

Opinion No. 4**CONSTITUTION AND CONSTITUTIONAL LAW; Amendments of Constitutions; convention referendum — ELECTIONS; Referendum; constitutional convention — Article XIX, Sections 8 and 9, Montana Constitution**

Held: A referendum calling for a constitutional convention is not an amendment within the meaning of Article XIX, Section 9 of the Montana Constitution. The referendum and three constitutional amendments can be referred to the people at the next general election.

February 4, 1959

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

Dear Mr. MacDonald:

You have requested my opinion whether three amendments and a referendum calling for a constitutional convention can be submitted to the people at the next general election. Your inquiry involves but one issue: is a referendum an amendment within the meaning of Article XIX, Section 9 of the Montana Constitution?

The constitution authorizes a change in its provisions by two distinct, exclusive and complementary methods. One method is by a convention of delegates chosen for the express purpose of revising, altering or amending the constitution (Article XIX, Section 8). The second method is through adoption by the people of propositions for specific amendments (Article XIX, Section 9). The latter provision limits to three the number of amendments that may be submitted to the electors at any general election.

In *State ex rel. Hay v. Alderson*, 49 Mont. 387, 414, 142 Pac. 210, the court stated that Article XIX, Section 9 ". . . deals with but **one subject-amendments** to the Constitution . . ." In *State ex rel. Corry v. Cooney*, 70 Mont. 355, 361, 225 Pac. (2d) 1007, the court construed the word amendment and stated: ●

"In legislative parlance 'amendment' is an alteration or change of something proposed in a bill or established as law. (Bouvier's Law Dictionary.) A statute which adds a provision to a section or an existing statute is an amendment . . . Generally speaking, an amendment repeals or changes some provision of a pre-existing law or adds something thereto . . ."

Article XIX, Section 9 also provides that if the amendment is adopted by the electors then it ". . . shall become part of the constitution . . ." Thus, the amendment referred to in this section must effect some change in the constitution when it is adopted by the electors. Is any change made in the constitution if the electors adopt a referendum for a constitutional convention?

Section 8 of Article XIX authorizes a constitutional convention to revise, alter or amend the constitution. The question is submitted to the electors ". . . and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof . . ." In *State ex rel. Corry v. Cooney*, *supra*, the court distinguished a revision from an amendment to the constitution and declared:

" . . . Revision as contemplated in section 8 implies a re-examination and restatement of the Constitution, or some part of it, in a corrected or improved form. The revision may be with or without material change; but clearly, as the word is used in the section, it implies the probability of extensive and comprehensive action by the convention."

Section 8 also provides that the proposed revision, alteration or amendments be submitted to the people and shall not take effect until adopted by the people. Thus, no change is made in the constitution by a referendum calling for a convention.

Article XIX, Section 9 limits the number of amendments that may be submitted at any general election to three. This provision disables the legislature from revising or altering the constitution in any extensive manner except by convention as prescribed in Section 8. The provisions for revising, altering or amending the constitution are exclusive, distinct and complementary. See, *McFadden v. Jordan*, 196 Pac. (2d) 787, 789, 32 Cal. (2d) 330.

Therefore, it is my opinion that a referendum calling for a constitutional convention is not an amendment within the meaning of Article XIX, Section 9 of the Montana Constitution. The referendum and three constitutional amendments can be referred to the people at the next general election.

Very truly yours,
FORREST H. ANDERSON
Attorney General