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DISAPPROVAL — PROPOSED PETITION, AMENDMENT ARTICLES, CONSTITUTION OF OHIO, XII, II, V—OLD AGE PENSION—SUMMARY, SEVERAL PROPOSED AMENDMENTS AND TEXT, INCONSISTENT.

COLUMBUS, OHIO, January 24, 1939.

HON. HERBERT S. BIGELOW, *Cincinnati, Ohio*.

DEAR SIR: This will acknowledge the receipt of your communication of recent date, as follows:

“On behalf of the Committee I am submitting to you herewith duplicate petitions requesting your certification of the summaries we have composed for four constitutional amendments which we are proposing for a separate vote which we are including on one initiative petition, under the decision of *Hubbell vs. Bettman*, 124 Ohio St. 24 (1931).

Though we understand this to be a legal procedure, it is not the usual procedure, and I trust you will consider us right in the opinion that it will not be necessary to carry on the petition a separate certification for each of the summaries but that the certification can be made once as applying to all four of the summaries in language as follows:

I, ....., Attorney General of the State of Ohio, in pursuance of the duties imposed upon me under the provisions of Section 4785-175, General Code, hereby certify that the foregoing summaries are fair and truthful statements of the proposed amendments of the Constitution of Ohio by adoption of the following new sections: Section 13 (a) of Article XII; Section 1 (h) of Article II; Section 8 of Article V; and Section 42 of Article II.

Will you kindly return one of the copies of the petition with your certification or with your suggestion as to corrections or changes that should be made.”

You have submitted along with this letter a written petition, signed by one hundred qualified electors of this State, containing four proposed constitutional amendments and summaries of the same under Section 4785-175, General Code.

It is proposed to adopt, first, Section 13 of Article XII to read as follows :

“All citizens of the State of Ohio of the age of 60 years or over who are retired from gainful occupation as wage earners, and who are not under conviction for crime, are guaranteed an income of Fifty (\$50) Dollars per month, except that all married couples living together are guaranteed an income of Forty (\$40) Dollars a month to each person, which income in either case shall consist of pension payments by the State supplementing all other sources of income. Such State payments shall be made to all persons, citizens of the State of Ohio at the time of the adoption of this amendment, or, having become citizens after its adoption, shall have been residents of the State of Ohio for 10 years or such shorter time as may be determined by law. Such payments by the State of Ohio shall be conditioned upon age, residence limitations, income, and non-employment only. Payments of legally established pension claims shall be retroactive to the date of applications therefor, which application may be made subsequent to six months after the adoption of this amendment by vote of the people. Persons receiving pension allowances may reside anywhere within the State, but laws may be passed restricting expenditures of such allowances outside the State. Neither ownership of a homestead, occupied by the owner, nor support legally enforceable from relatives shall be deemed income within the meaning of this provision.

Land holdings, under a common individual, corporate, trust, partnership, or other ownership, in excess of Ten Thousand (\$10,000) Dollars of value, exclusive of all improvements thereon, are hereby subjected to a special tax on such excess of two per cent, which special tax shall be in addition to all levies for general revenue purposes, and all revenues therefrom shall be used for the payment of Old Age Pensions, before revenues are used from other sources for such purpose.

This amendment shall become effective in accordance with its provisions without enabling legislation, but laws may be

passed not inconsistent with its provisions, in furtherance of its purpose.

All provisions of law or constitution of the State of Ohio in conflict with any provision of this amendment are hereby amended and superseded with respect to such conflict.”

The proposed summary of this amendment to read as follows:

“The Constitutional amendment proposed by this petition provides a self-effective system of Old Age Pensions in the form of a guarantee of an income of Fifty (\$50) Dollars to every person who, being retired from gainful occupation as a wage earner, is a citizen of the State or who becomes one after its adoption and resides in the State 10 years or such shorter time as the law may provide, except that Forty (\$40) Dollars is guaranteed to each person of a married couple living together. The State payments supplement all sources of private income and payments are retroactive to the date of application which may be six months after the adoption of the amendment. No restrictions on payments are permitted except age, citizenship, income, and lack of employment, and ownership of a home or residence is permitted. Forced dependence on relatives or children for support is abolished by this amendment. The spending of pension funds outside the State may be restricted by law.

All land values owned by one person, corporation, trust, partnership, or other legal entity, in excess of Ten Thousand (\$10,000) Dollars of value is subjected to a tax of two per cent on such excess. The revenue from the tax is to be fully used for Old Age Pensions, before revenues from other sources are used.

This Amendment is self-enforcing, without enabling legislation, and independent of conflicting laws or constitutional provisions.”

It is further proposed to adopt Section 1 (h) of Article II to read as follows:

“In the exercise of the powers of the initiative and referendum, after the adoption of this amendment by vote of the people, the signatures of 100,000 of the electors at large shall be sufficient upon a petition to bring to popular vote a constitutional amendment for any purpose whatsoever. Whenever there shall have been filed with the Secretary of State a petition signed by 50,000 of the electors at large, proposing a law, for any purpose whatsoever, the full text of which shall be set forth in such

petition, the Secretary of State without submitting same to the Legislature, shall submit it to the electors for their approval or rejection at the next regular or general election, and if approved by a majority of the electors voting thereon, it shall take effect 30 days after the election at which it was approved. No initiative or referendum petition shall require the designation of ward and precinct of the signer, but the residence address in addition to the township or city shall be sufficient. No proposal which shall be submitted to the people in the State of Ohio or in any subdivision thereof shall require more than a bare majority for its adoption.

This amendment shall be self-enforcing and is hereby declared to be in full force, without enabling legislation, and all provisions of law or constitution of the State of Ohio in conflict with any provision of this amendment are hereby amended and superseded with respect to such conflict."

The proposed summary of this amendment to read as follows:

"The number of signatures for Initiative petition is set at 100,000 qualified electors at large, to propose a Constitutional amendment, and 50,000 qualified electors at large to propose a new law. Proposed laws are directed to be submitted direct to the voters without first being submitted to the General Assembly. The requirement that the ward and precinct of signers be shown is removed and there is substituted the requirement only of the residence address and city or town or township. A bare majority is declared to be a sufficient margin by which to carry any proposal which shall be submitted to the people for adoption, by the State of Ohio or any political subdivision, thereof.

The general provision is added making the provisions self-enforcing and to relate the amendment to the existing constitution by providing amendment for all conflicting sections."

It is further proposed to adopt Section 8 of Article V to read as follows:

"All candidates for the State Legislature and National Congress shall be nominated by petition, and not at a Party Primary, and at the general election their names shall appear in alphabetical order and in rotation, on a separate LEGISLATIVE BALLOT, under the name of the particular office sought, and without any Party or other designation whatsoever.

This amendment is declared to be self-enforcing, without enabling legislation, and nominations shall be in the manner now

provided or as may subsequently be provided for the nomination of independent candidates.

All provisions of law or constitution of the State of Ohio in conflict with any provision of this amendment are hereby amended and superseded with respect to such conflict."

The proposed summary of this amendment to read as follows:

"All candidates for the State Legislature and for the United States Congress are to be nominated, not at party primary elections, but by petition, as in the case of independent candidates, and their names are to be printed in alphabetical order and in rotation, under the name of the office sought, on a separate ballot at the general election, all party emblems or other designations being prohibited on such ballot. The amendment is made self-enforcing, independently of any enabling legislation, and of existing provisions of law or constitution in conflict therewith."

It is further proposed to adopt Section 42 of Article II to read as follows:

"On expiration of the term of office of the present General Assembly, the Senate shall constitute a one-chamber Legislature, with such legislative powers as are now exercised by the two Houses, subject to all constitutional reservations of power under existing or future provisions of the constitution. There shall be no election thereafter, of members of the lower House."

The proposed summary of this amendment to read as follows:

"The Ohio Senate is constituted the Legislative body of the State, the Lower House being abolished after the expiration of the term of the present General Assembly, only Senators to be elected as State Legislators thereafter—the Senate to have the Legislative powers now exercised by both Houses, but subject to all reservations of power under present or future provisions of the constitution."

Section 4785-175, General Code, provides as follows:

"Whoever seeks to propose a law or constitutional amendment by initiative petition or to file a referendum petition against any law, section, or item in any law, shall by a written petition signed by one hundred qualified electors submit such proposed law, constitutional amendment or measure to be referred, and a summary of same to the attorney general for examination. If,

in the opinion of the attorney general, the summary is a fair and truthful statement of the proposed law, constitutional amendment or measure to be referred, he shall so certify. A verified copy of the proposed law, constitutional amendment or the law, sections or items to be referred, together with the summary and the attorney general's certification shall then be filed with the secretary of state, who shall forthwith designate a convenient size for the sheets of paper, the color and weight of paper to be used, and general order of arrangement of such petition, the form of which shall be substantially as hereinafter set forth."

In the case of *State ex rel. Hubbell vs. Bettman, Attorney General*, 124 O. S., 24, it was said:

"We find nothing expressly prohibiting the petitioners from uniting in a single petition amendments of separate and distinct provisions of the Constitution, even to the extent of amending sections and articles wholly unrelated to each other."

However, when several amendments are proposed in the same initiative petition, and the Attorney General is requested to certify in one certificate that the summary to each amendment is a fair and truthful statement of such proposed amendment, it follows that if any summary contains any unfair or untruthful statements, the request must be refused.

An examination of the text and summary of the proposed Old Age Pensions amendment, to be known as Section 13 of Article XII, discloses several material discrepancies. The text states that the pension is only applicable to a described class of citizens "of the age of 60 years or over", while the summary submitted states that the amendment shall apply to "every person" without any definite qualification as to age. The text bars persons "under conviction for crime" from participating, while the summary fails to note this exclusion. The provision for a special tax is that lands "in excess of Ten Thousand (\$10,000) Dollars of value, *exclusive of all improvements thereon*, are hereby subjected to a special tax on such excess of two per cent, which special tax *shall be in addition to all levies for general revenue purposes*, and all revenues therefrom shall be used for the payment of Old Age Pensions, before revenues are used from other sources for such purpose." The summary, it will be noted, does not exclude improvements thereon from such tax nor does it directly state that such special tax is in addition to all other levies for general revenue purposes.

In view of the foregoing, it appears that there are several differences between the provisions of the text and summary of the proposed Old Age Pension amendment. These differences are so material that a certification that the summary is a fair and truthful statement cannot be made.

Since a certification as requested cannot be made, it is unnecessary to further examine the petition to determine if there are any other material inconsistencies between texts and summaries.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*