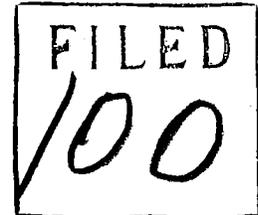


Opinion No. 437
Answered by Letter

December 1, 1961

Honorable Robert Young
Representative, First District
3500 Adie Road
St. Ann, Missouri



Dear Mr. Young:

This is in answer to your letter of recent date in which you state that you are requesting the opinion of the Attorney General regarding the question of whether or not a referendum on an ordinance of the town of Bridgeton, Missouri, is authorized upon a petition signed by certain residents of such city.

Section 49 of Article III of the Constitution provides as follows:

"The people reserve power to propose and enact or reject laws and amendments to the Constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided." (Emphasis ours)

The provisions of Section 52(a) of Article III of the Constitution pertaining to the referendum provide only for petitions for a referendum on laws passed by the General Assembly, and do not provide for a referendum on municipal ordinances. There is therefore no constitutional grant to the voters of municipalities of a right to refer ordinances of the municipalities to a vote of the people.

The principle that authorization must be found before a referendum can be held by a city on an ordinance enacted by such city is well established.

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In the case of Muehring v. School District, 28 N. W. 2d 655, the Supreme Court of Minnesota held that a referendum conducted without legal authority is of no legal effect. The Court said, 1. c. 658:

"Where there is no statutory authorization for submission of a question to the voters for their decision, such a submission by a public authority clothed with power with respect to the question submitted constitutes an unauthorized redelegation of delegated power. In such a case, because the voters lack power with respect to the question submitted and because the public authority lacks the power to confer it upon them, submission of the question to the voters is without legal effect, and their decision is in no way controlling or binding."

In the case of City of Mt. Olive v. Braje, 7 N. E. 2d 851, the Supreme Court of Illinois held that there must be authorization for a referendum before one can be held. The Court said, 1. c. 853:

"The legal voters of any such municipality have no inherent or constitutional right to require the governing body to submit any legislation to a referendum. Such requirements exist only by virtue of statutory provisions which the Legislature has the right to impose or withhold. The wisdom of requiring a question to be submitted under certain circumstances, and not under others, is a matter for legislative determination, and not for the courts."

The only cities in Missouri that are authorized to hold referendums concerning ordinances are those cities which have been granted statutory power to hold referendums regarding ordinances, or cities which are authorized by the charters of such cities

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to conduct referendums regarding ordinances.

We find no authority for the holding of a referendum in the provisions of the legislative act establishing the town of Bridgeton, such act being found at page 380, Laws of Missouri, 1842-43, approved by the Governor February 27, 1843. We do not find any statute enacted by the Legislature authorizing the town of Bridgeton to conduct a referendum upon an ordinance enacted by the city council of such city.

It is therefore our view that since there is no constitutional, statutory or charter authorization for the holding of a referendum in the town of Bridgeton, that no referendum can be held, even though a petition for a referendum is signed by certain residents of such city.

Yours very truly,

THOMAS F. EAGLETON
Attorney General