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CONSTITUTION OF MICHIGAN: Art 2, § 9

INITIATIVE AND REFERENDUM: Amendment of act adopted by initiative.

If a measure proposed by initiative petition is enacted by the legislature within 40 session days without change or amendment, the legislature may amend or repeal such measure by majority votes in each house as specified in Const 1963.

Where, however, the legislature has not enacted a legislative proposal initiated by the people within the 40 session day period and the proposal is adopted by the people, a majority of three-fourths of the members elected to and serving in each house of the legislature is required to amend or repeal that law.

Opinion No. 4932 January 15, 1976.

Honorable Jeffrey D. Padden
State Representative
The Capitol
Lansing, Michigan 48901

You have asked for my opinion concerning legislative initiative pursuant to Mich Const 1963, art 2, § 9.

The third paragraph of said constitutional provision provides in relevant part:

> "Any law *proposed* by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. . . ." [Emphasis added]

You ask whether an extraordinary majority is required to enact into law such a popularly initiated proposal.

It is my opinion that, had the drafters of the Constitution intended that initial enactment of legislation proposed by initiative petition under paragraph 3 would require extraordinary majorities in each house, explicit language to that effect would have been utilized. I interpret the absence of such language as signifying an intent that such laws be adopted by those majorities of the members elected to and serving in each house of the legislature specified elsewhere in Mich Const 1963.

The fifth paragraph of Const 1963, art 2, § 9, states in relevant part:

> ". . . no law *adopted by the people at the polls* under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. . . ." [Emphasis added]

If a measure proposed by initiative petition is enacted by the legislature within 40 session days without change or amendment, the legislature can amend or repeal such a measure by majority votes in each house as specified elsewhere in Mich Const 1963. In contrast, however, where the legislature

has not enacted an initiated legislative proposal within the 40 session day period and the matter is submitted to the people for consideration at a general election, after such measure has been adopted by the people at the polls, an extraordinary majority of three-fourths of the members elected to and serving in each house of the legislature is required to amend or repeal it.

FRANK J. KELLEY,
Attorney General.

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CITIZENSHIP: Teacher's Certificate

TEACHERS: Citizenship requirement for permanent certification

The statutory requirement of United States citizenship as a qualification for a certificate as a school teacher is unconstitutional.

Opinion No. 4925 January 16, 1976.

Dr. John W. Porter
Superintendent of Public Instruction
Michigan Department of Education
Lansing, Michigan

You have requested my opinion whether the requirement of MCLA 340.852; MSA 15.3852, that one be a United States citizen to qualify for permanent certification as a school teacher is constitutional.

MCLA 340.852; MSA 15.3852, in pertinent part, provides:

> ". . . No permanent certificate qualifying a person to teach in the public schools of this state shall be granted to any person who is not a citizen of the United States. . . ."

The United States Supreme Court has stated:

> ". . . The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting* v *United States,* 149 U.S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."
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> *Truax* v *Raich,* 239 US 33, 42; 36 S Ct 7, 11; 60 L Ed 131, 135 (1915).

More recently, in *In re Griffiths,* 413 US 717; 93 S Ct 2851; 37 L Ed 2d 910 (1973), the Supreme Court considered the constitutionality of the citizenship requirement for admission to the Connecticut Bar. The Court ruled that state classifications based on alienage were "inherently suspect." Thereupon, the Court stated: