Opinion No. 6

CONSTITUTIONS AND CONSTITUTIONAL LAW: Amendment: state: approval of governor not required—Article V, Section 40 and Article XIX, Section 9, Montana Constitution

Held: 1. A constitutional amendment proposed by the legislature need not be submitted to the governor for approval.

2. Article XIX, Section 9 of the Montana Constitution is complete by itself and details the steps to be taken to amend the constitution. No other requirement can be imposed.

February 27, 1959

Honorable John J. MacDonald
Speaker of the House
Thirty-sixth Legislative Assembly
Helena, Montana

Dear Mr. MacDonald:

You ask whether a legislative act proposing an amendment to the state constitution need be approved by the Governor before being submitted to the people for approval or rejection.

The procedure for amending the constitution is contained in Article XIX, Section 9. The part of that section pertinent to your inquiry follows:

> "Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution."

The veto power of the governor is contained in Article V, Section 40 which provides:

> "Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill."

I do not find a large body of writing on this question. However, the legal writers and cases are in agreement that a proposed amendment need not be approved by the Governor, and I find no authority to the contrary.

In his work on Constitutional Limitations (8th Ed. p. 87) Judge Cooley states "A proposed amendment which has duly passed the legislature does not require to be passed upon by the Governor before it can be submitted to the people."

Supporting this conclusion are a number of decisions, among them being Commonwealth v. Grist (196 Pa. 396, 46 Atl. 505.) In that case the Pennsylvania Supreme Court was presented with the question raised here. Specifically, Pennsylvania had to decide whether its Constitutional provision requiring legislative orders, resolutions or votes be submitted to the Governor was applicable to constitutional amendments initiated by the legislature.

In concluding that action by the governor was not warranted the court noted:

> ". . . First, the amendment is to be proposed in the senate or house; second, it must be 'agreed to by a majority of the members elected to each house'; third, it must 'be entered on their journals with the yeas and nays taken thereon'; fourth, in immediate sequence to the entry on the journals, and as a part of the same sentence, the article provides, 'and the secretary of the commonwealth shall cause the same to be published three months before the next general election in at least two newspapers in every county in which such newspapers shall be published.' It will be observed that the duty of the secretary of the commonwealth follows immediately upon the entry of the amendment on the journals of the two houses, with the yea and nay votes of the members. There is no other action by any department of the state government that is either required or allowed, prior to the action of the secretary."

In view of the similar requirements of our constitutional provision on amendments this holding is particularly in point. This further comment of the Pennsylvania court is pertinent:

> ". . . It will be observed that the method of creating amendments to the constitution is fully provided for by this article of the existing constitution. It is a separate and independent article, standing alone and entirely unconnected with any other subject. Nor does it contain any reference to any other provision of the constitution as being needed or to be used in carrying out the particular work to which the eighteenth article is devoted. It is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution. It is also necessary to bear in mind the character of the work for which it provides. It is constitution-making—it is a concentration of all the power of the people in establishing organic law for the commonwealth; for it is provided by the article that, 'if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments

shall become a part of the constitution.' It is not lawmaking, which is a distinct and separate function, but it is a specific exercise of the power of a people to make its constitution."

This case in addition noted that a constitutional amendment was not a distinctively legislative matter and so was not an order, resolution or vote calling for gubernatorial action.

In reaching the same conclusion as the Pennsylvania court, the Supreme Court of South Carolina basing its decision on essentially the same two constitutional provisions, made the cogent observation that a constitutional amendment requires a ⅔ vote of the members **elected** to each house while the overriding of a veto requires but a ⅔ vote of the members **present.** Thus the Governor's approval would be superfluous and illogical. (215 S.C. 224, 54 SE 791.) The observation is in point.

The authoritative works upon American law, Corpus Juris Secundum and American Jurisprudence (16 C.J.S. Constitutional Law, p. 52) (11 Am. Jur. Constitutional Law, p. 634) agree that the sanction or approval of the governor of a state is not essential to the validity of a proposed amendment.

A deligent search has revealed not a single judicial decision in opposition to the authorities cited above. The rule appears to be universal.

For the reasons given above it is my opinion that a proposed constitutional amendment need not be presented to the governor.

Very truly yours,
FORREST H. ANDERSON
Attorney General