

GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

February 1, 1974

DEPARTMENT OF LAW LETTER OPINION NO. 74-5-L (R-10)

REQUESTED BY: THE HONORABLE JUANITA HARELSON  
Arizona State Representative

- QUESTIONS:
1. What is the deadline for filing initiative petitions before the next general municipal election in the City of Tempe?
  2. How many signatures are required for an initiative petition to be placed on the next Tempe city ballot?

- ANSWERS:
1. City of Tempe initiative petitions must be filed with the City Clerk no later than four months preceding the date of the election at which the measure is to be voted upon.
  2. Fifteen per cent of the total number of registered voters qualified to vote in the last preceding general municipal election in the City of Tempe.

These questions deal with a perplexing area of the law, as currently there is one constitutional provision and two statutory provisions all dealing with the same topic-- "filing deadlines" and each specifying a different time period for filing initiative petitions. Apparently these three provisions have resulted in a great deal of confusion and, in an effort to clarify the situation, this opinion shall give a somewhat detailed listing of the applicable provisions.

Article 4, Part 1, Section 1 of the Arizona Constitution specifically states:

Section 1. (1) [Senate; house of representatives; reservation of power to people] 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, or item, section, or part of any Act, of the Legislature.

(2) [Initiative power] The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to propose any amendment to the Constitution.

\* \* \*

(4) [Initiative and referendum petitions; filing] 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. . . . (Emphasis added.)

\* \* \*

(8) [Local, city, town or county matters] The powers of the initiative and the Referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate. Such incorporated cities, towns, and counties may prescribe the manner of exercising said powers within the restrictions of general laws. Under the power of the Initiative fifteen per centum of the qualified electors may propose measures on such local, city, town or county matters, and ten

per centum of the electors may propose the Referendum on legislation enacted within and by such city, town, or county. Until provided by general law, said cities and towns may prescribe the basis on which said percentages shall be computed. (Emphasis added.)

\* \* \*

(14) [Reservation of legislative power] This section shall not be construed to deprive the Legislature of the right to enact any measure.

(15) [Self-executing] This section of the Constitution shall be, in all respects, self-executing.

From these provisions it can be seen that the people of the State of Arizona have provided a procedure whereby initiative measures may be placed on a municipal ballot for the electors' consideration.

The requirements of the Constitution are simple and quite clear. Fifteen per cent of the qualified electors may propose an initiative measure and the initiative petitions must be filed no later than four months prior to the election. In addition, cities and towns may prescribe the basis on which the percentage of qualified electors shall be computed. Pursuant to this authority, the City of Tempe Charter, § 8.01, as amended 1968, provides:

. . . [H]owever, that the total number of registered voters qualified to vote at the last preceding general municipal election shall be the basis on which the number of electors of the city required to file an initiative referendum petition shall be computed.

Therefore, by reading Article 4, Part 1, § 1 of the Arizona Constitution together with § 8.01 of the Tempe City Charter, it can be seen that the initiative petitions must be filed no later than four months preceding the date of the election at which the measure is to be voted upon, and the

petitions must contain valid signatures of fifteen per cent of the total number of registered voters qualified to vote in the last preceding general municipal election in the City of Tempe.

On its face the above result appears abundantly clear, but when read in connection with A.R.S. §§ 19-141, 19-121, as amended 1973, and 19-143.A, a great deal of confusion can result. The pertinent portions of these statutes provide as follows:

**A.R.S. § 19-141.A:**

A. In cities and towns which do not provide by ordinance or charter for the manner of exercising the initiative and referendum powers reserved by the constitution to the people thereof, the provisions of this chapter shall apply to the legislation of such municipalities, and the duties required of the secretary of state as to state legislation shall be performed in connection with such legislation by the city or town clerk, or person performing the duties as such. . . .

The statute goes on to make further analogy between the Governor and Mayor, Attorney General and City Attorney, etc.

**A.R.S. § 19-121.D:**

D. Initiative petitions which have not been filed with the secretary of state as of five p. m. on the day five months prior to the ensuing general election after their issuance shall be null and void, but in no event shall the secretary of state accept an initiative petition which was issued for circulation more than twenty-four months prior to the general election at which the measure is to be included on the ballot.

**A.R.S. § 19-143.A:**

A. If an ordinance, charter or amendment to the charter of a city or town is proposed by initiative petition, it shall be filed with the

city or town clerk, who shall submit it to the voters of the city or town at the next ensuing election held therein not less than ninety days after it was first presented to the city or town council. The council may enact the ordinance or amendment and refer it to the people or it may enact the ordinance or amendment without referring it to the people, and in that case it is subject to referendum petition as other ordinances. The mayor shall not have power to veto either of such measures.

From the above statutes it might be argued that either the five month limitation or ninety day limitation should apply to municipal initiative petitions. But, after careful consideration of the applicable Arizona and Oregon (where our initiative provisions originated) case law, it would appear that to do so would be in conflict with the Arizona Constitution on several grounds.

First, Article 4, Part 1, § 1 (4) of our Constitution specifically provides for a limitation of not less than four months. Therefore, the ninety day provision in A.R.S. § 19-143.A would clearly be in conflict with Article 4, Part 1, § 1(4), and whenever a legislative enactment is in conflict with either the state or federal Constitutions the enactment must yield. Adams v. Bolin, 74 Ariz. 269, 281, 247 P.2d 617 625 (1952); Miller v. Heller, 68 Ariz. 352, 206 P.2d 569 (1949).

Secondly, the five month limitation in A.R.S. § 19-121.D would appear also to be in conflict with our Constitution, in that it would contravene both the purpose and plain language of Article 4, Part 1, § 1(4). The Arizona Supreme Court in McBride v. Kerby, 32 Ariz. 515, 260 P. 435 (1927), specifically spoke as to the purpose behind our initiative and referendum provisions and stated at p. 525 (Ariz. Reports):

Let us first examine the evils which the initiative and referendum were meant to meet, and then the remedy. It is well known that in the past many of our American legislatures were suspected, more or less justly, of being guided rather by the selfish wishes of the few

than the true good of the many. It was claimed, and with much show of reason, that the powerful financial interests of the different states were able either to purchase or browbeat enough legislators to secure the passage or defeat of any measures they desired, and that the real will of the people was being nullified. While initiative and referendum legislation has been known ever since the dawn of popular government, it was not until the early part of this century that it was seriously urged in America as a remedy for the evils above mentioned, and it is to the state of Oregon that credit is due for its first practical application on a large scale in our country. Briefly summarized, the idea back of this remedy was that if the people had the right to prevent a bad law taking effect until they had approved it, it would be a waste of money for selfish interests corruptly to force it through the legislature, while if the people could also by their own action present and adopt affirmative statutes independent of the legislature, it would be equally futile for those interests to oppose any laws wished by the voters. In this way the purity of legislatures would be improved, and above all the people could prevent or adopt any laws they pleased, regardless of the actions of their representatives.

We think it will not be questioned that any system which preserves this right unimpaired, to wit, the right of the people to adopt or to prevent any legislation they wish, complies with the spirit of the initiative and referendum, and that this was the purpose of our electors when they placed these provisions in the Constitution.

From the above language, it is abundantly clear that to allow the state Legislature to alter the "filing deadline" specified in Article 4, Part 1, § 1(4) at their mere whim would be playing into the hands of the very "evils" condemned in McBride, supra. Such an interpretation would grant the Legislature an uncontrolled power to alter the initiative process at any time and defeat the stability intended by our forefathers.

Opinion No. 74-5-L  
(R-10)  
February 1, 1974  
Page Seven

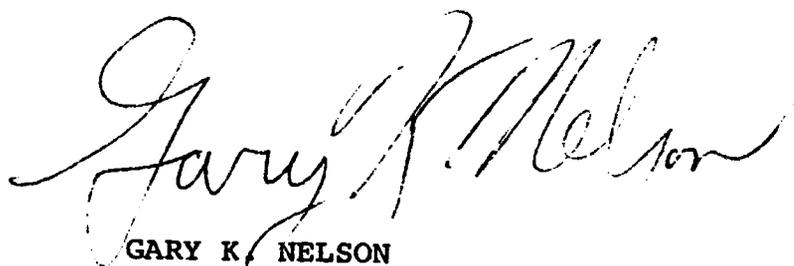
Further, the language "not less than four months preceding" implies a constitutional right to file initiative petitions up to the last day "four months preceding the date of the election". To allow the Legislature the power to lengthen this deadline would allow them to ultimately add five, ten or fifteen months, ad infinitum, onto the deadline, an absurd constitutional construction which must be avoided. McBride v. Kerby, supra.

Lastly, Subsections (8) and (11) of Article 4, Part 1, § 1, specifically provide that, to a limited extent, the Legislature may amend and alter the procedures set forth under these two subsections. But Subsection (4) contains no such provision.

Therefore, notwithstanding the fact that it has been stated that expressio unius est exclusio alterius should be applied with great caution to the legislative branch of the government, Earhart v. Frohmler, 65 Ariz. 221, 178 P.2d 436 (1947), such a rule of construction would appear to be applicable here. Absent express constitutional authority (such as found in Subsections (8) and (11)), the Legislature may not amend or alter the provisions of Article 4, Part 1, § 1.

Therefore, in conclusion, to the extent A.R.S. §§ 19-141, 19-121 and 19-143 are in conflict with Article 4, Part 1, § 1 of the Arizona Constitution, the Constitution must be deemed controlling.

Respectfully submitted,



GARY K. NELSON  
The Attorney General

GKN:JMM:MA:ell