

*Yes
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January 30, 1952
Op. No. 30

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Ray Langham
Speaker of the House of
Representatives
State Legislature
Capitol Building
Phoenix, Arizona

Dear Mr. Langham:

We have your request for an opinion on the following question:

Does the Legislature have the legal authority to submit to a vote of the people the question of the repeal of a law enacted under the initiative provisions of our Constitution?

The question you ask has not been directly passed on by our Supreme Court and we have found only a few decisions from other jurisdictions bearing on it.

Section 1, Part 1, Article 4, of our Constitution provides:

"(Initiative and referendum.)--(1)
(Legislative authority.) The legislative authority of the state shall be vested in a legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act,

long as such legislation is not prohibited by the State or Federal Constitutions. South Dakota's Constitution is similar to the above quoted sections of our Constitution and in State ex rel Wagner, 144 N.W. 730; 50 L.R.A. N.S. 206 (S.D.) the court said:

"Judge Cooley in his work on Constitutional Limitations, 7th ed. pp. 126-128, says: 'In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specifically defined legislative powers, but is intrusted with the general authority to make laws at discretion.' "

In that case the court said under this power the legislature had the right to refer a measure to the people independent of constitutional authorization. The court said:

"The object of the constitutional amendment, as well as its effect (so far as concerns the referendum), was not to grant the power to the legislature to authorize the referendum. The legislature already had that power. * * * "

Our Constitution, Sections 1 and 2, supra, does not take away the right of the legislature to refer a measure, it merely grants to the people the right to refer legislative acts and adds the legislature may do likewise, but it already had this power under the case above cited. Nowhere in our Constitution is there a

prohibition against referring an initiated law to the people for final action.

Under Section 6, supra, a limitation is placed on the legislature in that the body may not repeal or amend an initiated or referred measure. A submission to the voters of the question of a repeal of such a measure is not a repeal. It merely submits to the same body (the voters) the right to repeal the act, and it is not repealed until the voters determine that question at an election. If the framers of the amendment to the Constitution had intended that an initiated measure could be repealed only upon an initiated petition they would have used language to that effect. In Stetson v. City of Seattle, 134 Pac. 494 (Wash.), the court considered a provision in the city charter of like effect as said Section 6 in connection with a referral by the council of a referred ordinance. The court held the council had the right to refer the ordinance to the voters, notwithstanding it had been approved by the voters at an election. The court said:

" * * * We think the charter, as taken as a whole, must be held to mean that a referendum ordinance cannot be altered, or repealed by any less authority than that which called it into being. We do not question the right of the council to pass any amendatory or repealing ordinance as the charter is now framed, but we believe that it should be referred to the people under the simple referendum."

This case was followed in State v. Seattle, 48 Pac. 2d 602 (Wash.).

In the case of State v. Superior Court, 131 Pac. 2d 983 (Ariz.) we find a statement which might indicate a contrary rule. The court said:

" * * * While a legislative act may be repealed by a subsequent legislature, an initiated measure, once adopted, can only be repealed in the same manner in which it was adopted. * * * "

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The language used was unnecessary to a decision in that case and was probably dicta. We think the statement was a loose expression of the writer and he meant an initiated measure could only be repealed by the voters. We don't think he meant the same formal procedure as was followed in enacting the law would have to be followed to repeal it.

It is our opinion the legislature has the inherent power to refer to the voters the question as to whether an initiated measure will be repealed. Your referral does not of itself repeal the law.

Yours truly,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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