114. Revenue—Soft-Drink License in Unincorporated Town—County Commissioners May Fix.

(1) Rev. Laws, 877, as amended Stats. 1919, p. 408: County Commissioners may fix license of soft-drink establishments.

(2) Stats. 1921, p. 194, are amended by Stats. 1923, p. 62. County Commissioners, acting as Town Board for unincorporated town, may enact ordinance fixing license of soft-drink places.

INQUIRY

CARSON CITY, January 29, 1924.

You call my attention to Stats. 1921, p. 194, which provide:

> An Act creating a County License Board to regulate the issuance and revocation of licenses for billiard-balls, dance-halls, bowling alleys, theaters, or soft-drink establishments, in unincorporated cities and towns of this State.

You advise that no law can be found authorizing the collection of licenses on soft-drink establishments, and you request information as to the powers of the Board of County Commissioners to fix the amount of license fee to be collected on soft-drink establishments.

OPINION

Statutes of 1921, p. 194, have been amended by Statutes of 1923, p. 62.

Your attention is directed to Statutes of 1919, p. 408, chap. 228, wherein the Act approved February 26, 1881, being section 877 of the Revised Laws, has been amended.

Under the ninth subdivision of this amendment the Boards of County Commissioners are authorized to adopt ordinances fixing a license tax on the several businesses mentioned by you in your letter, including soft-drink establishments.

It will be necessary, therefore, for your Board of County Commissioners, acting as a Town Board for the unincorporated cities and towns of your county, to enact an ordinance fixing the license fee to be charged and collected from those engaged in the business of operating soft-drink places.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. F.E. WADSWORTH, *District Attorney, Pioche, Nevada.*

SYLLABUS

115. Constitution, How Amended.

(1) Sec. 3, art. 19, of the Constitution: Before amendment to the Constitution can be made, independent of the Legislature, it is necessary that a method of

procedure be adopted, even though provisions of section are declared to be self-executing.

INQUIRY

CARSON CITY, January 30, 1924.

You submit the following interrogatories, and request an official opinion:

In what manner is the power to propose amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislature, to be exercised?

Is it by initiative petition of 10 per cent or more of the qualified electors, as provided in section 3, article 19 of the Nevada Constitution, and is the further action covered by either (1) Enactment by the Legislature, or (2) Upon the rejection by the Legislature, or its failure to act upon said petition, by majority vote of the qualified electors at the next ensuing general election?

OPINION

Section 3 of article 19 of the Constitution of the State of Nevada provides:

> The people reserve to themselves the power to propose laws and the power to propose amendments to the Constitution, and to enact or reject the same at the polls, independent of the Legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any Act, item, section, or part of any Act or measure passed by the Legislature, and section 1 of article 4 of the Constitution shall hereafter be construed accordingly. The first power reserved by the people is the initiative, and not more than 10 per cent of the qualified electors shall be required to propose any measure by initiative petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions, for all but municipal legislation, shall be filed with the Secretary of State not less than thirty days before any regular session of the Legislature; the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes. Such initiative measures shall take precedence over all measures of the Legislature except appropriation bills, and shall be enacted or rejected by the Legislature, without change or amendment, within forty days. If any such initiative measure, so proposed by petition as aforesaid, shall be enacted by the Legislature and approved by the Governor in the same manner as other laws are enacted, the same shall become a law. If said initiative measure be rejected by the said Legislature, or if no action be taken thereon within said forty days, the Secretary of State shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure, it shall become a law and take effect from the date of the official declaration of the vote.

A careful study of the constitutional provisions of the States of Oklahoma and Oregon discloses that similar provisions have been enacted, but a method of procedure has been

indicated.

It will be noted that under the provisions of section 3, supra, no procedure is set forth as to the number or percentage of electors whose names must be affixed to the petition requesting an amendment to the Constitution; no time is designated when said petition must be filed; neither is the place for filing said petition set forth.

I am of the opinion that, in order to carry out the intent of the people in adopting section 3 to the Constitution, whereby proposed amendments could be enacted at the polls, independent of the Legislature, some form or method must be adopted by the Legislature. Section 3 of article 19 fails to outline a method.

In arriving at this conclusion I have not overlooked the fact that section 3, supra, provides:

> The provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation.

The Supreme Court of the State of Nevada, in the case of State v. Brodigan, 37 Nev. 43, quotes from a decision of the Supreme Court 896, where the Court states:

> Where the Constitution requires the performance of an act, but provides neither officer, the means, or the method in which the act shall be performed, in such a case there is no other means of carrying such a provision into effect but by appropriate legislation.

Notwithstanding the declaration contained in section 3, in reference to these provisions being self-executing, the Supreme Court in the Brodigan case held that legislative action was necessary.

I have examined, also, Statutes of 1915, p. 157, and Statutes of 1921, p. 108, but conclude that these provisions of the law apply to initiative petition as defined in the Constitution.

It is my opinion, therefore, that before amendments to the Constitution can be made, independent of the Legislature, in conformance to section 3, article 19, legislative action is necessary and a method of procedure must be adopted.

Respectfully submitted,

M.A. Diskin, *Attorney-General.*

Hon. W.J. Hunting, *Superintendent of Public Instruction.*

SYLLABUS

116. Corporations—Delinquent Corporation—Publication of List by Governor—Expense, How Paid.

(1) Stats. 1923, p. 342: List of delinquent corporations and Governor's proclamation of forfeiture should be published in Carson City News and some paper outside Carson City.

(2) The advertising cost should be paid out of appropriation designated in Act.

(3) The Carson City News is not entitled to any additional compensation for this publication.