

General's statutory power to appoint and not do violence to the prohibition against the employment of attorneys at law by other state officers and departments."

If, therefore, there were specific mention of the employment of attorneys in connection with the appropriations to which you refer, the employment by this office of an additional attorney to be paid from such appropriations might possibly be sustained.

Likewise, if there were in the laws relating to your department a provision similar to Section 497 of the General Code directing specifically how the payment of an additional special counsel should be made, it very properly could be held that payment out of the appropriations to which you refer would be justified.

In view of the fact that the legislature has failed to indicate specifically, either by general law or in the appropriation act, that authority exists for the payment of the compensation of a special counsel for the department of highways and public works otherwise than from the appropriation specifically made for special counsel, I do not feel that I am justified in approving such an employment.

I am therefore compelled to the conclusion that the employment of a special counsel by the Attorney General and his assignment to the Department of Highways and Public Works cannot be made so as to authorize payment of the compensation of such employe out of the appropriations made to such department by the 87th General Assembly.

However, if for the reasons stated in your letter you are of the opinion that it is necessary for me to designate an additional special counsel in order that the legal work of your department may be adequately taken care of, upon receipt of a letter from you to that effect I will make application to the Emergency Board, under Section 2313, General Code, which provides in part that

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, \* \* \* the officers of such department \* \* \* may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law \* \* \* ",

for an allowance sufficient to enable me to employ such counsel.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1073.

INITIATIVE AND REFERENDUM—PRINTED COPIES OF INITIATED AND REFERRED LAWS AND ARGUMENTS THEREON SUBMITTED TO PEOPLE—COST OF PRINTING AND MAILING—ADDITIONAL HELP.

**SYLLABUS:**

1. Section 1g, Article II of the Constitution peremptorily commands the Secretary of State to cause to be printed a true copy of all proposed laws to be submitted to the

people through the initiative and referendum, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against such laws, and to mail, or otherwise distribute, the same to each of the electors of the state, as far as may be reasonably possible, and it is the mandatory duty of the Secretary of State to obey this constitutional command regardless of the fact that neither the constitution nor the laws of the state specifically provide in detail the manner and method of so doing.

2. The cost of the necessary paper and printing of a proposed law to be submitted to the people through the initiative and referendum, together with arguments or explanations, or both, for and against the same, is a proper charge against the appropriation made by the 87th General Assembly to the Controlling Board to supplement appropriations to state departments for print paper and printing ( H. B. No. 502, p. 167), and, if the appropriations to the Secretary of State are insufficient to cover such cost, it is his duty to make application to such board for sufficient funds to cover the necessary cost of the paper and printing proposed laws, together with an argument or explanation for and against such laws.

3. If the regular personnel of the Secretary of State's Department be inadequate to mail, or otherwise distribute, a copy of any proposed law, together with arguments or explanations, or both, for and against such law, or the appropriations to the Secretary of State be insufficient to cover the cost and expense of such printing, mailing or distribution, it is the duty of the Secretary of State to make application to the Emergency Board, under authority of Section 2313, General Code, for an allowance of sufficient funds to cover such cost and expense, including the compensation of any necessary additional help.

COLUMBUS, OHIO, September 28, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of September 23, 1927, in which you request my opinion, and which reads as follows :

"Petitions have been filed in the office of the Secretary of State which comply with all legal requirements for submission to the electors of Ohio under the Initiative and Referendum sections of the Constitution and the Code of Ohio. One of these is a referendum upon amended Senate Bill No. 72, known as the Marshall Bill, the other is an initiated bill first submitted to the General Assembly. Subsequently a supplementary petition was filed for submission of the question to the electors of the state and is the Act entitled, 'To regulate the practice of Chiropractic in this state by authorizing the examination and licensing of practitioners thereof, establishing educational requirements, and providing penalties for illegal practice.'

The General Assembly at its recent session appropriated \$30,000 for the expenses to be incurred by the Secretary of State under Sections 5018-1, 5018-4 and 5018-5 of the General Code and 1-G of Article 2 of the Constitution of Ohio. This appropriation was vetoed by the Governor leaving no funds available to the Secretary of State for expenses, as directed under the above sections. Publicity pamphlets have been filed for and against each of the above measures.

We request your opinion as to whether the Secretary of State is authorized under the provisions of Section 5018-4 to incur the expense necessary in the distribution of publicity pamphlets without specific appropriation by either the General Assembly or the Emergency Board of the state."

The appropriation item vetoed by the Governor, to which you refer in the second paragraph of your letter, apparently is the one set forth on page 11 of the act entitled "An Act—To make general appropriations" (House Bill No. 502), reading as follows:

"Maintenance—

\* \* \* \*

F Contract and Open Order Service—

\* \* \* \*

F 9. General Plant—

\* \* \* \*

Printing and Distributing Constitutional Amendments...\$30,000.00"

You will observe that by its terms, this item was limited to "Printing and Distributing *Constitutional Amendments*," and the funds therein appropriated could not, therefore, have been used by the Secretary of State to print and distribute proposed laws, that is, proposed *statutes* as distinguished from proposed amendments to the constitution.

Your question requires an examination of certain sections of the Constitution of Ohio and certain statutes relating to the initiative and referendum, and a determination of the duties of the Secretary of State with reference to the printing and distribution of proposed laws, together with arguments and explanations for and against such laws.

Section 1g, Article II of the Constitution of Ohio provides, *inter alia*, as follows:

" \* \* \* A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. *The Secretary of State shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the Secretary of State shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. \* \* \* The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.*" (Italics the writer's.)

Sections 5018-1a to 5018-9, inclusive, of the General Code, were passed on April 18, 1913, in an act entitled "An Act—To provide for the submission of publicity pamphlets by the state, county or municipality relative to measures submitted to the people through the initiative and referendum." (103 v. 831).

Since you state in your letter that "Publicity pamphlets have been filed for and against each" of the proposed laws referred to in your communication, it is unnecessary here to set forth sections 5018-2 and 5018-3, General Code, relating to the appointment of a committee to prepare an explanation of the measure to be submitted or to comment thereon.

Sections 5018-1a, 5018-4, 5018-5 and 5018-6, *supra*, respectively read as follows :

Section 5018-1a. "The Secretary of State, at least thirty days before any election at which any proposed amendment to the constitution or proposed law is to be submitted to the people, shall cause to be printed in pamphlet form a copy of the title and text of each measure to be submitted, with the form in which the ballot title thereof will be printed on the official ballot. Such pamphlet shall also contain an explanation of any proposed measure, not exceeding a total of three hundred words for each to be filed as hereinafter provided."

Section 5018-4. "The posting and other cost of distributing such pamphlets shall be paid by the state. The auditor of the state upon receipt of a voucher signed by the Secretary of State shall draw his warrants on the state treasurer for such amount as may be necessary to pay for such printing, postage and cost of distribution at each election, and the same shall be paid from the general fund of the state."

Section 5018-5. "The Secretary of State shall, at least twenty days before any such election, transmit one copy of such pamphlet to every voter in the state by mail with postage fully prepaid. If the Secretary of State shall, at or about the same time be mailing any other pamphlets to voters, he may, if practicable, bind the matter herein provided for and enclose any and all pamphlets under one cover. For the purpose of securing a mailing list of voters outside of cities having a registration of voters, the Secretary of state shall prescribe the forms of books to be used by all local election officials in keeping a record of the postoffice address of all voters residing outside of such cities. The latest available registration lists shall be used in such cities."

Section 5018-6. "When more copy is offered to the Secretary of State than herein provided for, the Secretary of State shall cause such additional copy to be incorporated in the pamphlet provided for in Section 1 of this act, if the parties submitting such additional copy deposit with it a sum of money sufficient to pay for the printing thereof. When any constitutional amendment or other measure has been published in pamphlet form in accordance with the provisions of this act, the same shall be in lieu of any other method of advertising provided by law."

With reference to Section 1g, Article II of the Constitution, and the sections of the General Code above referred to, the Supreme Court of Ohio, in the case of *The State, ex rel., Hunt, et al., vs. Hildebrant, Secretary of State*, 93 O. S. 1, held as follows :

1. "Section 1g of Article II peremptorily commands the Secretary of State to cause to be printed an argument and explanation, or both, against any proposed amendment to the constitution, and to mail, or otherwise dis-

tribute, the same, together with a copy of such proposed amendment and argument and explanation, or both for such amendment, to each of the electors of the state, as far as may be reasonably possible, and further expressly provides that this, with other provisions found in this section of the constitution, 'shall be self-executing.'

2. These mandatory provisions of the constitution are binding upon the executive officers and the courts of this state alike. It is the duty of the officer to obey. He has no authority to declare that a constitutional provision is not self-executing, when the constitution expressly provides that it is self-executing.

3. It is the official duty of the Secretary of State to obey this constitutional command, regardless of the fact that neither the constitution nor the laws of the state specifically provide in detail the manner and method of selecting the person or persons who shall prepare and file such argument and explanation, or both.

4. Where an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed.

5. The act of the General Assembly, passed April 18, 1913 (103 O. L., 831), entitled, 'An act to provide for the submission of publicity pamphlets by the state, county or municipality, relative to measures submitted to the people through the initiative and referendum,' does not facilitate the operation of the provision of Section 1g of Article II of the Constitution, in reference to the preparation and mailing, or otherwise distributing, to the electors of the state, as far as may be reasonably possible, an argument or explanation, or both, against a proposed amendment to the constitution."

In the opinion, Judge Donahue, speaking for the court, said :

"The language found in Section 1g of Article II of the Constitution, is too plain, positive and direct to require construction by this or any other court.

*By this section the Secretary of State is peremptorily commanded to print the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and to mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same, to each of the electors of the state, as far as may be reasonably possible.*

There can be no reasonable doubt as to the intent and purpose of this provision. The words used exhaust the possibilities of the English language to make the meaning clear.

This same section further provides that this and other provisions of this section of the constitution shall be self-executing; that laws may be passed to facilitate their operation, but not to limit or restrict the same.

*In view of the positive language found in this section of the constitution, declaring that this provision shall be self-executing, it is hardly within the province of the Secretary of State, or of the supreme court, or any other court, to say that it is not. That it may be difficult of operation is not a sufficient reason for refusing to obey the mandate of the constitution of the state.*

Language could not have been used by the members of the constitutional convention or by the electors of the state that would give clearer expression to their intention and purpose in reference to this subject-matter.

\* \* \* \* \*

\* \* \* it is contended, nevertheless, that \* \* \* this provision can not be self-executing, because neither the constitution nor the statutory law of the state provides any method by which the Secretary of State may determine who may prepare and file this argument, or, in case more than one argument is prepared and filed with him, which one of these arguments shall be printed and distributed, and that, therefore, if this provision of the constitution is not self-executing in all cases it is not self-executing in any.

This contention overlooks the fact that the constitution expressly provides that this provision shall be self-executing in all cases, and it also overlooks the further fact that when the constitution commands an officer of the state to do a particular thing, the mere omission to point out in detail the manner and method of doing it does not excuse the officer from performing the duty enjoined upon him by the supreme law of the land. If a master commands a servant to do a particular thing, without directing him in detail how he shall do it, it is a fair and necessary presumption that the servant is to exercise an intelligent discretion in doing the thing commanded to be done. Certainly affairs of state must be conducted on as equally intelligent lines as private business. Therefore, if the constitution of the state commands a public officer to do a particular thing, without directing the manner in which it shall be done, and the General Assembly of the state has not, in the exercise of the authority conferred upon it, enacted any laws to facilitate the operation of the provisions of the constitution, it necessarily follows that the officer who is required to perform this duty has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded; otherwise, full directions would have been given the officer or the duty would not have been imposed upon him. It would be the merest folly to command him to do a particular thing and then withhold from him the power to do it. \* \* \* The presumption naturally obtains that he will fairly and honestly discharge his duties in this behalf and determine all questions he is called upon to decide according to the justice of the case, regardless of his own personal preferences or political affiliations \* \* \*

Our attention is called to the act of the General Assembly of Ohio, passed April 18, 1913, entitled, 'An act to provide for the submission of publicity pamphlets by the state, county or municipality, relative to measures submitted to the people through the initiative and referendum,' which act has been given sectional numbers 5018-1 to 5018-9, inclusive, of the General Code.

It is clear that this act does not facilitate the operation of this particular provision of Section 1g of Article II of the Constitution. It may have been intended to do so, but if that were the intention it fails in the accomplishment of its purpose.

\* \* \* the mandate of the constitution must be obeyed, and if any question or doubt arises as to the manner and method of doing this, that question must be answered and that doubt resolved by the application of the same ordinary intelligence of men that is applied to the solution of everyday problems of life."

The Supreme Court could not have used language more plainly or more emphatically pointing out the duty of the Secretary of State to cause to be printed and

distributed any proposed law to be submitted to the people through the initiative and referendum, together with the arguments and explanations for and against such measure. Adopting the words of Judge Donahue, "The words used exhaust the possibilities of the English language to make the meaning clear." It being the duty then of the Secretary of State to cause any proposed law, together with arguments and explanations for and against such law to be printed and distributed, it is his further duty to obtain the necessary financial and other aid to carry the plain mandates of the Constitution into effect if it be at all possible so to do.

In so far as the cost of the paper and printing is concerned, your attention is directed to the appropriation made to the Controlling Board by the 87th General Assembly, contained on page 167 of the general appropriation act (H. B. No. 502), which reads:

"F Contract and Open Order Service—		
F 8. Contingencies -----	\$10,000 00	\$20,000 00
To supplement appropriations to state department and divisions for print paper and printing, transfers to be made subject to approval of Con- trolling Board -----		
	20,000 00	40,000 00"

The cost of the required print paper and of printing the proposed laws and the arguments and explanations in question would clearly be a proper charge against this item, and, if your department does not have sufficient funds for this purpose, the Controlling Board would undoubtedly make a sufficient allotment therefrom in order to enable you to carry out the plain mandates of the Constitution. It is your duty, therefore, if additional funds be necessary, at once to make proper application to the Controlling Board for sufficient funds for the purposes in question.

With reference to the expenses incident to mailing, or otherwise distributing, the proposed laws and the arguments and explanations for and against them, if the regular personnel of your department is not sufficient to do this work, additional employes should be employed and funds to cover the expense thereof obtained from the Emergency Board under the provisions of Section 2313, General Code, which provides in part as follows:

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or in case of an emergency requiring the expenditure of money not specifically provided by law, the trustees, managers, directors or superintendent of such institution, or the officers of such department or commission, may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law. Such applicant shall fully set forth to the secretary in writing the facts in connection with the case. As soon as can be done conveniently, the secretary shall arrange for a meeting of the board, and shall notify the applicant of the time and place of the meeting and request his presence \* \* \* ."

It is my opinion that this is a case in which the Emergency Board would be entirely justified in making a proper allowance either upon the ground that there is a "deficiency in \* \* \* the appropriations for the expenses" of your department or upon the ground that an emergency exists. It could scarcely be argued that the legislature was able to foresee that there would be a referendum on Amended Senate

Bill No. 72 or that the other act mentioned in your letter would be initiated. It is my opinion, therefore, that if additional funds be necessary to enable you to perform the constitutional duties devolving upon you, pointed out by the Supreme Court in the Hildebrant case, *supra*, you should at once make application to the Emergency Board, which would be clearly authorized to make the necessary allowance to enable you to mail, or otherwise distribute, copies of the proposed laws, together with arguments and explanations for and against them.

I have not answered the specific question asked in the last paragraph of your letter, for the reason that, in view of the conclusion reached herein, I deem it unnecessary so to do, it being my opinion that, since funds lawfully appropriated to the Controlling Board and Emergency Board can undoubtedly be obtained to enable you to comply with the requirements of Section 1g, Article II, *supra*, a consideration of the question, as to whether or not monies for the purpose under consideration may be withdrawn from the state treasury without a specific appropriation by the General Assembly, is unnecessary.

From what has been said, it is my opinion that :

1. Section 1g, Article II of the Constitution peremptorily commands the Secretary of State to cause to be printed a true copy of all proposed laws to be submitted to the people through the initiative and referendum, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against such laws, and to mail, or otherwise distribute, the same to each of the electors of the state, as far as may be reasonably possible, and it is the mandatory duty of the Secretary of State to obey this constitutional command regardless of the fact that neither the constitution nor the laws of the state specifically provide in detail the manner and method of so doing.

2. The cost of the necessary paper and printing of a proposed law to be submitted to the people through the initiative and referendum, together with arguments or explanations, or both, for and against the same, is a proper charge against the appropriation made by the 87th General Assembly to the Controlling Board to supplement appropriations to state departments for print paper and printing (H. B. No. 502, p. 167), and, if the appropriations to the Secretary of State are insufficient to cover such cost, it is his duty to make application to such board for sufficient funds to cover the necessary cost of the paper and printing proposed laws, together with an argument or explanation for and against such laws.

3. If the regular personnel of the Secretary of State's Department be inadequate to mail, or otherwise distribute, a copy of any proposed law, together with arguments or explanations, or both, for and against such law, or the appropriations to the Secretary of State be insufficient to cover the cost and expense of such printing, mailing or distribution, it is the duty of the Secretary of State to make application to the Emergency Board, under authority of Section 2313, General Code, for an allowance of sufficient funds to cover such cost and expense, including the compensation of any necessary additional help.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*