Opinion No. 55-6268

August 31, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

In your letter of August 22, 1955, you request advice concerning the proposed referendum of Chapter 37, Laws of 1955. Pursuant to Section 3-7-20, N.M.S.A., 1953, the Secretary of State is directed and empowered to fix and declare a popular name by which the referred measure is to be designated on the ballot. There is also a duty which is reposed in the Attorney General to approve the instructions to the persons who sign the petition under Section 3-7-16, N.M.S.A., 1953. Both of these statutes require the two State officials to appraise the referability of the submitted statute. In line with this, this office instructs you as follows:

Article IV, Section 1 of the New Mexico Constitution reads, in part, as follows:

"The people reserve the power to disapprove, suspend and annul any law enacted by the legislature, **except** general appropriation laws; **laws providing for the preservation of the public peace, health or safety,** for the payment of the public debt or interest thereon, or the creation or funding of the same, except as in this Constitution otherwise provided; **for the maintenance of the public schools or state institutions,** and local or special laws. Petition disapproving any law other than those above excepted, enacted at the last preceding session of the legislature, shall be filed with the Secretary of State not less than four months prior to the next general election. Such petitions shall be signed by not less than ten per centum of the qualified electors of each of three-fourths of the counties and in the aggregate by not less than ten per centum of the qualified electors of the state, as shown by the total number of votes cast at the last preceding general election." (Emphasis supplied)

You will note that the underlined exceptions above refer to types of laws which cannot be referred. The Supreme Court of the State of New Mexico has had before it on several occasions the question of referability of various statutes. The two most recent expressions are **State ex rel Hughes vs. Cleveland,** 47 N.M. 230, 141 P. 2d 192, and **State ex rel Linn vs. Romero,** 53 N.M. 402, 209 P. 2d 179. In the first case the Supreme Court held as follows:

"While it is true the questions of exemption from referendum was not directly presented in the foregoing decisions, this fact in no way weakens their persuasiveness. Certainly, it may not be successfully argued that there is one test for determining the constitutionality of a statute as representing, for instance, a reasonable exercise of the police power as involved in the referendum clause of our Constitution and still another for deciding the referability of the same measure. The reason is obvious since, if the constitutional validity of the legislation be sustained as a reasonable exercise of such

police power, its nonreferable character is thereby automatically and indubitably established."

The statute in question can only be justified under the police power of the State. The test is not whether the particular act, in the opinion of the Supreme Court or any other fact finding agency, is for the peace, health or safety, but it is a question to be determined by the Legislature and any law which is passed under the inherent police power of the State is not referable. The only way a state gains authority to regulate any highway activity is under its police power. There are no New Mexico cases directly in point on this; however, it is so well established that it is beyond question and a compilation of the cases may be found in the 5th Dec. Digest, title "Highways" Section 165, where a great number of cases are cited, including cases from the Supreme Court of the United States. **South Carolina State Highway Department vs. Barnwell Bros.,** 58 S. Ct. 510, 303 U.S. 177, 625 82 L. Ed. 734.

In the case of **T. E. Connolly, Inc., vs. State,** 164 P. 2d 60, 72 Cal. App. 2d 145, the California Court said as follows:

"The Legislature in exercise of its police powers, for protection of traveling public and for payment of excise taxes for maintenance of highways, may reasonably regulate or limit length, width, weight or load of a vehicle which may be permitted to use the public highways."

The cases hold that the question is not the type of regulation, so long as that type is reasonable in a legal sense, but rather the nature of the statute passed and the basis for the passage of that statute, that is to say, the right the State has to pass such a statute.

Therefore, the only way a Legislature may pass laws regulating the length, width, and load limit of a vehicle is under the police power of the State, and by reason of the nature of this statute falling within the police power of the State, the statute herein sought to be referred cannot be referred under the language in Article IV, Section 1, as defined in the case of **State ex rel Hughes vs. Cleveland,** supra.

There is presented in this proposition a second question which is raised under the provision for exemption from referendum in Article IV, Section 1 of statutes passed for the maintenance of public schools and state institutions. The terms "state institutions" or "public institutions" as applied to exemption from referendum have been considered by the highest courts of several jurisdictions. **Noreton vs. Haggerty,** 240 Mich. 584, 216 N.W. 450, involved a referendum petition. The Court held that the highway department was a state institution within the meaning of their referendum act. To the same effect see **State ex rel Blakeslee vs. Clausen,** 85 Wash. 260, 148 P. 28; **State ex rel Shade vs. Coyne,** 58 S. D. 493, 237 N.W. 733. This doctrine was specifically reaffirmed in the case of **Detroit Automobile Club et al vs. Secretary of State,** 230 Mich. 623, 203 N.W. 529.

In the case of **State ex rel Linn vs. Romero,** supra, our Supreme Court in reference to this proposition, said as follows:

"The respondent argues persuasively that the State Highway Commission is an 'institution,' as the word is used in Sec. 1 of Art. 4 of the State Constitution, and because of this also, the law is exempted from the referendum provided thereby, and in support cite the following authorities (Citing authorities)."

The Court declared to decide the question in the **Linn** case, as not necessary to a decision.

The third possible reason for the exemption of this statute from referendum, is that fines are provided. Under the Constitution of the State of New Mexico, Article XII, Section 4, all fines collected by the State go to the maintenance of the public schools, thus falling within the exemption provided in Article IV, Section 1 quoted above.

Of the twenty states having referendum provisions in their constitutions, the New Mexico provision is perhaps the most narrow and conservative. As said in the **Cleveland** case, supra, ". . . our constitution makers were imbued with an undeniably conservative idea as to the desirability of, or necessity for, either the initiative or referendum."

Therefore, it is the opinion of this office that Chapter 37 of the Laws of 1955, is not referable to the people and that you should decline to comply with Section 3-7-20, N.M.S.A., 1953, and you are hereby informed that this office is expressly refusing to approve the instructions to canvassers and petition signers under the provisions of Section 3-7-16, N.M.S.A., 1953.

We sincerely hope this answers your inquiries.

By: Fred M. Standley

Assistant Attorney General