

No. 21
INITIATIVE—REFERENDUM—LEGISLATURE—
AMENDMENTS

**Held: Initiative and referendum measures may be amended by Legislature
in same manner as other ordinary legislative measures.**

February 12, 1941.

Honorable G. F. Mundy
Senate of the State of Montana
State Capitol
Helena, Montana

Dear Senator Mundy:

You have requested my opinion as to whether Chapter 84 of the Laws of the Twenty-fifth Legislative Assembly, 1937, as amended by Chapter 221 of the Laws of the Twenty-sixth Legislative Assembly, 1939, can be amended by the Legislature without a referendum vote, inasmuch as such chapter is a referendum measure.

Chapter 84 was passed by the Legislative Assembly and approved by the Governor in 1937. It was subsequently adopted as a referendum measure by a vote of the people at the general election held November 8, 1938, and became effective by virtue of the Governor's proclamation on January 21, 1939.

It was submitted to a vote of the people under Section 1, Article V of the Montana Constitution, dealing with legislative authority, the initiative and referendum, pursuant to statutory procedural laws.

There is no express inhibition in our State Constitution against amendment by the Legislature of referendum measures. We have examined decisions from many jurisdictions and find that, in the absence of express constitutional or other provisions prohibiting such amendment, the courts are not in agreement as to whether these measures may be so amended.

However, the question has been decided in Montana in *State ex rel. Goodman v. Stewart*, 57 Mont. 144, 151, 187 Pac. 641, a case involving an initiative measure, where our Supreme Court adopted the following language from *Kadderly v. Portland*, 44 Or. 118, 74 Pac. 710, 720, 75 Pac. 222,

“Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as are other statutes, and may be amended or repealed by the Legislature at will.”

The rule finds ample support from other jurisdictions having no constitutional prohibitory provisions.

State ex rel Halliburton v. Roach, 230 Mo. 408, 130 S. W. 689, 139 Am. St. Rep. 639;

In re Senate Resolution No. 4, 54 Colo. 262, 130 Pac. 333;

State ex rel v. Whisman, 36 S. D. 260, 154 N. W. 707, L. R. A., 1917B, 1;

Baird v. Burke County, 53 N. D. 140, 205 N. W. 17;

State ex rel. Singer v. Cartledge, 129 Ohio St. 279, 197 N. E. 237;

Granger v. City of Tulsa (Okla.), 51 Pac. (2nd) 567.

The following germane pronouncement is found in State ex rel. Evans v. Stewart, 53 Mont. 18, 161 Pac. 309:

“No distinction is to be made between a statute enacted by the people directly, and one enacted by the Legislative Assembly with the approval of the Governor. The result is the same in either case.”

In answer to your specific inquiry, therefore, it is my opinion that the Legislature may amend the referendum measure in question and need not submit such amendment for the approval of the people.

Sincerely yours,

JOHN W. BONNER
Attorney General