STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92034

STATE OF NEBRASKA
OFFICIAL
MAR 3 1992
DEPT. OF JUSTICE

DATE: February 28, 1992

SUBJECT: LB 946; Does that bill changing the effective date of legislative redistricting conflict with Article III, Section 7 or Article III, Section 8 of the Nebraska Constitution?

REQUESTED BY: Senator George Coordsen
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

Neb.Rev.Stat §50-1152 (1991 Supp.) provides that the legislative redistricting statutes passed in 1991 "shall become operative on January 6, 1993," except that members from the newly created odd-numbered legislative districts will be nominated and elected in 1992. LB 946 would amend the initial portion of Section 50-1152 to read as follows:

> Sections 50-1101 to 50-1152 shall become operative on the effective date of this act, except that members of the Legislature from the odd-numbered districts mentioned in sections 50-1101 to 50-1152 shall be nominated at the primary election in 1992 and elected at the general election in November 1992 for the term commencing January 6, 1993.

In addition, LB 946 would add the following new language to Section 50-1152:

> The members of the Legislature elected or appointed prior to the effective date of this act shall represent the newly established districts for the balance of their

L. Jay Bartel, J. Kirk Brown, David T. Bydalek, Laurie Smith Camp, Elaine A. Chapman, Delores N. Coe-Barbee, Dale A. Comer, David Edward Cygan, Mark L. Ells, James A. Elworth, Laura H. Essay, Lynne R. Fritz, Royce N. Harper, William L. Howland, Marilyn B. Hutchinson, Kimberly A. Klein, Donald A. Kohtz, Charles E. Lowe, Lisa D. Martin-Price, Lynn A. Melson, Harold I. Mosher, Fredrick F. Neid, Paul N. Potadle, Marie C. Pawol, Kenneth W. Payne, Jan E. Rempe, James H. Spears, Mark D. Starr, John R. Thompson, Barry Waid, Terri M. Weeks, Alfonza Whitaker, Melanie J. Whittamore-Mantzios, Linda L. Willard

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> terms, with each member representing the same numbered district as prior to the effective date of this act.

You have now posed several questions concerning the interaction of this proposed statutory language with various provisions of the Nebraska Constitution. Our responses to your inquiries are set out below.

The provisions of our state Constitution at issue are Article III, Section 7, and Article III, Section 8. Article III, Section 7 provides, in pertinent part:

> When the Legislature is redistricted, the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term.

The pertinent portion of Article III, Section 8 provides:

> No person shall be eligible to the office of member of the Legislature unless on the date of the general election at which he is elected or on the date of his appointment he ...has resided within the district from which he is elected for the term of one year next before his election....And no person elected as aforesaid shall hold his office after he shall have removed from such district.

It appears that the impetus for LB 946 was, in part, a perceived conflict between the operative date of redistricting under Section 50-1152 and the residency requirements of Article III, Section 8. That is, Article III, Section 8 requires a person to reside within a legislative district for one year prior to the date of his or her election to the Legislature. On the other hand, under Section 50-1152, the operative date for the formation of new legislative districts is January 6, 1993. In those instances where the redistricting plan forms new legislative districts from territory that was part of old districts (new legislative Districts 21 and 39), it could be argued that no one would be a resident of the new district for a year at the time of the election in 1992, since the district does not come into being until 1993. Therefore, the initial portion of LB 946 apparently proposes to amend Section 50-1152 so that it could be considered operative retroactive to its effective date--90 days after its passage, or September 5, 1991. In that way, individuals could be considered as residents of the new legislative districts for one year prior to the general election in 1992. You have asked us whether LB 946 even needs to be enacted, or whether the current language of Section 50-1152 is sufficient. We assume that, by that question, you are asking if

there is a conflict between Article III, Section 8 and the current operative date of Section 50-1152 which would require a statutory change.

The answer to your question concerning the necessity for the change in operative dates contemplated by LB 946 obviously turns on the meaning of the language in Article III, Section 8 concerning residency. There do not appear to be any Nebraska cases which give guidance as to the construction of the residency language in Article III, Section 8. Moreover, the particular constitutional language at issue has remained unchanged as a part of our state Constitution since at least 1875. See Constitution of the State of Nebraska, November 1, 1875, Article III, Sec. 5. As a result, there is little information available from either the state Constitutional Convention in 1920 or any subsequent constitutional amendments. Therefore, we must determine the meaning of the plain language of the constitutional provision itself, with the assistance of appropriate rules of constitutional construction.

In considering the meaning of constitutional provisions in Nebraska, it is proper to consider the evil and mischief attempted to be remedied, the objects sought to be accomplished, and the scope of the remedy sought to be applied, and to give such provisions an interpretation which best appears calculated to effectuate the constitutional purpose. E.K. Buck Retail Stores v. Harkert, 157 Neb. 867, 62 N.W.2d 288 (1954). In addition, constitutional provisions should receive a liberal and general, rather than strict, construction and application. State ex rel. Thompson v. Neble, 82 Neb. 267, 117 N.W. 723 (1908).

With these rules of constitutional construction in mind, we turn to the language of Article III, Section 8 which is at issue. Presumably, the reason for requiring an individual to reside in his or her legislative district for one year prior to his or her election to the Legislature is to accomplish increased familiarity with the district--its geography, its economy, and its citizens and their concerns. We see no reason why this purpose could not be accomplished by reading Article III, Section 8 as requiring that individuals who wish to run for the Legislature in new districts immediately after redistricting may do so if they have resided in territory which will become the new district for one year prior to the general election. Such residence would appear to satisfy the purposes of the constitutional provision. Conversely, reading Article III, Section 8 to require immediate implementation of the redistricting plan in order to satisfy residency requirements appears to us to be an unduly strict reading of the constitutional provision under the circumstances. We therefore do not believe, in reference to your question concerning the "need" for LB 946, that the current implementation provisions of Section 50-1152 conflict with Article III, Section 8.

You have also asked whether the residency requirements of Article III, Section 8 would prohibit a legislator who is currently representing either District 21 or District 39 from serving in the Legislature if LB 946 is enacted. In a related question, you have requested our views as to whether such legislators must establish their residence in the new Districts 21 and 39 to complete their terms through January, 1993, in the event implementation of redistricting is accelerated under LB 946.

As noted above, Article III, Section 8 of the Nebraska Constitution requires a member of the Legislature to reside in his or her legislative district, and a legislator may not "...hold his office after he shall have removed from such district." On the other hand, it is clear under the applicable language of Article III, Section 7 that members of the Legislature elected prior to redistricting continue in office after redistricting for the balance of their term, and, Article III, Section 7 allows the Legislature to designate, if necessary, what newly established district a legislator will represent after redistricting. In the present instance, the new Districts 21 and 39 created by the 1991 redistricting bill are some distance geographically from their predecessor districts, and the Senators who represent those districts currently will not reside in the new districts. Yet, LB 946 would both accelerate the creation of the new districts, and also require that they by represented by the current representatives of those districts who do not reside there. We assume that this situation led to your second set of questions.

Again, there is no case law from Nebraska that sheds light on this tension between constitutional provisions. However, unlike Article III, Section 8, which has remained unchanged since at least 1875, Article III, Section 7 was added to our state constitution in 1966. The legislative history of the bill which ultimately became the portion of Article III, Section 7 in question offers some assistance in answering your question.

The portion of Article III, Section 7 at issue dealing with redistricting and the placement of hold-over Senators into new districts was added to our state Constitution as a result of a constitutional amendment proposed by LB 923, which was passed by the Nebraska Legislature in 1965. That constitutional amendment was approved by the voters in November, 1966. During the floor debate on LB 923, several comments by senators indicated that the intent of the constitutional language in question was to allow the Legislature the right to assign legislators to particular districts if necessary as a result of redistricting, even if that assignment resulted in Senators representing districts in which they did not reside. For example, one exchange went as follows:

> Senator Pedersen: All right, then the second question is, on the committee amendment you say in (sic) the law providing for such redistricting shall when necessary specify the newly established district which they shall represent for the balance of the term. The people can actually be voting for certain senators in certain districts and the legislature by this can subsequently thereto specify another part of the state that this senator who continues over actually will be representing. Is that the way you understand it?
>
> Senator Warner: This would be my understanding.

Floor Debate on LB 923, Seventy Fifth Nebraska Legislature, at 2937 (1965) (emphasis added). See Floor Debate on LB 923, Seventy Fifth Nebraska Legislature, at 2939 (1965).

Obviously, comments by Senators concerning the purpose of a constitutional amendment proposed by the Legislature and approved by the people are not dispositive. Nevertheless, in the absence of any caselaw which interprets the language in question, those comments are useful in giving insight as to the motivation for the amendment.

From the language cited above, it is clear that the amendment added to Article III, Section 7 in 1966 was intended, at least by the Legislature, to give it the option of assigning legislators to districts in which they do not reside in the event that such assignments become necessary as a result of redistricting. A constitutional amendment becomes an integral part of the instrument, and must be harmonized, if possible, with all the other provisions of the instrument. Luikart v. Higgins, 130 Neb. 395, 264 N.W. 903 (1936). Therefore, the 1966 amendment to Article III, Section 7 must be considered an integral part of the Nebraska Constitution, and must be harmonized with the remainder including the residency requirements of Article III, Section 8. As a result, we believe that the residency requirements of Article III, Section 8 do not apply in the specific instance of a legislator who is assigned to a particular district as a result of redistricting, even if that legislator is not a resident of the newly assigned district. Should LB 946 be passed and redistricting be accelerated, no constitutional violation would occur with respect to the representation of Districts 21 and 39 by Senators who do not reside there. Similarly, we do not believe that the Senators currently representing Districts 21 and 39 would need to establish their residences in those new districts should LB 946 be passed and redistricting implemented.

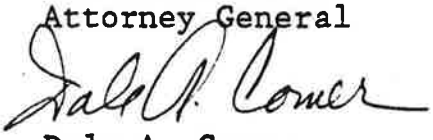
Finally, you ask if there are "any problems" with the final portion of LB 946 which amends Section 50-1152 so that members of

the Legislature elected or appointed prior to the effective date of the redistricting act shall continue to represent their previous numbered district for the remainder of their term. This question is, again, in the context of Article III, Sections 7 and 8.

To the extent we understand your question, we do not believe there are "any problems" with this language. In great part, it simply mirrors the appropriate language of Article III, Section 7, and is authorized by that Section. We do not see how that is improper.

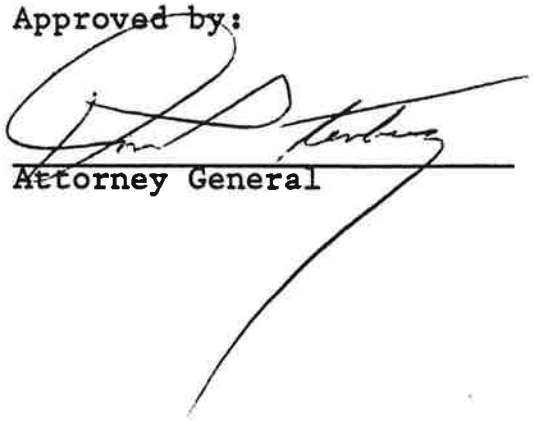
Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

Approved by:



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