

INITIATIVE AND REFERENDUM: Legislature may determine the percent, not in excess of eight per cent of petitioners, required to initiate measures.

June 26, 1935. 6-27



Hon. T. H. Rogers  
Director, Legislation and Tax Bureau  
St. Louis Chamber of Commerce  
St. Louis, Missouri

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"The Chamber of Commerce has had inquiry as to the wording of the provision in Section 57 of Article IV of the State Constitution relating to the initiative. The clause in the Constitution reads 'the first power reserved by the people is the initiative, and not more than eight per cent of the legal voters in each of at least two-thirds of the Congressional Districts of the State shall be required to propose any measure by such petition.' The inquiry is as to the phrase in the foregoing quoted sentence 'and not more than eight per cent of the legal voters.' Is that sentence accepted to mean not less than eight per cent, or is the quotation as given exact. The inquiry is based on the thought that if a petition submitting a measure through the initiative is 'not more than eight per cent' then a petition of a few signatures in each district would be sufficient to get a proposition before the people under the initiative.

"It is probable that the Legal Department of the State has rendered an opinion on this question. If it has, may I ask that you have someone of your force give us the thought in such a rule?"

We have inquired of the Secretary of State for the original records of the enactment of the initiative section of the Constitution and are informed by that office that they were destroyed in the fire which destroyed the Capitol some twenty-five years ago and that the only record that office has with reference to the adoption thereof is the vote by which the above provision was adopted by the people at the general election held in 1908. The 1909 Session Acts at page 906 show the same provisions as are shown in the Revised Statutes of 1929 and we feel sure that the printed section now appearing in the statutes is a correct recording of the act.

We note that Section 57 of Article 4 of the Constitution of Missouri relating to the initiative and referendum provides as follows as to the initiative:

"The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters in each of at least two-thirds of the congressional districts in the State shall be required to propose any measure by such petition."

With reference to the referendum it provides as follows:

"The second power is the referendum, and it may be ordered (with certain exceptions not pertinent to your inquiry) either by the petitions signed by five per cent of the legal voters in each of at least two-thirds of the congressional districts in the State."

The same rules apply to the initiative as to the referendum with respect to the efficacy of the petitions. In the initiative the people have the constitutional right to legislate without any official act performed by the General Assembly, that is, the people to the extent of "not more than eight per cent of the legal voters

in each of at least two-thirds of the congressional districts in the State" shall sign the petitions proposing the measure, and upon said petitions being filed with the Secretary of State at a time so that at least four months will elapse before the election occurs at which the measure is to be voted upon, it then becomes his official duty to place said measure upon the election ballot. The Constitution further safeguards the initiative by requiring that said petitions "shall include the full text of the measure so proposed." Doubtless a sufficient and perhaps controlling reason for the latter requirement is to prevent unscrupulous persons circulating petitions from taking advantage of the people who signed the petitions.

When voted on at the oncoming election, such measure is adopted and becomes a law provided it receives a majority vote at the election.

The second power reserved therein to the people is the referendum. This is the power to suspend until the next election a law passed by the Legislature and signed by the Governor.

In order to so suspend it and have the opportunity presented to the people to express themselves and to accept or reject it, the "petitions signed by five per cent of the legal voters in each of at least two-thirds of the congressional districts in the State" shall be presented, or the referendum may be ordered by the legislative assembly, etc.

Referendum petitions likewise shall be filed with the Secretary of State, but under this course the time to so file "shall not be more than ninety days after the final adjournment of the session of the Legislature at which the bill was enacted."

It will be noted that there is a different constitutional requirement as to the number of petitioners required with respect to the initiative from those required with respect to the referendum. The former is "not more than eight per cent" and the latter is that "the petitions signed by five per cent" shall be filed.

Volume 12, Corpus Juris, page 735, par. 126, states the law as follows:

"Constitutional provisions reserving to the people the power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independently of the legislature, are self-executing to the extent that they prescribe the rules for the exercise of the rights reserved; but where such provisions merely create rights to be exercised in the manner prescribed by general laws, they do not become operative until the enactment of legislation."

The same Volume, at page 742, par. 156, says:

"All national authority is derived from the constitution of the United States, in which the powers of the federal government are enumerated. But not so with the governments of the several states; their original powers they received through charters from the British crown, which charters served as their constitutions during the colonial period, and up to the time of the framing and adopting of state constitutions by them or by their peoples during or after the revolutionary period; and all powers that are not expressly or by necessary implication granted to the United States, in the federal constitution, remain with the several states or with the people, being necessarily inherent in the state governments or in the people who have established such governments."

At page 745, par. 167, is declared the following:

"The constitutions of the several states, unlike the federal constitution, are not grants of power. On the contrary, they are limitations on the legislative powers of the states. A state constitution is the supreme written will of the people of the State who have adopted it as a framework or basis of their government subject only to the

limitations to be found in the federal constitution.\* \* \*The generally accepted doctrine is that they (the legislature) may pass any acts that are not expressly, or by necessary implication, inhibited by their own constitutions or by the federal constitution."

And at page 749:

"The legislature needs no specific constitutional authorization for its enactments, as all the legislative authority of the state which is not denied to the legislature by the constitution of the state resides in that body.\* \* \*The only test of the validity of an act regularly passed by a state legislature is whether or not it violates limitations imposed by the state or federal constitutions in express terms or by clear implication."

In speaking of express and implied limitations on the legislature, at page 750, par. 169, it is stated:

"Such limitations on the power of the legislature, however, will not be raised by implication unless this intention clearly appears from the instrument itself, and no implied limitation will be extended beyond the legitimate meaning of the terms employed."

And at page 752:

"The generally accepted rule is that courts will not declare a statute void merely because in their opinion it is opposed to the spirit supposed to pervade the constitution."

And at page 791:

"A presumption in favor of constitutionality is raised by the mere fact of the enactment of a statute by the legislature."

The Supreme Court of Missouri in the case of State ex rel. vs. Board of Curators of University of Missouri, 268 Mo. 598, speaking of limitations on the legislative power, says:

"The legislative power, subject to the limitations contained in the Constitution, is vested in the General Assembly of the State of Missouri. The General Assembly retains all legislative power not expressly or by necessary implication forbidden it by the Constitution."

And quotes approvingly from Cooley's Const. Limitations (7 Ed.), pp. 236 et seq., as follows:

"The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason and expediency with the law making power. Any legislative act which does not encroach upon the powers apportioned to the other departments of the government, being prima-facie valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the Constitution and the case shown to come within them". Further, "when the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature, we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument."

The section under construction provides that the

"Petitions and orders for the initiative and for the referendum shall be filed by the Secretary of State, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor."

Thus it will be noted that the act itself contemplates that the Legislature has the right to enact such legislation as is not inconsistent with the constitutional provision to the end that the people, through the Legislature, may from time to time after the requirement with reference to what per cent, not greater than eight per cent, of the legal voters in the given number of congressional districts shall be required in order to invoke the initiative.

Pursuant to the same, the Legislature, by Sections 10702 to 10711 inclusive, R. S. Missouri 1929, enacted provisions applicable to the administration of the initiative. One of those provisions in Section 10703 is as follows:

"Provided, that the minimum number of petitioners to either an initiative or referendum petition, when filed with the secretary of state, shall be five per cent of the legal voters in each of at least two-thirds of the congressional districts in the state."

The provision of Section 57 aforesaid that "not more than eight per cent of the legal voters", etc., with reference to invoking the initiative, means that the Legislature has no power to enact a law requiring a greater number of signers than "eight per cent" as therein stated, but the Legislature does have the constitutional right to enact a law prescribing such per cent, not in excess of eight per cent, as the Legislature deems proper. In other words, the field is open for the Legislature to exercise its discretion as to what per cent of signers they desire or require in order that the initiative may be invoked, but the Legislature can not require a greater number than the eight per cent provided in the Constitution as the maximum that may be required. The Legislature was clearly within its constitutional authority when it enacted the law providing that the minimum number of petitioners to the initiative petitions should be five per cent.

CONCLUSION.

We are of the opinion that the necessary number of signers of initiative petitions in order to invoke the initiative in this state is at least five per cent of the legal voters in each of at least two-thirds of the congressional districts of the state, and that when petitions have so been filed with the Secretary of State, then the law insofar as it requires signers of petitions therefor has been fully complied with.

Yours very truly,

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Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
Acting Attorney General

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