

January 25, 1950

Wesley Bolin, Secretary of State  
Capitol Building  
Phoenix, Arizona

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**ARIZONA ATTORNEY GENERAL**

Dear Mr. Bolin:

We have your letter of January 12 stating:

"The files and records in this office disclose that House Concurrent Resolution No. 10, proposing an amendment to subsection (2), section 1, part 2, article IV, Constitution of Arizona was passed by a majority of each house of the legislature in the Eighteenth Legislature, Regular Session. Such files and records disclose further that this measure was not submitted to the vote of the people of Arizona at the general election held in the year 1948, as provided by article 21, Constitution of Arizona.

I would appreciate your opinion as to whether or not, notwithstanding the failure to submit the amendment proposed by House Concurrent Resolution No. 10 at the 1948 general election, I may or should submit the same to the vote of the people of Arizona at the general election to be held this year".

The question you asked was before our Supreme Court in the case of Sims Printing Co. v. Frohmiller, 54 Ariz. 64, 92 P. 2d 334.

The Sims case was a mandamus proceeding to compel the auditor to pay certain charges for printing measures which should have been submitted at the 1936 election, but which was not submitted then because of the fault of the Secretary of State. The Secretary of State then attempted to submit the measure at the 1938 election. In disposing of the case the Court quoted subdivision 10, section 1, Article 4 of the Arizona Constitution, which reads as follows:

"(10) When any Initiative or Referendum petition or any measure referred to the people by the

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Legislature shall be filed, in accordance with this section, with the Secretary of State, he shall cause to be printed on the official ballot at the next regular general election the title and number of said measure, together with the words "Yes" and "No" in such manner that the electors may express at the polls their approval or disapproval of the measure.' (Italics ours.)"

and there held:

"Subdivision (5) makes it imperative to submit the legislation proposed by the people for their vote, and subdivision (10) fixes the time of such submission, which is 'at the next regular general election'. If this constitutional provision had been complied with, the 1936 proposed legislation would have been submitted at the general election in November of that year. The provisions of the Constitution are mandatory, unless by express words they are declared to be otherwise. Article 2, sec. 32. We conclude that the Constitution means what it says and that the secretary of state was without power or authority to submit the 1936 proposed legislation by the people at the 1938 regular general election, and therefore he had no right to incur the expense for the publication of such proposed legislation."

Under the decision in the Sims case it is our opinion you cannot legally submit the proposed measure to the electors at the general election to be held this year.

Yours very truly,

FRED O. WILSON, Attorney General

EARL ANDERSON, Assistant Attorney General