

**Amendments — Constitutional Amendments — Publication—
Notice—Secretary of State—County Clerk.**

Notice of a constitutional amendment should be published both as provided in section 9, article XIX of the state constitution and section 537 R. C. M. 1921.

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

September 9, 1926.

My dear Mr. Stewart:

You have requested my opinion whether, in view of the provisions of section 9, article XIX, constitution of Montana, it is necessary that publication of proposed amendments to the constitution be also published, as provided in section 537 R. C. M. 1921.

Section 9, article XIX of the constitution provides in part as 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; * * *

By section 537 R. C. M. 1921 it is further provided:

“Whenever a proposed constitution, or constitutional amendment, or other question, is submitted to the people of the state for popular vote, the secretary of state must duly, and not less than thirty days before the election, certify the same to the clerk of each county in the state, and the clerk of such county must cause to be published in one newspaper in the county a copy of the proposed question to be submitted to the people of the state, once a week for three successive weeks. One of such publications in each of said newspapers must be made upon the last day upon which such newspaper is issued before election.”

I am unable to see any conflict in these two provisions. The constitutional provision provides for the notice to be given by the secretary of state and the statutory provision provides for the notice to be given by the county clerk and as there is no question as to the constitutionality of the statutory provision it is in full force and effect.

Our supreme court has held that the publication of the notice provided for in section 9, article XIX of the constitution is mandatory (State ex rel. Woods v. Tooker, 15 Mont. 8; State ex rel. Floyd v. Rotwitt, 15 Mont. 29). In the case first above cited, our court said:

"If it is held that the command to the secretary of state to publish a proposed amendment for a certain period is non-essential and may be disregarded, why may not the legislative department of the government follow the same practice, and disregard the requirement that the proposed amendment shall be voted for by two-thirds of the members elected to each house, or the requirement that the proposed amendment, with the ayes and noes of each house, shall be entered in full on their respective journals? If one requirement is non-essential, why is not another? And who is to say what is essential and what is not? And by what rules are such distinctions to be made? The constitution does not itself make them. The framers of that instrument made no distinction in the requirements. They made them all mandatory; and, if a court commences to nullify their commands by construction, we do not know where the court would commence, or where it would end, or where it would draw the line which the constitution says shall not be drawn."

A statutory provision in the language of the statute above referred to is no less mandatory than a constitutional provision and I believe the language of the court above quoted is equally applicable in consideration of section 537, supra.

It is, therefore, my opinion that publication of proposed amendments to the constitution should be published as provided for in section 537 R. C. M. 1921, as well as in section 9, article XIX of the constitution.

Very truly yours,

L. A. FOOT,
Attorney General.