CITIZENS RESEARCH COUNCIL OF MICHIGAN
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ISSUES RELATIVE TO THE INITIATIVE PETITION TO REDUCE PROPERTY ASSESSMENT RATIOS

An initiative petition that was filed with the Secretary of State on September 11, 1990, has raised several constitutional issues regarding legislative consideration of initiative petitions in general and whether, under certain circumstances, such proposed laws must be submitted to the electors even if not enacted by the Legislature. This analysis is limited to matters of procedure and form and does not address the substance of the proposal.*

Is should be noted at the outset that the state Supreme Court has held that an initiative petition submitted to the Legislature must first be certified by the Board of State Canvassers. **(In re Proposals D & H) Michigan State Chamber of Commerce v State of Michigan**, (417 Mich 409; 1983). Section 476 of Public Act 116 of 1954, the Michigan election law, requires the Board of State Canvassers to determine "at least 2 months prior to the election at which such proposals are to be submitted," whether petitions have been signed by the requisite number of qualified and registered electors. (The requirement of Section 472 that initiated legislation be "filed with the secretary of state not less than 10 days before the beginning of a session of the legislature," was held to be unconstitutional as an unreasonable burden on the right of initiative. **Wolverine Golf Club v Hare**, (384 Mich 461; 1971)). Two months prior to the 1990 general election was September 7th.

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*The initiative petition in question, if approved, would amend Section 27a of Public Act 206 of 1893, the general property tax act, to:

(1) Provide that property be assessed at 45% of its true cash value beginning on December 31, 1990, and at 40% of its true cash value "on each succeeding year thereafter";

(2) Require that the state reimburse from its general fund any revenue loss to a local unit, occasioned by the foregoing, during the same calendar year of the loss, such reimbursement being in addition to any required by Section 30 of Article 9 of the 1963 state Constitution;

(3) Provide any taxpayer with standing to enforce the statute by bringing suit, including a class action, in the circuit court having jurisdiction over the property; and

(4) Provide as damages for a plaintiff 150% of his or her actual costs, inclusive of attorney fees and prohibit the imposition of costs against a plaintiff.

A. The Initiative Petition Process

The initiative petition process is governed by Section 9 of Article 2 of the state Constitution, that provides in pertinent part:

> Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided....
>
> If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election....

1. The Meaning of "Session" Days

it has been held that resort may be had to the Official Record of the Constitutional Convention and the Address to the People when attempting to determine the meaning of a provision of the state Constitution. Burdick v Secretary of State, (373 Mich 578; 1964). The phraseology that the Legislature be given forty "session" days to act upon an initiative petition was added, almost as an afterthought, by the Constitutional Convention just before it approved Article 2. Concerning the language then before the Convention, that the Legislature must act within forty days, the following exchange occurred:

> Delegate Brake: I wonder if that shouldn't be 40 legislative days. Suppose this petition is presented the last day before the legislature adjourns or while they're completely in recess? 2 Official Record, Constitutional Convention 1961, at 3085.

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> Delegate Kuhn: ... this question did come up, and the answer is the legislature, if it were not in session, could not receive the petition, and therefore, it was 40 legislative days. But if you'd like to offer this amendment, [the addition of the word "legislative"] I wouldn't see any objection. Id.

Thus, Delegate Brake's proposal would have the effect of making explicit what a number of other Convention delegates understood to be implicit: namely that days meant "legislative" days, since the Legislature would, as a practical matter, have to be in session to receive a petition. After brief discussion, the Convention adopted the amendment, but due to a parliamentary error during its consideration, "legislative" days became "session" days. Id at 3086.

Clearly then, the Constitutional Convention selected session days, instead of calendar days, in order to prevent the forty-day period from continuing to run after the Legislature had adjourned. However, the Convention Record does not indicate whether the intent was to count as session days only those days when the Legislature was actually sitting, or any days between

the start of a session and final adjournment. The statement of Delegate Kuhn that if the Legislature "were not" in session, [it] could not receive the petition," when read literally, appears to suggest the former.

While the courts have not had occasion to construe "session" days in Section 9 of Article 2, the state Supreme Court has construed the meaning of "sessions" as used in Section 11 of Article 4 of the state Constitution. Section 11 of Article 4 provides limited legislative immunity during sessions, and for five days before and thereafter. In **Bishop v Wayne Circuit Judge**, (395 Mich 672; 1976), it was held that sessions begin on the second Wednesday in January, at which time the Legislature is required to convene, and continue until the Legislature adjourns without day. Thus, the court "decline[d] the invitation to define 'sessions' as meaning only 'working sessions' when the legislature is actually sitting." (395 Mich at 676.) There is, however, no assurance that a court would necessarily interpret the language of Section 9 of Article 2 regarding session days in the same manner as the language of Section 11 of Article 4 has been interpreted.

Section 6 of Article 5 of the state Constitution is also relevant to the present inquiry. Section 6 reads as follows:

> Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.

The Convention Record relative to Section 6 of Article 5 reveals that the language in its original form contained the word "legislative" days, but as with the case of Section 9 of Article 2, the Convention substituted "session" for "legislative," and as with Section 9 of Article 2, did so without explanation on the record.

The state Attorney General has construed the language of Section 6 of Article 5 on two occasions. (OAG 1963-64, No. 4329 and OAG 1965-66, No. 4531.) In the former of the two opinions it was concluded that

> [i]t must follow that the day that a regular or special session is convened and the day of adjournment without day of such regular or special session, **and each and every day between the convening of the legislature and the final day of adjournment without day is a session day under Article V, Section 6**. (OAG 1963-64, No. 4329 at 498; emphasis supplied.)

The Attorney General's interpretation of Section 6 of Article 5 includes weekends and holidays in the definition of session days. This is the case because weekends and holidays are not expressly excluded from the constitutional provision. See (OAG 1957-58, No. 3252.)

2. Other Issues

Assuming the initiative petition in question is certified and submitted to the Legislature, it is not clear what the status of the proposal would be should the Legislature, without either enacting or rejecting it, adjourn without day before forty session days had elapsed. Proposed legislation in the form of a bill that is pending before the Legislature at adjournment does not carry over to the next two-year legislative session, but must be reintroduced. Furthermore, the sixty session day period given for senatorial advice and consent "is restricted to one legislature." (OAG 1963-64, No. 4329 at 502.)

It is noteworthy that Section 13 of Article 4 of the state Constitution expressly provides that "**[a]ny business, bill or joint resolution** pending at the final adjournment of a regular session held in an **odd numbered** year shall carry over with the same status to the next regular session." (Emphasis supplied.) However, there is no express constitutional provision that legislative business be carried over from an even-numbered year. It is not unreasonable to argue that had the Constitutional Convention assumed that legislative business would automatically carry over from one year to the next, the last sentence of Section 13 of Article 4 would have been superfluous.

Although the precise question was not before it, the Court of Appeals offered the view in Wolverine Golf Club v Hare, (24 Mich App 711; 1970), that the remainder of the forty-day period for legislative consideration of an initiative petition would continue to run from the start of the next legislative session. This view was based on that portion of the Constitutional Convention Record quoted on page 2.

The assumption made by the Court of Appeals, while persuasive at first blush, could inevitably lead to the very problem sought to be avoided. The reason the Constitutional Convention employed the concept of session days was to ensure that a Legislature presented with a proposed initiated law would be accorded sufficient time to sedately reflect upon it, and thereby lessen the risk of enacting ill-conceived legislation. It is possible that a Legislature to which a proposal is submitted might exhaust so much of the forty-day period before finally adjourning that the incoming Legislature would have little time remaining for its own consideration. If there was substantial turnover in the Legislature, as is often the case after a general election, the incoming Legislature, many members of which might be entirely unfamiliar with the proposed law, would nevertheless have to make a decision regarding it within the remainder of the forty-day period.[*]

It would seem a harsh result to require the people to again collect initiative petition signatures simply because, having once done so and having submitted them, the Legislature, without acting upon them, adjourned without day before forty session days had elapsed. However, it

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[*] For example, if a proposal was submitted to the Legislature on November 23rd of this year and assuming final adjournment on December 31, thirty-eight session days would elapse (including weekends and holidays) leaving the 86th session of the Legislature only two days to consider the proposed law.

would seem equally unreasonable that an incoming Legislature be given for its consideration of a proposed law only so many remaining session days as its predecessor had chosen not to use.

A reasonable solution would be to require the Board of State Canvassers to resubmit the proposed law to the incoming Legislature and to commence the forty-day period anew, or when it was clear form the outset that less than forty session days remained before final adjournment, the Board of State Canvassers might simply submit the proposed law to the incoming Legislature in the first instance.

There has also been some suggestion that the provision of the proposal requiring the state to reimburse local units for any revenue loss due to the reduction of the assessment ratio would, if enacted, be held unconstitutional as an attempt to bind future Legislatures. It is a long-standing rule of constitutional law that an act of one Legislature is not binding upon a future Legislature. **Atlas v Wayne County Board of Auditors**, (281 Mich 596; 1937). Thus, for example, even though one Legislature may pass a law that it declares to be irrepealable, a subsequent Legislature may nevertheless repeal it.

The initiative petition in question does not purport to prohibit the Legislature from subsequently amending or repealing it. The only restriction imposed upon subsequent legislative action, and that by the state Constitution, is no initiated law adopted by the people "shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature." The requirement of an extraordinary legislative majority applies only to an initiated law approved by the voters; an initiated law enacted by the Legislature without change or amendment may subsequently be amended or repealed by a simple majority of the Legislature. (OAG 1975-76, No. 4932.)

Finally, the proposed law was apparently written with the assumption that were it not enacted by the Legislature, it would be placed before the electorate at the 1990 general election. Thus, the proposal states that "each property assessment shall be reduced to 45 percent of its true cash value on **December 31, 1990....**" (Emphasis supplied.) But as noted at the outset, state law requires than an initiative petition be certified at least two months prior to the election at which it would be submitted to the voters. In the instant case, the initiative petition was not even submitted for certification two months prior to the 1990 election. Therefore, assuming the Legislature is not disposed to enact the proposed law as is, the earliest that it can appear before the voters is the 1992 general election, at which time, should voters approve the proposal, a judicial determination may have to be made concerning whether the provisions of the law should be given retroactive application.