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AMENDMENT, PROPOSED—CITY CHARTER—MAY BE SUBMITTED TO ELECTORS BY TWO-THIRDS VOTE, MEMBERS CITY COUNCIL — SHALL BE SUBMITTED BY CITY COUNCIL BY FILING PETITION SIGNED BY TEN PER CENT OF ELECTORS — DUTY, CLERK OF CITY COUNCIL AS TO NOTICE OF SUCH ELECTION — PROCEDURE AS TO A SINGLE AMENDMENT OR A NUMBER OF AMENDMENTS—BALLOT TITLES — ARTICLE XVIII, SECTION 9, CONSTITUTION OF OHIO — CITY OF LIMA.

## SYLLABUS:

1. *Under the provisions of Article XVIII, Section 9, of the Constitution of the State of Ohio and Section 129 of the Charter of the City of Lima a proposed amendment to said charter may be submitted to the electors of said city by a two-thirds vote of the members of the city council and shall be submitted to said electors by the city council upon the filing of a petition signed by ten per cent of the electors of the city setting forth the proposed amendment.*

2. *Not less than thirty days prior to the election at which the proposed amendment is to be submitted to the electors the clerk of the city council of Lima shall mail a copy of such proposed amendment to each elector whose name appears upon the poll or registration books of the last regular or general election held in said city. No duty rests with the clerk to mail to such electors a copy of the portion or portions of the existing charter to which the proposed amendment is directed.*

3. *If at a given election there is submitted (a) a single amendment seeking to amend a number of sections of the existing charter of the City of Lima, or (b) a number of amendments each seeking to amend one or more sections of said charter, in either case such amendment or amendments may be submitted to the electors by ballot title consisting of clear, concise state-*

*ments, without argument, descriptive of the substance of such proposed amendment or amendments.*

Columbus, Ohio, May 18, 1940.

Hon. Paul T. Landis, Prosecuting Attorney,  
Lima, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

"We desire to have the opinion of your office on behalf of the Board of Elections of this county in regard to the submission to the voters of the City of Lima of proposed amendments to the charter of the City of Lima. Copy of the entire charter of the City of Lima is enclosed and reference is made to Sec. 129 of the charter which raises the questions here involved, and concerning which we desire the following opinion:

(1) Under the first sentence of Sec. 129, may proposed amendments to the charter be submitted to the electors merely by ordinance passed by two-thirds vote of the members of the Council, or does it also require a petition signed by ten per cent of the electors of the city, prepared and filed with the City Council?

(2) A part of Section 129 of said charter provides, 'the clerk of the Council shall transmit to the election authorities prescribed by general law, a duly authenticated copy of such ordinance forthwith upon its passage, and not less than thirty days prior to such election, the clerk of the Council shall mail a copy of the proposed amendment to each elector whose name appeared on the registration books of the last regular or general election held in the city.'

Is a clerk required to mail a copy of the proposed amendment, and also the present part of the charter so proposed to be amended?

(3) Said Section 129 of said charter provides, 'proposed amendments to this charter may be submitted to the electors by ballot title which shall be clear concise statements, without argument, descriptive of the substance of such proposed amendments'.

Under this provision of the charter where there are several or numerous amendments to be submitted at the same election, what form should the ballot take?"

The first question is concerned with the circumstances under which the

city council of Lima is to submit to the electors of said city proposed amendments to the existing city charter. Section 129 of the Charter of the City of Lima, to which reference is made in your communication, provides in part as follows:

“Proposed amendments to this Charter *may* be submitted to the electors of the city by a two-thirds vote of the members of Council, and upon petition signed by ten (10) per centum of the electors of the city, setting forth any such proposed amendment, prepared and filed with the Council, through its Clerk in the manner and form prescribed in this Charter for the preparation and filing with the Clerk of an initiative petition for an ordinance, such proposed amendment *shall* be submitted to the electors of the city by the Council. \* \* \*” (Emphasis mine.)

The section above quoted must be read and construed in connection with Article XVIII, Section 9 of the Constitution of the State of Ohio from which the language thereof was derived. Said constitutional provision is as follows:

“Amendments to any charter framed and adopted as herein provided *may* be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, *shall* be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.” (Emphasis mine.)

A comparison of the two sections above set out instantly reveals a marked similarity and necessarily so in view of the observation that the former arose out of and is limited by the latter. It appears that each provides for two occasions upon which proposed amendments to a city charter are to be submitted to the voters, as follows: (1) by a two-thirds vote of the city council, the legislative authority, or (2) upon petition signed by ten per cent of the electors of the municipality. The method of submission in both cases is by action of council. However, in the first instance it is optional with the council, whereas in the second it is mandatory as evidenced by the use of the words “*may*” and “*shall*” above emphasized.

It is, therefore, my opinion that a proposed amendment to the Lima city charter may be submitted to the electors by action of city council if two-thirds of said body so desire and shall be submitted in like manner by council if ten per cent of the electors so petition the council.

This view is strengthened by an examination of Article XVIII, Section 8 of the Constitution of the State of Ohio, reference to which is made in Article XVIII, Section 9, *supra*. Said Section 8 provides in part 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’. \* \* \*” (Emphasis mine.)

Here again will be noted the use of the words “may” and “shall” in a manner similar to their use in Article XVIII, Section 9, *supra*. Clearly, under the provisions of Section 8 the question of whether or not a commission shall be chosen to frame a charter can be submitted to the electors of a municipality either by a two-thirds vote of the council or upon a petition signed by ten per cent of said electors. The two sections are in *pari materia* and, therefore, warrant like construction, especially where the language is so similar.

Your second inquiry is with reference to notice to the electors of proposed amendments. In connection therewith your attention is directed to Section 129 of the Charter of the City of Lima, Article XVIII, Section 9 of the Constitution of the State of Ohio and Article XVIII, Section 8 of the Constitution of the State of Ohio:

Section 129 of the Charter of the City of Lima:

“The Clerk of the Council shall transmit to the election authorities prescribed by general law a duly authenticated copy of such ordinance forthwith upon its passage, and not less than thirty days prior to such election the Clerk of the Council shall mail a copy of the proposed amendment to each elector whose name appears upon the registration books of the last regular or general election held in the city.”

Article XVIII, Section 9, Constitution of the State of Ohio:

“\* \* \* and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter.”

Article XVIII, Section 8, Constitution of the State of Ohio:

“Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein.”

The language of each of the above quotations is very clear and unambiguous to the effect that a copy of the proposed amendment shall be mailed to each qualified elector. Nowhere is any mention made of supplying the elector with a copy of the portion or portions of the existing city charter to which the proposed amendments are directed.

I am, therefore, of the opinion that no such copy of the existing charter provisions must accompany the copy of the proposed amendment mailed to the qualified electors.

In your final question you inquire as to the form of ballot in those instances where several amendments are submitted in the same election. In connection therewith I quote the pertinent portion of Section 129 of the Charter of the City of Lima as follows:

“Proposed amendments to this Charter may be submitted to the electors by ballot title, which shall be clear, concise statements, without argument, descriptive of the substance of such proposed amendments.”

Herein lies specific authority to submit a proposed amendment to the electors by use of a ballot title and thereby dispense with printing the full text of such amendment on the official ballot. The Constitution of the State of Ohio is silent on this point. However, our Supreme Court, in the case of *Reutener vs. The City of Cleveland, et al.*, 107 O. S. 117, held as follows as evidenced by the fourth branch of the syllabus:

“A proposed amendment, covering 67 printed pages and comprising 181 sections, was submitted to the voters of the city of Cleveland at the election of November, 1921, for their approval. Copies of the proposed amendment were mailed to the electors prior to the election, as provided by the constitution. A digest of the substance of the amendment, consisting of 86 lines, which digest substantially expressed the purpose and terms of the amendment, was printed on the ballot. The constitution did not prescribe that copies of the amendments submitted at municipal elections in charter cities should be placed on the ballots. *Held*: That this was a substantial compliance with the constitution. (*State, ex rel. Greenlund v. Fulton, Secretary of State*, 99 Ohio St., 168, distinguished and held not to apply to municipal charter elections.)

The rule thus pronounced by the court in the Reutener case, *supra*, is set out in 28 O. J. 947, in the following language:

“It is not necessary that proposed amendments of Home Rule charters should be printed in full on the ballot by which the question is submitted to the electors; it is sufficient if a digest of the substance of such amendments, substantially expressing the purpose and terms thereof, is printed on the ballot.”

It appears that the framers of Section 129 of the Charter of the City of Lima have incorporated therein and adopted thereby the rule above referred to. Thus, if at a given election there is submitted (1) a single amendment seeking to amend a number of sections of the existing charter of the City of Lima, or (2) a number of amendments each seeking to amend one or more sections of said charter, in either case such amendment or amendments may be submitted to the electors by ballot title consisting of clear, concise statements, without argument, descriptive of the substance of such proposed amendment or amendments.

In view of the foregoing and in specific answer to your inquiries, it is my opinion that:

(1) Under the provisions of Article XVIII, Section 9 of the Constitution of the State of Ohio and Section 129 of the Charter of the City of Lima a proposed amendment to said charter may be submitted to the electors of said city by a two-thirds vote of the members of the city council and shall be submitted to said electors by the city council upon the filing of a petition signed by ten per cent of the electors of the city setting forth the proposed amendment.

(2) Not less than thirty days prior to the election at which the proposed amendment is to be submitted to the electors the clerk of the city council of Lima shall mail a copy of such proposed amendment to each elector whose name appears upon the poll or registration books of the last regular or general election held in said city. No duty rests with the clerk to mail to such electors a copy of the portion or portions of the existing charter to which the proposed amendment is directed.

(3) If at a given election there is submitted (a) a single amendment seeking to amend a number of sections of the existing charter of the City of Lima, or (b) a number of amendments each seeking to amend one or more sections of said charter, in either case such amendment or amendments may

be submitted to the electors by ballot title consisting of clear, concise statements, without argument, descriptive of the substance of such proposed amendment or amendments.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.