Tenn. Code Ann. §§ 2-1-107 and 2-5-151. These statutes require that registered voters must manually sign a referendum petition filed with the county election commission, unless the voter is

physically or mentally unable to sign the petition. Furthermore, Tenn. Code Ann. § 6-1-209, governing incorporation elections under the mayor-aldermanic charter, expressly requires that a written petition be signed in the presence of the person circulating it. Thus, a referendum petition circulated on the internet and electronically signed would not meet these statutory requirements.

5-6. No. These statutes do not explicitly require that individuals, if able to do so, must manually sign the petitions referenced in these statutes. Nonetheless, given the general rule that statutes relating to the same subject or having a common purpose should be construed together, the more persuasive position is that petitions submitted to governmental entities under these statutes should be construed in the same manner as petitions for recall, referendum or initiative filed with governmental entities under Tenn. Code Ann. §§ 2-1-107 and 2-5-151. As previously stated in response to questions 1-4, these statutes require a manual signature unless the petitioner is unable to sign. A petition circulated on the internet and signed with electronic signatures would not satisfy this requirement.

ANALYSIS

This opinion addresses whether the Uniform Electronic Transactions Act, codified at Tenn. Code Ann. §§ 47-10-101 to -123 (the “UETA”), requires local governments to accept a petition with electronic signatures collected through internet social media as a valid petition submitted by citizens of a territory under various statutes dealing with city formation and annexation. The UETA broadly recognizes and requires the acceptance of an electronic signature as a valid “signature.” The UETA specifically provides:

- (a) A record or signature may not be denied legal effect or enforceability *solely* because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law requires a signature, an electronic signature satisfies the law.

Tenn. Code Ann. § 47-10-107.

The UETA defines the various terms used in Tenn. Code Ann. § 47-10-107. The term “electronic” means “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.” Tenn. Code Ann. § 47-10-102(5). An “electronic record” is “a record created, generated, sent, communicated, received, or stored by electronic means.” Tenn. Code Ann. § 47-10-102(7). “Electronic signature” means “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” Tenn. Code Ann. § 47-10-102(8).

Under Tenn. Code Ann. § 47-10-109(a), an electronic record or signature is attributable to a person as if it were the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to whom the electronic record or electronic signature was attributable. Tenn. Code Ann. § 47-10-111 provides:

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Tennessee adopted the UETA in 2001, *see* 2001 Tenn. Pub Acts, ch. 72, and thereby joined the federal government and numerous state jurisdictions that have enacted such legislation to “make it clear that electronic records are acceptable media for recording a contract or other record relating to a transaction.” 10 *Williston on Contracts*, § 29:23 (4th ed. 2012). One commentator aptly described the impetus for such legislation as follows:

As with everything else in the digital age, the hallowed handwritten and signed document is being reduced to relic status. Today, transacting electronically has become the norm rather than the exception. Nearly any type of contract can be drafted and executed electronically. Scores of legal documents, such as tax forms and trademark applications, are completed, signed, and submitted electronically. Checks are gradually becoming a thing of the past as more and more institutions accept automatic account withdrawal programs. Even parking tickets, once known for their illegibility, are no longer handwritten.

The electronic medium, at a minimum, expedites and modernizes commercial and business transactions, allowing parties to enter into them instantly and effortlessly.

Bran Noonan, *The Modernized, Streamlined Contract*, 81 N.Y. St. B.J. 10, 11 (Oct. 2009).

Nonetheless, despite the UETA’s seemingly expansive scope, the UETA does contain certain limitations. The UETA applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means. Tenn. Code Ann. § 47-10-105(b). Furthermore, the UETA expressly excludes certain transactions from its coverage. Tenn. Code Ann. § 47-10-103 outlines the scope of the UETA and its limitations as follows:

- (a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.
- (b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) Title 47, chapters 1-9 [the Uniform Commercial Code], excepting §§ 47-1-107, 47-1-206, and titles 47, chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by a law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

(Emphasis added).

Accordingly, pursuant to Tenn. Code Ann. § 47-10-103(d), the provisions of the UETA must yield to “other applicable substantive law.”¹

The various statutes referenced in this opinion request generally address petitions filed by Tennessee citizens with governmental agencies which, when properly filed and signed by the appropriate number of citizens, will trigger some action, such as the initiation of a referendum, by the governmental agency. *See* Tenn. Code Ann. §§ 6-1-101 to -220 (petition filed with the county election commission to initiate a referendum to incorporate under the mayor-aldermanic general act charter); Tenn. Code Ann. §§ 6-18-101 to -115 (petition filed with the county election commission to initiate the referendum to incorporate under the city manager-commission general act charter); Tenn. Code Ann. §§ 6-30-101 to -108 (petition filed with county election commission to initiate a referendum to incorporate under the modified city manager-council charter); Tenn. Code Ann. § 6-51-404 (petition filed with the county election commission to initiate a referendum election on the merger of cities); Tenn. Code Ann. § 6-51-201 (petition filed with the city recorder objecting to de-annexation of a territory and thereby initiating a referendum); Tenn. Code Ann. § 6-51-102(a)(1) (a petition to a city council to annex territory by ordinance which, if properly filed, will trigger the annexation of territory in conformity with Tenn. Code Ann. § 6-51-102).

The aforementioned four petitions that are filed with the county election commission must comply with Tenn. Code Ann. § 2-5-151, given that Tenn. Code Ann. § 2-5-151(k) specifically states that “[t]his section [Tenn. Code Ann. § 2-5-151] shall control any petition with signatures filed with the county election commission on or after June 25, 1997.”

¹The Act also imposes certain restrictions on the UETA’s applicability to transactions with state and local governmental agencies. Under Tenn. Code Ann. § 47-10-118(a)(1), the Tennessee Information Systems Council is authorized to determine whether, and to what extent, the State or its agencies or departments will send and accept electronic records and electronic signatures. Similarly, under Tenn. Code Ann. § 47-10-119(a)(2), local government public officials may determine whether, and to what extent, they will send and accept electronic records and electronic signatures.

Tenn. Code Ann. § 2-5-151(e)(2) mandates that any such petition must contain “[t]he *genuine* signature and address of registered voters only, pursuant to the requirements of Tenn. Code Ann. § 2-1-107.” (emphasis added). Tenn. Code Ann. § 2-1-107(b) and (c) provide as follows:

(b) Any person *who signed a permanent registration card shall sign any petition signed under this title*; provided, that any person who printed such person’s name on such person’s permanent registration card shall print the name on any petition signed under this title. However, failure to comply with the foregoing shall not operate to disqualify any nominating signature or candidate’s signature.

(c) A person’s regular signature shall be accepted just as such person’s legal signature would be accepted. For example, for the purposes of this section “Joe Public” shall be accepted just as “Joseph Q. Public” would be accepted.

(Emphasis added).

These provisions read collectively require that any signature on these petitions must be manually made, unless the signer is physically or mentally unable to sign the petition. Initially, Tenn. Code Ann. § 2-5-151(e)(2) requires a “genuine” signature. In interpreting the meaning of the word “genuine,” where as here it is not defined by the underlying statute, courts are guided by the rules of statutory construction that every word in a statute has meaning and purpose, each word should be given its full effect, and dictionary definitions may be referenced and relied upon when a word is not defined by the statute. *See, e.g., State v. White*, 362 S.W. 3d 559, 566 (Tenn. 2012); *Wlodarz v. State*, 361 S.W.3d 490, 496 (Tenn. 2012); *State v. Clark*, 355 S.W.3d 590, 593 (Tenn. Crim. App. 2011). The word “genuine” in Tenn. Code Ann. § 2-5-151(e)(2) modifies the word “signature,” and the term “genuine” is commonly defined as “authentic or real; something that has the quality of what it is purported to be or to have.” *Black’s Law Dictionary*, 708 (8th ed. 2004). Thus the placement and definition of “genuine” are strong evidence that the General Assembly intended these petitions to be manually signed, if possible.

This interpretation is buttressed by the reference in Tenn. Code Ann. § 2-1-107(b) that “[a]ny person who signed a permanent registration card shall sign any petition signed under this title.” The permanent voter registration form also contemplates that the applicant will sign manually unless he or she is unable to do so. Tenn. Code Ann. § 2-2-116 (stating that additional information is required if “the registrant signs by a mark, or cannot sign at all”). *See also* Tenn. Code Ann. § 2-2-119 (setting forth the process whereby a registrant unable to write a signature or make a mark can be authenticated); *State ex rel. Potter v. Harris*, 2008 WL 3067187, at *6 (Tenn. Ct. App. Aug. 4, 2008) (Tennessee Court of Appeals finding that a county election commission could reasonably reject petition signatures that did not match a signer’s signature on his or her voter registration card, a verification that would be made difficult with an electronic signature).

Further evidence that the General Assembly intended persons to manually sign these petitions is found in the manner by which the General Assembly directed petitions to be certified to adopt a mayor-aldermanic charter. Tenn. Code Ann. § 6-1-203 provides that “[p]etitions for

adoption of this charter shall be in substantially the following form” and provides a sample petition. The sample petition requires the following certifications, which must be notarized:

Certificate

I, _____, hereby certify that I *personally* solicited the signatures of the persons appearing on this page and that they, in fact, signed their names to this petition *in my presence*.

Name

Address

Date

Tenn. Code Ann. § 6-1-209 (emphasis added). Under this statute, therefore, an individual must personally solicit a voter’s signature. The term “personally” means “[i]n person; without the intervention of another: *I thanked him personally.*” *The American Heritage Dictionary*, 926 (2nd college ed. 1985). The individual must then certify both that he or she personally solicited the signature and that the voter signed the petition in the soliciting individual’s presence. A petition circulated on the internet and signed with electronic signatures through the internet could not satisfy this requirement. Such a petition is neither “personally” solicited nor signed by the voter in the solicitor’s “presence.”

For all of these reasons, a petition seeking a referendum filed with a county election commission requires the petitioner to sign manually unless he or she is unable to do so. A petition circulated on the internet and signed with electronic signatures would not satisfy this requirement.

Although no Tennessee court has expressly addressed this issue, the California Court of Appeal reached this same conclusion in interpreting similar statutes under California law. The Court of Appeal specifically held that California’s Uniform Electronic Transactions Act, which is virtually identical to Tennessee’s UETA, did not authorize the use of electronic signatures on initiative petitions. *Ni v. Slocum*, 127 Cal. Rptr. 3d 620, 627–33 (Cal. Ct. App. 2011). The Court in reaching this conclusion reasoned in part as follows:

Elections Code section 100, however, requires more than a signature. The voter must “personally affix” his or her signature to the petition and must then “personally affix” his or her printed name and address. Neither Government Code section 16.5 nor the UETA states that the use of an electronic signature is deemed to constitute “personally affix[ing]” it for purposes of Election Code section 100. Further, both statutes are limited to electronic signatures. Neither

authorizes the use of electronics to “affix” a printed name and address. Because Government Code section 16.5 and the UETA do not tell us whether electronic signatures are deemed to be personally affixed under Elections Code section 100, and because they do not address the use of printed information other than signatures, neither is sufficient to validate petitioner’s use of the electronic signature software to endorse the marijuana initiative petition.

Id. at 628. California’s use of the term “personally affix” in its petition statute is similar to Tennessee’s requirement of a “genuine signature” in that both require a petitioner to manually sign a petition unless he or she is unable to do so.

5-6. It is arguably a closer question whether the UETA would allow for electronic signatures on the petitions referenced in Tenn. Code Ann. § 6-51-201 and Tenn. Code Ann. § 6-51-102(a)(1). Neither of these statutes furnishes much guidance on the format of the petition.

Tenn. Code Ann. § 6-51-201(a) permits an incorporated city or town to contract its limits if three-fourths of the qualified voters voting in an election agree. Subsection (b) of the same statute provides the conditions under which a city may contract its limits by passing an ordinance and further allows such an action to be submitted to the voters for approval upon execution and filing of an appropriate petition, stating in relevant part under Tenn. Code Ann. § 6-51-201(b):

- (1) Any incorporated city or town, whether it is incorporated by general or special act, may after notice and public hearing, contract its limits within any given territory upon its own initiative by ordinance when it appears in the best interest of the affected territory.
- (2) Such contraction of limits within any territory shall not occur unless a majority of the total membership of the city legislative body approves such contraction.
- (3) Such contraction of limits within any territory shall not occur if opposed by a majority of the voters residing within the area to be de-annexed. The concurrence of a majority of the voters shall be presumed *unless a petition objecting to de-annexation signed by ten percent (10%) of the registered voters* residing within the area proposed to be de-annexed is filed *with the city recorder* within seventy-five (75) days following the final reading of the contraction ordinance. If such a petition is filed, a referendum shall be held at the next general election to ascertain the will of the voters residing in the area that the city proposes to de-annex. The ballot shall provide a place where voters may vote for or against de-annexation by the city. If a majority of those voting in the referendum fail to vote for the de-annexation, the contraction ordinance shall be void and the matter may not be considered again for two (2) years. If a majority vote for de-annexation, the ordinance shall become effective upon certification of the result of the referendum.

(Emphasis added). The statute does not set forth the petition’s format and only states that the petition shall be signed by registered voters. *Id.* Likewise, Tenn. Code Ann. § 6-51-

102(a)(1) provides little guidance on the form of the petition referenced in that statute. Tenn. Code Ann. §6-51-102(a)(1) provides:

A municipality, *when petitioned by a majority of the residents and property owners of the affected territory*, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof. During this thirty-day period, the municipality shall notify the county mayor in whose county the territory being annexed is located that territory located in the unincorporated part of the county is being annexed by the municipality. The notification shall include a copy of the annexation ordinance and a map of the area being annexed.

(Emphasis added).

Neither of these statutes explicitly requires that individuals must manually sign the referenced petitions unless they are unable to do so. Nonetheless, given the general rule of statutory construction that statutes relating to the same subject or having a common purpose should be construed together, the more persuasive position is that petitions submitted to governmental entities under these two statutes should be construed in the same manner as petitions for recall, referendum or initiative filed with governmental entities, including county election commissions, under Tenn. Code Ann. § 2-5-151. *See Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010); *State v. Edmondson*, 231 S.W.3d 925, 927 (Tenn. 2007). Thus, such petitions would be required, as are initiative petitions under Tenn. Code Ann. § 2-5-151, to be manually signed by the petitioner if the petitioner is able to do so. *See* Tenn. Code Ann. § 2-5-151(e)(2).

Such a reading of these two statutes provides the appropriate deference to the General Assembly to make the policy determination of whether electronic signatures should be permitted for initiative petitions, given that as of this date the General Assembly has not specifically or expressly permitted electronic signatures on initiative petitions. As the California Court of Appeal aptly explained in the *Ni* case:

the decision to allow the use of this type of technology [electronic signature] is properly one for the Legislature. Under our Constitution, the Legislature has the authority to “provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors.” (Cal. Const., art. II, § 10, subd. (e).) The use of electronic signatures in the endorsement of initiative petitions entails more than a new means for inscribing a signature. As described by petitioner, the process moves petition endorsement online, providing a means for endorsing petitions solely by use of an Internet Web site. Evaluating the policy issues arising from the use of the Internet for petition endorsement and

accommodating this technology within the existing signature validation process is outside the proper scope of our task. Because there is no evidence the Legislature has ever considered these questions, let alone affirmatively approved the use of electronic signatures in connection with initiative petitions, we should hesitate to mandate their acceptance by judicial fiat.

Ni, 127 Cal. Rptr. 3d at 630-31.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Bo Watson
State Senator, Speaker Pro Tempore
13 Legislative Plaza
Nashville, Tennessee 37243-0211