

GENERAL ASSEMBLY:
CONSTITUTIONAL LAW:
REFERENDUMS:

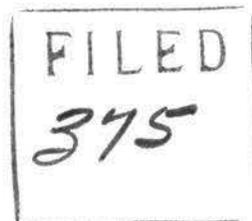
Once a measure is referred to the electorate, the General Assembly has no power to repeal the measure. The Secretary of State must continue

to perform his statutory duties with respect to having the referred measure submitted to the electorate even though the General Assembly has attempted to repeal the measure.

OPINION NO. 375

June 11, 1970

Honorable Robert E. Young
State Representative
District No. 133
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Young:

This is in reply to your request for an official opinion of this office on two questions:

"[1] . . . Can the General Assembly repeal an act upon which a referendum has been ordered by petition of the people? . . ."

"[2] If a bill ordered to referendum by petition of the people after the bill's passage by the Legislature cannot be repealed before a vote by the people but the Legislature ostensibly repeals the bill before that vote, what then is the duty of the Secretary of State?"

In response to your first question, we find that the Supreme Court of Missouri has addressed itself to this question in the case of State ex rel. Drain v. Becker, 240 S.W. 229 (Mo. 1922). In that case Judge Walker, in the opinion of the court wrote:

"It seems to be contended, although not so expressed in words, that the right of reference reserved to the people may be forestalled or nullified by legislative action before the referred measure has been voted upon. . . . This is a mistake. The powers of the General Assembly are in no wise limited by the constitutional provision until the right of referendum has been invoked; thereafter it is divested of all power in regard to the matter referred until the action of the people has been exercised by a vote upon same. . . . [T]he General Assembly, after

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the right of reference has been invoked, cannot interfere with a referred measure by the passage of another on the same subject until after the one referred has been voted upon by the people and their power in that respect exhausted." 240 S.W. at 232.

In a concurring opinion, Judge Graves also agreed that the legislature could not repeal a law after it had been referred to the people. He observed:

". . . The election would be an absurd and useless thing, if the General Assembly could repeal the law and enact another in lieu thereof. The declaration that the measure should become effective upon a favorable vote would be idle language, if the General Assembly could repeal it, between the date of the reference and the date of the election." 240 S.W. at 235.

It should be noted that three judges of the court dissented from the views expressed by Judge Walker and Judge Graves. However, since the majority of the court held in *State ex rel. Drain v. Becker*, supra, that the legislature is divested of all power to act on a measure referred to the people until the people have voted on the measure, we find that the law is settled on this point. We therefore hold that the legislature has no power to repeal a measure to be submitted to the electorate at a referendum election before the referendum election occurs.

With respect to your second question, in view of our answer to the first question, the Secretary of State should continue to follow procedures set out in Chapter 126, RSMo 1959, which sets out his duties with respect to a measure referred to the electorate. On the authority of *State ex rel. Drain v. Becker*, supra, he has no right to refuse to perform his statutory duties with regard to a measure referred to the electorate merely because the General Assembly has attempted to repeal the measure.

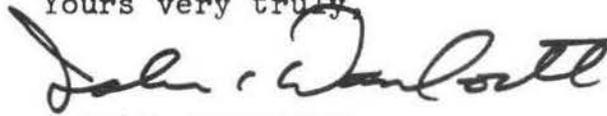
CONCLUSION

It is the opinion of this office that once a measure is referred to the electorate, the General Assembly has no power to repeal the measure. The Secretary of State must continue to perform his statutory duties with respect to having the referred measure submitted to the electorate even though the General Assembly has attempted to repeal the measure.

Honorable Robert E. Young

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General