Exhibit C

not pass upon its constitutionality, and such reference is not a binding interpretation of law, but is mere dicta.

The 1947 opinion of the attorney general did not overrule the 1943 opinion. Although it made reference to 1941 PA 299, § 11b, *supra,* the opinion did not purport to pass upon the constitutionality of the statute and should not be construed as determining that the act is constitutional.

In conclusion, since neither of the latter references to the statute, either by the Supreme Court or by the subsequent opinion of the attorney general, considered the constitutionality of the statute, neither of these latter authorities detracts from the legal effect of the earlier opinion of the attorney general.

Further, since the legislature has known of this determination of unconstitutionality of the statute since 1943 and has taken no steps to remedy the constitutional defects by which the Commissioner of Revenue could discharge that duty, it is clear that 1923 PA 151, § 11b, *supra,* is and remains unconstitutional to the extent of and for the reasons expressed herein and those expressed in OAG, 1943-1944, No 0-953, supra.[2]

740813.1

FRANK J. KELLEY,
Attorney General.

CONSTITUTIONAL LAW: Amendments

CONSTITUTIONAL LAW: Initiative

ELECTIONS: Constitutional Amendment

ELECTIONS: Initiative

A statute providing that signatures affixed to petitions proposing a constitutional amendment or initiation of legislation more than 180 days prior to filing are rebuttably presumed to be stale and void is invalid.

Opinion No. 4813 August 13, 1974.

Honorable Gary Byker
State Senator
The Capitol
Lansing, Michigan 48901

You have asked for my opinion concerning the constitutionality of § 472a, as amended, of the Michigan Election Law, MCLA 168.472a; MSA 6.1472(1), which provides that signatures affixed to a petition pro-

[2] This opinion does not consider the possible constitutional defects discussed in OAG, 1943-1944, No 0-953, *supra,* at p 475:

> "*All these extraordinary powers are subject to no control by any court and no notice of any exercise of these powers is provided for. It is probably unconstitutional under the XIVth Amendment of the Constitution of the United States and the Constitution of the State of Michigan.*" [Emphasis supplied.]

posing an amendment to the State Constitution or to a petition proposing initiation of legislation are rebuttably presumed to be stale and void if affixed more than 180 days before the petition was filed with the office of the Secretary of State. The statute does not provide what type or quantum of proof is sufficient to overcome the presumption.

Petitions proposing initiation of legislation are authorized by Const 1963, art 2, § 9:

> "The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative . . . The power of initiative extends only to laws which the legislature may enact under this constitution . . . To invoke the initiative . . . petitions signed by a number of registered electors, not less than eight percent . . . of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.
>
> * * *
>
> "The legislature shall implement the provisions of this section."

This provision has been held to be self-executing. *Wolverine Golf Club* v *Secretary of State,* 384 Mich 461, 466; 185 NW2d 392 (1971). Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:

> ". . . a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. . . ." [*Wolverine Golf Club* v *Secretary of State, supra,* at 466]

I am consequently of the opinion that, as applied to signatures affixed to petitions which initiate legislation pursuant to Const 1963, art 2, § 9, § 472a of the Michigan Election Law is beyond the legislature's power to implement said section and is therefore unconstitutional and unenforceable.

Petitions to propose amendments to the State Constitution are authorized by Const 1963, art 12, § 2. Unlike art 2, § 9, that provision does not contain any general statement to the effect that the legislature is authorized to implement any of its provisions. The first paragraph of art 12, § 2, sets forth the requirements of the petition and the gathering of signatures:

> "Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the

signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon."

The delegations of authority to the legislature to implement this provision are very explicit and pertain to designation of the official who has the duty to receive the petitions, the form and manner of circulation, and the method of canvassing.

In view of the fact that section 472a confronts proponents of constitutional amendment petition drives with the dilemma of choosing between the burden of gathering all of the signatures within 180 days and the burden of overcoming a rebuttable presumption of staleness while not knowing the kind or quantity of evidence to be marshaled, it is doubtful that a court would construe the legislature's delegated power to provide by law for the "manner" in which such petitions shall be "signed and circulated" as including the authority to prescribe a specific time frame within which the signatures must be affixed. It would be more reasonable to expect that the court would give such provision a more limited construction, as was the case in *Wolverine Golf Club* v *Secretary of State, supra,* with reference to even broader language found in art 2, § 9.

Consequently, I am of the opinion that, with regard to signatures affixed to petitions proposing amendment to the State Constitution pursuant to Const 1963, art 12, § 2, § 472a of the Michigan Election Law is unconstitutional.

The case of *Hamilton v Secretary of State,* 221 Mich 541; 191 NW2d 829 (1923), provides further support for the contention that section 472a of the Election Law is unconstitutional pursuant to both Const 1963, art 12, § 2, and art 2, § 9. In that case the Secretary of State argued that signatures to an initiatory petition must be attached within a reasonable time before its filing. The Secretary of State contended that inasmuch as signatures on the petitions before him ran back as far as 20 months, the petition was not filed within a reasonable time. The plaintiff argued that no time limit was established for signatures contained on initiatory petitions. Although no statute was involved in the case the holding of the Court and the reasoning it used to arrive at this holding makes the *Hamilton* case directly applicable to the problem before us:

> "The constitutional provision [1908 Const, art 17, § 2] contains procedural rules, regulations and limitations; it maps the course and marks the way for the accomplishment of an end; it summons no legislative aid and will brook no elimination or restriction of its requirements; it grants rights on condition expressed, and if its provisions are complied with and its procedure followed its mandate must be obeyed. Its provisions are prospective in operation and self-executing. The vote for governor every two years fixes the basis for determining the number of legal voters necessary *to sign* an initiatory petition and start designated official action.
>
> "This primary essential to any step at all fixes distinct periods within which initiatory action may be instituted. A petition must start out for signatures under a definite basis for determining the necessary

number of signatures and succeed or fail within the period such basis governs.

* * *

". . . The identity of the petition was inseparably linked with the basis it sought to comply with, and as an initiatory petition it could not and did not survive the passing of such basis and then identify itself with a new basis wholly prospective in operation . . . The Constitution plainly intends an expression of an existing sense of a designated percentage of the legal voters. Such sense may be expressed after any biennial election for governor, and if in percentage of legal voters signing the petition it meets the basis under which it was circulated, it becomes effective upon filing the same with the secretary of State at least four months before the basis is changed by a subsequent vote for governor." [pp 544-546]

In other words, petitions and the signatures affixed to them are valid for as long as a particular basis (votes cast) remains in effect. 1963 Const, art 12, § 2, and art 2, § 9, both provide that the requisite number of signatures to initiative petitions is to be determined by a set percentage of votes cast for all candidates for governor at the last preceding general election at which a governor was elected. Therefore, the term for governor determines the time periods during which petitions may be circulated for signature and any signatures gathered during such a period are valid. Under 1963 Const, art 5, § 21, the governor serves a period of four years. Hence, signatures on petitions are to be considered valid so long as they are gathered during a single four-year term bounded on both sides by a gubernatorial election.

FRANK J. KELLEY,
Attorney General.

740814.1

COUNTIES: Board of Health; Board of County Commissioners

Board of health of a county health department may negotiate labor contracts with its employees, which contracts are subject to approval of the board of county commissioners.

A county board of health cannot execute contracts without approval of the board of county commissioners.

A board of county commissioners may regulate fees and charges of persons employed by county board of health in executing health laws and their own regulations.

Opinion No. 4825 August 14, 1974.

Honorable Earl E. Nelson
State Representative
The Capitol
Lansing, Michigan 48901

You raise three issues concerning the respective authority and duties of a county health board in relation to the county board of commissioners.