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CHARTER—DUTY OF COUNCIL TO PROVIDE BY ORDINANCE FOR SUBMISSION TO ELECTORS QUESTION OF CHOOSING COMMISSION TO FRAME CHARTER—PETITION, TEN PER CENTUM OF ELECTORS OF CITY FILED—ARTICLE XVIII, SECTION 8, CONSTITUTION OF OHIO—WHERE COUNCIL INITIATES ORDINANCE IN ABSENCE OF PETITION, TWO-THIRDS VOTE OF MEMBERS OF COUNCIL REQUIRED.

SYLLABUS:

Where, under the provisions of Section 8, Article XVIII of the Constitution, a petition of ten per centum of the electors of a city has been filed, requesting the council thereof to provide by ordinance for the submission to the electors of the question of choosing a commission to frame a charter, it is the duty of the council to so provide. In such case there is no requirement that such ordinance be passed by two-thirds of the members of council, the requirement of a two-thirds vote being applicable only to those situations where council itself initiates such ordinance in the absence of such a petition.

Columbus, Ohio, March 25, 1953

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I am in receipt of your communication of recent date which, in effect, requests my opinion as to whether, under the provisions of Section 8 of Article XVIII of the Constitution, an ordinance passed by a city council *upon petition of ten per cent of the electors*, providing for submission to the electors of the question "shall a commission be chosen to frame a charter" requires a two-thirds vote of the members of such council.

The specific question under consideration is set out in a letter to you from the Jefferson County Board of Elections which, in part, reads as follows:

"The Jefferson County Board of Elections met in special session Wednesday, March 18, 1953, at 2:00 p.m. At this meeting the board was confronted with several inquiries relative to the ordinance passed by the Steubenville City Council. Article XVIII, section 8, of the Constitution of the State of Ohio states that the ordinance establishing a charter form of government re-

quires two-thirds vote of council. A certified copy of the ordinance together with the minutes of the meeting were forwarded to the board by the clerk of council and the minutes containing the entire proceedings of that meeting. The vote was recorded as four councilmen against and four in favor of the ordinance and the president of the council cast the deciding vote. The board feels that since the clerk of council submitted the minutes of the meeting attached to the ordinance it should take cognizance of the fact it wasn't passed by a two-thirds vote of council. Therefore, the board is of the opinion that council should be advised that the ordinance lacks the two-thirds vote of council as set forth in the Constitution. * * * The board has checked the petitions filed originally with the council containing 2,025 names and has approved said petitions. The only question remaining to be clarified is the lack of two-thirds vote of council on the ordinance."

Section 8 of Article XVIII of the Ohio Constitution, in pertinent part, reads as follows :

"The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, 'Shall a commission be chosen to frame a charter'. The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. * * *"

It will be noted that the above quoted language *authorizes* a city council, by a two-thirds vote, to provide for the submission to the electors of the question of whether a commission should be chosen to frame a charter, and *compels* the city council to submit such question upon petition of ten per centum of the electors.

I assume that since the "board has checked the petitions filed originally with the council containing 2025 names and has approved said petitions," such petition contained the names of at least ten per cent of the electors of such city. It is clear from the language of the Constitution that upon the filing of a petition of ten per cent of the electors, it becomes the mandatory duty of the city council to provide, by ordinance, for the submission to the electors of the question of choosing a commission to frame a charter. Can it be said that a vote of two-thirds of the

members of council would be necessary in order to comply with this mandatory duty? The plain language of the Constitution compels a negative answer to this question.

It is quite clear, from the language of the Constitution, that the requirement of a two-thirds vote of the members of council is applicable only to a situation where the council, in the exercise of its own discretion, determines to submit such question to the electors and that such requirement of a two-thirds vote is not applicable to a situation where, by the filing of a petition of ten per cent of the electors, a mandatory duty is imposed upon the council to submit such question.

This view, I believe, is fully supported by the decision of the Supreme Court in the case of *State, ex rel. McCormick v. Fouts*, 103 Ohio St., 345. The first paragraph of the syllabus of this case reads as follows:

“Where a petition has been filed with the legislative authority of a city praying the passage of an ordinance for submission to the electors of the city of the question ‘shall a commission be chosen to frame a charter’ and the legislative authority in fact passes an ordinance by a two-thirds vote of its members, no inquiry may thereafter be made into the form, substance or sufficiency of such petition.”

I believe the following language from the opinion by Marshall, C.J., appearing at page 347, is particularly pertinent:

“* * * By the provisions of Section 8, Article XVIII of the Constitution, the city council has discretionary power to pass an ordinance to submit the question of a charter to the people, and the purpose of a petition of ten per cent. of the electors is to compel such action. * * *”

If, as held by the Supreme Court in the *Fouts* case, it is not necessary to make an inquiry into the sufficiency of the petition in case of a two-thirds vote, it would follow that in the case where there is no question as to the sufficiency of the petition, a two-thirds vote of the members of council would not be required. This is true for the reason that the two-thirds vote is only required where the council, by its own initiative, passes such an ordinance.

In specific answer to your inquiry, it is my opinion that where, under the provisions of Section 8, Article XVIII of the Constitution, a petition of ten per centum of the electors of a city has been filed, requesting the council thereof to provide by ordinance for the submission to the electors

of the question of choosing a commission to frame a charter, it is the duty of the council to so provide. In such case there is no requirement that such ordinance be passed by two-thirds vote of the members of council, the requirement of a two-thirds vote being applicable only to those situations where counsel itself initiates such ordinance in the absence of such a petition.

Respectfully,

C. WILLIAM O'NEILL
Attorney General