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1. PETITION—FILED WITH SECRETARY OF STATE—AMENDMENT TO STATE CONSTITUTION—TO CALCULATE NINETY DAY PERIOD, INCLUDE DAY OF FILING AND EXCLUDE ELECTION DAY—ARTICLE II, SECTION 1a, CONSTITUTION OF OHIO.
2. PETITION FILED WITH SECRETARY OF STATE TO AMEND CONSTITUTION—LESS THAN NINETY DAYS BEFORE NEXT SUCCEEDING REGULAR OR GENERAL ELECTION—SECRETARY OF STATE MAY NOT SUBMIT SUCH AMENDMENT TO ELECTORS IN YEAR FOLLOWING THAT IN WHICH PETITION FILED.

## SYLLABUS:

1. Article II, Section 1a provides that when a petition is filed with the secretary of state proposing an amendment to the constitution of the state of Ohio the same shall be submitted at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. In calculating such ninety day period the day of filing shall be included and the election day excluded. *Thraikill v. Smith*, 106 O.S. 1 followed.

2. Under Article II, Section 1a when a petition is filed with the secretary of state, proposing an amendment to the Ohio Constitution, in less than ninety days before the next succeeding regular or general election the secretary of state may not submit such amendment to the electors in the year following that in which such petition is filed.

Columbus, Ohio, July 20, 1949

Hon. Charles F. Sweeney, Secretary of State  
Columbus, Ohio

Dear Sir:

I have before me your communication requesting my opinion which request reads as follows:

“Article II, Section 1a, of the Ohio Constitution is headed ‘The Initiative and Referendum’. I am hereby requesting that you render to me at the earliest possible moment a formal opinion on the interpretation of Article II, Section 1a, of the Ohio Constitution, as to the final date and time for filing initiative petitions referred to in the above mentioned section of the Ohio Constitu-

tion. Specifically, the date and time for filing initiative petitions for a proposed amendment to the Ohio Constitution to be submitted to the electors at the general election to be held November 8, 1949."

You have orally requested an opinion in answer to a question that may be stated as follows:

"Assume that a petition is filed with the secretary of state under Article II, Section 1a, of the Ohio Constitution, *seventy* days before the next succeeding regular or general election in a given year; may the secretary of state retain such petitions and submit the proposed amendment to electors in the *following* year?"

Article II, Section 1a of the Ohio Constitution which you refer to in your letter provides:

"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. \* \* \*"

In order to give an opinion in answer to your request, it is necessary to make a determination of the meaning of the phrase contained in Article II, Section 1a, which reads:

"\* \* \* 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.*" (Emphasis added.)

Section 4785-3 of the Ohio General Code, contains a definition of the term "general election" which reads as follows:

"The term 'general election' shall mean any election held on the first Tuesday after the first Monday in November."

Therefore, the next general election to be held in Ohio will be Tuesday, November 8, 1949. Briefly, you desire to know what is the last day on which the above mentioned petitions may be filed.

The Ohio Supreme Court has had occasion to pass on this precise question. In *Thraikill v. Smith*, 106 O. S. 1, the second paragraph of the syllabus contains the following language:

“Section 1a, Article II, provides that when a petition is filed with the secretary of state proposing an amendment to the constitution the same shall be submitted at the next succeeding regular or general election occurring subsequent to ninety days after the filing of such petition. In calculating such ninety-day period the day of filing shall be included and the election day shall be excluded.”

In the body of the opinion at page 6, Chief Justice Marshall refers to an earlier Ohio Supreme Court case (*Jones v. Board of Deputy State Supervisor*, 93 O. S. 14) and cites the case with approval.

The second paragraph of the syllabus of the *Jones* case, *supra*, states:

“Where a statute requires that an act be performed a fixed number of days *previous* to a specified day, the last day should be excluded and the first day included in making the computation.”  
(Emphasis added.)

Further, in the case of *Cassidy v. Zaller et al.*, 142 O. S. 186, decided October 6, 1943, the court speaking through Judge Williams at page 187 states:

“It is settled that when a statute requires an act to be done within a specified number of days prior to a fixed date, the last day, namely, the fixed date, is to be *excluded* and the first day *included* in making the calculation.” (Emphasis added.)

It is apparent then, that where a number of days are to pass *prior* to a fixed date, the fixed date must be excluded and the first day included in making the computation of time. The provisions of the Ohio Constitution involved in your request contain the phrase:

“\* \* \* shall submit \* \* \* the proposed amendment, \* \* \* at the next succeeding regular or general election \* \* \* occurring *subsequent* to ninety days after the filing of such petition.”  
(Emphasis added.)

If the word "subsequent" appearing in the above phrase means that the number of days must pass *prior* to election day then all of the above cited cases are in harmony and the correct rule has been adopted in the Thrailkill case. Webster's New International Dictionary, Second Edition, 1944, contains the following definition of the word "subsequent":

"Following in time; coming or being later than something else."

Under the above definition the election day November 8, must be "following in time" from the "ninety days after the filing of such petition". Therefore, the ninety days must run prior to the election day and the election day may *not* be included in the computation of the ninety day period.

I am aware of the fact that there are Ohio State Supreme Court cases which seem to adopt a different method of computation of time. Particularly, I am aware of Houck v. State, 127 O. S. 247, in which it was decided that in computing the ninety day time period contained in Article II, Section 1c of the Ohio Constitution, the first day, namely, the date of filing of the ninety day period was to be excluded and the last day included. The pertinent provision of Article II, Section 1c passed upon by the Court in the Houck case reads:

"\* \* \* No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state \* \* \*."

Notice that in the phrase quoted above there is no fixed date *prior* to which the ninety days must run or no fixed date *subsequent* to the running of the ninety days. Therefore, the Houck case and the Thrailkill case, *supra*, are distinguishable on their facts and in the Houck case Judge Zimmerman at page 254 of the opinion does so distinguish them in the following language:

"The matters passed upon in the cases last cited (the Jones and the Thrailkill case, *supra*), and the question with which we are now confronted, are so totally different as to make those cases inapplicable."

Another Ohio Supreme Court case which uses the same method of computation as used in the Houck case is Neiswander v. Brickner, 116 O. S. 249. In the Neiswander case, the statute, Section 4736 of the General Code, provided among other things:

“Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall *within thirty days from the time such action is taken* file with the county board of education a written remonstrance against it.” (Emphasis added.)

Judge Allen, speaking for the Court, relied on Section 10216 of the General Code as determinative of the case. Section 10216 reads:

“Unless otherwise specifically provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; except that the last shall be excluded if it be Sunday.”

Notice that the statute involved in the Neiswander case, Section 4736, General Code, contains no fixed date *prior* to which the given number of days must pass nor a fixed date *subsequent* to the passing of a given number of days. Therefore, the facts of the case are distinguishable from the Thrailkill case and the method of computation is not applicable to the facts presented by your question. Further, Section 10216 of the General Code’s opening sentence provides: “Unless otherwise specifically provided \* \* \*” the statute shall apply. There may be a question as to whether a statute such as Section 10216 applies to a constitutional provision; that, however, I do not have to decide as I am satisfied that Article II, Section 1a does “specifically” provide by the use of the word “subsequent” a different method of time computation. Further, Section 10216 of the General Code was passed by the Fiftieth General Assembly and was in force and effect at the time the decision of the Thrailkill case was rendered.

In answer to your question, I am of the opinion that the last date and time for filing initiative petitions for a proposed amendment to the Ohio Constitution in the year 1949 is before midnight on August 10, 1949.

The following language from Article II, Section 1a will, I think, be determinative of your second question:

“When a petition signed by the aforesaid required number of electors shall have been filed with the secretary of state \* \* \* proposing an amendment to the Constitution, \* \* \* the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, \* \* \* at the next succeeding regular or general election *in any year* occurring subsequent to ninety days after the filing of such petition. (Emphasis added.)

What is the significance of the phrase "in any year" in the above provision? I am of the opinion that the only meaning possible to give the phrase is that it limits the submitting of the proposed amendment to a *given* year in which petitions have been filed ninety days before the date of such election. Certainly all the words of a constitutional provision are to be given effect. See 8 O. Jur., page 132.

Therefore, in answer to your question, if the phrase is to have any effect it must mean that petitions proposing an amendment to the Ohio Constitution must be filed with the secretary of state ninety days before a regular or general election in a given year and if *no* such election is to be held subsequent to ninety days after the filing of such petitions then the petitions may *not* be retained by the secretary and submitted in the following year.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.