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CONSTITUTION OF MICHIGAN: Art 2, § 8
Art 2, § 9
Art 12, § 2

ELECTIONS: Recall

RECALL: Freshness requirement for petition signatures

INITIATIVE AND REFERENDUM: Freshness of petition signatures.

A 90-day limitation on the freshness of signatures on recall petitions and on referendum petitions is constitutional.

Opinion No. 4964 April 19, 1976.

Honorable Jack Welborn
State Senator
The Capitol
Lansing, Michigan 48901

A recent opinion of the Attorney General concerning the time period in which signatures may be affixed to an initiatory petition has prompted you to ask a similar question relative to other types of petitions. Your letter refers to what is apparently OAG, 1973-1974, No 4813, p 171 (August 13, 1974). That opinion ruled unconstitutional § 472a, as amended, of the Michigan Election Law; MCLA 168.472a; MSA 6.1472(1), which provided that signatures affixed to a petition proposing an amendment to the State Constitution or to a petition proposing initiation of legislation are presumed to be stale and void if affixed more than 180 days before the petition is filed. This determination was reached based upon a recognition of the self-executing nature of Const 1963, art 2, § 9, and the limited authority delegated to the legislature by Const 1963, art 12, § 2. The opinion concluded that because of this, the legislature lacked the power to enact implementing legislation which would also tend to limit the effective exercise of the people's basic right to resort to the initiatory process.

The subject of your current concern has been stated by you in two questions as follows:

> "1. Does the current 90 day 'freshness' requirements for signatures on a recall petition constitute a violation of basic constitutional rights, following your decision concerning petitions for constitutional amendments.
>
> "2. Are similar restrictions on referendum petitions also a violation of constitutional rights?"

The requirement that signatures on a recall petition be obtained within 90 days of filing the petition is found in § 955 of the Michigan Election Law, as amended; MCLA 168.955; MSA 6.1955, which provides:

> "The petitions shall be signed by registered and qualified electors equal to at least 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the electoral district of the official sought to be recalled. Any signatures obtained more than 90 days before the filing of such petition shall not be counted."

This section was enacted as part of a statutory procedure which the legislature was required to formulate in compliance with the mandate of Const 1963, art 2, § 8:

> "Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question."

It is readily apparent that the scope of the authority granted the legislature to implement the provisions of Const 1963, art 2, § 8, is far greater than that granted by Const 1963, art 12, § 2. The former provision, Const 1963, art 2, § 8, affirmatively commands that "Laws shall be enacted to provide for the recall. . . ."; whereas the delegation of authority by Const 1963, art 12, § 2, is limited to designation of the official who has the duty to receive the petitions, the form and manner of circulation, and the method of canvassing. Therefore, the legislature does have the authority to impose limitations in relation to recall which it may not impose in relation to the initiative.

Having concluded that the reason for the more restrictive interpretation of Const 1963, art 12, § 2, does not apply to Const 1963, art 2, § 8, it becomes necessary to determine whether or not the principles applicable to Const 1963, art 2, § 9, also apply to limit the legislature's authority with respect to Const 1963, art 2, § 8. As noted, Const 1963, art 2, § 9, was held to be self-executing and, consequently, the power of the legislature is limited to merely formulating the process by which the initiative petition reaches the legislature or the electorate. *Wolverine Golf Club* v *Secretary of State,* 384 Mich 461, 466; 185 NW2d 392 (1971). Therefore, if Const 1963, art 2, § 8, is self-executing, the legislature would be without power to impose the 90-day "freshness" requirement of MCLA 168.955; MSA 6.1955. The contrary would, of course, be the case if the constitutional provision is not self-executing.

Guidance in deciding this question may be found in the opinion of Chief Judge Lesinski in *Wolverine Golf Club* v *Secretary of State,* 24 Mich App 711, 725, 726; 180 NW2d 820 (1970), which was approved by the Supreme Court in *Wolverine Golf Club* v *Secretary of State, supra,* 384 Mich 461, 465, 466:

> "Whether a constitutional provision is self-executing is largely determined by whether legislation is a necessary prerequisite to the operation of the provision. See 42 Am Jur 2d, Initiative and Referendum, § 3.
>
> " 'A constitutional provision may be said to be self-executing, if it supplies a sufficient rule, by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced, and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.'

> "Cooley, Constitutional Limitations (7th Ed) p 121, quoted in *Thompson* v. *Secretary of State* (1916), 192 Mich 512, 520, wherein the Court declared art 5, § 1 (initiative and referendum) of the Michigan Constitution of 1908 to be self-executing."

Examination of the language of Const 1963, art 2, § 8, discloses that elective officers shall be subject to recall upon petition of 25% of the number of electors voting for governor in the district in the last election. The section does not lay down rules by means of which this provision may be given force and effect; further legislation is a necessary prerequisite to the operation of the provision.

This conclusion is made even more evident when Const 1963, art 2, § 8, is compared to Const 1963, art 2, § 9. A complete outline of the initiative and referendum processes consisting of six paragraphs is set forth in Const 1963, art 2, § 9, detailing the procedures which must be followed to exercise those rights. By contrast, Const 1963, art 2, § 8, consists of two sentences providing that all elective offices, except judges of courts of record, are subject to recall. In view of the foregoing, it is my opinion that the provisions of Const 1963, art 2, § 8, are not self-executing. Consequently, the legislature has broader authority to implement these provisions and the 90-day limitation on petition signatures established by MCLA 168.955; MSA 6.1955 is not unconstitutional.

Another indication of the constitutionality of this statute can be found in the opinion of the Court in *Wolverine Golf Club* v *Secretary of State, supra,* 384 Mich 461, 466. While holding invalid the statute requiring that initiative petitions be filed not less than 10 days before the start of a legislative session, MCLA 168.472; MSA 6.1472, the Court concluded as follows:

> "Whether we view the ten-day-filing requirement in an historical context or as a question of constitutional conflict, the conclusion is the same—the requirement restricts the utilization of the initiative petition and lacks any current reason for so doing."

As this language of the Court indicates, any restriction of this nature on the exercise of such a constitutional right must be supported by a presently viable justification. In the case of the 90-day restriction on signatures on a recall petition, a compelling reason for the restriction is easily discernable. Without a reasonable time limitation, an organization or individual would be able to obtain the necessary number of signatures on a recall petition, and then hold the petition indefinitely thereby subjecting the officeholder to undue influence under the threat that the petitions would be filed if the officeholder did not perform as desired. The potential for this type of abuse does not exist with regard to the initiatory process.

A further distinction between the initiative and recall becomes apparent when the purposes of each are considered. Both the initiative process for proposing legislation under Const 1963, art 2, § 9, and for proposing an amendment to the constitution under Const 1963, art 12, § 2, involve an initial expression of the popular will. The recall process, however, involves the expression of voter sentiment on a question which has already been passed upon at least once by the electorate; the selection of an individual to hold

a particular office. Because the recall process attempts to directly countermand the expressed intention of the people, certain restrictions not applicable to the initiative process, such as the 90-day limitation on signatures, are not unreasonable.

The 90-day limitation applicable to signatures on a referendum petition which is the subject of your second question is found in Const 1963, art 2, § 9:

> "The people reserve to themselves the power . . . to approve or reject laws enacted by the legislature, called the referendum. . . . The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. . . ."

Inasmuch as the 90-day restriction is imposed by the Constitution itself, it is manifest that the restriction is constitutional. As was noted previously, the 180-day restriction on signatures on initiatory petitions was deemed to violate the State Constitution. It is only when a part of the State Constitution is held to conflict with a provision of the United States Constitution that a state provision will be struck down as unconstitutional.

Therefore, to answer your questions, it is my opinion that the 90-day requirement as it applies to signatures on both recall and referendum petitions is constitutional.

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TAX ASSESSMENTS: Distribution of money received by rounding out state equalization factor.

The "excess of roll" that results from the rounding out of the total authorized millage belongs to the contingent fund of the township. However, the rounding out of state equalized valuations of assessed property must be shared by the taxing authorities in proportion to their percentage of the total tax levy.

Opinion No. 5000 April 19, 1976.

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You have requested my opinion concerning the following question:

> "What is the proper distribution between various units of government at tax settlement time of excess money received because a local unit of government rounds up its state equalization factor."

It is your position, shared by the Local Audit Division of the Michigan Department of Treasury:

> "* * * that any excess funds collected by the rounding up of the