

OFFICE OF
ATTORNEY GENERAL

SCOTT WHITE
SECRETARY OF STATE

STATE CAPITOL
PHOENIX, ARIZONA

JUNE 27, 1930.

Hon. I. P. Fraizer,
Secretary of State,
Phoenix, Arizona.

My dear Mr. Fraizer:

This will acknowledge receipt of your inquiry of June 19, 1930, requesting the opinion of the Attorney General upon the questions put in your letter.

In view of the fact that the questions asked are numerous, and in order that my opinion in reference to the answers thereto may be followed more easily, I will state your questions again, together with the answer immediately following each question:

1. Kindly advise the last date and hour that nominating petitions of candidates for state offices may be filed in the office of the Secretary of State.

- A. Section 100, R. C. A., 1928, reads as follows:

"#100. OFFICE HOURS. Unless otherwise provided by law every officer shall keep his office open for the transaction of business from ten o'clock a. m. until four o'clock p. m. each day except holidays."

I am of the opinion that the Secretary of State need not open his office until 10 a. m. and is not required to keep his office open after 4 p. m. The Secretary of State is not required to receive nominating petitions after 4 p. m. of the last day within which nominating petitions may be filed, provided he has closed his office at 4 p. m. If he chooses to keep his office open he may do so and may lawfully receive petitions until 12 p. m. of the last day within which nominating petitions might be filed. In the event that he decides to keep his office open after 4 p. m. he must receive petitions so long as the office is open.

2. What is the last day and hour that initiated laws and constitutional amendments may be filed?

- A. Your attention is directed to Article IV, Section 1, (4) of the Arizona Constitution, which reads as follows:

"(4) All petitions submitted under the power of the Initiative shall be known as Initiative Petitions, and shall be filed with the Secretary of State not less than four months preceding the date of the election at which the measures so proposed are to be voted upon. All petitions submitted under the power of the Referendum shall be known as Referendum Petitions, and shall be filed with the Secretary of State, not more than ninety days after the final adjournment of the session of the Legislature which shall have passed the measure to which the Referendum is applied. The filing of a Referendum Petition against any item,

section, or part of any measure shall not prevent the remainder of such measure from becoming operative."

The Constitution above quoted requires that the petitions be filed "not less than four months preceding the day of the election". The word "month" as used here means calendar month. Section 3040 (4) R.C.A. 1928. The words "not less than four months" means that four full calendar months must intervene between the day of the filing of the petition and the day of the election.

The answer to question No. 1, as to the last hour upon which the petition may be filed, is applicable to the filing of initiative measures.

3. What constitutes a sufficient legal signing of initiative petitions or constitutional amendments filed in the office of the Secretary of State to justify its being counted and accepted?

A. Your attention is directed to Article IV, Section 1 (9) of the Arizona State Constitution, which defines the form and jurisdictional facts that must appear in every initiative petition. This section reads in part as follows:

"Every Initiative or Referendum petition shall be addressed to the Secretary of State in the case of petitions for or on State measures, and to the clerk of the Board of Supervisors, city clerk, or corresponding officer in the case of petitions for or on county, city or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the State (and in the case of petitions for or on city, town, or county measures, of the city, town, or county affected), his postoffice address, the street and number, if any, of his residence, and the date on which he signed such petition."

4. In construing the statutes governing the filing of initiative petitions and constitutional amendments, please define a "qualified elector".

A. Your attention is directed to Section 1160 R.C.A. 1928, which defines the word "elector". This section reads as follows:

"§1160. QUALIFICATION OF ELECTORS.
Every citizen of the United States, of the age of twenty-one years or over, who shall have become a resident of the state one year next preceding the election, and of the county and precinct in which he claims the right to vote, thirty days, and who, not being prevented by physical disability from so doing, is able to read the constitution of the United States in the English language in such manner as to show that he is neither prompted nor reciting from memory, and able to write his name, shall be deemed to be an elector of the state, and may register to vote at all elections authorized by law, but idiots, insane persons and persons under guardianship, and persons convicted of treason or a felony unless restored to civil rights, shall not be qualified to register for any election."

I am of the opinion that a person need not have registered to be a qualified elector. Before a person may become a registered voter he must have the qualifications of an elector as defined above.

5. Must all initiative petitions and constitutional amendments carry the enacting clause "Be it enacted by the people of Arizona" (Section 24, Article IV, Arizona Constitution) in order that they may be legally submitted by the Secretary of State for action of the voters?

A. Your attention is directed to Article IV, part 2, Section 24, Arizona State Constitution, which reads as follows:

"Section 24. The enacting clause of every bill enacted by the Legislature shall be as follows: 'Be it enacted by the Legislature of the State of Arizona,' or when the Initiative is used: 'Be it enacted by the People of the State of Arizona.'"

Every initiated measure to be in conformity with the Constitution should contain the enacting clause as provided in Section 24, above. However, the Secretary of State may not refuse to submit to the people any initiated measure filed in his office basing his refusal on the fact that such measure does not contain such enacting clause where the petition is otherwise sufficient, since it is not within his authority to pass upon the sufficiency of the text of the petition.

6. Must a copy of the proposed law or amendment to be submitted to the vote of the people be attached to each sheet containing twenty or less signatures when filed in the office of the Secretary of State to comply with the law?

A. Your attention is directed to Section 1742, R. C. A. 1928, which in part reads as follows:

"Every sheet for signatures shall be attached to a full and correct copy of the title and text of the measure, or amendment to the constitution, proposed or referred by the petition;
* * *"

I am of the opinion that the proper construction of this language is that it is not necessary that a full and correct copy of the title and text of the measure should be attached to each and every separate sheet of signatures, but several sheets may be attached to one full and correct copy of the title and text of the measure.

7. Is it legally necessary that the individual names of signers on each sheet be set out in detail in the affidavit of the circulator on the back of each petition containing twenty names?

A. Yes. See Section 1743, R. C. A. 1928.

8. What authority, if any, has the Secretary of State to reject petitions filed in his office that have not complied with the express provisions of the Arizona statutes and what procedure should he follow in rejecting them? Would you kindly refer us to the section and page of the Code governing his action in a case of this kind.

A. I know of no section of our code expressly setting out the authority or duty of the Secretary of State in reference to the matter stated in

the foregoing question. A petition might be faulty in many ways. In every instance it would be a question to be determined upon the facts in the instant case. An attempt to give a general opinion on this question would be very apt to cause a great deal of confusion. It is my opinion that when a specific question arises, it should be submitted to this office, since a general opinion attempting to cover all possibilities is practically impossible and would no doubt lead to difficulties.

9. Is it the province of the Secretary of State to determine the title of the act as it appears on the ballot? Please distinguish "ballot title" from the "title of the act filed?"

A. Article IV, Section 1 (10) of the Constitution, provides:

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

It will be noted that this constitutional provision requires the Secretary of State to cause to be printed on the official ballot the title and number of the act, 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." Section 1745, R. C. A. 1928, requires the Secretary of State to furnish the clerks of the Boards of Supervisors with certified copies of the titles and numbers of the measures to be voted upon and section 1746, R. C. A. 1928, refers to the ballot title. The "title of the act filed" in many, if not most instances, does not advise the electors as to the real purpose or object of the measure so that he may express his approval or disapproval thereof. It may merely provide "an act to amend, etc". It is my opinion that it is the intention of the law that the Secretary of State place upon the ballot a "ballot title", in addition to the title of the act filed, which will advise the elector concerning the nature or object of the measure to be voted upon.

10. What is the last date and hour for filing arguments for or against any initiated measure or constitutional amendment?

A. The answer to question No. 1, above, is applicable to the question asked.

11. In the matter of arguments for or against any initiated law or constitutional amendment, we assume there is no limit as to the number of arguments that may be filed as long as those filing them pay for the printing of the argument in the publicity pamphlet. If this conclusion is correct, does it apply to constitutional amendments submitted by the legislature for a vote of the people. In other words, can anyone that so desires and is willing to pay the price, submit argument for or against constitutional amendments to be submitted to the voters by legislative act?

A. Yes. Section 1746, R. C. A. 1928.

12. Is there any provision of our law that requires the Secretary of State to give a receipt for initiative petitions filed in his office before he has had an opportunity to check same? If so, will you give us a proper legal form of receipt.

A. I know of no provision requiring such a receipt.

Very truly yours,

(Signed) K. Berry Peterson

ATTORNEY GENERAL

(Signed) Charles L. Strouss

ASSISTANT