

following the transmission of such increases to the Legislature by the Governor. Because the Legislature did not act within 60 calendar days to reduce or reject the cost-of-living plan adopted by the Commission, it can no longer do so. As a result, the plan adopted by the Commission will go into effect without change.

While the Legislature can no longer reject or reduce the cost-of-living plan adopted by the Commission, it is within the Legislature's discretion to appropriate as much as it chooses for the operation of state government. In the case of *Civil Service Commission v Auditor General, supra*, the Michigan Supreme Court made the following statement with respect to the Legislature's power to appropriate for compensation for state employees:

"We conclude that it is within the power of the legislature to fix the amount it will appropriate for personal services in any State department or agency; but by the 1940 Constitutional amendment the power is vested in the civil service commission to 'fix rates of compensation for all classes of (civil service) positions.' . . ." [302 Mich at 688]

Thus, the answer to your second question is that the Legislature must appropriate an amount to each agency that it deems sufficient for the operation of that agency during the fiscal year, but civil service employees are entitled to receive as compensation the amount fixed by the Civil Service Commission.

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ELECTIONS: Constitutional Amendment.

CONSTITUTION OF MICHIGAN: Amendment.

If a petition to amend the Constitution lacks a sufficient number of signatures up to and including the general election at which the Governor is elected, that petition dies and no petition signatures procured prior to that date can be considered. However, petition signatures procured after that election are valid for the duration of the gubernatorial term.

Opinion No. 4880

July 3, 1975.

Dear Senators and Representatives:¹

You have called my attention to a petition campaign being conducted to collect at least 10% of the total vote cast for Governor in the 1970 gubernatorial election in order to place a constitutional amendment limiting state taxes on the ballot. You specifically noted that the petition campaign was started on May 15, 1974 and at the date of your opinion request, approximately 162,000 signatures had been collected.

Your specific question concerns the validity of signatures obtained prior to November 5, 1974, which was the date of the November 1974 general

¹ The request for this opinion was signed by 50 members of the legislature.

election, for purposes of placing the constitutional amendment on the 1976 or 1978 November general election ballot.

On July 24, 1974 I advised a number of Legislators concerning the validity of signatures obtained after the statutory deadline for filing a petition proposing an amendment to the constitution. In that letter I noted that Const 1963, art 12, § 2 dealt with the purpose of amending the constitution by petition and vote of the electors. Said section provides:

"Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon."

* * *

In addition, 1954 PA 116, § 471; MCLA 168.471; MSA 6:1471 implements the requirement of the aforementioned constitutional section in the following terms:

"Petitions of qualified and registered electors proposing an amendment to the constitution shall be filed with the secretary of state at least 120 days before the election at which such proposed amendment is to be voted upon."

In that opinion, I concluded that if petitions were filed with the Secretary of State after July 8, 1974, that date being 120 days before the November 5, 1974 general election, the matter could not be voted upon by the electorate at the 1974 November general election. I further noted that if the petitions with a sufficient number of signatures were submitted on or before November 4, 1974 but after July 8, 1974, the Secretary of State could have used the 1970 vote totals for Governor as a base figure although the earliest election on the issue would not be held until the 1976 general election.

Your present opinion request relative to the sufficiency of petition signatures obtained under the 1970 base figure is definitively answered by *Hamilton v Secretary of State*, 221 Mich 541; 191 NW 829 (1923). Therein the plaintiff asked for a writ of mandamus directing the Secretary of State to submit to the electorate of the state at the April, 1923 election an amendment to the constitution.

The Court noted that the Secretary of State rejected the petition and refused to submit the proposed amendment. The Court in its opinion said:

“ . . . The vote for governor . . . fixes the basis for determining the number of legal voters necessary *to sign* an initiatory petition and start designated official action.” p 544 [Emphasis of the Court]

“This primary essential to any step at all fixes distinct periods within which initiary action may be instituted. A petition must start out for signatures under a definite basis for determining the necessary number of signatures and succeed or fail within the period such basis governs.

“The period in question started out in February, 1921, under the then requirement . . . An attempt was made to meet the requirement and failed. This petition lost all legal significance when the vote for governor at the November election in 1922 fixed a new basis . . . *The petition died with the requirement it sought but could not meet and was not raised from the dead by the advent of a new basis designating the number necessary to sign.*” pp 544-546 [Emphasis supplied]

The Court then added:

“ . . . The identity of the petition was inseparably linked with the basis it sought to comply with, and as an initiatory petition it could not and did not survive the passing of such basis and then identify itself with a new basis wholly prospective in operation. It would be anomalous to say that a failure to comply with a former basis may constitute full compliance with a later basis. *The Constitution plainly intends an expression of an existing sense of a designated percentage of the legal voters.*” p 546 [Emphasis supplied]

Thus, if a petition to amend the constitution lacked a sufficient number of signatures up to and including November 4, 1974, that amendatory petition died and no petition signatures procured prior to that date may be considered. However, petition signatures procured on or after November 5, 1974 are valid for the duration of the current gubernatorial term.

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