Boxing Contests—Prohibited—Kiley Boxing Bill—Referendum—Repeal of Existing Law.

Where a measure is passed by the legislature and on being referred to the people by a five per cent referendum petition, it dos not repeal an existing law, and for that reason the Kiley Boxing Bill never repealed Sec. 8576 of Revised Codes of 1907.

Aug. 6th, 1919.

Mr. C. E. Carlson,
County Attorney,
Bozeman, Montana.

Dear Sir:

During our conversation on the 2nd inst., you submitted the two following propositions for consideration:

1st. What is the present status of the so-called boxing laws of this state, and are boxing contests now prohibited?

2nd. Is a sheriff liable in damages for stopping a boxing contest and causing the arrest of the participants?

The Revised Codes of 1907 by Section 8576 prohibits boxing matches, with a certain exception, and makes a violation of its provisions a misdemeanor.

Subsequent legislation was enacted upon this subject by the Thirteenth Legislative Assembly when it passed Chapter 97 of the Session Laws of 1913, providing for a State Athletic Commission and for the regulation of boxing and sparring in the state, but which within six months after the adjournment of the legislature, was ordered referred to the people by referendum petition signed by five per centum of the legal voters of the state, and at the general election held on November 3rd, 1914, was defeated.

The question of permitting boxing in this state was not again revived until the Sixteenth Legislative Assembly saw fit to pass Chapter 190 of the Session Laws of 1919 and to thereby refer the matter to the people of the state for their decision at the next special or general election, and providing therein that "this Act shall be in full force and effect from and after its passage, provided the same shall be ratified by a majority vote of the people of the State of Montana voting at the next election, whether general or special, held in the State of Montana."

Section 1 of Article V of the Constitution makes provision for the referendum, and in reference to measures referred by petition to the people, embodies an alternative, viz.: if the petition ordering referendum is signed by only five per centum of the legal voters of two-fifths of the whole number of the counties of the state, the measure shall be in full force and effect; if, on the other hand, such petition is signed by fifteen per centum of the legal voters of a majority of the whole number of the counties of the state, the law becomes inoperative until passed upon by the people.

Therefore the proposition is directly at issue as to whether a measure which is at once in full force and effect upon being passed by the legislature, but which is finally defeated on being referred to the people by referendum petition signed by five per centum of the legal voters, operates to repeal an existing law.

I submit that it does not, and in support of that contention cite the case of In Re McDonald et al., 49 Mont. 454, 143 Pac. 947, in which an identical state of facts was involved. The Legislative Assembly of the State of Montana passed Chapter 145 of the Session Laws of 1911, which is commonly known as the "Donohue Bill," and thereby specifically repealed Sections 1045 to 1110, inclusive, of the Revised Codes of 1907; the people, according to the official returns on file in the office of the Secretary of State, ordered the measure submitted to them for rejection or approval by referendum petition signed by more than five per centum but less than fifteen per centum of the legal voters of the state, and at the election held in November, 1912, repudiated the action of the legislature in passing the bill. The whole vote cast for governor in 1908 is used as the basis upon which to compute the number of signatures required to have the measure submitted; that vote was 68,186, and the number of signatures obtained on the referendum petitions was 7176, which is more than

five but less than fifteen per centum of the vote for governor in 1908, and consequently the "Donohue Bill" became effective as provided in Section 1 of Article V of the Constitution. In the case above cited it was contended that the passage of the Donohue Bill and its resulting effectiveness repealed those sections of the Code above mentioned, and as a consequence there was no organized militia in the state. In passing upon the question thus presented, the Supreme Court in re McDonald, supra, speaking through Mr. Justice Sanner said:

> "A very brief notice will suffice for the contention that in consequence of the passage of the Donohue Bill by the legislature, which was subsequently defeated on referendum, we have no organized militia in this state, and therefore all that has been done was illegal. There is nothing in this. The militia of this state consists of its able-bodied citizens between the ages of eighteen and forty-five years, with certain exceptions. (Const. Art. XIV, Sec. 1.) The governor was authorized to call any or all of them to quell the insurrection, without regard to whether they belonged to the national guard or not. But we have an organized militia. The passage of the Donohue Bill by the legislature was not final and never became effective by virtue of the referendum. It required the approval of the people before becoming a law, and this it never had. If it did not become a law for constructive purposes, it could not be one for repealing purposes. (State ex rel. Hay v. Alderson, 49 Mont. 387, 142 Pac. 210.)"

Therefore upon the authority of this case, Chapter 97 of the Session Laws of 1913 never became a law for any purpose, and did not, and could repeal or amend Section 8576 of the Revised Codes of 1907, which is still the law of this state.

Chapter 190 of the Session Laws of 1919 does not change the situation, because by the clause referring the measure to the people, it is specifically provided that the provisions of this measure shall not become effective until ratified by the people at the next election, whether general or special.

Therefore, an answer to the second inquiry is eliminated, because if Section 8576 is still the law of this state, prohibiting boxing contests, the sheriff is not only not liable in damages for stopping such an exhibition, but it becomes his duty to do so and to cause the arrest of the participants for a violation of the law.

You are therefore advised that it is my opinion that Section 8576 is now in effect, and that the sheriff should cause the arrest of any person violating the same, for which he is of course not liable in damages when properly exercising the functions of his office.

Respectfully,

S. C. FORD,

Attorney General.