

CONSTITUTION: Amendments, initiative petition for — approval by Board of State Canvassers.

INITIATIVE AND REFERENDUM: Initiative petition for — approval by Board of State Canvassers.

The 1963 Constitution vests in the legislature authority to prescribe the form of initiatory petitions not only for amendment to the Constitution, but also for the initiation of legislation and for referendum, as well as other legislative details with respect to the circulation and signing of these petitions. Whether the Board of State Canvassers will be required to approve the form of a petition, including the heading to be printed upon the respective petitions prior to the submission thereof to the electors for signature, will be dependent upon the provisions of any implementing legislation which may be adopted.

No. 4285

February 20, 1964.

Mr. Robert M. Montgomery, Secretary
Board of State Canvassers
The Capitol
Lansing, Michigan

Your request for opinion under date of January 29, 1964 notes the changes resulting from the adoption of the 1963 Constitution in the provisions governing initiative petitions proposing constitutional amendments, initiation of legislation or for referendum of legislation. You request my opinion as to whether under the 1963 Constitution the Board of State Canvassers is under a duty to approve the form of any such initiative petition, including the heading upon the individual petitions, prior to the submission thereof to the electors for signature.

The 1908 Constitution¹ specified with respect to an initiatory petition proposing a constitutional amendment:

“* * * The petition shall consist of sheets in such form and having printed or written at the top thereof such heading as shall be designated or prescribed by the secretary of state, or such other person or persons hereafter authorized by law to receive, canvass and check the same.
* * *”

Following the adoption of the 1941 amendment the legislature enacted implementing legislation.² Included therein was a prescribed form of petition.³

With the enactment of the Michigan election law,⁴ the 1941 act was repealed and the provisions thereof re-enacted as Chapter 22 of that act.⁵

¹ Article XVII, Section 2, as amended, ratified April 7, 1941.

² Act No. 246, P.A. 1941.

³ Section 12.

⁴ Act No. 116, P.A. 1954, being C.L.S. 1961 § 168.1 et seq., M.S.A. 1956 Rev. Vol. and M.S.A. 1961 Cum. Supp. § 6.1001 et seq.

⁵ Section 471 et seq., being C.L.S. 1961 § 168.471 et seq., M.S.A. 1956 Rev. Vol. and M.S.A. 1961 Cum. Supp. § 6.1471 et seq. The form of the petition is set forth in section 482.

By an amendment to the 1908 Constitution proposed by joint resolution adopted at the 1955 regular session of the legislature and adopted at the biennial spring election held April 4, 1955, the following section⁶ was added to the 1908 Constitution:

"A board of state canvassers consisting of 4 members shall be established by law. No candidate for an office to be canvassed by the board shall be eligible to serve as a member of said board. A majority of the board shall not be composed of adherents of the same political party."

Such provision was implemented by Act No. 239, P.A. 1955,⁷ as amended.

The Supreme Court construed⁸ the above quoted provision of Article XVII, Section 2 as requiring the Secretary of State or the Board of State Canvassers, as constituted by Act No. 239, P.A. 1955, to designate or prescribe an approved form of initiative petition for constitutional amendment, including the heading required to be printed upon the individual petitions for that purpose, prior to the submission to the electors for signing.

You have advised that the records of the Board of State Canvassers failed to show the taking of formal action to prescribe a form of initiative petition for a constitutional amendment, or for either a petition to initiate legislation or for a referendum.⁹ Instead, the Board has followed the practice of approving individual petitions which were in the form prescribed by the statute.¹⁰

This brings us to the consideration of any change in the law resulting from the adoption of the 1963 Constitution. Article XII, Section 2, provides for initiatory petitions for constitutional amendments. That section contains no provision comparable to that first above quoted from the 1908 Constitution¹¹ authorizing the Secretary of State or other person or persons to designate the form of the petition. Instead, in providing for initiatory petitions for constitutional amendments, it specifies:

"* * * Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. * * *"

The Address to the People¹² notes that this section is a revision of Article XVII, Sections 2 and 3 of the 1908 Constitution, and enumerates four changes in the provisions of those sections to be effected by such revision. Included among such changes is:

⁶ Article III, Section 9.

⁷ C.L.S. 1961 § 200.301 et seq., M.S.A. 1956 Rev. Vol. and M.S.A. 1961 Cum. Supp. § 6.2111 et seq.

⁸ *Pillon v. Attorney General*, 345 Mich. 536, 540-544.

⁹ Provision for the latter two petitions was made by Article V, Section 1 of the 1908 Constitution, as amended in 1913. This section was again amended through joint resolution adopted at the 1941 session of the legislature and ratified April 7, 1941. This section does not include provision comparable to that above quoted from Article XVII, Section 2.

¹⁰ Section 482 of the Michigan election law.

¹¹ Article XVII, Section 2.

¹² This is an explanation of the changes in the 1908 Constitution proposed by the 1963 Constitution, which was prepared and published by the 1961 Constitutional Convention pursuant to C.L.S. 1961 § 168.181, M.S.A. 1961 Cum. Supp. § 6.1181.

"3. Details as to form of petitions, their circulation and other elections procedures are left to the determination of the legislature."

Article II, Section 9 of the 1963 Constitution reserves to the people the right of initiative and referendum. However, no reference is made therein to the form of the initiatory petition. Instead, section 9 concludes:

"The legislature shall implement the provisions of this section."

Thus the 1963 Constitution has vested in the legislature authority to prescribe the form of initiatory petitions not only for amendment to the Constitution, but also for the initiation of legislation and for referendum upon enacted legislation, as well as other detail with respect to the circulation and signing of these petitions. Any such petition would have to conform to applicable statutory provisions when adopted by the legislature.

As above noted, the 1908 Constitution¹³ required the Board of State Canvassers to take action designating or prescribing the form of a petition for a constitutional amendment, including the heading to be printed upon the individual petitions circulated for that purpose, prior to the submission thereof to the electors for signing. As also noted, the constitutional provisions imposing that requirement are not contained in either Article XII, Section 2, or Article II, Section 9 of the 1963 Constitution.

Accordingly, the Constitution no longer imposes that obligation upon the Board. Whether the legislature in implementing those constitutional provisions will enact legislation which imposes upon the Board the duty of approving the form of a petition, including the heading to be printed upon the individual petitions prior to the submission thereof to the electors for signing, remains to be seen. In the event it adopts such legislation, whether action must be taken by the Board, or instead, by you as its secretary, will depend upon the provisions of any such legislation.

FRANK J. KELLEY,
Attorney General.

¹³ Article XVII, Section 2, as amended.