

You have further submitted a certificate of authorization from the board of trustees of the Ohio Soldiers' and Sailors' Orphans' Home to enter into the contract.

Finding said contract in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1499.

INITIATIVE PETITION—PROPOSING CONSTITUTIONAL AMENDMENT  
—SIGNATURES OBTAINED PRIOR TO EFFECTIVE DATE OF NEW  
ELECTION LAW VALID—ADDITIONAL NAMES MAY BE ADDED  
TO COPY OF SUCH PETITION FILED IN 1929.

*SYLLABUS:*

1. *In the event an initiative petition proposing an amendment to the Constitution has been circulated in the year 1929, and a number of signatures then secured thereto, such signatures if secured in accordance with the laws then in force and effect may be considered sufficient and counted in determining the requisite number of signatures upon such petition when filed in 1930.*

2. *When copy of such petition was filed in 1929, under the provisions of Section 5175-29c, General Code, as then in force and effect, additional signatures may now be secured to such petition.*

COLUMBUS, OHIO, February 7, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Will you kindly render your opinion upon the following:—

1. In the event an initiative petition proposing an amendment to the Constitution has been circulated in the year 1929, and a number of signatures secured thereto in accordance with the laws then in force and effect, may such signatures be considered sufficient and counted in determining the requisite number of signatures upon such petition when filed in 1930?

2. When copy of such petition was filed in 1929, under the provisions of Section 5175-29c, General Code, as then in force and effect, may additional signatures be now secured to such petition?”

Steps which have already been taken toward the submission of the question to the electors are under authority of Section 1a of Article II of the Constitution, which is as follows:

“The first aforesaid power reserved by the people is designated the initiative and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the Secretary of State shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general

election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: 'Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors.'

I am advised that this petition has not yet been filed with the Secretary of State, but that to date a considerable number of signatures have already been secured thereto. Your attention is particularly directed to the fact that Section 1a of Article II of the Constitution, *supra*, places no limitation as to the period of time over which signatures may be secured. It is provided that after such petition shall have been filed with the Secretary of State as therein provided, the proposed amendment shall be submitted at the next succeeding regular or general election in any year occurring subsequent to ninety days after such filing. I am of the view, therefore, that signatures secured in the year 1929 should be counted as well as those secured in the year 1930.

The election laws of the State of Ohio, as enacted by the 88th General Assembly, effective January 1, 1930, being General Code Sections 4785-1 to 4785-233, inclusive, contain numerous references to the matter of initiative and referendum proceedings. Sections 4785-178 to 4785-182, inclusive, General Code, relate to the procedure to be followed after an initiative petition has been filed with the Secretary of State and will, of course, be applicable to the petition to which you refer which is now being circulated.

Perhaps the most serious question raised by your letter, in view of the evident desire to secure additional signatures at this time, arises under Sections 4785-34 and 4785-177. Section 4785-34 provides in part as follows:

" \* \* \* \* \* No person residing in any registration precinct shall be entitled to vote at any election or to sign any nominating, initiative, referendum or recall petition unless he is duly registered as an elector in the manner provided herein; provided, however, that for the primary election and any special elections held before the general election in 1930, all voters who were duly registered and qualified to vote at the general election in 1929 and have not changed their places of residence shall be deemed to have registered for any such primary or special election. Registrars of each precinct, on the Friday and Saturday in the second week before such primary or special election held before the general election in 1930, shall obtain from the board the last registers for such precincts, and attend at the polling places in such precincts on such dates between the hours fixed by the board, and then and there receive applications for registration by qualified electors residing therein as are not already registered. If such applicants are qualified, the registrars shall enter them in the registers, subject to the rules and conditions prescribed for registration."

Section 4785-176 provides the form of referendum or initiative petition and Section 4785-177 provides as follows:

"Each signer of any such initiative or referendum petition must be a qualified elector of the county, and a registered voter if he resides in a registration city or precinct, in which such election is to be held, and must place on the petition in his own handwriting after his name, his place of residence including street and number (or if no street and number then

his post office address) and the date of signing such petition. In case of state petitions all parts of petition from a county shall, insofar as practicable, be kept separate and filed together so that the quota of each county may be easily determined."

The provision of Section 4785-34, *supra*, which section is now in force and effect, that no person residing in any registration precinct shall be entitled to sign any initiative petition unless registered as an elector in the manner provided in the new election law, must be given first consideration. The act provides for permanent registration of all electors residing in registration precincts. Section 4785-36 is the only section which sets forth the time when such electors shall have the opportunity to so register and such registration under this section shall be on Thursday in the fifth week and Friday and Saturday in the fourth week preceding the general election of 1930. It follows that there is no way provided whereby a person residing in a registration precinct may be registered as an elector in the manner provided in the new election law in the interval between January 1, 1930, and Thursday in the fifth week preceding the general election of 1930. I do not find any provision making any exception to the requirement contained in Section 4785-34, *supra*, that before a person residing in a registration precinct may sign an initiative petition he must be registered as provided in the act. This section has provided an exception applicable to the 1930 primary and any special election which may be held before the 1930 general election, but is silent as to the matter of signing initiative petitions in this interval of time.

It might perhaps be contended that since Section 1a of Article II of the Constitution, *supra*, specifically provides that electors may sign a petition to propose an amendment to the Constitution, the Legislature is without power to nullify such provision by the enactment of laws relating to registration. Section 1, Article V of the Constitution, however, provides as follows:

"Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections."

If the contention is correct that the Legislature may not provide that in registration precincts only electors who are registered may sign an initiative petition, it would follow that under Section 1, Article V, *supra*, the Legislature may not provide that in such precincts only electors who are registered may vote. I am of the view that legislation relative to registration is constitutional as being within the police power to prevent fraud in elections, and that the question with which I am here confronted is not controlled by the contention that Section 1a of Article II, *supra*, must necessarily in all instances under all circumstances be the sole test of the right to sign an initiative petition. Of course, if the Legislature has provided that no one whether an elector or otherwise may sign an initiative petition during the interval between January 1, 1930, and Thursday in the fifth week preceding the general election of 1930, a serious question of constitutionality arises. A careful consideration of the portion of Section 4785-34, herein quoted, leads me to the conclusion that the Legislature had no such intention in the enactment of the provision as to registered electors signing initiative petitions. The express provisions whereby the act shall not preclude electors from voting, though not registered as therein provided, at any special election or at the 1930

primary election, are indicative of a legislative intent that the provision with relation to signing initiative petitions shall not be applicable until the electors are given an opportunity to register as provided in the act.

In view of the foregoing and consistent with the well-established rule that courts will, whenever possible, place a construction upon a law such as will result in its constitutionality, I am of the opinion that Section 4785-34, General Code, does not apply to electors who sign an initiative petition in the interval between January 1, 1930, and Thursday in the fifth week preceding the general election of 1930.

I have given consideration to Section 26 of the General Code, which provides that pending proceedings shall not be affected when a statute is repealed or amended unless otherwise expressly provided in the amending or repealing act. This office has held that when a petition is filed with a board of county commissioners by benefited property owners seeking a road improvement, the proceeding is pending within the meaning of Section 26, and also that when an application for state aid in the case of a road improvement has been filed by a board of county commissioners with the Director of Highways, such filing constitutes the proceeding as pending within the meaning of Section 26. Opinions of the Attorney General, 1924, Vol. I, p. 378. I should have no difficulty in concluding that after an initiative petition has been filed with the Secretary of State, the proceeding is pending within the meaning of Section 26. However, I should have considerable hesitancy in holding that the mere filing of a copy of a petition sought to be circulated as provided in Section 5175-29c, General Code, as in force and effect prior to repeal by the 88th General Assembly, is for all intents and purposes sufficient to constitute this such a pending proceeding.

It must be borne in mind, however, that the petition which was circulated in 1929 in accordance with the provisions of law then in force and effect does not in detail correspond with the form of petition set forth in Section 4785-176, General Code. For instance, Section 5175-29f provided as follows:

"At the top of each part of the petition the following words shall be printed in red:

NOTICE.

Whoever knowingly signs this petition more than once, signs a name other than his own or signs when not a legal voter is liable to prosecution."

Section 4785-176 provides for substantially the same notice in the following language:

"Immediately above the place for signature on each part of such petition shall be printed in red the following warning:

'NOTICE. Whoever knowingly signs this petition when not a qualified voter in the county, or not a registered voter in a registration precinct; or signs a name other than his own; or signs the petition more than once, is liable to prosecution.'

To say that such minor variations of the law necessitate instituting proceedings de novo on the theory that these proceedings may not perhaps be said to be in the strict sense pending within the meaning of Section 26, would be placing a retrospective construction upon the election laws. I do not believe the Legislature intended that it be so construed.

Specifically answering your questions, I am of the opinion:

1. In the event an initiative petition proposing an amendment to the Constitution has been circulated in the year 1929, and a number of signatures then secured thereto, such signatures if secured in accordance with the laws then in force and effect may be considered sufficient and counted in determining the requisite number of signatures upon such petition when filed in 1930.

2. When copy of such petition was filed in 1929, under the provisions of Section 5175-29c, General Code, as then in force and effect, additional signatures may now be secured to such petition.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1500.

APPROVAL, FINAL RESOLUTION AND CONTRACT FOR ROAD IMPROVEMENTS IN GEAUGA AND LICKING COUNTIES.

COLUMBUS, OHIO, February 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1501.

APPROVAL, NOTES OF JUNCTION CITY-JACKSON VILLAGE SCHOOL DISTRICT, PERRY COUNTY—\$70,000.00.

COLUMBUS, OHIO, February 7, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1502.

COUNTY BUILDINGS—SECTION 2333, GENERAL CODE, CONSTRUED—HOW TO DETERMINE WHETHER BOND ISSUE FOR EXTENSION TO COURT HOUSE SHOULD BE SUBMITTED TO PEOPLE—INCORPORATING IN ONE RESOLUTION MORE THAN ONE IMPROVEMENT AUTHORIZED.

SYLLABUS:

1. *The provisions of Section 2333, General Code, do not apply to the alteration or extension of an existing court house.*

2. *When bonds are proposed to be issued for the purpose of building an extension to an existing court house, the question of whether or not such issue must*