

17 Or. Op. Att. Gen. 564 (Or.A.G.), 1935 WL 32232

Office of the Attorney General

State of Oregon

November 13, 1935

In re repeal of act relating to student fees in state institutions of higher learning while such act is pending under referendum.

*1 Hon. Charles H. Martin

Governor

State of Oregon

Dear Governor:

Within 90 days after the passage of chapter 84 by the legislative assembly at its 1935 session, a referendum petition was filed with the secretary of state which referred the act to the people under the provisions of [section 1 of article IV of the state constitution](#).

The filing of a petition for referendum is a matter preliminary to the legislative act. [State ex rel. v. Olcott, 62 Or. 277, 279; 125 Pacific 303](#). That is, when a legislative act is pending under a referendum, until the people act upon it, it ceases to be an act and is nothing more than a bill pending for legislative action. The right of the people to a referendum vote on a statute enacted by the legislature can not be defeated by a subsequent repeal of the act referred. [State ex. rel. Drain v. Becker \(Mo.\), 240 Southwestern, 229](#).

As was expressed by the supreme court of Maine In re Opinions of the Justices, 174 Atlantic 853, at 855:

“After referendum has been invoked and until the voters have acted thereunder, the subject-matter of the referred bill is withdrawn from further consideration of the legislature. It can neither amend nor repeal the act during that period.”

To the same effect, so held the Supreme Judicial Court of Massachusetts In re Opinions of the Justices, 191 Northeastern 33, 39.

In the case of [State v. Becker, 240 Southwestern, 229, 231-232](#), the supreme court of Missouri said:

“It is not reasonable to conclude, in the absence of words of limitation, that the power thus reserved (referendum) was intended to be other than complete. Held to be otherwise, it would fail to effect the purpose of its creation, which, as we have shown, was to lessen the limits of legislative power as theretofore possessed by the general assembly. Of what avail would a reservation be which could be rendered futile by the act of the body from which the power has been withdrawn? To place the seal of judicial approval upon such legislative action, would, in effect, render the constitutional provision concerning the initiative and referendum nugatory and, as a consequence, its adoption a vain and foolish thing. Reasons upon which the rules of construction are based offer no support to such a conclusion. * * * The people cannot refer a measure until it has been adopted by the general assembly and signed by the governor, and only lacks the required efflux of time to become a law. On the other hand, the general assembly, after the right of reference has been invoked, cannot interfere with a referred measure by the passage of another on the same subject until after the one referred has been voted upon by the people and their power in that respect exhausted.”

There are instances in which a legislature might, in exercising its power given to it by the constitution to enact emergency legislation, enact an emergency measure, which emergency measure repealed an act pending on referendum. In re Opinion of the Justices, 191 Northeastern 33, [McBride v. Kerby, 32 Ariz. 516, 260 Pac. 435](#), [In re Senate Resolution, 54 Colo. 262, 130 Pac. 333](#), [State v. Whisman, 36 S. D. 260, 154 Northwestern 707](#). However, Senate Bill 9, the instant bill, is not an emergency measure, and chapter 84, Oregon Laws 1935, which it seeks to repeal, stands on a different footing from an operative statute

binding upon the public. It is an inchoate and uncompleted statute still in its incipient stage. Consequently, until the people have voted upon chapter 84, Laws of 1935, which is now pending on referendum, the present legislature had no completed act to repeal.

*2 I, therefore, recommend that you veto Senate Bill number 9.

I. H. Van Winkle
Attorney-General
Ralph E. Moody
Assistant

17 Or. Op. Atty. Gen. 564 (Or.A.G.), 1935 WL 32232

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