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**INITIATIVE AND REFERENDUM: Initiative petition for legislation — additional signatures may not be filed.**

Where a petition for the initiating of legislation, as filed with the county clerks and forwarded to the Secretary of State, is determined by the Board of State Canvassers not to be entitled to be transmitted to the legislature by reason of an insufficient number of signatures of qualified and registered electors affixed thereto, there is no constitutional authority to supply the deficiency by the filing of additional signatures.

No. 4287

February 20, 1964.

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

Your request for opinion arises out of the following circumstances:

Petitions to initiate legislation entitled "An act to regulate the levy and collection of a tax passed upon income by a city, village, county, township or school district of the State of Michigan" pursuant to Article V, Section 1, as amended, of the 1908 Constitution were circulated by a group of citizens of this state known as the Vigilance Tax Committee of Michigan. In excess of 53,000 signatures were obtained during the period of a few months preceding November 6, 1962, the date of holding the general November election of that year. Circulation of the petition was continued following the holding of that election, and sections of the petition were filed on November 18, 1963 with the county clerk of some 60 counties in which the respective sections had been circulated. As filed the petition is stated to have contained a number of signatures of qualified and registered electors totaling 248,616. These were transmitted to the Secretary of State, who, pursuant to the statute<sup>1</sup> convened the Board of State Canvassers<sup>2</sup> to canvass the same.<sup>3</sup> That board at a meeting held on December 31, 1963, determined that the petition bore an insufficient number of signatures of qualified and registered electors to entitle the same to be transmitted to the legislature, for the reason that the signatures affixed to the petition prior to November 6, 1962, the date of holding the last election for the office of governor, could not be considered.<sup>4</sup> Subsequently, the Michigan Supreme

<sup>1</sup> Section 475, Act 116, P.A. 1954, as amended, being C.L.S. 1961 § 168.475, M.S.A. 1956 Rev. Vol. § 6.1475.

<sup>2</sup> 1908 Michigan Constitution, Article III, Section 9, which section was added by an amendment ratified at the election of April 4, 1955, and implemented by Act No. 239, P.A. 1955, being 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.

<sup>3</sup> C.L.S. 1961 § 168.476 et seq., M.S.A. 1956 Rev. Vol. and M.S.A. 1961 Cum. Supp. § 6.1476 et seq.

<sup>4</sup> Such order was consistent with the following prior opinions of the Supreme Court and former Attorneys General. *Hamilton v. Secretary of State*, 221 Mich. 541, involving an initiatory petition for a constitutional amendment, and O.A.G. 1941-42 No. 22135, p. 449, and O.A.G. 1949-50 No. 859, p. 67, involving initiatory petitions for legislation.

Court refused to review the order of the Board of State Canvassers, and dismissed a petition for order to show cause.<sup>5</sup> At the direction of the Board of State Canvassers you now inquire:

“1. Could additional petitions be filed to bring the number of valid signatures up to the minimum?”

In *Hamilton v. Secretary of State*, 204 Mich. 439, a writ of mandamus was sought to require submission of a proposed constitutional amendment at the biennial spring election of 1919, pursuant to petition therefor filed with the Secretary of State on or before December 7, 1918, which was at least four months prior to the date of holding said election. Issuance of the writ was denied by reason of an insufficient number of signatures of qualified electors. The insufficiency resulted from the fact that prior to December 5, 1918, the effective date of the Women's Suffrage amendment to the state Constitution,<sup>6</sup> women were not qualified electors. Signatures of women affixed to the petition prior to that date were accordingly disregarded as not being those of a “qualified elector.”<sup>7</sup> Thereafter the proponents of such amendment attempted to supply the deficiency by the filing of additional signatures. Following the tendering of the additional signatures, mandamus was again sought to require their acceptance and the submission of the proposed amendment at the succeeding election. The Supreme Court in a brief per curiam opinion (*Hamilton v. Secretary of State*, 206 Mich. 371) denied the issuance of the writ, stating:

“We are of opinion that the petition filed with the Secretary of State and considered in *Hamilton v. Secretary of State*, 204 Mich. 439, cannot be treated as a continuing petition, to be revived as such from time to time by the addition of other names. It was filed to effect a purpose. It was found and declared to be insufficient for the purpose because lacking signatures. It performed its office and as a petition, in view of the law, is dead.”

Is this reasoning of the Supreme Court applicable to a petition to initiate legislation filed pursuant to Article V, Section 1, as amended, of the 1908 Constitution? In that case plaintiff sought the issuance of the court's writ of mandamus to require the Secretary of State to submit the proposed constitutional amendment to the electors. The case was submitted to the Supreme Court on May 29, 1919. Reference to the pleadings show that the relief sought was the court's writ of mandamus to require the submission of such an amendment at the general November election in 1920. It should be noted that no election to the office of governor intervened between the date of the original filing of the petition in December, 1918, and that of the 1920 general November election.<sup>8</sup> The petitions originally filed with the Secre-

<sup>5</sup> *Kuhn, et al v. Secretary of State, et al*, Sup. Ct. No. 50704-1/2, petition for order to show cause denied and dismissed on February 7, 1964.

<sup>6</sup> Article III, Section 1 of the 1908 Michigan Constitution, as amended, which amendment was proposed by joint resolution of the legislature and ratified at an election held November 5, 1918.

<sup>7</sup> See Article XVII, Section 2, as in effect prior to the amendment proposed by the legislature and ratified at the election held April 7, 1941.

<sup>8</sup> See *Hamilton v. Secretary of State*, 221 Mich. 541.

tary of State in December, 1918, sought the submission of the question at the biennial spring election in April, 1919.

Attention is directed to the following requirement of Article V, Section 1:

"Each section of the petition shall be filed with the clerk of the county in which it was circulated, but all said sections circulated in any county shall be filed at the same time. Within 20 days after the filing of such petition in his office, the said clerk shall forward said petition to the secretary of state or such other person or persons as shall hereafter be authorized by law."

The requirement that "all said sections circulated in any county shall be filed at the same time" negates any contention that such a petition can be "treated as a continuing petition, to be revived as such from time to time by the addition of other names."

The people in providing for the power of initiative in Article V, Section 1 of the Michigan Constitution of 1908, and for the amendment of the Constitution by initiative petitions in Article XVII, Section 2 of the Michigan Constitution of 1908, as amended in 1941, set forth the same requirement that the number of signers, except for the percentage required, was to be based upon the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Thus it can be concluded that, excepting the percentage of signers, the people intended that the same procedure for the filing of petitions apply and it must follow that the reasoning of the Supreme Court in *Hamilton v. Secretary of State*, 206 Mich. 371, would be equally controlling. Petitions filed for initiative under Article V, Section 1 of the Michigan Constitution of 1908, must likewise be considered dead after their filing and rejection for insufficient signatures.

The provisions of the Constitution of 1908 are no longer applicable since the Michigan Constitution of 1963 became effective on January 1, 1964. There is no provision in the Constitution of 1963 authorizing the filing of additional signatures to supplement initiative petitions filed in 1963 under Article V, Section 1 of the Michigan Constitution of 1908 and rejected by the Board of State Canvassers as insufficient.

For the reasons above stated, your first question is answered in the negative. Inasmuch as each of the remaining questions is premised upon the receiving of an affirmative answer to the first question, no reply to those questions is required.

FRANK J. KELLEY,  
*Attorney General.*