

“(i) All other moving violations pertaining to the operation of motor vehicles reported under this section.....2 points

“* * *

“(4) If a person has accumulated 9 points as provided herein, the director may call said person in for an interview as to his driving ability and record after due notice as to time and place of said interview. In the event the person fails to appear as provided herein, the director shall add 3 points to his record.”

The term “other moving violations pertaining to the operation of motor vehicles,” as used in subsection (1)(i) above, would include violations of section 683. Aside from the number of points to be assessed therefor, there is no basis for differentiating between a violation of section 683 and any other moving violation expressly enumerated in section 320a. Therefore, the Secretary of State is required to record each conviction of any such violation, abstract of which is forwarded to you, and to assess two points for each such conviction as specified by that section.

FRANK J. KELLEY,
Attorney General.

640409.5

INITIATIVE: Effective date of enactment of initiative petition into law.
TENURE OF TEACHERS: Effective date of mandatory tenure.

Initiative petition calling for mandatory tenure in Michigan school districts enacted into law by the legislature becomes effective 90 days after the final adjournment of the legislature when the initiative petition does not specify that the enactment shall be immediately effective.

No. 4313

April 9, 1964.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

When does the law proposed by initiative petition enacted by the Michigan legislature making tenure of teachers mandatory in Michigan become effective?

An initiative petition seeking to amend Act 4, P.A. 1937, Extra Session, as last amended by Act 242, P.A. 1963, being C.L. 1948 § 38.71 et seq.; M.S.A. 1959 Rev. Vol. and 1963 Cum. Supp. § 15.1971 et seq., to make tenure of teachers mandatory in Michigan, was enacted by the Michigan legislature in accordance with resolutions approved by the Senate on March 10, 1964, and by the House of Representatives on March 12, 1964. The Secretary of State has entitled such enactment as Act 2, P.A. 1964.

The aforesaid initiative petition did not specify by its provisions that should the legislature enact the initiative petition into law, the law would become immediately effective.

The initiative petition was filed with the Secretary of State prior to December 15, 1963 and certified by him to each house of the Michigan legislature on January 8, 1964.

The legislature acted upon such initiative petition in accordance with Article II, Sec. 9 of the Michigan Constitution of 1963, which provides as follows:

"The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. 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. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

"No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

"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. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

"If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yeas and nays vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

"Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and 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. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict,

that receiving the highest affirmative vote shall prevail." (Emphasis supplied)

In opinion No. 4303, dated March 6, 1964, I ruled that should the legislature enact the initiative petition for mandatory tenure, the initiative petition enacted into law by the legislature is subject to referendum only when the power of referendum is invoked by the people pursuant to Article II, Sec. 9. In this regard the people in approving the Michigan Constitution of 1963 expressed a clear and unmistakable intent to make laws proposed by initiative petition enacted by the legislature subject to referendum.

The power of referendum which has been reserved in the people has been described by the Michigan Supreme Court as a great power vested in the minority of the people in that 1/20th of the electors of the state may suspend the operation of any act of the legislature, however important, except acts making appropriations, until the next general election. *Thompson v. Secretary of State*, 192 Mich. 512 (1916).

The people have withheld authority from the legislature to change the terms of the initiative petition proposed to be enacted into law, each house of the legislature being required to enact or reject the initiative petition as submitted by the people. See Opinion of the Attorney General No. 4303, *supra*.

While the people have mandated that any law proposed by initiative petition shall be enacted or rejected by the legislature and if any law proposed by such petition shall be enacted by the legislature, it shall be "subject to referendum, as hereinafter provided," the people have not in the subsequent portion of Article II, Sec. 9 specified that this power 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. Rather, the people have made such provision in the text of Article II, Sec. 9 for referendum before they mandated that "if any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided." Thus, the phrase "as hereinafter provided" may be discarded as surplusage,

This order of constitutional provision is not significant because the law appears well settled that in the construction of the Constitution effect must be given to the entire section. *Vetter v. Fowler*, 167 Mich. 499 (1911).

Consideration must also be given to Article IV, Sec. 27 of the Michigan Constitution of 1963, which provides as follows:

"No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

Reading the provisions of Article II, Sec. 9 and Article IV, Sec. 27 together, in light of the form of initiative petition presented to the legislature calling for mandatory tenure without specifying immediate effect in such petition should the legislature enact it, the conclusion must follow that the initiative petition which has been enacted by the Michigan legislature,

entitled Act 2, P.A. 1964, shall not take effect until the expiration of 90 days after the end of the session at which it was passed.

Therefore, it is the opinion of the Attorney General that the law enacted by the legislature in response to initiative petition amending the provisions of Act 4, P.A. 1937, Extra Session, *supra*, to require mandatory tenure in Michigan school districts, which has been entitled Act 2, P.A. 1964, takes effect 90 days after final adjournment of the 1964 Regular Session of the Michigan Legislature unless suspended by operation of law within such 90 day period by the filing of a valid referendum petition in accordance with the provisions of Article II, Sec. 9, *supra*.

FRANK J. KELLEY,
Attorney General.

640414.1

CITIES: Home Rule -- Charter Elections.

Under the Home Rule Act, being Act 279, P.A. 1909, as amended, proviso limitation in Sec. 16 does not carry over into Sec. 17 so that a new charter commission may be selected as often as valid petition is filed within 10 days after canvass and determination of vote rejecting a proposed charter as provided by Sec. 17. Each new charter commission selected after petition under Sec. 17 becomes subject to proviso limitations in Sec. 16.

No. 4259

April 14, 1964.

Mr. Samuel H. Olson
Prosecuting Attorney, Wayne County
500 Police Headquarters
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You advise that your office has been presented with a problem involving the interpretation of Secs. 16 and 17 of the Home Rule Act, Act 279, P.A. 1909, as amended, being C.L. 1948 and C.L.S. 1961 § 117.16 and § 117.17; M.S.A. 1961 Cum. Supp. § 5.2095 and § 5.2096.

The problem faced arises with the rejection by popular vote of a proposed charter and the initiation of procedures for resubmission of a charter to the electorate. At issue here is whether or not the statutes cited place an absolute limitation on the subsequent resubmission of charter drafts to the electorate of the proposed city.

Under the terms of Sec. 16 where the proposed charter is rejected, the elector receiving the highest number of votes cast for the office of mayor becomes mayor *de facto* of the proposed city until a mayor for such proposed city is elected and qualified pursuant to a charter which shall have been approved by the electorate.

For the first 10 days following the election at which the proposed charter was rejected, the electors of the proposed city may petition the *de facto* mayor for the selection of a new charter commission. This step is recognized by the provision of Sec. 16 requiring the *de facto* mayor to take no further action until 10 days have elapsed after the election at which the