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CONSTITUTIONAL LAW: Power of Initiative.

INITIATIVE: Authority of legislature over initiative petition.

LEGISLATURE: Power over initiative petition.

REFERENDUM: Effect on initiative petition enacted into law.

TEACHERS' TENURE: Mandatory tenure proposed by initiative petition.

An initiative petition proposing mandatory tenure is not subject to the rules of the Senate and House of Representatives.

Where the legislature enacts an initiative petition into law the initiative petition is not subject to referendum unless the power of referendum is invoked by the people pursuant to Article II, Sec. 9 of the Michigan Constitution of 1963.

An initiative petition enacted into law by the legislature can be amended by the legislature at a subsequent legislative session.

Before the legislature may propose a different measure upon the same subject for approval or rejection by the electors, it must reject the initiative petition.

In the event that the legislature rejects the initiative petition and wishes to propose a different measure upon the same subject, the legislature must act on both within the 40 day period as specified by the people in Article II, Sec. 9 of the Michigan Constitution of 1963.

No. 4303

March 6, 1964.

Hon. William G. Milliken
State Senator
Lansing, Michigan

On March 5, 1964 you conferred with the Assistant Attorney General in charge of the Education Division of this office, concerning the initiative petition proposing the enactment of a mandatory tenure law filed with the Secretary of State and transmitted to the legislature by that officer on January 8, 1964. Also present at this conference were Senators Frederic Hilbert and Robert VanderLaan. At this conference a number of questions were asked for legal opinion by this office. Your questions are answered seriatim:

1. Is the initiative petition for mandatory tenure pending presently before the Michigan legislature, a bill which is subject to the rules of the Senate and the House of Representatives?

The people have reserved to themselves the power to enact laws under the initiative power, pursuant to Article II, Sec. 9 of the Michigan Constitution of 1963. This portion of the Michigan Constitution provides in pertinent part as follows:

"Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

"If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

"Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail."

The people have conferred the legislative power upon the Senate and House of Representatives pursuant to Article IV, Sec. 1 and have mandated that "all legislation shall be by bill," in accordance with Section 22 of Article IV.

The language of the Michigan Constitution is abundantly clear. A law proposed by the people through initiative petition is not a bill pending before the Michigan legislature. Therefore, such petitions are not subject to the rules of the respective houses of the legislature. However, each house of the legislature may, if it desires, send such proposal to a committee for recommendation that the initiative petition be enacted or rejected. See Opinions of the Attorney General, 1925-1926, page 112. When returned to the floor, the Constitution requires that by a yea and nay vote upon a roll call the members of each house act upon the petition to approve or reject it without change.

Therefore, in answer to your first question, the petition for mandatory tenure presently pending before the Michigan legislature is not subject to the rules of the Senate and the House of Representatives.

2. If the legislature should enact the initiative petition for mandatory tenure, must such law be submitted to the electorate at the next general state election to be held in accordance with Article II, Sec. 5 of the Michigan Constitution of 1963?

A plain reading of Article II, Sec. 9 of the Michigan Constitution of 1963 compels the conclusion that an initiative petition enacted into law by the legislature is not subject to referendum unless the power of referendum is invoked by the people pursuant to Article II, Sec. 9. The legislature is without constitutional authority to order a referendum by placing the law

enacted under Article II, Sec. 9 of the Michigan Constitution on the ballot subject to ratification by the people.

3. If the legislature enacts an initiative petition into law, can the legislature amend the law at a subsequent legislative session?

It is clear from Article II, Sec. 9 of the Michigan Constitution of 1963 that an initiative petition which is rejected by the legislature, in accordance with the Constitution and approved by the electors, is subject to amendment only by vote of the electors except where the initiative petition provides otherwise, or by three-fourths of the members elected to and serving in each house of the legislature, as expressly provided by the people.

The people have not imposed similar restrictions upon a law enacted by the legislature in response to initiative petitions filed with that body under Article II, Sec. 9. It must follow that the initiative petition enacted into law by the legislature in response to initiative petitions are subject to amendment by the legislature at a subsequent legislative session. It is equally clear that the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963.

4. Must the legislature accept or reject an initiative petition proposal before it can adopt a substitute proposal?

In response to this question, the language of Article II, Sec. 9 of the Michigan Constitution of 1963 is clear and unambiguous. The legislature must reject the law proposed by initiative petition before it can propose to the people a different measure upon the same subject. The people have mandated that there be a yea and nay vote upon separate roll calls for each proposal.

There appears to be no restriction in the Constitution which would prevent the legislature from considering a substitute proposal in accordance with the rules of each house of the legislature. However, the legislature must comply with the mandatory time limit of 40 days prescribed by the people both as to enacting or rejecting the initiative petition. In the event of a rejection of the initiative petition, the legislature, if it wishes, may enact a different proposal on the same subject matter but within the 40 day limit. *Leininger v. Secretary of State*, 316 Mich. 644 (1947). The people in ordering separate roll call votes by yeas or nays on each measure make this crystal clear.

It must be observed that in the event the legislature approves the law proposed by initiative petition, the Governor has no veto power over such approval.

By express language the people have proscribed the authority of the Governor over laws to be enacted under the initiative power reserved in the people as set forth in Article II, Sec. 9.

The Constitution contemplates that each house of the legislature, by recorded vote, act upon the initiative petition to enact or reject it. Since the people have withheld authority in the legislature to change the terms of the initiative petition proposed to be enacted into law, the vote to enact or reject the initiative petition must be on the petition as submitted by the people.

In effect, the legislature enacts or rejects the initiative petition by resolution of each house of the legislature. See *Decher v. Secretary of State*, 209 Mich. 565 (1920).

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CONSTITUTIONAL LAW: Investment of pension funds in corporate stock.

RETIREMENT SYSTEMS: Investment of retirement funds.

Funds accumulated to provide retirement or pension benefits for public officials and employees may be invested in the stock of any company, association or corporation as authorized by the legislature by statute.

No. 4218

March 13, 1964.

Hon. Robert E. Waldron
State Representative
The Capitol
Lansing, Michigan

Article IX, Sec. 19 of the Michigan Constitution of 1963, provides in pertinent part as follows:

"The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, *except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; * * *.*" (Emphasis supplied)

You ask whether the language "as provided by law," found in Article IX, Sec. 19 of the Michigan Constitution of 1963, means statutes enacted by the state legislature.

You indicate in your letter that some retirement systems are provided for by the charters of municipal corporations. The charter of a city is the fundamental law of the city. *Mayor of City of Dearborn v. Dearborn Retirement Board of Trustees*, 315 Mich. 18 (1946).

Implicit in your inquiry is the question whether the charter of a municipal corporation is a "provision of law" as intended by the people in Article IX, Sec. 19 of the Michigan Constitution of 1963.

Thus, it may be concluded that the language "provided by law," found in Article IX, Sec. 19 of the Michigan Constitution of 1963 is not entirely clear in its meaning.

The object of construction of the Constitution is to ascertain and give effect to the intent of the people in ratifying the Constitution. *City of Jackson v. Commissioner of Revenue*, 316 Mich. 694 (1947).

Where the language in the Constitution is unclear, resort may be had to the debates of the framers. *Kearney v. Board of State Auditors*, 189 Mich. 666 (1915).