ELECTIONS:
CONSTITUTIONAL LAW:

A law calling for an election on the question of whether or not to hold a constitutional convention may be enacted by initiative.

OPINION NO. 22

March 9, 1973

FILED
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Honorable Harold Reisch
Representative, District 110
Room 203B, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Reisch:

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

> "Can the proposition of calling a constitutional convention be placed on an election ballot by the power of initiative?"

Article XII, Section 3(a) of the Missouri Constitution provides in part:

> "At the general election on the first Tuesday following the first Monday in November 1962, and every twenty years thereafter, the secretary of state shall, and at any general or special election the general assembly by law may, submit to the electors of the state the question 'Shall there be a convention to revise and amend the constitution?' . . ."

Thus, it may be seen that the question of having a convention to revise and amend the Constitution is submitted to the electorate as a matter of course once every twenty years; and also that the question may be submitted to the electorate at a general or special election by "the general assembly by law."

Your question is whether or not the power of initiative may be utilized to submit the question of a constitutional convention to the electorate.

Article III, Section 49 of the Constitution provides:

> "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."

The limitations on the power of initiative are contained in Article III, Section 51. There it is provided that:

> "The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution. . . ."

Nowhere does the Constitution specifically prohibit the submission of the question by initiative of whether or not a law is to be enacted requiring an election on the question of holding a constitutional convention. Examination reveals that the Constitutional Debates of the 1945 Constitutional Convention are silent on the question of whether the phrase "the general assembly by law" found in Article XII, Section 3(a), relating to a constitutional convention was intended to limit such a law to a law passed by the general assembly as opposed to a law enacted by initiative.

In the case of State ex rel. Lashly v. Becker, 235 S.W. 1017 (Mo. banc 1921), the court observed with respect to the constitutional amendment to the 1875 Constitution granting the people the power to initiate legislation:

> "This amendment authorizes the people to initiate laws, yet no court would hold that they could initiate a valid law, if such law was opposed to any reservation of power, or restriction of legislative power, contained in the Constitution at the adoption of the amendment. See the Oregon cases supra, both of which were before we adopted our amendment. The framers of the amendment had no such intent, and their intent must clearly appear from the documents. If they initiated and voted a law lending the state's credit 'to any person, association or corporation,' we would have to hold such law void, as violative of section 45 of article 4. So throughout the restrictions upon legislative power or authority. The sole idea was to centralize legislative authority or power in a given and single forum, so that the referendum and initiative rights of the people would be preserved. They

> did not intend, nor do thoughtful people think, that they intended to utterly destroy the reservations and restrictions of the document that they were amending. As said, their purpose was to center all legislative power or authority (as we have defined it supra) in one single legislative forum, so that they could invoke either the referendum or the initiative. That forum they made the General Assembly. . . ." 235 S.W. at 1021-1022

Article IV, Section 5 of the 1875 Constitution prohibiting the grant of public credit to private individuals, as well as the successor provision in the present Constitution, Article III, Section 39, begin respectively, "The general assembly shall have no power" and "The general assembly shall not." Neither provision expressly prohibits such laws by initiative. However, from the quoted language from the Lashly case above, it is apparent that the restriction in those provisions applies equally to the power of initiative as it does to the power of the general assembly.

Similarly, the Supreme Court in State ex rel. Gordon v. Becker, 49 S.W.2d 146 (Mo. banc 1932) indicated that the people had authority to enact legislative districts by initiative although the Constitution placed this duty in the general assembly.

We believe those two cases taken together indicate that the people's power to enact legislation by initiative, except when restricted by the express provisions of Article III, Section 51, is as broad as the general assembly's power to enact laws. Therefore, we do not read the language in Article XII, Section 3(a) providing "the general assembly by law" as precluding such a law from being enacted by initiative.

CONCLUSION

We are of the opinion that a law calling for an election on the question of whether or not to hold a constitutional convention may be enacted by initiative.

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

Yours very truly,

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Attorney General