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INITIATIVE AND REFERENDUM:

Article V, Sec. 1 of the Michigan Constitution of 1908, as amended, supersedes the requirements of § 483 of the Michigan Election Law and therefore a petition for initiative or referendum may be circulated anywhere within one county.

The heading of the initiatory petition should read "Initiative Measure to be Presented to the Legislature" as provided in Article V, Sec. 1 of the Michigan Constitution of 1908, rather than as provided in § 482 of the Michigan Election Law.

A petition for the initiation of legislation cannot serve as a petition for referendum should the petition fail to be filed within the constitutional time limit provided for petitions for the initiation of legislation.

A petition for referendum may be filed as to an act which has been given immediate effect, except where the act makes appropriations for state institutions or to meet deficiencies in state funds.

No. 4117

January 2, 1963.

Honorable Edward H. Jeffries
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion as to the following questions:

"1. May a single section of a petition be circulated anywhere within one county as section 1 of article V of the state constitution seems to provide or can it only be circulated in a single city or township as sections 482 and 483 of Act No. 116 of the Public Acts of 1954, the Michigan election law, provide?

"2. Should the heading on an initiatory petition be "Initiative Measure to be Presented to the Legislature" as provided by Section 1 of Article V of the state constitution or "Initiation of Legislation" as provided by section 482 of the Michigan election law?

"3. May petitions be so drafted that they would serve as petitions for the initiation of legislation which would restore by amendments and repeal the law as it existed before the passage of Acts No. 215, No. 217 and No. 218 of the Public Acts of 1962, but if not filed within the constitutional time limit could then serve as petitions for referendums on the same public acts?

"4. May a petition for referendum be filed as to an act which has been given immediate effect? If not, then would the immediate effect procedure provide a method by which the legislature could circumvent the right of referendum? If such a petition may be filed then what effect does it have on the immediate effect act during the period until the next general election when the question is voted upon?"

Article V, Sec. 1 of the Michigan Constitution of 1908, as amended, vests the legislative power of the State of Michigan in the Senate and House of Representatives but reserves to the people the powers of initiative

and referendum. Petitions to be circulated in order to carry out these reserved powers are controlled by the provisions of Article V, Sec. 1 of the Michigan Constitution of 1908, as amended. It was held in *Leininger v. Secretary of State*, 316 Mich. 644, that in enacting a statute by initiative, compliance with Article V, Sec. 1 of the Michigan Constitution of 1908 was mandatory. Article V, Sec. 1 provides:

“* * * Each section of the petition shall bear the name of the county or city in which it is circulated, and only qualified and registered electors of such county or city shall be competent to sign such section. * * *”

Our Supreme Court in the case of *Michigan State Dental Society v. Secretary of State*, 294 Mich. 503, made clear the meaning of each section of a petition for referendum. At page 513 of its opinion the Court said:

“As used in our Constitution, ‘each section’ of a petition is a group of several pages fastened together and containing a full and correct copy of the act, signatures, and the circulator’s affidavit, whereas the petition itself is the sum total of all the sections of a petition.”

This office has issued a comprehensive opinion¹ which discussed the constitutional provisions for the initiation of amendments to the constitution and certain provisions of the Michigan Election Law which conflicted with the constitutional provisions. That opinion stated that the powers retained by the people of initiative and referendum under Article V, Sec. 1 and the power retained under Article XVII, Sec. 2 to initiative amendments to the constitution are similar in nature and therefore are often measured by like standards. A pertinent portion of that opinion, on page 509, reads as follows:

“The supreme court has held previous versions of Art 5, § 1, and Art. 17, § 2, to be self-executing and not subject to legislative, executive or judicial interference. *Thompson v. Secretary of State*, 192 Mich. 512, 520; *Scott v. Secretary of State*, 202 Mich. 629, 643; *Hamilton v. Secretary of State*, 221 Mich. 541, 544. Also, see *Hamilton v. Secretary of State*, 227 Mich. 111, 129; *Leininger v. Secretary of State*, 316 Mich. 644, 655, 656; *City of Jackson v. Commissioner of Revenue*, 316 Mich. 694, 713-716. In the last mentioned case noncompliance with P.A. 1941, No. 246, was deemed of no controlling importance, the court significantly observing (p. 716): ‘The Constitution cannot be amended or superseded by legislation.’”

Therefore, it is my conclusion that any initiative or referendum petition may be circulated anywhere within one county as provided by Sec. 1 of Article V of the Michigan Constitution of 1908, as amended. The provisions of § 483² of the Michigan Election Law which require that said petitions shall not be circulated in more than one city or township and that all the signers of a petition shall be qualified and registered electors in the city or township are in conflict with the clear language of Article V, Sec. 1 of the Constitution and therefore are of no effect. The petitions

¹ O.A.G. No. 1151, Vol. 1949-50, p. 507.

² C.L.S. '56 § 168.483, M.S.A. '56 Rev. Vol. § 6.1483.

may be circulated in an entire county if it is so shown on said petition or if the petition indicates that the place of circulation is a city, then the petition may only be circulated within said city and all signers must then reside in that city. See *Thompson v. Secretary of State*, 192 Mich. 512 at p. 526.

Portions of the above discussion are also pertinent to your second question and lead to the conclusion that the heading on an initiatory petition must read as provided in Article V, Sec. 1 of the Michigan Constitution of 1908, as amended, rather than as provided in § 482 of the Michigan Election Law. Therefore, the initiatory petition should contain a heading which reads "Initiative Measure to be Presented to the Legislature".

Your third question inquires as to whether a petition may serve as a petition for initiation of legislation and in the event it is filed late then serve as a petition for referendum. Article V, Sec. 1 of the Michigan Constitution of 1908, as amended, provides that initiative petitions shall be filed not less than ten (10) days before the commencement of any session of the legislature. Referendum petitions must be presented within ninety (90) days after the final adjournment of the legislature. Each petition has its own distinctive purpose and function which are not similar. The function of the initiative petition, as its name indicates, is to propose legislative measures, resolutions and laws. The purpose of the referendum petition is to permit the people to reject an act already passed by the legislature. Thus it is clear that the objectives to be obtained by an initiative petition are quite dissimilar from the objectives sought by referendum. There is no common ground on which these petitions may be said to be interchangeable. Clearly an elector who was willing to subscribe to one might logically refuse to subscribe to the other. To say that one petition might serve in a dual capacity as capable of invoking either the initiatory or the referendum at the choice of the advocates who present them for filing would necessarily result in confusion and in misdirection of the intent of the subscribers.³ I am of the opinion that a petition must either be an initiative petition or a referendum petition and cannot serve as both.

Your fourth question inquires as to whether a petition for referendum may be filed as to an act which has been given immediate effect. Article V, Sec. 1 of the Michigan Constitution of 1908, as amended, states as follows:

"The legislative power of the state of Michigan is vested in a senate and house of representatives; but the people reserve to themselves the power to propose legislative measures, resolutions and laws; and to enact or reject the same at the polls independently of the legislature;

³ An analogy may be found in the decision of the Supreme Court in the case of *Barnett v. Secretary of State*, 285 Mich. 494, where the Supreme Court refused to compel by mandamus the submission to the people of an amendment to the Constitution proposed by a joint resolution adopted by the legislature. The basis for the Court's action is found in the following quotation from its opinion at page 498:

"Obviously, the resolution sets forth separate, distinct, inconsistent and repugnant propositions, and it is impossible by the application of any known rules of construction to determine which proposition was intended to be submitted."

and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. * * *

The Michigan Supreme Court has never ruled upon this precise issue. However, decisions of that court as to whether certain appropriation acts were subject to referendum are informative.

In *Detroit Automobile Club v. Secretary of State*, 230 Mich. 623, it was held that Act 2, P.A. 1925, an immediate effect act providing for a tax on gasoline and appropriating a portion of the proceeds thereof to the use of the state highway department, was not subject to referendum. The majority opinion stated at page 626:

"We are of the opinion that the State highway department is a State institution within the meaning of the Constitution, and that, therefore, this act, which makes an appropriation for its use, is not subject to the referendum.

"We are also of the opinion that the act may be said to have been passed to meet deficiencies in State funds. * * *

Five members of the Court concurred in the majority opinion, two concurred in the result, and the remaining justice wrote an opinion concurring in holding that the act was not subject to referendum upon the ground that the highway department "may fairly be said to be a State institution within the meaning of that term as used in the constitutional provision" but questioned the second ground given by the majority.

In *Moreton v. Secretary of State*, 240 Mich. 584, similar issue was presented as to Act 150, P.A. 1927, which likewise imposed a tax on gasoline, repealed and superseded Act 2, P.A. 1925. That act was not given immediate effect. It was pointed out that under the 1927 act a portion of the proceeds were appropriated for highway purposes not only to the state highway department, but also to counties, cities and villages, and based thereon, the contention was made that the appropriation of a portion of the funds for the use of local units prevented such appropriation being for "state institutions." However, the Supreme Court rejected such contention holding in an unanimous opinion:⁴

"Although counties are political subdivisions of the State, it cannot be said that they are State institutions as ordinarily understood, but when they are engaged in building roads for State purposes, under the direction and supervision of the State administrative board, with money supplied by the State at large, they are exercising State functions, and the money appropriated by the legislature for that purpose is for State institutions within the meaning of the Constitution (Art. 5 § 1)."

Similar holding was made in *Michigan Good Roads Federation v. State Board of Canvassers*, 333 Mich. 352, following the adoption of Act 54, P.A. 1951, amending Act 150, P.A. 1927, which amendatory act was one of a package of highway bills passed at that session.

⁴ Quoting syllabus No. 4.

Any act making an appropriation may be given immediate effect.⁵ As above noted, two of the acts under consideration in the three decisions last above cited were given immediate effect. If an act which properly had been given immediate effect were not subject to referendum, the only issue necessary to have been decided in each of those cases would have been whether the acts were properly in effect. Reference to the court's decision in those cases demonstrates that the issue considered by the court as determinative of the case was whether the particular act made an appropriation for a state institution. In the third case involving Act 150, P.A. 1927, which was not given immediate effect, the same issue was considered to be controlling. It follows, therefore, that while any act which makes an appropriation may be given immediate effect, only those acts which make an appropriation either (1) for state institutions, or (2) to meet deficiencies in state funds, are exempt from referendum. Accordingly, acts which do not make such appropriation are subject to referendum regardless of whether or not the same have been given immediate effect.

Under the majority rule followed by the courts of our sister states, those acts which are properly given immediate effect are not subject to referendum.⁶ However, those decisions are generally based upon constitutional provisions which are distinguishable in that respect from the Michigan Constitution.

You also inquire as to what effect the filing of a petition for referendum has upon an act which is already in effect by virtue of having been given immediate effect. Inasmuch as

- (1) acts which do not make appropriation acts either
 - (a) for state institutions, or
 - (b) to meet deficiencies in state fundsare subject to referendum, even though the same are already in effect by virtue of having been given immediate effect; and
- (2) the Constitution provides "no such act shall go into effect until and unless approved by a majority of the qualified and registered electors voting thereon,"

it necessarily follows that upon the timely filing of a proper referendum petition with respect to any such act, the same shall cease to be in effect during the period between the filing of such petition, the holding of an election upon that issue, and certification of such result of such election.

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⁵ Article V, Sec. 21, Michigan Constitution.

⁶ See authorities collated in annotation at 146 A.L.R. 284.