



THE SENATE
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State of Michigan
The Honorable Dana Nessel, Attorney General
Attn: Opinion Department
G. Mennen Williams Building
P.O. Box 30212
Lansing, MI 48909

RE: Request for Formal Opinion

Dear Attorney General Nessel:

I write today regarding Former Attorney General Schuette's Opinion No. 7306 regarding the legislative enactment and amendment of laws proposed by initiative petition. Opinion No. 7306 interprets Article II, Section 9 of the Michigan Constitution of 1963 in a manner that poses serious threats to the constitutional power of initiative reserved to the people.

This issue has received widespread attention over the last year due to the legislative enactment and amendment of laws proposed by initiative petition. One proposal sought to create a new Michigan minimum wage law. The other proposal sought to provide employees with the ability to earn paid sick time. In May 2018, organizers filed nearly 400,000 signatures in support of each proposal. After review, the Board of State Canvassers certified both proposals for the November 2018 general election ballot.

However, upon receipt by the Legislature, majority leadership implemented a plan to enact both proposals to keep them off the ballot and then amend them during the "Lame Duck" session after the election. The Legislature enacted Public Acts 337 and 338 of 2018, and then, in the same legislative session, significantly amended the laws resulting in enactment of Public Acts 368 and 369 of 2018. The net effect of these amendments was the elimination of the ability for many employees to earn paid sick time, and substantial and sweeping changes to the minimum wage law proposed by initiative petition. These laws are set to take effect in March 2019, and many questions have been raised regarding the constitutionality of the action taken by the Legislature in enacting and amending the laws.

Under Article II, Section 9, the people have reserved to themselves the ability to enact laws using ballot initiatives. Specifically, Article II, Section 9 provides in part:

“Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.”

The plain language of this clause contains both a mandate and a prohibition. It mandates that if the Legislature takes action, it either enact or reject an initiative petition; and, further, it prohibits the Legislature from changing or amending an initiative petition. Alternatively, the Legislature can reject an initiative petition and propose a different measure on the same subject, in which case the initiated proposal and the legislative proposal both go on the ballot. In any event, the plain language of Article II, Section 9 prohibits the exact legislative action at issue here – the enactment and amendment of a law proposed by initiative petition in the same legislative session.

In direct contravention of this plain reading, in Opinion No. 7306, Former Attorney General Schuette concluded that “nothing in Article II, Section 9 limits the Legislature’s ability to substantively amend a legislatively enacted initiated law, or from doing so during the same legislative session in which the initiated law was enacted.” This conclusion is contrary to the plain language of Article II, Section 9, fails to give effect to every word and phrase in Article II, Section 9, and is inconsistent with the spirit and structure of the constitutional provision.

Indeed, the plain language of Article II, Section 9 expressly limits the Legislature’s ability to amend a legislatively enacted initiated law by stating that a “law proposed by initiative petition shall either be enacted or rejected by the legislature **without change or amendment.**” (Emphasis added). Former Attorney General Schuette’s conclusion that a law proposed by initiative petition may be enacted and amended by the Legislature in the same legislative session disregards the prohibition on such action in the plain language of Article II, Section 9.

In Opinion No. 4303, Former Attorney General Frank Kelley determined that “it is [] clear that the legislature in enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963.” Opinion No. 4303 correctly construed the powers of the Legislature conferred by Article II, Section 9, and properly preserves the powers of the people regarding laws proposed by initiative petition.

Since Former Attorney General Kelley’s opinion, there has been no amendment of this section or other change in law that would warrant a deviation from the Kelley opinion.

With the aforementioned in mind, I ask for your formal opinion as to the following questions:

- 1) Does Article II, Section 9 of the Michigan Constitution of 1963 prohibit the Legislature from enacting a voter-initiated law and subsequently amending it at the same legislative session?
- 2) Were Public Acts 337 and 338 of 2018 enacted and amended in the same legislative session in violation of Article II, Section 9 of the Michigan Constitution of 1963?

Thank you in advance for your assistance with this request. Please do not hesitate to contact my office if you have questions or need more information. If you are unwilling or unable to issue an opinion in response to my request, I humbly ask that you please provide, in detail, the reason or reasons for your denial.

Sincerely,


Stephanie Chang
Michigan State Senator, 1st District