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OPINION	:	No. 80-910
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of	:	<u>JANUARY 22, 1981</u>
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The Honorable Robert W. Naylor, Member of the Assembly, has requested an opinion on the following questions:

1. May the Legislature call a special election prior to a general election for the purpose of submitting an initiative measure to the electorate?
2. May the Legislature place an initiative measure on the ballot of a special election called by the Governor, to be conducted prior to a general election, for the purpose of submitting another qualified initiative to the electorate?

CONCLUSIONS

1. The Legislature may not, under existing statutes, call a special election prior to a general election for the purpose of submitting to the electorate an initiative measure which qualified less than 131 days prior to the general election; however,

such limitation is purely statutory and may be superseded by a special provision of a statute calling such special election.

2. The Legislature may not, under existing statutes, place on the ballot of a special election called by the Governor for the purpose of submitting another qualified initiative to the electorate, an initiative measure which qualified less than 131 days prior to the special election; however, such limitation is purely statutory and subject to amendatory legislation.

ANALYSIS

The initial inquiry is whether the Legislature may call a special election for the purpose of submitting an initiative to the electorate. California Constitution, article II, section 8¹ provides:

“(a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

“(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

“(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

“(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.”

While subdivision (c) expressly authorizes the Governor to call a special statewide election for submission of an initiative measure to the electorate, it is silent with respect to the Legislature.

Prior to its revision on November 8, 1966, former article IV, section 22, paragraph 3 provided in part:

¹ Formerly article IV, section 22, renumbered June 8, 1976.

“The first power reserved to the people shall be known as the initiative. Upon the presentation to the Secretary of State of a petition certified as herein provided to have been signed by qualified electors, equal in number to 8 percent of all the votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law or amendment to the Constitution, set forth in full in said petition, the Secretary of State shall submit the said proposed law or amendment to the Constitution to the electors at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the governor in his discretion prior to such general election.”

Paragraph 12 provided:

“If for any reason any initiative or referendum measure, proposed by petition as herein provided, be not submitted at the election specified in this section, such failure shall not prevent its submission at a succeeding general election, and no law or amendment to the Constitution, proposed by the Legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed, as herein provided.”

Under the former provisions, the Legislature was required to *include* on any statewide special election called by it for submission to the voters of any law or constitutional amendment, “all measures proposed by petition of the-electors, if any be so proposed.” With respect to the submission of an initiative measure *alone*, however, the Secretary of State was required to submit any such initiative to the electors “at the next succeeding *general election* occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any *special election called by the Governor* in his discretion prior to such general election.” Commenting on the proposed revision of constitutional language as it presently appears in article II, section 8, subdivision (c), the Constitution Revision Commission stated in part:

“Under the provisions of existing Section 1, paragraph 3, all initiative measures must be submitted at any timely special election called by the Governor prior to the general election. Under the last portion of existing Section 1, paragraph 12, however, it appears that at a special election called by the Legislature no initiative measure need be submitted unless measures proposed by the Legislature are also submitted.

“Seeing no need for this distinction, the Commission amended the existing provisions to require that *all qualified initiative measures be submitted at any timely special election, whether called by the Governor or the Legislature*, prior to the general election.” (Emphasis added.)

(Cal. Const. Revision Commission, Proposed revisions, Feb. 1966, p. 44.) Thus, the Commission clearly contemplated the existence of legislative authority to call a special election for submission of an initiative measure.

Apart from the historical perspective, other related provisions indicate legislative authority to call a special election for such purposes. Article II, section 10, subdivision (e) of the California Constitution provides:

“The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors.”

In addition, article IV, section 8, subdivision (c)(2) provides:

“*Statutes calling elections*, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment.” (Emphasis added.)

Pursuant to its authority under article II, section 10, subdivision (e), the Legislature has provided, in section 2651 of the Elections Code:

“The Governor shall call all statewide, congressional, or legislative special elections by issuing a proclamation pursuant to Section 2553. In the case of a vacancy in office the proclamation shall be issued within 14 calendar days of the occurrence of the vacancy.

“A copy of the proclamation shall be sent to the board of supervisors of every affected county and a notice of election published in accordance with the provisions of Section 2554.”

There can be little doubt, however, that the Legislature may, by statute calling a special election, amend and modify the provisions of section 2651 to the extent of inconsistency. in *Veterans’ Finance Committee of 1943 v. Betts* (1961) 55 Cal. 2d 397, it was held that a proclamation of the Governor is not requisite to the validity of an election where the time and place of the election are statutorily prescribed.

The initial inquiry further inquires as to whether the Legislature may call such special election “prior to a general election.” We understand the inquiry as a reference to the 131 day period prescribed in article II, section 8, subdivision (c), *supra*. The 131 day period refers to general elections and not to special statewide elections. Hence, the sole constitutional constraint is that where an initiative qualifies more than 131 days prior to the next general election, any special statewide election held for the purpose of submitting such initiative to the electorate must occur prior to the general election: the constitution does not preclude such special election for an initiative which qualified less than 131 days prior to the general election from being conducted prior to the general election.

The Legislature itself has, however, extended the limitation to special elections. (55 Ops. Cal. Atty. Gen. 217 (1972).) Elections Code section 3514 provides:

“Notwithstanding any other provision of law, no initiative shall be placed on a statewide special election ballot which qualifies less than 131 days before the date of the election.”²

Nevertheless, the Legislature may, in our view, by the express terms of a statute calling a special election, amend and obviate the effect of such provisions. Such an amendment of existing legislation must be accomplished by statute (Cal. Const., art. IV, § 8, subd. (b)), and in the event of a veto by the Governor, by two-thirds of the membership of each house concurring (Cal. Const., art. IV, § 10, subd. (a)). (And *cf.* Cal. Const. Revision Commission, Proposed Revisions, Feb. 1966, pp. 48–49, 56–58.)

In view of the foregoing, it is concluded that the Legislature may not, under existing statutes, call a special election prior to a general election for the purpose of submitting to the electorate an initiative which qualified less than 131 days prior to the general election; however, such limitation is purely statutory and subject to any amendatory provisions of a statute calling such special election.

The second inquiry is whether the Legislature may place a qualified initiative on the ballot of a special election called by the Governor, to be conducted prior to a general election, for the purpose of submitting another qualified initiative to the electorate. As previously noted, the 131 day limitation prescribed under California Constitution, article II, section 8, subdivision (c), does not apply to special elections. (14 Ops. Cal. Atty. Gen. 28 (1949).) Subdivision (c) expressly provides that an initiative measure shall be submitted

² Section 3525 of said code provides:

Every measure submitted to the people by the Legislature shall appear on the ballot of the first statewide election occurring after 131 days after the adoption of the proposal by the Legislature.”

at the next general election held at least 131 days after it qualifies *or at any special statewide election held prior to that general election.*

By statute, however, no initiative shall be placed on a statewide special election ballot which qualifies less than 131 days before the date of the election. (Elec. Code, § 3514.) Nevertheless, the effect of this statute, enacted under the authority of article II, section 10, subdivision (e) of the California Constitution (55 Ops. Cal. Atty. Gen. 217, *supra*, at p. 218), may be vitiated by amendatory legislation.

It is concluded that the Legislature may not, under existing statutes, place on the ballot of a special election called by the Governor for the purpose of submitting another qualified initiative to the electorate, an initiative which qualified less than 131 days prior to the special election; however, such limitation is purely statutory and subject to amendatory legislation.

The analysis and conclusions herein expressed are focused on the 131 day limitation respecting the qualification of measures to be submitted at a special election. It is to be noted that other time constraints not within the scope of this opinion, but which must be considered in any case, are statutorily prescribed. For example, ballot pamphlets must be mailed to the voters not more than 40 nor less than 21 days before the election. (Elec. Code, § 3578.) Copy for preparation of the ballot pamphlets must be furnished to the Office of State Printing at least 40 days prior to the date for required delivery to the county clerks as provided in section 3578 of the Elections Code. (Elec. Code, § 3569.) Not less than 20 days prior to the submission of the ballot pamphlet copy to the State Printer, such copy must be made available for public examination.

(Elec. Code, § 3576; Gov. Code, § 88006.) The views previously expressed in 14 Ops. Cal. Atty. Gen. 28, *supra*, at page 33, are pertinent:

“It is true that in deference to a constitutional mandate for the appearance of a measure on the ballot, substantial compliance with the statutory time table will suffice. (*Hart v. Jordan*, *supra*, 14 Cal. 2d at 292.) Nevertheless, the Constitution also requires that the ballot pamphlets be prepared and distributed to the voters in advance of the election. The timely fulfillment of this requirement cannot be prevented or even jeopardized by reason of the tardy arrival of a single measure. If a petition qualifies so late that pro and con arguments cannot ‘be secured and the measure, together with the arguments, incorporated in the ballot pamphlet in sufficient time to allow printing and distribution to the voters, then as a matter of sheer factual necessity the measure may not be included on the ballot. The period for qualification thus expires a reasonable time before the special election. What

is a reasonable time depends in each instance upon the period required by the Secretary of State for the performance of his duties with relation to the election, and chiefly the time required to prepare, print and distribute the ballot pamphlet. (See, *Green v. Jordan*, 216 Cal. 318.)”
