

Chapter 254

Initiative, Referendum and Recall

Chapter 254

NOTES OF DECISIONS

1. In general

A liberal construction is given to the initiative and referendum law. *State v. Kozier*, (1923) 108 Or 550, 217 P 827; *State v. Mack*, (1930) 134 Or 67, 292 P 306.

The initiative and referendum chapter is a proper exercise of legislative power. *Stevens v. Benson*, (1907) 50 Or 269, 91 P 577.

Whether Oregon ceased to have a republican form of government because of its adoption of the initiative and referendum is a political question. *Pacific States Tel. & Tel. Co. v. Oregon*, (1912) 223 US 118, 32 S Ct 224, 56 L Ed 377.

A distinction between a constitutional amendment and a statute was recognized by the legislature in enacting the initiative and referendum law. *Colby v. City of Medford*, (1917) 85 Or 485, 167 P 487.

There can be no valid referendum of any law except in pursuance of constitutional or statutory authority and regulation. *State v. Mack*, (1930) 134 Or 67, 292 P 306.

2. Function of initiative and referendum

Pursuant to authority conferred by the Oregon Constitution, the legislature enacted this general law prescribing the method of exercising the initiative and referendum powers. *Long v. Portland*, (1909) 53 Or 92, 98 P 149, 1111; *State v. Portland Ry., Light & Power Co.*, (1910) 56 Or 32, 107 P 958; *Curtis v. Tillamook City*, (1918) 88 Or 443, 171 P 574, 172 P 122.

The procedure prescribed relating to initiative should be followed. *Hill v. Hartzell*, (1927) 121 Or 4, 252 P 552; *State v. Kozier*, (1928) 126 Or 641, 270 P 513.

The intention of the legislature in enacting 1907 c. 226 was to provide for the initiative and referendum in all cases authorized by the Oregon Constitution. *Farrell v. Port of Portland*, (1908) 52 Or 582, 98 P 145.

3. Initiative and referendum locally

The constitutional provision, as applied to districts other than cities, was not self executing, and 1907 c. 226 was designed to furnish an appropriate procedure for putting that amendment into effect. *Schubel v. Olcott*, (1912) 60 Or 503, 120 P 375; *Barber v. Johnson*, (1917) 86 Or 390, 167 P 800, 1183.

The method provided by a city for exercising its referendum and initiative powers may control rather than the sections of the general Act. *Curtis v. Tillamook City*, (1918) 88 Or 443, 171 P 574, 172 P 122.

An initiative petition for removal of a county seat should follow the procedure designated in the initiative provisions of this chapter. *Hill v. Hartzell*, (1927) 121 Or 4, 252 P 552.

The manner of exercising the initiative and referendum powers reserved by the Oregon Constitution to the legal voters of every city or town is that prescribed by this chapter, unless a city or town provides its own procedure as permitted by the constitutional provision, in which event the procedure so provided is exclusive and the statute inap-

plicable. *Seufert v. Stadelman*, (1946) 178 Or 646, 167 P2d 936.

An amendment to the city charter of Portland was properly submitted by the council without initiative petition under 1907 c. 226. *McKenna v. Portland*, (1908) 52 Or 191, 96 P 552.

FURTHER CITATIONS: *Kosydar v. Collins*, (1954) 201 Or 271, 270 P2d 132.

LAW REVIEW CITATIONS: 46 OLR 253.

254.030

NOTES OF DECISIONS

1. In general

There is a distinction between a referendum and an initiative petition in respect to the manner of setting out the Act to be voted on. *Palmer v. Benson*, (1907) 50 Or 277, 91 P 579.

A court has jurisdiction to investigate the sufficiency of the filing of a petition. *State v. Olcott*, (1912) 62 Or 277, 281, 282, 125 P 303.

It is necessary to observe the conditions prescribed in this section in preparing a petition for the initiative. *Equi v. Olcott*, (1913) 66 Or 213, 133 P 775.

Where a city prescribed its own initiative method, it could resort to such method rather than that fixed by the legislature. *Curtis v. Tillamook City*, (1918) 88 Or 443, 171 P 574, 172 P 122.

The failure to have a ballot title printed on the covers of the petitions when in circulation, as provided in ORS 254.070, is fatal. *State v. Mack*, (1930) 134 Or 67, 292 P 306.

An initiative petition which meets statutory procedural requirements shall be filed by the Secretary of State even though it may fail to permit electors to vote separately on separate amendments. *State v. Newbry*, (1950) 189 Or 691, 222 P2d 737.

A city charter was duly submitted without an initiative petition. *Duncan v. Dryer*, (1914) 71 Or 548, 143 P 644.

2. Under former similar statute

The provision for a warning clause in the petition was not mandatory and its omission did not vitiate the petition. *Stevens v. Benson*, (1907) 50 Or 269, 91 P 577; *Palmer v. Benson*, (1907) 50 Or 277, 91 P 579; *Day v. Salem*, (1913) 65 Or 114, 131 P 1028, Ann Cas 1915A, 1011.

An Act adopted by the initiative had to comply with Ore. Const. Art. IV, §20, as to subjects and titles of Acts. *Turnbridge v. Thompson*, (1918) 89 Or 637, 175 P 281; *Malloy v. Marshall-Wells Hardware Co.*, (1918) 90 Or 303, 173 P 267, 175 P 659, 176 P 589.

The purpose of the petition for referendum was to identify the particular enactment of the legislature which petitioners desired to have referred to the people. *Palmer v. Benson*, (1907) 50 Or 277, 91 P 579.

A copy of the title and text of the measure had to be attached to the initiative petition. *Id.*

An error in setting out the title of the Act did not render

insufficient a petition which contained a full copy of the text of the Act. Id.

The circulator of a referendum petition had to see that the proper address of the signers thereto was placed on the petition. *State v. Olcott*, (1912) 62 Or 277, 288, 289, 125 P 303.

Each sheet did not need to contain the petition; "sheets for signatures" were only auxiliary to the petitions. *Day v. Salem*, (1913) 65 Or 114, 131 P 1028.

The petitioner had to be only a legal voter; the Oregon Constitution did not require that the petitioner for referendum be a registered voter. *State v. Olcott*, (1913) 67 Or 214, 135 P 95, 135 P 902.

An emergency Act was not subject to the referendum powers of the people. *Cameron v. Stevens*, (1927) 121 Or 538, 256 P 395.

ATTY. GEN. OPINIONS: Public inspection of initiative petition for state measure, 1956-58, p 313; period during which petitions may be circulated, 1966-68, p 48; certification of voter's signature on petition if signer's address is different on registration records, 1966-68, p 344; legality of petition circulated which is different from preliminary copy filed, 1966-68, p 572; required number of signatures on initiative petitions circulating when 1968 amendment to Oregon Constitution was adopted, 1966-68, p 633.

254.040

NOTES OF DECISIONS

1. In general
2. Certification
3. Signatures

1. In general

This section was a proper exercise of the legislative power under Ore. Const. Art. IV, §1. *Kellaher v. Kozler*, (1924) 112 Or 149, 228 P 1086; *Kays v. McCall*, (1966) 244 Or 361, 418 P2d 511.

An initiative petition is sufficient if it has the requisite number of signatures, certified and authenticated, and if petition itself, the affidavit of the circulator, and the certificate of the county clerk or the notary public substantially conform to the statute. *Kellaher v. Kozler*, (1924) 112 Or 149, 228 P 1086.

Counties, in the exercise of initiative powers, should follow the procedure prescribed in this and other initiative sections of this chapter. *Hill v. Hartzell*, (1927) 121 Or 4, 252 P 552.

The rule of this section as to the length of time for investigation of a petition is, in the absence of a charter provision, applicable to the investigation of a recall petition. *State v. Clark*, (1933) 143 Or 482, 22 P2d 900.

The Secretary of State has no right to waive any requirement set forth in this provision. *State v. Snell*, (1937) 155 Or 300, 60 P2d 964.

2. Certification

The notaries public certifying petitions must have personal knowledge of the facts to which they certify. *State v. Kozler*, (1922) 105 Or 509, 210 P 172.

The term prima facie evidence of the facts, as used in this section, implies the right to offer supporting evidence just as strongly as it implies the right to offer contradicting evidence. *State v. Kozler*, (1922) 105 Or 486, 210 P 179.

The Secretary of State may be enjoined from certifying a proposed measure where an initiative petition presented to him was certified by persons other than those by whom the petition was circulated. *State v. Snell*, (1937) 155 Or 300, 60 P2d 964.

The county clerk has the duty of certifying as genuine

the signatures found on a county initiative petition. *Stuart v. Weldon*, (1966) 245 Or 203, 421 P2d 367.

3. Signatures

The Secretary of State may consider and count only signatures which have been certified either by county clerk or notary public. *Kellaher v. Kozler*, (1924) 112 Or 149, 228 P 1086; *Kays v. McCall*, (1966) 244 Or 361, 418 P2d 511.

That the clerk did not compare the signatures in the mode prescribed is not fatal, since the genuineness of the signatures may still be shown. *State v. Kozler*, (1922) 105 Or 486, 210 P 179.

The secretary, in counting signatures, is governed by what exclusively appears upon the face of the petition. *Kellaher v. Kozler*, (1924) 112 Or 149, 228 P 1086.

It is not an unreasonable burden on the sponsors to require them to submit signatures to the county clerk far enough in advance of the deadline to make it possible to certify the required number of signatures. *Kays v. McCall*, (1966) 244 Or 361, 418 P2d 511.

Signatures on petitions to initiate a county legislative election must be submitted in ample time for the county clerk to verify the signatures before the constitutional and statutory deadline. *Stuart v. Weldon*, (1966) 245 Or 203, 421 P2d 367.

FURTHER CITATIONS: *State v. Olcott*, (1912) 62 Or 277, 125 P 303; *State v. Olcott*, (1913) 67 Or 214, 220, 135 P 95, 902.

ATTY. GEN. OPINIONS: Irregularities in textbook referendum petitions, 1940-42, p 331; qualifications of circulator, 1946-48, p 170; procedure when ballot title changed by the Supreme Court, 1952-54, p 148; location on sheet of signature of circulator, 1958-60, p 211; charge for verification of signatures, 1962-64, p 275; circulation of initiative petitions by minors, 1962-64, p 381; constitutionality of certifying signatures after a petition is filed, 1964-66, p 126; period during which petitions may be circulated, 1966-68, p 48; proposed legislation to authorize certification of signatures after deadline, 1966-68, p 90; certification of voter's signature on petition if signer's address is different on registration records, 1966-68, p 344; verification of sheet by signer-circulator, 1966-68, p 624.

254.060

NOTES OF DECISIONS

Failure to submit to the city attorney a bill proposing an amended city charter was not fatal where there was no city attorney at the time and the title of the measure was adequate. *Haines v. City of Forest Grove*, (1909) 54 Or 443, 103 P 775.

A copy of the petition filed with the Secretary of State must be transmitted by him to the Attorney General. *Schubel v. Olcott*, (1912) 60 Or 503, 120 P 375.

The Secretary of State was under no duty to furnish a ballot title for an initiative measure to adopt a new or revised Oregon Constitution. *Holmes v. Appling*, (1964) 237 Or 546, 392 P2d 636.

FURTHER CITATIONS: Oregon Assn. of Independent Ins. Agents v. Appling, (1962) 230 Or 270, 369 P2d 692; *Jordan v. Thornton*, (1962) 230 Or 292, 369 P2d 746; *Columbia R. Salmon & Tuna Assn. v. Thornton*, (1962) 230 Or 472, 371 P2d 975; *Columbia R. Salmon & Tuna Packers Assn. v. Appling*, (1962) 232 Or 230, 375 P2d 71; *Oregon AFL-CIO v. Weldon*, (1970) 256 Or 307, 473 P2d 664.

ATTY. GEN. OPINIONS: Period during which petitions may be circulated, 1966-68, p 48; ballot title review procedure considering 1967 amendment, 1966-68, p 331.

254.070

NOTES OF DECISIONS

1. In general

This statute must be liberally construed in support of the action of the people as made known at the polls. *State v. Osbourne*, (1936) 153 Or 484, 57 P2d 1083.

2. Requirement of ballot title

Where the same law was petitioned for referendum by two sponsors, the name or title of the measure should be printed only once on the ballot. *State v. Kozler*, (1923) 108 Or 550, 217 P 827.

The failure of petitions to have a ballot title on the cover or elsewhere when in circulation is fatal. *State v. Mack*, (1930) 134 Or 67, 292 P 306.

Surplusage in a ballot title to a constitutional amendment in that the title refers to matter previously incorporated in the section does not vitiate. *State v. Osbourne*, (1936) 153 Or 484, 57 P2d 1083.

If the ballot title on an initiative petition does not correctly apprise signers of the matter to be voted on, signatures on such petitions are not valid. *Columbia R. Salmon & Tuna Packers Assn. v. Appling*, (1962) 232 Or 230, 375 P2d 71.

3. Sufficiency of ballot title

A ballot title should be informative and not argumentative, should be a label and not a brief, and should give a perspective of the measure and not a prejudgment upon its merits. *Wieder v. Hoss*, (1933) 143 Or 122, 21 P2d 780.

The fact that the court may be able to write a better ballot title constitutes no reason for discarding the title of the Attorney General. *Wieder v. Hoss*, (1933) 143 Or 122, 21 P2d 780.

The title was defective in that it did not state with clarity the chief purpose of the measure. *Schnell v. Thornton*, (1964) 237 Or 253, 391 P2d 380; *Whelan v. Johnson*, (1970) 257 Or 238, 478 P2d 391.

A ballot title was sufficient where it alludes to the Act of the legislature sought to be referred to the people as a "bill". *Davis v. Van Winkle*, (1929) 130 Or 304, 278 P 91, 280 P 495.

A ballot title which used the language found in one section of the Act was faulty when another section restricted the meaning of the words used in the title. *Dagwell v. Thornton*, (1953) 199 Or 8, 259 P2d 125.

The title complied with this section. *Dunagan v. Thornton*, (1964) 237 Or 379, 391 P2d 783.

FURTHER CITATIONS: *Turnbridge v. Thompson*, (1918) 89 Or 637, 175 P 281; *Saylor v. Enterprise Elec. Co.*, (1923) 106 Or 421, 212 P 477; *Allied Truck Owners v. Hoss*, (1932) 139 Or 686, 11 P2d 960; *Keene v. Van Winkle*, (1932) 139 Or 689, 12 P2d 318; *Young v. Neuner*, (1946) 178 Or 625, 169 P2d 124; *McDonald v. Van Winkle*, (1931) 136 Or 706, 299 P 1015; *Dodd v. Neuner*, (1950) 188 Or 510, 216 P2d 670; *Blitz v. Neuner*, (1952) 194 Or 1, 240 P2d 1193; *Columbia R. Salmon & Tuna Packers Assn. v. Thornton*, (1958) 215 Or 1, 325 P2d 812; *Jordan v. Thornton*, (1962) 230 Or 292, 369 P2d 746; *Miller v. Appling*, (1963) 235 Or 240, 384 P2d 181; *Westerholm v. Thornton*, (1963) 235 Or 633, 386 P2d 458; *Marr v. Thornton*, (1964) 237 Or 506, 392 P2d 328; *Mosser v. Thornton*, (1965) 241 Or 482, 406 P2d 788; *In re Ballot Title*, (1967) 247 Or 488, 431 P2d 1; *Bristow v. Thornton*, (1968) 249 Or 294, 437 P2d 825; *Hill v. Thornton*, (1968) 249 Or 292, 437 P2d 824; *Dority v. Thornton*, (1968) 250 Or 62, 440 P2d 367; *Anderson v. Thornton*, (1968) 250 Or 183, 441 P2d 241; *Anderson v. Thornton*, (1968) 250 Or 185, 441 P2d 240; *Oregon AFL-CIO v. Weldon*, (1970) 256 Or 307, 473 P2d 664.

ATTY. GEN. OPINIONS: Period during which petitions may be circulated, 1966-68, p 48; ballot title review procedure considering 1967 amendment, 1966-68, p 331.

254.073

CASE CITATIONS: *Rogers v. Myers*, (1969) 252 Or 656, 452 P2d 302.

254.077

NOTES OF DECISIONS

1. In general

The purpose of an appeal is not to secure the best possible ballot title, but to eliminate one that is insufficient or unfair. *Wieder v. Hoss*, (1933) 143 Or 122, 21 P2d 780; *Mosser v. Thornton*, (1965) 241 Or 482, 406 P2d 788; *Rogers v. Myers*, (1969) 252 Or 656, 452 P2d 302.

2. Under former similar statute

Ballot title corrected by Supreme Court. *Columbia R. Packers v. Thornton*, (1958) 215 Or 1, 325 P2d 812; *Whelan v. Johnson*, (1970) 257 Or 238, 478 P2d 391.

Not until the decision of the court on appeal for change in the ballot title was the title ready for certification to the various county clerks and not until that time did the necessity arise for enjoining the secretary from certifying it to those officers. *Friendly v. Olcott*, (1912) 61 Or 580, 123 P 53.

The circulation of a valid referendum petition, this statute having been fully complied with, was proper notwithstanding a pending appeal from a valid title prepared by the Attorney General. *State v. Hoss*, (1930) 134 Or 138, 292 P 324.

The Supreme Court was not required to wait until the 20-day period had elapsed before entertaining an appeal as provided in the statute. *Wieder v. Hoss*, (1933) 143 Or 122, 21 P2d 780.

The Attorney General, although an executive officer, acted judicially in the writing of a ballot title, and his action could be subjected to judicial scrutiny. *Richardson v. Neuner*, (1948) 183 Or 558, 194 P2d 989.

If the ballot title written by the Attorney General might inadvertently induce some voters to draw an erroneous inference as to the measure's meaning or purpose and a ballot title that did not have that effect was available, the court rejected the Attorney General's title and certified the other. *Westerholm v. Thornton*, (1963) 235 Or 633, 386 P2d 458.

Questions as to the constitutionality of a proposed measure were not within the scope of review authorized. *Dunagan v. Thornton*, (1964) 237 Or 379, 391 P2d 783.

FURTHER CITATIONS: *State v. Osbourne*, (1936) 153 Or 484, 57 P2d 1083; *Jordan v. Thornton*, (1962) 230 Or 292, 369 P2d 746; *Columbia R. Salmon & Tuna Packers Assn. v. Appling*, (1962) 232 Or 230, 375 P2d 71; *Civin v. Frye*, (1963) 236 Or 233, 388 P2d 112; *Schnell v. Thornton*, (1964) 237 Or 253, 391 P2d 380; *Oregon AFL-CIO v. Weldon*, (1970) 256 Or 307, 473 P2d 664.

ATTY. GEN. OPINIONS: Procedure when ballot title changed by the Supreme Court, 1952-54, p 148; ballot title review procedure considering 1967 amendment, 1966-68, p 331.

LAW REVIEW CITATIONS: 33 OLR 229.

254.090

NOTES OF DECISIONS

One ballot title should be printed on a ballot submitting a tax measure at the instance of organizations representing

two groups of petitioners. *State v. Kozer*, (1923) 108 Or 550, 217 P 827.

Failure of some county clerks to label the initiative measure on the ballot as required by this section did not invalidate the legislation where the objection was not raised until after election. *Miles v. Veatch*, (1950) 189 Or 506, 220 P2d 511, 221 P2d 905.

FURTHER CITATIONS: *Dodd v. Neuner*, (1950) 188 Or 510, 216 P2d 670.

ATTY. GEN. OPINIONS: Date of election on state-wide initiative measure, 1960-62, p 252; period during which petitions may be circulated, 1966-68, p 48.

254.100

NOTES OF DECISIONS

The certification of municipal initiative measure, where the municipality follows the state procedure, must be within the time provided. *State v. Poulsen*, (1932) 140 Or 623, 15 P2d 372.

The county clerk is not authorized to disregard the statutory direction as to the limitation of time when the measure to go on the ballot must be filed before him, regardless of whether the statute is mandatory or directory. *State v. Boyer*, (1932) 140 Or 637, 15 P2d 375.

Where a municipality in providing for the submission of an initiative measure to the vote of the people invokes the general law, it must comply with the requirements of the statute as to certification. *Id.*

254.110

ATTY. GEN. OPINIONS: Submitting conflicting measures, 1960-62, p 252; constitutionality of proposing alternatives in tax proposal, (1968) Vol 34, p 323; proposed amendment contingent upon binding choice of alternatives, (1970) Vol 34, p 1118.

254.120

NOTES OF DECISIONS

An ordinance upon which the referendum is invoked will take effect upon the proclamation of the mayor to that effect. *Long v. Portland*, (1909) 53 Or 92, 98 P 324, 1111.

In addition to the gubernatorial proclamation, the legislature may provide that the county court shall proclaim the result of a vote by the people of the county to remove the county seat. *Barber v. Johnson*, (1917) 86 Or 390, 167 P 800, 1183.

ATTY. GEN. OPINIONS: Effect of failure of county court to issue proclamation declaring initiative measure to be in effect, 1926-28, p 46; applicability of this section to the initiative, 1948-50, p 105; date on which measures approved by people by referendum become effective as law, 1952-54, p 53; effect of Governor's proclamation of the law, 1952-54, p 56.

254.130

NOTES OF DECISIONS

This provision is made effective only when the municipality has not made and does not make any conflicting provisions. *Acme Dairy Co. v. Astoria*, (1907) 49 Or 520, 90 P 153.

Amendment of a city charter was within former initiative and referendum provision of the Oregon Constitution, authorizing municipalities to prescribe the manner of exercising initiative powers as to municipal legislation. *Id.*

Amendments to a city charter may be submitted to the

people in the manner prescribed by the general law where the city has not provided for a different method. *McKenna v. Portland*, (1908) 52 Or 191, 96 P 552.

Where the city at the time of the proceedings had no city attorney, failure to have the title prepared by the city attorney did not invalidate the election. *Haines v. City of Forest Grove*, (1909) 54 Or 443, 103 P 775.

Where a municipality does not provide the manner of exercising the initiative or referendum, the provisions of this section apply. *McBee v. Town of Springfield*, (1911) 58 Or 459, 114 P 637.

The signing of initiative petitions cannot be restricted by ordinance to registered voters. *State v. Dalles City*, (1914) 72 Or 337, 143 P 1127, Ann Cas 1916B, 855.

An ordinance calling a special election where the ordinance pertains to or involves the initiative and referendum powers is not "municipal legislation." *Campbell v. Eugene*, (1925) 116 Or 264, 240 P 418.

A new charter which was submitted by initiative petition to the city council, approved by the council, and adopted by the electors of the city at an election was valid. *Haines v. City of Forest Grove*, (1909) 54 Or 443, 103 P 775.

A new charter which was not submitted by initiative petition was valid. *Duncan v. Dryer*, (1914) 71 Or 548, 143 P 644.

FURTHER CITATIONS: *State v. Portland*, (1913) 65 Or 273, 133 P 62; *Curtis v. Tillamook City*, (1918) 88 Or 443, 453, 171 P 574, 172 P 122; *Colby v. City of Medford*, (1917) 85 Or 485, 509, 167 P 487; *State v. Gibson*, (1948) 183 Or 120, 191 P2d 392; *Jacob v. City of McMinnville*, (1962) 229 Or 577, 368 P2d 78.

254.140

NOTES OF DECISIONS

See also cases under ORS 221.310.

A petition for referendum of ordinance must be filed within 15 days from the final passage of the ordinance, in accordance with city charter provision, and not within 30 days, as provided by this section. *State v. Portland Ry., Light & Power Co.*, (1910) 56 Or 32, 107 P 958.

A method of referendum substituted by a city for that provided by the legislature will be followed. *Curtis v. Tillamook City*, (1918) 88 Or 443, 171 P 574, 172 P 122.

Ordinance ordering special election to vote on charter amendment is not "municipal legislation" subject to referendum. *Campbell v. Eugene*, (1925) 116 Or 264, 240 P 418.

The time limit within which a referendum petition must be filed is mandatory and jurisdictional, and upon failure to file, an ordinance becomes law. *State v. Gibson*, (1948) 183 Or 120, 191 P2d 392.

254.150

NOTES OF DECISIONS

See also cases under ORS 221.210.

Where a city has by charter or ordinance prescribed its own procedure, this section is inapplicable. *Colby v. City of Medford*, (1917) 85 Or 485, 512, 167 P 487; *Thompson v. Nelson*, (1936) 155 Or 43, 62 P2d 267.

Authority of cities and towns to provide for initiative power extends to the manner of amending the charters of cities as well as to their municipal ordinances. *Acme Dairy Co. v. Astoria*, (1907) 49 Or 520, 90 P 153.

1907 c. 226 is broad enough to include proceedings to amend the charter of the Port of Portland. *Farrell v. Port of Portland*, (1908) 52 Or 582, 98 P 145.

The council may either approve or reject the proposed charter or ordinance, after which proceedings may be taken as directed. *Haines v. City of Forest Grove*, (1909) 54 Or 443, 103 P 775.

A town or city must have been created before the voters of a community can enact or amend a charter; no group of voters in unorganized territory can adopt a charter. *City of Hillsboro v. Pub. Serv. Comm.*, (1920) 97 Or 320, 187 P 617, 192 P 390.

This section applies to municipalities which have not provided by ordinance or charter for the manner of exercising initiative powers. *State v. Gilmore*, (1927) 122 Or 19, 257 P 21.

An ordinance which shows by its title and emergency clause an intention to provide the mode of exercising the initiative and referendum in enacting a new charter is sufficient to authorize the enactment of a new charter. *Duncan v. Dryer*, (1914) 71 Or 548, 556, 143 P 644.

The act of commissioners in passing an ordinance adopting a charter is not an enactment of such charter. *Birnie v. La Grande*, (1916) 78 Or 531, 538, 153 P 415.

It is equally inadmissible to inquire into the constitutionality of a proposed initiative measure when the remedy sought is mandamus to compel submission as when the proceeding is by injunction to restrain its submission. *Johnson v. City of Astoria*, (1961) 227 Or 585, 363 P2d 571. **Distinguished in** *Holmes v. Appling*, (1964) 237 Or 546, 392 P2d 636.

Possibility of unconstitutionality of an initiative measure does not excuse officer's refusal to perform mandatory duty if preliminary statutory requirements have been complied with. *Id.*

ATTY. GEN. OPINIONS: Qualifications required of voters voting on initiative matters of city, 1944-46, p 56.

254.160

ATTY. GEN. OPINIONS: Qualification of signer of referendum petition to refer income tax law, 1928-30, p 242; necessity of filing of petition prior to preparation of ballot titles, 1928-30, p 456.

254.180

ATTY. GEN. OPINIONS: Application to an amendment to workmen's compensation and commercial fishing laws, 1964-66, p 23.

254.210

ATTY. GEN. OPINIONS: Proposed constitutional tax limit, (1968) Vol 34, p 203.

254.310 to 254.340

ATTY. GEN. OPINIONS: Necessity of Voters' Pamphlet in election on county leash law, 1960-62, p 384.

254.310

NOTES OF DECISIONS

A county was a district, within the meaning of Ore. Const. Art. IV, former §1a. *Schubel v. Olcott*, (1912) 60 Or 503, 120 P 375; *Briggs v. Stevens*, (1926) 119 Or 138, 248 P 169.

An initiative petition to remove a county seat was sufficient under Ore. Const. Art. IV, former §1a, if it is proposed by 15 percent of the legal voters. *Briggs v. Stevens*, (1926) 119 Or 138, 248 P 169.

If pamphlets required by the general law were not mailed to the voters, an election on the question of removing the county seat is void even though a general discussion of the matter had been had in the local press. *Hill v. Hartzell*, (1927) 121 Or 4, 252 P 552.

By the enactment of statutes concerning hunting and

taking of game birds the state has pre-empted the area of regulation by local ordinance, *Fischer v. Miller*, (1961) 228 Or 54, 363 P2d 1109.

ATTY. GEN. OPINIONS: Sending out voters' pamphlet and duty of county clerk in county special election, 1946-48, p 462; Voters' Pamphlet for referred county civil service law, 1958-60, p 317; construing "local" law, 1962-64, p 240; city residents voting on county zoning ordinance, 1966-68, p 469; county zoning procedure by initiative, 1966-68, p 481; procedure for initiative to repeal zoning ordinance, 1966-68, p 644.

LAW REVIEW CITATIONS: 6 OLR 272; 8 OLR 343; 46 OLR 255.

254.320

NOTES OF DECISIONS

The legislature was authorized to declare an emergency in this section, so as to preclude submission to referendum vote. *Cameron v. Stevens*, (1927) 121 Or 538, 256 P 395.

FURTHER CITATIONS: *Briggs v. Stevens*, (1926) 119 Or 138, 248 P 169; *Hill v. Hartzell*, (1927) 121 Or 4, 252 P 552.

ATTY. GEN. OPINIONS: Application of this section to petition filed for purpose of referring an Act applying to all counties having a population of 200,000 or more, 1930-32, p 298; authority of legislature to refer a plan to divide a county into representative districts to the people of the county, 1954-56, p 66.

254.340

CASE CITATIONS: *Port of Brookings v. Mather*, (1966) 245 Or 230, 421 P2d 695; *Oregon AFL-CIO v. Weldon*, (1970) 256 Or 307, 473 P2d 664.

ATTY. GEN. OPINIONS: Authority of residents of rural fire protection districts to adopt initiative laws imposing regulations, 1938-40, p 341; sending out voters' pamphlet and duty of county clerk in county special election, 1946-48, p 462; authority of a portion of any incorporated water district to withdraw from a corporation, and petition and join a different corporation, 1950-52, p 402; Voters' Pamphlet for referred county civil service law, 1958-60, p 317; construing "district," 1962-64, p 240.

254.410 to 254.450

ATTY. GEN. OPINIONS: Authority to call city recall election, 1960-62, p 356.

254.410

ATTY. GEN. OPINIONS: Preliminary filings in recall, 1966-68, p 465.

254.420

CASE CITATIONS: *State v. Clark*, (1933) 143 Or 482, 22 P2d 900.

ATTY. GEN. OPINIONS: Preliminary filings in recall, 1966-68, p 465.

254.450

ATTY. GEN. OPINIONS: Recalling a precinct committeeman, 1966-68, p 233.

254.460

ATTY. GEN. OPINIONS: Preliminary filings in recall, 1966-68, p 465.

254.590

ATTY. GEN. OPINIONS: Constitutionality, 1940-42, p 176; employer using an employe in his business to solicit signatures to a referendum petition as violating this section, 1952-54, p 134.

254.600

NOTES OF DECISIONS

In passing upon the sufficiency of a statement of contributions and expenditures, the Secretary of State acts in a ministerial capacity; he performs no judicial function and

has no discretion. *State v. Snell*, (1942) 168 Or 153, 121 P2d 930.

The services for which money is paid need not be minutely described in the statement of contributions and expenditures. *Id.*

Substantial compliance with the requirement of a statement of contributions and expenditures is sufficient. *Id.*

This section was enacted to facilitate the functioning of the initiative and referendum powers and ought not to be construed so as to make it a burden thereon. *Id.*

Failure of sponsors to file a sufficient statement of expenditures did not invalidate an initiative measure after approval by the people. *Miles v. Veatch*, (1950) 189 OR 506, 220 P2d 511, 221 P2d 905.

ATTY. GEN. OPINIONS: Secretary of State investigating matters behind sponsors' statements, 1940-42, p 383; sponsors' expense statements listing persons who performed services but were not paid therefor, 1940-42, p 383; placing initiated measure on ballot when statement of expenditures does not comply with this section, 1954-56, p 12.