

ELECTIONS: A referred act becomes effective on the date
REFERENDUM: of its approval by the vote of the people.

March 27, 1950



Honorable G. H. Bates
Director of Revenue
State of Missouri
Jefferson City, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department, reading as follows:

"The question has arisen in our department as to when H.C.S. for H.B. No. 185 would become effective should this proposition receive a favorable vote on April 4, 1950.

"In accordance with the decision rendered in the case of State ex rel. v. Commission, 318 Missouri 1004, 2 S.W. (2d) 796, I am ruling that 'A referred act becomes effective on the date of its approval by a vote of the people.'

"May I ask if your Department concurs in this ruling, and if not, please advise the date on which in your opinion the law would become legally effective."

Section 52, Article III, Constitution of Missouri, provides in part as follows:

"Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise."

In the case of State ex rel. v. Missouri Workmen's Compensation Commission, 2 S.W.2d 796, the Supreme Court handed down a decision as to the effective date of the Missouri Workmen's Compensation Act, which was referred to a vote of the people on November 2, 1926. The court quoted the statement of the case from the brief of counsel for the amicus curiae in that case, page 798, as follows:

"On November 2, 1926, at the biennial general election in Missouri, the electorate voted upon the Missouri Workmen's Compensation Law of 1925, which had been duly passed by the Legislature and approved by the Governor, and duly referred to the people under the provisions of section 57 of article 4 of the Missouri Constitution, and the provisions of chapter 47 of the Revised Statutes of Missouri 1919. On November 4, 1926, Marshall Elsas, while at work in the employ of the Montgomery Elevator Company at Kansas City, Mo., received injuries as a result of a fall from a ladder in an elevator shaft, from which he died on November 24th. Relator is his widow.

"On November 16, 1926, after a canvass of the official returns of the election and the certification of such canvass to the Governor of Missouri, by the secretary of state, in conformance with the provisions of section 5913, R. S. Mo. 1919, the Governor issued a proclamation declaring the law approved by the referendum held on November 2d."

"The Issue of Law in the Case.

"The question to be determined by this court is whether the Compensation Act became effective on November 2, 1926, the date of the referendum by which it was approved, or on November 16th, the date of the Governor's proclamation."

The court said, l.c. 801:

"The Constitution (section 57 of article

4) in plain and unambiguous terms says just when a referred law shall go into effect. It 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.'

"This statute (section 5913, R.S. 1919), relied upon by counsel, undertakes to make the date of the Governor's proclamation the effective date of the referred law. It undertakes to give force to the Governor's proclamation. In so far as this section undertakes to give the Governor, or any other person, the power to say when the referred law shall be the law of this state, it conflicts with the Constitution, and must fall.

"(9) That the lawmakers may fix a date for counting the votes, and a publication of the result by proclamation, is not questioned. This would not undertake to change the effective date of the referred law. Such would give to the public information of just what happened upon election day, but would not thwart the right to have the vote fix the effective date of the law, as plainly stated in the Constitution. Certain it is this constitutional provision confers no right upon the Governor to fix an effective date for a referred law.

"(10) Nor can we change the Constitution by mere force of our opinion, just because some hardships may be occasioned by following the Constitution. The Constitution may have made it hard upon a few litigants, where the accident occurred within a few days after the vote, but this is no reason to ask this court to rewrite the Constitution. Courts are not established for that purpose. The fixing of most any effective

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date might work some hardships."

It is to be noted that the provision of Section 57 of Article IV of the Constitution of Missouri, 1875, upon which the court based its decision, is substantially the same as the present provision found in Section 52, Article III, Constitution of Missouri, 1945, quoted supra.

It is, therefore, our view that the effective date of a referred law is the date upon which such law is approved by a majority of the votes cast on such measure.

CONCLUSION

It is the opinion of this department that an act referred to a vote of the people becomes effective on the date of its approval by a majority of the votes cast thereon.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General