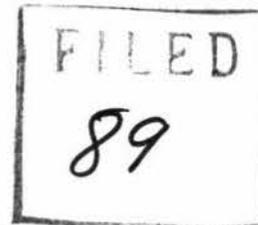


REFERENDUM:
SECRETARY OF STATE:

Law to be voted on at referendum election
to be published in newspapers designated
by the Secretary of State.

December 27, 1949



Honorable Walter H. Toberman
Secretary of State
Jefferson City, Missouri

Dear Sir:

This is in answer to your request for an official opinion
of this department reading as follows:

"We respectfully request your opinion
as to whether or not there is any pro-
vision in the State's laws for the
publication of a referendum before an
election and, if so, who has the re-
sponsibility to see that same is pub-
lished?"

Section 53, Article 3 of the Constitution of Missouri, 1945,
provides as follows:

"The total vote for governor at the
general election last preceding the
filing of any initiative or referen-
dum petition shall be used to deter-
mine the number of legal voters
necessary to sign the petition. In
submitting the same to the people the
secretary of state and all other
officers shall be governed by general
laws."

Section 2, Article 12 of the Constitution of Missouri, 1945,
provides in part as follows:

" * * * If possible, each proposed
amendment shall be published once a
week for two consecutive weeks in
two newspapers of different political

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faith in each county, the last publica-
tion to be not more than thirty nor
less than fifteen days next preceding
the election. If there be but one
newspaper in any county, publication
for four consecutive weeks shall be
made. * * *"

In the case of State ex rel. v. Westhues, 9 S.W. (2d) 612,
the Supreme court of Missouri said at l.c. 615:

" * * * The theory of the petition
filed in the circuit court case (No.
5844 there) was that the secretary of
state has no authority whatever to publish
in a newspaper in each county in the
state the full text of initiative
measures proposing the enactment of a
statute or of measures referred to the
people under the referendum, and that the
only authorized means for informing the
voters of the nature of initiative and
referendum measures as to proposed
statutes is the ballot title provided
for by section 5910, R. S. 1919."

The Circuit Court held at l.c. 616:

"The court is of the opinion that the
secretary of state is not authorized
under the law to designate the newspaper
in each county to publish the initiative
and referendum petitions which are not
constitutional amendments.

"Therefore proposition No. 2, which is
an initiative petition, seeking to enact
a law for the pensioning of police in
certain cities, is not a law which the
secretary of state is authorized to
publish.

"Therefore the injunction will be made
permanent, restraining him from designa-
ting a newspaper in each county of the
state and the city of St. Louis for the
publication of the initiative petition."

The court further said at l.c. 617:

"The initiative and referendum amendment to our state Constitution was adopted at the general election held November 3, 1908. It now appears as section 57, art. 4, of the Constitution. It is unnecessary to lengthen this opinion further by quoting the amendment in full. It provides for the enactment of laws by the people independent of the Legislative Assembly by a vote upon measures submitted to them by initiative petitions and for the rejection of laws enacted by the General Assembly by a vote of the people upon referendum petitions. It also provides for amendment of the Constitution by use of the initiative. The only part of the amendment which need be quoted here is the last sentence, reading as follows:

"'Petitions and orders for the initiative and for the referendum shall be filed with 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.'

"When the initiative and referendum amendment to the Constitution was submitted to the people, and when it was adopted, the only legislative proposals submissible to the people for approval or rejection were amendments to the Constitution proposed by the General Assembly. Hence the only general laws then in force governing submission of such proposals to the people were the constitutional provisions and statutes in respect to the submission of proposed constitutional amendments.

"Section 2, art. 15, of the Constitution, provides for its amendment by submission to and adoption by the people of proposals of the General Assembly. Said section provides that:

"'The proposed amendments shall be published with the laws of that session, and also shall

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be published weekly in some newspaper, if such there be, within each county in the state, for four consecutive weeks next preceding the general election then next ensuing.'

"Clearly there must be a publication in each county of the full text of constitutional amendments.

"Under authority of section 2, art. 15, the General Assembly enacted what are now sections 4941 and 4942, R. S. 1919. The first portion of section 4941 is practically in the language we have quoted above from section 2, art. 15, of the Constitution. It provides in addition for the posting of copies of proposed constitutional amendments at each voting place upon the day of election for the information of voters. Section 4942 provides for designation by the secretary of state of the newspaper in each county in which the proposed constitutional amendments shall be published, and also provides the manner of paying for such publication.

"The foregoing constitutional and statutory provisions were the only general laws in force when the initiative and referendum amendment was adopted, which could have any bearing upon the question of whether or not initiative and referendum measures were required to be published in full in a newspaper in each county. As legislative proposals for amending the Constitution were then required to be published in a newspaper in each county, it seems clear that in submitting initiative and referendum measures the secretary of state was required, at that time at least, to make publication thereof in like manner.

"V. As section 57, art. 4, of the Constitution, authorizes legislation to provide for the submission of initiative and referendum proposals, it next becomes necessary to determine whether the General Assembly has undertaken to do away with the requirement of publication in full of such proposals in a newspaper in each county. Respondent so held.

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"In 1909 the General Assembly enacted what is now chapter 47 of the 1919 statutes. That part of section 5910 of said chapter, which bears upon the manner of submitting initiative and referendum measures and which is relied upon by respondent as a full, proper, and exclusive legislative provision for submitting such measures, and as legislation 'especially provided therefor,' is as follows:

"'When any measures shall be filed with the secretary of state, to be referred to the people thereof by the referendum petition, and when any measure shall be proposed by the initiative petition, the secretary of state shall forthwith transmit to the Attorney General of the state a copy thereof, and within ten days thereafter the Attorney General shall provide and return to the secretary of state a ballot title for said measure. The ballot title may be distinct from the legislative title of the measure, and shall express, in not exceeding one hundred words, the purpose of the measure. The ballot title shall be printed with the number of the measure on the official ballot. In making such ballot title the Attorney General shall, to the best of his ability, give a true and impartial statement of the purpose of the measure, and in such language that the ballot title shall not be intentionally an argument likely to create prejudice either for or against the measure.'

"Manifestly, it would be impracticable to print upon the ballots used by the voters at the election the full text of lengthy initiative and referendum measures. The Workmen's Compensation Law, enacted by the Fifty-Third General Assembly and approved by the people as a referendum measure at the November, 1926, election, fills more than thirty pages as it is printed in the 1927 Session Acts. Laws 1929, pp. 490-522. The necessity for some ballot title for such measures, in order to give information of the character and purpose of the measure to those voters who have not read the full text and as a ready and accurate means of identifying the

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particular proposal in the minds of those voters who have read the full text, would readily occur to the General Assembly. That is just what it seems to have undertaken to do by the language we have quoted from section 5910. It undertook to do nothing more than to provide for an official ballot title.

"The requirement of a ballot title is in no way inconsistent with and merely supplements the requirement that such proposed measures should be published in full in a newspaper in each county. The provision for a 'ballot title' does not relieve the secretary of state of the duty, in submitting initiative and referendum measures, to be guided by the general laws in force when the amendment was adopted. The requirement of publication was not rendered unnecessary nor made unlawful by an act of the General Assembly which, on its face, did not purport to make a different and certainly not an adequate provision for advising the voters of the nature and purpose of the proposed measure. Had the General Assembly provided that the voters should be advised of the nature of the proposal, for example, by posting a true copy thereof on the front door of the courthouse in each county or in some public place in each voting precinct, it might then reasonably be contended that the General Assembly had undertaken to provide for a manner of publishing such proposals different from that provided for publishing constitutional amendments proposed by the General Assembly. By merely requiring a ballot title, section 5910, R. S. 1919, purports to provide neither an especial nor an exclusive method of submission. If it did, such requirement would be of doubtful constitutional validity, to say the least, because the Legislature has no power to enact a provision in conflict with a constitutional provision or a requirement clearly implied therefrom. State ex rel. Elsas v. Workmen's Compensation Commission (Mo. Sup.) 2 S.W. (2d) 796, loc. cit. 801."

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Since the holding in the Westhues' case was based on the provision that the submission of a referendum was to be governed by general laws and the constitution requires publication of proposed constitutional amendments, the reasoning in such case requires that a law to be referred must be published in the same manner as a proposed constitutional amendment.

Section 11678, R. S. Missouri, 1939, provides as follows:

"The secretary of state shall designate in what newspaper in each county said proposed amendments shall be published, and the claim due the publisher of such newspaper for such publication and the costs of publishing the copies of the amendments hereinbefore provided for shall be certified by the secretary of state to the state auditor, who shall draw his warrant on the state treasurer therefor, payable out of any money in the treasury not otherwise appropriated."

Therefore, the Secretary of State designates the newspaper or newspapers in which the law, which is the subject of the referendum, is published. Section 11677, R. S. Missouri, 1939, provides as follows:

"All amendments proposed to the Constitution of the state of Missouri by the general assembly shall be published with the laws of the session at which they are proposed, and also in some newspaper, if such there be, in each county in the state for four consecutive weeks next preceding the general election then next ensuing, and two or more copies of such amendments, printed in great primer poster type, shall be posted at each voting place for the information of voters; such copies shall be furnished by the secretary of state to the county clerks of each county, who shall have the same duly posted at each voting place in his county on the morning of the election day on which said amendments are to be voted on."

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The quoted provision of Section 2, Article 12 of the Constitution, supra, supersedes the provisions of Section 11677, R. S. Missouri, 1939, since the provision relating to publication in two newspapers is inconsistent with such statute. House Bill No. 2060 of the Sixty-fifth General Assembly repeals and reenacts Sections 11677 and 11678, R. S. Missouri, 1939, but such House Bill cannot become effective until ninety days after sine die adjournment of the General Assembly under provisions of Section 29 of Article 13 of the Constitution, and Senate Concurrent Resolution No. 23, concurred in by the House, provides that sine die adjournment of the Legislature shall be on January 14, 1950. House Journal, Sixty-fifth General Assembly, page 2338. Therefore, such reenacted statutes will not be in effect before the special election to be held April 4, 1950.

CONCLUSION

It is the opinion of this Department that a law which is made the subject of a referendum election must be published in the same manner as proposed constitutional amendments are published; that such publication is governed by the provisions of Section 2, Article 12 of the Constitution of Missouri, 1945, and that the newspaper or newspapers in which publication is to be made are to be designated by the Secretary of State.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB/feh