

## Opinion No. 19-2304

June 17, 1919

**BY:** O. O. ASKREN, Attorney General

**TO:** Mr. Mateo Lujan, Assistant Secretary of State, Sante Fe, New Mexico.

Resolution Ratifying National Prohibition Amendment Not Subject to Referendum.

### OPINION

We have your letter of the 12th instant, advising this office of the filing of petitions for the referendum of House Joint Resolution No. 1, Fourth State Legislature, and requesting advice from this office as to what steps should be taken by you in connection therewith.

As suggested to you orally, we are of the opinion if the petition is in the form prescribed by law and contains the names required by the constitution providing for the referring of laws to the people for acceptance or rejection, the same must be filed by you without any objection.

Concerning your action in connection with this petition, your duties are prescribed by section 1 of Article IV of the Constitution. Therein it is provided that the Secretary of State shall submit to the electorate at the next general election the approval or rejection of such law, but there is no method prescribed by which such question shall be submitted or the manner of its submission by the Secretary.

There is grave doubt whether the resolution in question is one that is contemplated by the constitution. First, because it is doubtful whether a House Joint Resolution is a "law enacted by the legislature"; and second, because it is doubtful whether any legislation approving or rejecting a proposed amendment to the constitution of the United States is subject to the laws providing for the submission of legislation to the electorate, upon the ground that the constitution of the United States provides the methods by which it may be amended, and there is nothing in the provisions of that document which authorizes the submission of such a question to a vote of the electors of the different states.

For the above named reasons, we suggest that you advise the attorneys for the petitioners that the approval or rejection of the law will not be submitted by you to the electorate at the next general election, stating your reasons therefore, so that in this manner the petitioners may be given an opportunity to take such action as they may deem proper in order to obtain from the courts a ruling as to the legality of the submission of this question to the voters of the state by virtue of the referendum provisions of the constitution.

HARRY S. BOWMAN,

Assistant Attorney General