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STATE CAPITOL
PHOENIX, ARIZONA

April 26, 1973

DEPARTMENT OF LAW LETTER OPINION NO. 73-12-L (R-21)

REQUESTED BY: THE HONORABLE SANDRA D. O'CONNOR
and
THE HONORABLE LEO CORBET
Arizona State Senators

QUESTION: Can the Arizona Legislature refer the act
of ratifying a proposed amendment to the
United States Constitution to the people?

ANSWER: No. See body of opinion.

Article 5 of the United States Constitution provides for proposal of amendments either by two-thirds vote of both houses of Congress or upon application of the legislatures of two-thirds of the states. The proposed amendment becomes effective by ratification by the legislatures of three-fourths of the states or by conventions in three-fourths of the states. The method of ratification is to be determined by Congress.

In the case of Hawke v. Smith, 253 U.S. 221, 40 S.Ct. 495, 64 L.Ed. 871 (1920), the Supreme Court was called upon to decide the same issue as involved here. Ohio had adopted a provision in their Constitution reserving to the people the legislative power of ratifying proposed amendments to the federal Constitution. The Court held, in short, that the term "legislature", as used in Article 5, means the representative body of the state which makes the laws of the people, and that the act of ratifying a proposed amendment must be an action of the legislature and cannot be referred to the people.

The principle that referendum provisions of state constitutions or referendum by act of the legislature cannot be applied to ratification or rejection of proposed amendments was reiterated by the Court in the National Prohibiting Cases (Rhode Island v. Palmer), 253 U.S. 350, 40 S.Ct. 486, 64 L.Ed. 946 (1920).

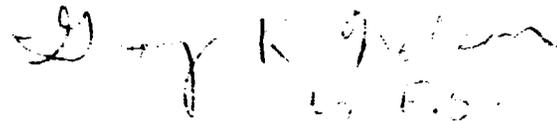
The method for ratification of proposed amendments to the federal Constitution has been set by provisions of that Constitution, and cannot be altered by state or national legislative bodies.

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Where Congress has designated the method under Article 5 to be ratification by the legislatures of three-fourths of the several states, it is only by official assent of those legislatures that ratification can be effected. Hawke v. Smith, supra; National Prohibiting Cases (Rhode Island v. Palmer), supra; In re Opinion of the Justices, 118 Me. 544, 107 A. 673, 5 A.L.R. 1412 (1919).

Although the official act of ratification must be by action of the Legislature, such is no prohibition to polling a consensus of attitudes of the people of the state concerning the proposed amendment by whatever means desirable to the Legislature; providing, however, that such response of the people is in no way binding upon the Legislature as concerning official ratification or rejection of the amendment. See In re Opinion of the Justices, supra.

Respectfully submitted,



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The Attorney General

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