

INITIATIVE PETITIONS: Secretary of State shall allow the withdrawal of initiative petitions when requested so to do by a representative of the petitioners.

August 17, 1942.

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Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Senator Brown:

The Attorney-General wishes to acknowledge receipt of your letter of August 12, 1942, requesting an opinion of this department. Said request, omitting caption and signature, is as follows:

"Honorable Charles A. Lee, State Chairman, and Honorable William F. Fahey, Counsel, for the Missouri Committee for a One-House Legislature, through Fred N. Switzer, Jr., of the law firm of Polk, Fahey & Switzer, St. Louis, on July 16, 1942, filed a document dated July 15, 1942, in substance questioning the sufficiency of petitions filed July 2, 1942, with the Secretary of State in the presence of His Excellency the Governor of Missouri, Honorable Forrest C. Donnell, submitting a proposal to amend the constitution by a provision establishing a unicameral General Assembly, and seeking to withdraw the request for the submission of the question. This request reads:

"Therefore, the undersigned, on their own behalf and on behalf, and at the request, of the Missouri Committee for a One-House Legislature, respectfully request that you refuse to accept and file said above described petition for the initiative, and that you refuse

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to certify said aforementioned proposition to be voted upon at the next general election, and we further withdraw our offer to file said petition and our demand that said proposition be submitted to the legal voters for their approval or rejection at the regular general election to be held on the 3rd day of November, 1942."

"A copy of the communication above mentioned was placed in the hands of your office on the date of its receipt, and, therefore, is not included in this communication.

"The action of the Missouri Committee for a One-House Legislature through Honorable Charles A. Lee and Honorable William F. Fahey apparently presents a new legal question in connection with the initiative and referendum. The Secretary of State is mindful that the questioning of the sufficiency of the petitions because of alleged fraud, forgeries, or hermetic illegality is not an issue here. The office has long accepted the doctrine advanced by the appellate courts of this state, and Attorneys General, that the Secretary of State in handling initiative and referendum matters is a ministerial officer in whom the constitution and assembly have vested no judicial discretion, and that all such questions are for the courts. The proposed withdrawal of the 'offer to file said petition and demand that said proposition be submitted' presents a question in law, in our opinion, and we therefore respectfully ask your ruling on the question as to the duty and authority of the Secretary of State in the premise."

The petitions submitting the question of a One-House Legislature were signed and filed in your office by Charles A. Lee, State Chairman of the Missouri Committee for a One-House Legislature, and William F. Fahey, Counsel for such organization. The document set out in your letter requesting the withdrawal of such petitions was also signed by Charles A. Lee and William F. Fahey, aforesaid, and filed in your office by Fred M. Switzer, Jr., a member of the law firm of which William F. Fahey is a partner. We find that your department accepted the petitions as originally filed by Lee and Fahey and thereby recognized the agency of such individuals for the large number of people who signed the petitions. Of course it would be impracticable and in fact impossible for each and every individual signer of such petitions to be present at the time such petitions were filed in your office. Therefore, as stated above, your department accepted such petitions when offered by Lee and Fahey. In the effort to withdraw these petitions it would have been likewise impossible for each and every signer of the petitions to be present, and therefore it became necessary if such withdrawal was desired for your department to recognize the agency in the person who has made an attempt to withdraw such documents.

In Section 12287, R. S. Mo. 1939, the statute infers that some person must appear to file such petition and in doing so acknowledges the agency of such person on behalf of the five per cent or more of the voters of the State who have filed such petition. Excluding parts of the statute which are not applicable, we will cite the following:

"When any such initiative or referendum petition shall be offered for filing, the secretary of state, in the presence of the governor and the person offering the same for filing, shall detach the sheet containing the signatures and affidavits, and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petition; the detached copies of such measure shall be delivered to the person offering the same for filing."

Again in Section 12290, R. S. Mo. 1939, we find "the person offering or filing such initiative or referendum petition." Again omitting the inapplicable portion of the section, we will cite as follows:

"No appeal shall be allowed from the decision of the attorney-general on a ballot title unless the same is taken within ten days after said decision is filed. A copy of every such decision shall be served by the secretary of state or the clerk of the court, upon the person offering or filing such initiative or referendum petition or appeal."

After considering such excerpts we feel that the statutes recognize the agency of such persons on behalf of their respective organizations. It strikes us that the relation between the persons filing petitions of this sort and also withdrawing petitions of this sort and their organizations, can be likened to the relation existing between attorney and client. In fact, at both the time the petitions were filed and the time the withdrawal was requested an attorney was present representing the Committee for a One-House Legislature and such attorneys in both instances were members of the same firm.

In Missouri the courts presume that an attorney of record has the right to act for his client. In the recent case of Kahn v. Brunswick-Balke-Collender Co., 156 S. W. (2d) 40, 1. c. 43, the court said:

"It is the law that without authority from the client an attorney cannot compromise the client's case; however, this general principle must be considered in connection with the further principle that the authority of an attorney of record to perform an act for his client is presumed, prima facie at least, and the burden of showing his want of authority rests on the party who questions it, unless such authority be denied by the client. Parr v. Chicago, B. & O. Railroad Co., 194

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Mo. App. 416, 184 S. W. 1169. In this case the authority has never been denied by the plaintiff. * * *

In our instant matter the agency or right to represent the organization has never been questioned and we think that in view of the fact that the representative capacity of Lee and Fahey was recognized at the time of the filing of the petitions, it now becomes the duty of your department to recognize such capacity and allow these petitions to be withdrawn. We further feel that in order to prevent the petitions being withdrawn it will be necessary for some person who has signed the petitions to deny the agency or representative capacity of the parties asking the withdrawal. As stated above, this denial of agency or representative capacity has not been made.

Conclusion

Therefore, it is our opinion that your department shall permit the withdrawal of the petitions for the One-House Legislature which have been filed heretofore in your office by Messrs. Lee and Fahey.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
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JSP:EG