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FORMAL)	No. 00-8
OPINION)	Whether Secretary of State Election in
)	2000 is "Previous General Election"
Of)	Referred to in Colo. Const. Art. V,
)	§ § 1(2) and 1(3)
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December 5, 2000

This opinion is issued at the request of Donetta Davidson, the Secretary of State of the State of Colorado. Secretary Davidson asks whether the election in the year 2000 to fill the vacancy in the office of Secretary of State is "the previous general election" referred to in Colo. Const. Art. V, § § 1(2) and 1(3).

QUESTION PRESENTED FOR REVIEW AND CONCLUSION

Question: Does the phrase "at the previous general election" in Colo. Const. Art. V, § § 1(2) and 1(3) mean the last general election for that office?

Answer: Yes. The phrase "at the previous general election" in Colo. Const. Art. V, § § 1(2) and 1(3) refers to the last general election at which the office of Secretary of State is on the ballot, even if that election is one to fill a vacancy. Proponents must obtain five percent of the total votes cast for the office of Secretary of State at the 2000 general election to qualify a measure for the ballot in 2001 and 2002.

DISCUSSION

The Secretary of State is a state officer who is elected at a general election for a term of four years. The general election is held on the day prescribed by law. Colo. Const. Art. VII, § 7. The General Assembly has determined that the general election shall be "held on the Tuesday succeeding the first Monday of November in each even-number year." Sections 1-1-104(17) and -201, C.R.S. (2000). The election for Secretary of State is held at the general election that is two years prior to the general election for President. Sections 1-4-204 and -301, C.R.S. (2000). Generally, vacancies for state offices are "filled by

appointment by the governor until the next general election after the vacancy occurs, when the vacancy shall be filled by election.” Section 1-12-204, C.R.S. (2000). Thus, general elections include both regular and vacancy elections.

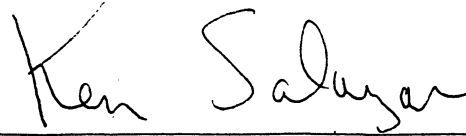
The election for the office of Secretary of State also impacts the initiative and referendum process. Pursuant to Colo. Const. Art. V, § § 1(2) and 1(3), citizen-initiated and citizen-referred petitions must be signed “by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election.” (Emphasis added.) Sections 1(2) and 1(3) do not distinguish between regular elections and vacancy elections for the office of Secretary of State. The question presented is whether the term “at the previous general election” includes a vacancy election for Secretary of State that occurs between regular elections for that office. The language of a constitutional provision should be ascertained in light of the objective sought to be achieved. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996). The words should be given their common meaning. In re Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

The word “the” is a definite article that particularizes the subject that it precedes. Brooks v. Zabka, 168 Colo. 265, 269, 450 P.2d 653, 655 (1969). The word “previous,” in this context, means “preceding in spatial order.” Webster’s Third New International Dictionary, 1789 (1999). Giving these words their common and ordinary meanings, the phrase, “at the previous general election” means the general election immediately preceding the commencement of the process of petition circulation.

This interpretation is supported by the purpose of the signature requirement. The Colorado Constitution requires proponents of a measure to show that their measure has sufficient public support to warrant a place on the ballot. Fabec v. Beck, 922 P.2d 330, 335 (Colo. 1996). In order to accomplish this goal, it is necessary to establish an accurate benchmark. The Colorado Constitution provides that proponents must show that their measure is supported by five percent of the people most likely to vote at the next general election. The people most likely to vote are those who voted for the office of Secretary of State. The most recent general election provides the most accurate snapshot of the number of likely voters.

The last regular election for Secretary of State was held in 1998. The next regular election for that office will be held in 2002. In 1998 Victoria Buckley was elected to a second term as Secretary of State. Secretary Buckley died in 1999, and Governor Owens appointed Donetta Davidson to that office. As required by law, an election to fill that vacancy was held on November 7, 2000. The number of votes cast for the office of Secretary of State at the election held on November 7, 2000 is the benchmark that must be used to determine if a citizen-initiated or citizen-referred measure may be placed on the ballot in 2001 and 2002.

Issued this 5th day of December, 2000.

A handwritten signature in black ink that reads "Ken Salazar". The signature is written in a cursive style with a horizontal line underneath it.

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