

Wed 8/8

To the Board of County Commissioners of Tulsa County,
I have your request to this office for an opinion as to whether or not the decision of your board in the location of the court house can be submitted to the people of the county under the referendum. My views of the law touching this question I herein submit.

In article 5 section one of the constitution, the people expressly reserve to themselves the right to reject any laws enacted by the legislature. By section 5 of the same article the power of the referendum is reserved to the people of the state at large, even further reserved to the legal voters of every county as to all local legislative action in the administration of County affairs. Section 5 of the same article further provides as follows: The manner of exercising said powers shall be prescribed by general laws, except that Boards of County Commissioners may provide for the time of exercising the initiative and referendum powers as to local legislation in their respective counties and districts.

It will be noted that these sections provide for legislative acts only.

The first legislature under the constitution passed a law providing for the manner in which the initiative and referendum powers reserved to the people should be put into effect.

(Session Laws 1907-08 C 44). Said law in substance provided that counties and other municipalities which do not provide by ordinance or charter for the manner of exercising the initiative and referendum powers reserved to the people, shall permit the enforcement of the initiative and referendum by the same procedure as it is exercised by the state at large.

Your board had fixed thirty days as the time in which petitions for the referendum should be filed on any action by you sought to be questioned at the polls. This ordinance of your board, or resolution if you so wish to term it, was in operation when the site was selected for the court house. The petitions for the referendum vote upon this question was not submitted to your board for nearly sixty days after you had acted, therefore they came too late, and can be considered of no effect.

But outside of the question of limitation, considering the proposition on its merits, is the location of a court house legislative action in the meaning of the constitution above referred to. Our laws upon the exercise of the referendum are similar to those of the state of Oregon, and the supreme court of that state had before it the case of Long vs. city of Portland wherein the line was drawn between what acts could be and what could not be submitted under the referendum. It said: The effect of the referendum will not, however affect in any manner ordinances or resolutions of the council that are not municipal legislation.

In the case of Brazel vs. Jiglev our own Supreme Court (and reported in 110 Pacific Reporter at page 1052) had before it the question as to whether or not the action of the County Commissioners in locating a bridge in the county, could be reviewed under the referendum. It was there held that this work was administrative upon the part of the commissioners and not legislative and therefore was not a subject for the referendum. It seems to me that this case is conclusive of the question. Article 17 section 2 of the constitution created the Board of County Commissioners, and provided that their duties until changed by law should be the same as like named officers in the territory of Oklahoma. The territorial law in force as to the duties of county commissioners when the constitution was established is copied into Snyder's Laws of Oklahoma 1909. Section 1687 of said statutes