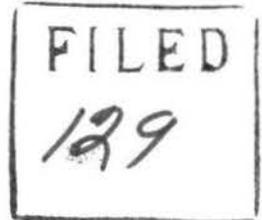


CONSTITUTIONAL LAW: Article XII, Section 2(b) of the Con-
INITIATIVE AND REFERENDUM: stitution of Missouri provides that
constitutional amendments proposed by
initiative shall be voted on at the next general election (more
than four months from the date of filing) or at a special elec-
tion called by the Governor prior thereto. The circulators of
the petition have no power to designate the date of the election
at which the amendment is to be voted. If an initiative petition
contains an election date, such petition is ineffective to autho-
rize the submission of the measure at a date later than the date
specified in the petition.

OPINION NO. 129

September 20, 1972

Honorable James G. Baker
State Representative
104 East 41st Street
Kansas City, Missouri 64111



Dear Representative Baker:

This is in response to your request for an opinion on the following questions:

- "1. In petitions seeking to invoke the power of initiative under 126.030 RSMo. can the circulators designate a special election at which shall be submitted an amendment to the constitution to the qualified voters of the state of Missouri, on a specific date that is binding?
- "2. In petitions seeking to invoke the power of initiative under 126.030 RSMo. are the circulators required to designate the specific date of the general election at which shall be submitted an amendment to the constitution to the qualified voter of the state of Missouri?
- "3. In petitions seeking to invoke the power of initiative under 126.030 RSMo. may the circulators word the petition so that the amendment to the constitution shall be submitted to the qualified voters of the state of Missouri, for their approval or

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rejection, at the first election, general or special, following four months after the date of the petition has been submitted to the Secretary of State of the state of Missouri?"

When amendments to the Constitution of the state are proposed by initiative, Article XII, Section 2(b) contains explicit direction as to when the election on the amendment is to be held. It provides:

"All amendments proposed by the general assembly or by the initiative shall be submitted to the electors for their approval or rejection by official ballot title as may be provided by law, on a separate ballot without party designation, at the next general election, or at a special election called by the governor prior thereto, at which he may submit any of the amendments. . . ."

Nowhere does the Constitution provide for the circulators or signers of a petition to designate the date of the election of which the proposed amendment is to be submitted to the voters.

Section 126.030, RSMo 1969 was repealed by Laws 1971, Senate Bill No. 56. However, a new section was enacted by Senate Bill No. 56 which is now Section 126.031, RSMo Supp. 1971. That section contains a suggested form for petitions which is substantially similar to the form set out by the repealed Section 126.030. Section 126.031, RSMo Supp. 1971, provides:

"The following shall be substantially the form of petition for any law or amendment to the Constitution of the state of Missouri proposed by the initiative:

Congressional District No. _____

Sheet No. _____

It is a felony for anyone to sign any initiative or referendum petition with any other name than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a qualified voter.

INITIATIVE PETITION

Honorable James G. Baker

To the Honorable _____, Secretary
of State for the state of Missouri:

We, the undersigned, citizens and qualified voters of the state of Missouri and the _____ congressional district, respectfully demand that the following proposed law (or amendment to the constitution, as the case may be) shall be submitted to the qualified voters of the state of Missouri, for their approval or rejection, at the general (special) election to be held on the _____ day of _____, A.D. 19____, and each for himself says: I have personally signed this petition; I am a qualified voter of the state of Missouri, and the _____ congressional district; my street address and the name of the city, town or village where I live are correctly written after my name.

Name _____, street address _____,
city, town or village _____ Zip code _____.

(Here follow numbered lines for signatures.)"

In view of the fact that Article XII, Section 2(b) contains expressed provision as to the date of the election at which the proposed constitutional amendment is to be submitted to the voters, we believe the General Assembly has no power to designate a different manner to determine the date of election at which the proposition is to be submitted to the voters. Consequently, any provision in Section 126.031, RSMo Supp. 1971 which could be interpreted as permitting the circulators or signers of the petition to select the election at which the proposed amendment is to be voted on is void as being contrary to Article XII, Section 2(b) of the Constitution.

Your attention is directed to Opinion No. 440, 1970, where this office held:

"We understand that the petitions which occasioned this particular inquiry state that the proposition, which the petitioners sought to have submitted to the electorate, was to be voted on at the November 3, 1970 general election or at a special election to be called by the Governor. Under Article XII, Section 2(b), the Governor could only call a special

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election prior to the general election held on November 3, 1970 to vote on the proposed amendment. Therefore, we interpret the reference to a special election called by the Governor on the petitions to refer to a special election called before November 3, 1970. Consequently, it appears that the signers of the petitions contemplated that the proposition would be submitted to the voters on or before November 3, 1970. Inasmuch as the signers of the petitions, as is evident from the face of the petitions, did not intend to have the proposition submitted any later than November 3, 1970, those petitions are ineffective as petitions proposing a constitutional amendment at some election after the general election held on November 3, 1970."

Thus, while the circulators or signers of a petition proposing a constitutional amendment have no power to designate the date of the election at which the amendment is to be voted on, that designation will be taken as an expression of intent by the signers of the petition to have the proposed amendment submitted to the electorate on, or before, the date therein designated and such petition is ineffective to cause the matter to be voted on at a later time.

Article III, Section 50 of the Constitution provides in part: "Every such petition shall be filed with the secretary of state not less than four months before the election . . ." Thus a petition filed with the Secretary of State less than four months before a general election is ineffective to cause the proposed amendment to be voted on at that next general election. To harmonize the four month provision of Article IV, Section 50 with the requirement of Article XII, Section 2(b) that the proposed amendment is to be voted on at the next general election requires that the reference to the next general election in Article XII, Section 2(b) be read as referring to the next general election at which the amendment may be voted on. Therefore if a petition is filed less than four months before a general election, the proposition is to be voted on at the general election next following the general election which will occur less than four months after filing unless submitted at a special election designated by the Governor more than four months after filing with the Secretary of State.

To specifically answer your questions:

1. Circulators of a petition proposing a constitutional amendment have no power to designate a special election at which

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the proposed amendment is to be submitted since Article XII, Section 2(b) places the power to call a special election to consider a proposed constitutional amendment solely in the hands of the Governor.

2. The circulators of a petition proposing a constitutional amendment are not required to designate the specific date of the general election at which the amendment is to be submitted to the voters since the date of the general election at which the proposition is submitted is determined by the date the petition is filed.

3. There is no need to word a petition to provide that the amendment to the Constitution shall be submitted to the qualified voters of the State of Missouri at the first election, general or special, four months after the petition has been submitted to the Secretary of the State of Missouri, for the reason that the proposition will be submitted at the first general election four months after the proposition has been filed with the Secretary of State, unless the Governor designates a special election prior thereto; and the circulators have no power to designate a date for a special election.

CONCLUSION

It is, therefore, the opinion of this office that Article XII, Section 2(b) of the Constitution of Missouri provides that constitutional amendments proposed by initiative shall be voted on at the next general election (more than four months from the date of filing) or at a special election called by the Governor prior thereto. The circulators of the petition have no power to designate the date of the election at which the amendment is to be voted. If an initiative petition contains an election date, such petition is ineffective to authorize the submission of the measure at a date later than the date specified in the petition.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Charles A. Blackmar.

Very truly yours,



JOHN C. DANFORTH
Attorney General