

be regarded as one separate, distinct and indivisible entity, and shall be so submitted as to enable each elector to cast either one affirmative or one negative vote thereon; provides that ballots shall designate the names of proponents under certain circumstances; provides that such amendments or laws shall go into effect if a majority of the electors shall approve thereof; provides that, in case of conflict between two or more approved amendments or between two or more approved laws, a degree of precedence and control shall be taken by any amendment or law receiving a greater number of approving or affirmative votes over any amendment or law, respectively, receiving a lesser number of such votes; provides that the fulfillment of requirements set forth in the statutes or elsewhere in the constitution shall not be a condition precedent to such proposed amendments or laws being placed on the ballot and submitted to the electors; provides that costs and expenses incident to the submission of such proposed amendments or laws shall be paid by the state from the general revenue fund; and provides that the provisions of this amendment are mandatory and shall be self-executing."

I am of the opinion that the foregoing is a fair and truthful summary of the contents and purposes of the proposed amendment. Accordingly, I submit, for uses provided by law, the following certification:

"I, Gilbert Bettman, Attorney General of the State of Ohio, pursuant to the duty imposed upon me under the provisions of section 4785-176 of the General Code, hereby certify that the foregoing is a fair and truthful summary of the contents and purposes of the proposed amendment of the Constitution of Ohio, by the addition to Article XVI of Section 4. GILBERT BETTMAN, Attorney General."

It should be observed that the function of the Attorney General under the law is not to pass upon the wisdom or unwisdom of a proposed amendment. His function with respect to the amendment is to pass upon its form. With respect to the synopsis, his function is to determine that it is a fair and truthful summary of the contents and purposes of the proposed law or amendment so that the electors in passing judgment thereon may be clearly apprised of the proposed change in the law and its purposes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3434.

DISAPPROVAL, PETITION FOR AMENDMENT TO ARTICLE XII, SECTION 12, OHIO CONSTITUTION.

COLUMBUS, OHIO, July 16, 1931.

MR. C. E. WHARTON, *Kenton, Ohio.*

DEAR SIR:—You have submitted to me a written petition signed by more than 100 qualified electors of the State, containing a proposed constitutional amendment

and a synopsis, for my examination under the provisions of Section 4785-176, General Code. The pertinent portion of Section 4785-176 is as follows:

“One hundred or more qualified electors of the state may, by a written petition signed by them, submit any proposed law or constitutional amendment to the attorney general for examination. If the attorney general finds such law or constitutional amendment correct as to form, he shall so certify and such certification shall be printed immediately, under the text of the law or constitutional amendment. Such electors may also submit to the attorney general a fair and impartial synopsis of such proposed law or amendment, and if such synopsis in the opinion of the attorney general is a fair and truthful summary of the contents and purposes of such proposed law or amendment he shall so certify. * * * *”

The section which you propose to add to Article XII as Section 12, reads as follows:

“The electors of each political subdivision may have full power to determine the manner in which public funds shall be expended in such subdivision. Such power shall include the right to increase or decrease the salary of any public official or employe by referendum vote. It shall also include the right to abolish any position in the public service that may be deemed unnecessary in the public service of any political subdivision, by referendum vote. It shall also include the right to curtail or abolish any specific expense or law fixing a price, or an item in the current budget of any political subdivision or the state as a whole, by referendum vote. In any of the above cases, such referendum vote may be demanded only by a petition signed by two per cent of the electors of the subdivision, or state, computed on last vote for governor. The general assembly may adopt suitable laws to carry out the provisions of this section.”

The provision in the foregoing section to the effect that the general assembly may authorize the electors of any subdivision or of the state as a whole, by means of a referendum, to abolish any item in the current budget of such subdivision or of the state, or to abolish any specific expense contained in such budget, is especially far-reaching in its effect. This provision in my opinion authorizes the general assembly to pass a law permitting the electors to impair the obligation of contracts, and abrogates in effect Section 28, Article II of the Constitution of Ohio, which section prohibits the general assembly from passing laws “impairing the obligation of contracts.”

Section 11, Article XII of the Constitution is also affected by the foregoing proposed amendment, which section provides as follows:

“No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed, unless in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.”

The foregoing section of the Constitution was considered in the case of *Link*

v. Karb, Mayor, 89 O. S. 326, the second and third branches of the syllabus being as follows:

"2. Section 11 of Article XII of the Constitution of Ohio requires the taxing authority of any political subdivision of the state proposing to issue bonds to provide at the time the issue of bonds is authorized, for levying and collecting annually by taxation an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity. This provision made at the time the issue of bonds is authorized is mandatory on all subsequent taxing officials of that political subdivision during the term of the bonds.

3. This provision of the constitution does not require that at the time the issue of bonds is authorized there shall then be levied any specified amount or any specific rate, but it does require that provision shall then be made for an annual levy during the term of the bonds in an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity, which levy must be made annually in pursuance of the provisions of the original ordinance or resolution requiring the same. The amount necessary to be levied for the purposes specified is to be determined by the taxing officials at the time the levy is made."

It is obvious that the foregoing proposed amendment seeks to authorize the electors of the state or of any subdivision of the state to abolish any item in the current budget for the payment of outstanding bonds.

Another section of the Ohio Constitution which the amendment will render inoperative is section 19, Article III, which provides as follows:

"The officers mentioned in this article shall, at stated times receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected."

While perhaps it may be contended that the electors of Ohio may, by the adoption of a single amendment to the Constitution, thereby render inoperative and ineffective any number of previously adopted provisions without expressly repealing such provisions which are inconsistent, I do not think an amendment of such far-reaching effect is correct as to form unless reference is made to the sections which it repeals. Such reference could perhaps be incorporated in a schedule.

It should further be noted in the instant case that the proposed amendment seeks to authorize the state and its subdivisions by means of the referendum to impair the obligation of contracts in violation of Section 10, Article I of the Constitution of the United States. This section of the federal Constitution expressly prohibits any state from passing a law impairing the obligation of contracts. I believe that the adoption of the amendment to the Constitution here under consideration would constitute the passage of a law authorizing the impairment of contracts and that such a law would be violative of the federal Constitution.

For the foregoing reasons, I find the proposed constitutional amendment which you have submitted incorrect as to form and I am therefore returning the same to you herewith without my certification endorsed thereon.

The synopsis of the amendment in question reads as follows:

"The purpose of this amendment is to grant to the electors of the state such control over the expenditure of public funds, that they may by the exercise of the referendum, increase or decrease the salary of any public official or employee, abolish any position in the public service that they deem unnecessary, sell any public office to the lowest bidder, curtail or abolish any specific expense or law fixing a price or an item in the current budget of any political subdivision or the state as a whole."

I find no provision in the amendment as to selling any public office to the lowest bidder. The provision for this has been stricken out of the text of the amendment. The synopsis is, therefore, not a fair and truthful summary of the contents and purposes of the proposed amendment.

Before it may be said that a synopsis of the amendment which you propose is "a fair and truthful summary of the contents and purposes of such proposed * * * amendment" some information should be contained therein as to the present constitutional provisions which will be rendered inoperative. This is one of the purposes of the proposed amendment. It is possibly one of the most important purposes.

I am, accordingly, unable to execute my certificate as requested with respect to the synopsis.

It should be observed that the function of the Attorney General under the law is not to pass upon the wisdom or unwisdom of a proposed amendment. His function with respect to the amendment is to pass upon its form. With respect to the synopsis, his function is to determine that it is a fair and truthful summary of the contents and purposes of the proposed law or amendment so that the electors in passing judgment thereon may be clearly apprised of the proposed change in the law and its purposes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3435.

APPROVAL, THREE LEASES TO RESERVOIR LAND AT BUCKEYE LAKE—F. L. HEIBERT.

COLUMBUS, OHIO, July 16, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from your department over the signature of the Chief of the Bureau of Inland Lakes and Parks of the Division of Conservation, submitting for my examination and approval three certain reservoir land leases in triplicate, by which there are leased and demised to one F. L. Heibert of Lancaster, Ohio, for terms of fifteen years each, three certain parcels of state reservoir lands at Buckeye Lake, the same being lots Nos. 6, 10, and 11, respectively, of the Abdalla, VanGundy and Heibert's Subdivision of C. M. Wagner's allotment of lands at Summerland Beach.

The annual rentals provided for in said leases are 6% of the valuations of the