

REFERENDUM: Special election for referendum vote on bills  
ELECTIONS: which passed in the 65th General Assembly and  
for which referendum petitions have been  
presented may be ordered.

September 27, 1949

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Honorable Forrest Smith  
Governor of Missouri  
Jefferson City, Missouri

Dear Sir:

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

"I would like to have an opinion from your department as to whether the Legislature will have the authority to call a special election to vote on House Committee Substitute for House Bill No. 185, if sufficient referendum petitions are filed with the Secretary of State within the proper time.

"I am informed that the petitions currently being circulated, calling for a referendum election on House Committee Substitute for House Bill No. 185, provide that such referendum election is to be held at the state election, November 7, 1950."

Section 52(b) of Article III of the Constitution of Missouri, 1945, provides, in part, as follows:

" \* \* \* All elections on measures referred to the people shall be had at the general state elections, except when the general assembly shall order a special election. Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise. \* \* \*"

It is to be noted that the quoted portion of Section 52(b) of Article III of the Constitution provides that the General Assembly shall have power to order a special election on measures referred to the people. In the case of *Libby vs. Olcott*, 134 Pac. 13, the Supreme Court of Oregon

en banc, in a case where an action was brought against the Secretary of State of Oregon to prevent the Secretary from proceeding with his duties in connection with a special election where measures referred to the people were to be voted upon, said, l.c. 14 and 15:

"By the act of February 28, 1913 (Laws 1913, p. 620), the legislative assembly passed a law providing that 'there shall be held a special election in the several voting precincts of this state on the first Tuesday after the first Monday in November, 1913. All measures passed by the twenty-seventh legislative assembly of the state of Oregon upon which the referendum may be invoked shall be submitted to the people for their approval or rejection at such special election.' In substance, the act in general terms made the present law for general elections applicable to that election, provided for filing arguments for or against the laws referred, printing the official pamphlet relating thereto, and mailing the same, together with an appropriation for \$12,000 to carry the act into effect, and declared an emergency. \* \* \* \*

\* \* \* \* \*

"The plaintiff's first reason for his opposition is that the election is ordered without stating upon what measures the vote will be taken, and because no petitions for the reference of laws to the people were pending at the passage of the act. To the first reason the second is closely allied. It is that the electorate is to be called upon to approve or reject only laws passed at the 1913 session of the legislative assembly. He argues that before the referendum can be directed, there must be some valid enactment in being that may be the subject of that prerogative of the people. It may be noted that both of the acts specifically mentioned in the complaint, and against which referendum petitions are alleged to have been filed, were passed before the law assailed in this suit.

Immediately upon their enactment they became proper subjects for the exercise of the referendum, subject to the condition that the petition against them be filed with the Secretary of State not later than 90 days after the final adjournment of the Legislature adopting the measure. We are not informed by the complaint that any other measure attacked by the referendum was not passed prior to the act in question. Construing the pleading against the pleader, we presume there is none. It is plain, therefore, that there was then in existence material upon which the referendum might operate. The act clearly designates them, not as laws thereafter to be passed, but in the words 'all measures passed by the twenty-seventh legislative assembly of the state of Oregon upon which the referendum may be invoked.' \* \* \* \* Summing up then as to the first two objections, we hold that the act sufficiently states the measures upon which a vote will be so taken, that there was then actual material in existence subject to the referendum, and that it was competent for the Legislature to provide for the referendum of its own measures only. \* \* \* \* \*

"According to the complaint, the head and front of the Legislature's offending is that it has called a special election for the decision of possible referendums. The essence of the controversy rests in the right or wrong of that action as determined by the standards of the Constitution. This properly brings us to a consideration of the plaintiff's third and principal objection. It is, in substance, that the act diminishes and attempts to pervert and destroy the referendum power reserved to the people. Section 1, art. 4, of the Constitution declares in part as follows: 'The legislative authority of the state shall be vested in a legislative assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or

reject at the polls any act of the legislative assembly. \* \* \* The second power is the referendum, and it may be ordered, \* \* \* either by the petition signed by five per cent. of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. \* \* \* ' In this section the people have declared their will on the subject in hand. By it they have vested legislative authority primarily in the legislative assembly with the reservations noted. Given a referendum ordered by the petition of voters, or by an act of the Legislature passed as other bills are enacted, the people saw fit to make a declaration about when such a question should be decided. On this point they said that 'all elections on measures referred to the people of the state shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election.' This language must be construed as part of the general scheme outlined in that section of the Constitution. It qualifies the reservation of power by the people which they call the referendum. To the legislative assembly they have committed the authority to call special referendum elections. Whether it fetters or facilitates the exercise of that reserved prerogative does not concern us. It exists. It is the voice of the people themselves which we must heed, and to which we must give effect. What is the essence of the referendum? It is the right to approve or reject at the polls any act of the legislative assembly. The people themselves



have shortened the period within which its exercise may be invoked to 90 days after the final adjournment of the session of the Legislature at which the contested measure was enacted. The law in question does not purport to disturb this element of the people's power. Neither does it in the least essay to abridge the right of any legal voter to approve or reject any measure referred. The right to appoint a special election might properly be ascribed to the legislative authority vested primarily by the people in the legislative assembly; but the people have gone further, and in almost express terms have given their representatives permission to call such elections."

At present, House Bill No. 185 has been enacted. Therefore, under the holding in the Olcott case, supra, a special election at which such law may be referred can be validly enacted. While it is true that in the case of State ex rel. vs. Becker, 289 Mo. 660, the Supreme Court of Missouri rejected the holding of the Supreme Court of Oregon, insofar as the conclusiveness of an emergency clause in a law was concerned, we believe that the holding of the Supreme Court of Oregon is entitled to great weight and is persuasive in this matter. Since the quoted portion of Section 52(b) of Article III of the Missouri Constitution was taken from the Oregon referendum provision, the only difference in the two provisions is that where the Missouri statute provides "general state elections," the Oregon section (Article 4, Section 1) provides "biennial regular general elections."

In the case of State ex rel. vs. Hall, 197 N.W. 687, the Supreme Court of North Dakota said, in an action against the Secretary of State to restrain such Secretary from submitting to the electors certain legislative measures, at l.c. 688:

"The facts necessary to be stated are: The last Legislative Assembly enacted chapter 204, S.L. 1923, relating to partisan elections, chapter 205, Laws 1923, relating to nonpartisan elections, chapter 208, Laws 1923, relating to a party central committee, and section 2 of chapter 300, Laws 1923, relating to bank stock taxes. Each of these acts was adopted without any emergency clause. On May 31, 1923, and before these acts became

effective as laws, referendum petitions signed by more than 7,000 electors of the state were filed for the purpose of referring these acts to a vote of the electors. The referendum petitions designated the general election to be held on the 4th of November, 1924, as the date of the referendum election for such laws. On January 30, 1924, the Governor called a special election for the purpose of submitting to the voters of the state the legislative acts thus made subject to the referendum petitions, to be held on March 18, 1924. This date is the date for holding the presidential preference primary election. Under article 26 of the Constitution, as adopted by the people in 1918, and ratified by the Legislature in 1919 (see Laws 1919, p. 503), the power of the people to cause a referendum of legislative acts for the vote of the electorate is specifically reserved. This article permits 7,000 electors at large, by referendum petitions, to suspend the operation of any measure enacted by the Legislature, except an emergency measure. It provides that each measure--

"referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the Secretary of State and shall be voted upon at any state-wide election designated in the petition, or at any special election called by the Governor." (The italics are ours.)

"Further, this article provides:

"If a referendum petition is filed against an emergency petition, such measure shall be a law until voted upon by the electors. And if it is then rejected by a majority of the votes cast thereon, it shall be thereby repealed. Any such measure shall be submitted to the electors at a special election if so ordered by the Governor or if the referendum petition filed against it shall be signed by thirty thousand electors at large. Such

special election shall be called by the Governor and shall be held not less than one hundred nor more than one hundred thirty days after the adjournment of the session of the Legislature.'

"In substance, the petitioner contends that the Governor has no power to call a special election upon acts, not emergency acts, made subject to referendum petitions when petitioning electors have designated in the referendum petitions a particular time for submission of the acts at a state-wide election; that the Governor has the power to call a special election only upon referendum petitions that affect emergency measures concerning which special authority is granted and special duties are imposed upon him.

"On the oral argument it was urged that, if the Governor, regardless of the date selected by the referendum petitions, possessed this independent power to call a special election upon acts not emergency measures, he might practically annul the constitutional provision by postponing the time of a special election after the time designated by the petitioning electors, and, besides, might wholly defeat or abrogate the power granted to the petitioning electors to fix the time for holding a state-wide election upon acts so referred.

"The precise question presented upon this appeal is whether the Governor has the power, pursuant to the constitutional provisions quoted, to call a special election in advance of the time designated by petitioning electors in referendum petitions. In answering this question, we are clearly of the opinion that the language of the constitutional provisions and intent thereof, considered in connection with the cognate law, contemplated and gave the power to petitioning electors to designate in referendum petitions a time when referred acts, not emergency measures, might be submitted to the electors at any state-wide election, and also gave to the Governor the power to accelerate the time of holding an election

upon such referred measures by calling a special election. These alternative powers so granted to the petitioning electors and to the Governor are consistent with the fundamental theory of checks and balances, and act as checks one upon the other, so that the petitioning electors, if they so desire, may fix the time beyond which such election may not be deferred, and, on the other hand, so that the Governor, if in his judgment the exigencies of the situation so require, may accelerate the time designated by calling a special election."

It is obvious that the special election ordered by the Legislature has no effect upon any act which is referred to the people by sufficient petitions, but has the effect only of accelerating the time when the people may approve or reject such act. There can be no vested right acquired in the time a referendum election is to be held, the only effect of the filing of the referendum petitions being to suspend the operation of the law until such time as the people may exercise their right to adopt or reject the law.

#### CONCLUSION

It is the opinion of this department that under the provisions of Section 52(b) of Article III of the Constitution of Missouri, 1945, the General Assembly has the power to order a special election at which House Bill No. 185 of the 65th General Assembly may be referred to vote of the people if sufficient referendum petitions are filed with the Secretary of State within the time limit set by the Constitution.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

CBB:VLM