

STATUTES  
INITIATIVE  
REFERENDUM

) Effective date of act suspended upon filing of referendum  
) petition, and such suspension is not affected by a suit  
) to test propriety of referendum.

October 19, 1949

10/24/49



Mr. Ralph E. Copher  
Collector of Revenue  
Department of Revenue  
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this Department, which request is as follows:

"The present session of the Legislature by enacting House Bill 185 raised the gasoline tax rate from two cents to four cents, effective as of October 14th.

"Since the enactment of this law, referendum petitions have been filed. Also, a suit has been filed questioning the right of the petitioners to file petition in such cases. The question now arises as to our status in the collection of the increased rate.

"Will you please advise at your earliest convenience the position our Department should take in the collection of tax under the existing circumstances."

Section 52 of Article 3, Constitution of 1945, provides for referendum on acts of the Legislature as follows:

"A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools) either by petitions signed by five per cent

of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.

"The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people shall be had at the general state elections, except when the general assembly shall order a special election. Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise. This section shall not be construed to deprive any member of the general assembly of the right to introduce any measure."

(Emphasis ours.)

According to our information, the Secretary of State has accepted the petition filed with him as sufficient under the constitutional provision above quoted. The suit to which you refer in your letter is a petition for injunction which has been filed in the Circuit Court of Cole County, Missouri, by three taxpayers against Walter H. Toberman, Secretary of State, asking that the Secretary of State be enjoined from accepting the referendum petitions, and from certifying a copy of said petition to the Attorney General for the preparation of a ballot title, and from performing certain other acts looking toward an election pursuant to said petitions. The petition for injunction alleges that House Bill No. 185 is an act which is not subject to referendum, because it is a law making appropriations for the maintenance of state institutions; because it is a law making appropriations for the current expenses of the state government; and, because it is a law necessary for the immediate preservation of the public peace, health or safety.

The Supreme Court of Missouri, in the case of State ex rel. Kemper v. Carter, 257 Mo. 52, 165 S.W. 773, considered the effect of the filing of a petition for referendum upon the effective date of an act of the Legislature. The constitutional provision then in effect (Section 57, Article 4, Constitution of 1875) contained the same provision found in Section 52, Article 3 of the Constitution of 1945, to-wit: "\* \* \*Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise." In the course of its opinion the court stated, 257 Mo., l.c. 70:

"When we consider the primary object of the adoption of the referendum and have regard to the evils which its friends had in mind to correct by it, any view other than that it suspends the taking effect of the act against which it is invoked till a vote be had is illogical and well-nigh unthinkable. The fact that the people of the State reserved to themselves the right to say whether an act of the Legislature should ever become an effective law, is accentuated, as a major premise in the very forefront of section 57, and in what we may with a bit of aptness call the 'ordaining clause.' For observe that this section says: 'But the people reserve to themselves power . . . at their own option to approve or reject at the polls any act of the legislative assembly.' Further along in the section our organic referendum law pertinent to this question also says: 'Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon and not otherwise.' (Italics are ours.) Can there be two minds that this language has specific reference to the time of the taking effect of an act of the Legislature touching which the referendum provisions of the law and the Constitution have been invoked? Can there be any, the remotest doubt that likewise this clause means what it says?"

The court further stated at l.c. 73:

"Aside from these most persuasive cases from other jurisdictions, by our own construction, of section 57 of article 4 of

our Constitution, as amended in 1908, we feel constrained to hold, without doubt or hesitation, that all acts of the Legislature touching which the referendum may be properly invoked, are suspended by the filing of a legal, sufficient and timely petition for the submission of such acts to a vote of the people for their approval or rejection, and that all such acts take effect when and only after a vote of the people has approved them at an election in which a majority of the votes are cast in favor of such act. \* \* \*

We find no cases in this state in which the question has been presented as to the effect of the filing suit to test the propriety of a referendum on a particular act. In the case of Barkley et al. v. Pool, 102 Neb. 799, 169 N.W. 730, a petition for injunction was filed pursuant to statutory authorization to restrain the Secretary of State from certifying the sufficiency of a referendum petition. The court in its opinion considered the act as having been suspended, despite the filing of said petition for injunction. In the course of its opinion the court stated, 169 N.W., l.c. 731: "The ordering of a referendum suspends the operation of a law until approved by the voters."

We feel that a similar view would be taken by the courts of this state should the matter be presented to them. The Constitution clearly provides that an act which has been made the subject of a referendum petition shall not become effective until it has been approved by the voters. In this case, the petition on file with the Secretary of State is sufficient on its face and would, therefore, have the effect of suspending the effective date of the act in question.

#### CONCLUSION.

Therefore, it is the opinion of this department that the provisions of House Bill No. 185 of the Sixty-fifth General Assembly will remain suspended until a permanent injunction is finally granted prohibiting the Secretary of State from submitting such bill to a referendum or until approved by a majority of the votes cast at a referendum election for such bill.

Respectfully submitted,

  
ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

RRW/feh