

subject to approval by the court, to permit the bank in question and those similarly situated to resume business.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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763.

CONSTITUTION OF OHIO—INITIATIVE PETITION TO AMEND—DATE AND RESIDENCE OF SIGNER MUST BE WRITTEN THEREON BUT NOT NECESSARILY PERSONALLY.

*SYLLABUS:*

*The date on which a signer of an initiative petition seeking a constitutional amendment signs such petition and the residence of such signer must be written thereon as required by Section 1g, Article II of the Constitution, but this information may be filled in by another. Attorney General's opinions 1913, Vol. II, p. 1356; 1915, Vol. II, 1749, 1817 overruled, under authority of In re Referendum Petition, 18 N. P. (N. S.) 140.*

COLUMBUS, OHIO, May 3, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion on the following question:

“Must the signer of a part of an initiative petition seeking a constitutional amendment personally write thereon the date of such signing, his residence address, including the ward and precinct where required, as provided in Section 1g, of Article II of the Constitution, or may such data be filled in for him by another?”

My immediate predecessor held in an opinion in which I concur, being Opinion No. 4272, rendered April 23, 1932, that this data must be contained in such an initiative petition. The first two branches of the syllabus are as follows:

“The failure to place the date of signing on an initiative petition for a constitutional amendment invalidates the signature of such petitioner.

Where the signer to such a petition resides in a municipality, the failure to state thereon any information as to the ward and the precinct in which his residence is located invalidates the signature of such petitioner.”

The foregoing opinion, however, did not pass upon the question of whether or not the signers must personally write this information on the petitions or parts of petitions which are signed. The language of this opinion with respect to this matter is as follows:

“I assume that by these inquiries you do not mean to raise the question as to whether these matters may be placed upon such petitions

by one other than the signer himself. In the case entitled *In re Referendum Petition*, 18 N. P. (N. S.) 140, Judge Estep of the Common Pleas Court of Cuyahoga County has held that such information need not be placed thereon by the signer himself. The opposite conclusion, I am informed, was reached by Judge H. W. Coultrap of the Court of Common Pleas of Vinton County in an unreported case. This office has previously held that this information must be placed on the petition by each signer. Attorney General's Opinions for 1913, Vol. II, page 1356; 1915, Vol. II, page 1749; 1915, Vol. II, page 1817."

The first opinion of this office upon the question which you present rendered in 1913 held as set forth in the syllabus:

"Under the provisions of article 2, section 1g, of the constitution, it is necessary for each signer of any initiative, supplemental or referendum petition to write in for himself the name of his township and county or the name of the municipality, street and number and the ward and precinct. This information may not be filled in by a second party."

This was followed in the first 1915 opinion referred to above, rendered September 15. The second 1915 opinion cited above was rendered September 22 of that year, the syllabus of which is as follows:

"Signatures to initiative, referendum and supplementary petitions may be written with indelible pencil. A qualified elector may not authorize another to sign his name upon such petition nor to place upon the same opposite his name, the date of signing, place of residence, street, number, ward or precinct."

In this opinion, the then Attorney General concurred in the 1913, opinion, *supra*, quoting the same in full. No mention is made in the last mentioned opinion of any judicial decisions, with respect to the question.

The case of *In re Referendum Petition*, 18 N. P. (N. S.) 140, was decided by the Common Pleas Court of Cuyahoga County September 14, 1915, a week and a day before the rendition of the September 22 opinion of this office hereinabove commented upon. Obviously this decision of the Common Pleas Court of Cuyahoga County had not been brought to the attention of this office immediately upon its rendition. The syllabus of this case is as follows:

"1. The constitutional provision that the names of all signers of referendum petitions shall be written in ink, is substantially complied with by the use of an indelible pencil, and an objection to the sufficiency of such signatures on the ground that they are written with an indelible pencil does not lie.

2. The requirement that the name of a signer of a referendum petition be written by himself is absolute; the date of signing and the residence of the signer are material, but may be filled in by another.

3. If the date of signing and residence of the person purporting to sign a petition do not appear on the petition, or if the residence can not be definitely ascertained from the petition, objection lies thereto."

The reasoning of the court appearing on pages 142 and 143 is as follows:

"The second objection in the stipulation refers to 3961 of said signatures in which the county and state, and the village and township following the signer's name do not appear in the same handwriting as that of the signature.

Section 1g, Article II of the Constitution makes it mandatory that the signing of the petition should be by the signer himself. This act can not be delegated to another. This clearly appears upon a careful-reading of this section of the Constitution. The name of the signer must be signed by himself, and shall be written in ink. The circulator of the parts of the petition must make oath that each of the signatures was made in his presence; that the signature was genuine; that he believes that the person who signed said petition had knowledge of its contents, and that he signed the same on the date set opposite his name. It is also a necessary requirement of the Constitution that the date of signing and the place of residence of the signer shall appear opposite his name on said petition. The Constitution provides that the signer shall place on such petition, after his signature, the date of signing and his place of residence. A resident of a municipality shall state, in addition to the name of such municipality, the street number, if any, of his residence, and the ward and precinct in which the same is located. If he resides outside of a municipality, he shall state the township and county in which he resides. Nowhere in this provision of the Constitution do we find the express requirement that the signer of the petition shall write this data. If it might be said from any language in this section of the Constitution, that the signer should write in this data, in my opinion it is not a mandatory duty, but directory only. I am of the opinion that the signer can give this information to the circulator of the petition, and that it can be written in by another person. This data in relation to place of residence of the signer and date of signing must be given, and must be placed upon the petition opposite the signer's name. If it does not so appear upon the petition in the proper place, the name should not be counted; otherwise the board would have no means of determining whether or not the signer is an elector, whether the signature is genuine, nor would the board have any means of detecting fraud and perjury in the procurement of signatures to these petitions.

In a consideration of Section 1g, Article II of the Constitution, I feel satisfied that, while the name of the signer to a referendum petition should be written by himself, and that it is an absolute requirement that the date of signature and place of residence shall appear on said petition opposite the name of the signer, yet I am of the opinion that this information, given by the signer as to his place of residence and date of signing, may be placed upon the petition by another, and in a different handwriting than that of the signature. Holding this view, I overrule this objection."

In my judgment, the foregoing reported decision of the Common Pleas Court of Cuyahoga County supersedes the hereinabove cited opinions of this office and is controlling. With respect to an unreported case decided by the Common Pleas Court of Vinton County mentioned in the 1932 opinion, *supra*. I am not advised as to whether that decision was rendered before or after the rendition of the decision in the case of *In re Referendum Petition, supra*. In any event, it is my judgment that this last mentioned case should be followed. This

view is strengthened by a consideration of the fact that the established administrative practice during the past eighteen years appears to have been in complete harmony with this Cuyahoga County Common Pleas Court decision.

Specifically answering your inquiry, it is accordingly my opinion that the date on which a signer of an initiative petition seeking a constitutional amendment signs such petition and the residence of such signer must be written thereon, but this information may be filled in by another.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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764.

APPROVAL, BONDS OF HOPEWELL RURAL SCHOOL DISTRICT, MUSKINGUM AND LICKING COUNTIES, OHIO—\$66,000.00.

COLUMBUS, OHIO, May 3, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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765.

APPROVAL, AMENDED ARTICLES OF INCORPORATION OF MONARCH FIRE INSURANCE COMPANY.

COLUMBUS, OHIO, May 4, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the Amended Articles of Incorporation of Monarch Fire Insurance Company and find them to be in accordance with the provisions of law and not inconsistent with the Constitution and laws of this State and the United States and I have therefore approved them.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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766.

APPROVAL, NOTES OF MORGAN TOWNSHIP RURAL SCHOOL DISTRICT, BUTLER COUNTY, OHIO—\$1032.00.

COLUMBUS, OHIO, May 4, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*