

### Initiative and Referendum — Referendum Petitions— Sufficiency Of.

When laws are sought to be referred, petitions must be signed not only by five per cent of the whole number of legal voters in the state, but also that in each of two-fifths of the counties petitions must be signed by five per cent of the legal voters residing in each of said counties, or if it is desired to suspend the operation of a law sought to be referred, the petitions may be signed by fifteen per cent of the legal voters in each of a majority of the counties of the state.

Helena, Montana, July 31st, 1919.

Hon. C. T. Stewart,  
Secretary of State,  
Helena, Montana.

Dear Sir:

I am in receipt of your request that I advise you with reference to the filing in your office of petitions to refer Referendum Measure No. 13, the Act of the Sixteenth Legislative Assembly, amending the direct primary law, and your duties when such petitions have been so filed.

Section 1 of Article V of the Constitution provides for the initiation and referring of law. The portion thereof with reference to the referring of laws, contains two provisions: First, a provision for referring a law enacted by the legislature, under which the law remains in full force and effect until such time as it may be rejected by the people at an election, and second, a provision under which the law becomes inoperative until approved by the people at an election. Under the first provision referendum petitions must be signed by five per cent of the legal voters of the state, provided that two-fifths of the whole number of counties of the state must furnish as signers of said petition five per cent of the legal voters in such county. This means that such petitions must be signed not only by five per cent of the whole number of legal voters in the state, but also that in each of two-fifths of the counties petitions must be signed by five per cent of the legal voters residing in each of said counties. When such petitions are filed the law is referred to the next biennial regular general election which is held on the first Tuesday after the first Monday in November of each even numbered year, but such law still remains in full force and effect during such time. Under the second provision referendum petitions must be signed by fifteen per cent of the legal voters of a majority of the counties of the state. This does not mean that such petitions must be signed by fifteen per cent of all of the legal voters in the entire state, but means that in each of a majority of the counties of the state the petitions must be signed by fifteen per cent of the legal voters in each of said counties. There being fifty counties in the state if petitions from twenty-six counties are filed and the petition from each county contains the names of fifteen per cent of the legal voters in such county, the petitions are sufficient even though all petitions filed do not contain the names of fifteen per cent of all of the legal voters in the state. When such petitions, con-

taining fifteen per cent of the legal voters in each of twenty-six counties are filed in your office the law proposed to be referred immediately becomes inoperative until such time as it is approved by the people at the next biennial regular election, such constitutional provision being self executing and automatically suspending the operation of such law and referring it to such election.

If, therefore, petitions for referring Referendum Measure No. 13 have been filed in your office from each of twenty-six counties in the state, the petition from each of such counties containing the names of fifteen per cent of the legal voters of such county, such law is automatically suspended and referred to the people to be voted on at the biennial regular general election to be held in November, 1920, and the only duty imposed on you by either the Constitution or the statutes, is that imposed on you by Section 109, Revised Codes, which requires you, upon the filing of such petition for referendum, to notify the Governor in writing of the filing of such petition, and you should, therefore, if petitions for referring said Referendum Measure No. 13 have been filed in your office, signed by fifteen per cent of the legal voters in each of twenty-six counties, notify the Governor in writing of such fact, and you should then take no further action in connection with such measure.

In using the words "five per cent of the legal voters" and "fifteen per cent of the legal voters" you should understand that I mean legal voters to the number which will equal either five per cent or fifteen per cent of the total vote cast for governor at the biennial regular general election held in November, 1916, and not such number of legal voters as will equal five per cent or fifteen per cent of those who may now be legal voters in the state or counties.

Respectfully,

S. C. FORD,

Attorney General.