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STATE OF NEBRASKA
OFFICIAL
DEC 23 1995
DEPT. OF JUSTICE

DATE: December 21, 1995

SUBJECT: Application of the Single Subject Requirement of Neb. Const. art. III, § 14, to Constitutional Amendments Proposed by the Nebraska Legislature.

REQUESTED BY: Senator Stan Schellpepper
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the propriety of a proposed amendment to LR 43CA. LR 43CA, as amended by the General Affairs Committee last session, proposes to submit to the electorate an amendment to Neb. Const. art. III, § 24, which, if approved, would allow the Legislature to "authorize and regulate games of chance, the proceeds of which may be used only for charitable or community betterment purposes, for civic benefit, for tax relief, for job creation and economic development, or for the promotion of agriculture." LR 43CA, § 1. The "games of chance" which could be authorized under the proposed amendment would "include, but not be limited to, casino gaming activities, player-activated electronic, video, or mechanical gaming devices, dice, card games of chance, and table games of chance." *Id.* Your proposed amendment to LR 43CA would add language providing for the creation of a "gaming commission" to regulate any gaming expansion which may be authorized by the Legislature pursuant to the amendment. Noting that Neb. Const. art. III, § 14, provides that "[n]o bill shall contain more than one subject, and the same shall be clearly expressed in the title", you ask "whether adding a provision which requires the creation of a gaming commission to

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regulate any gaming expansion which might be authorized by the Legislature pursuant to that constitutional amendment fulfills this single subject requirement."

Previously, this office concluded that the single subject requirement in art. III, § 14, is inapplicable to constitutional amendments proposed by the Legislature. 1971-72 Rep. Att'y Gen. 211 (Opinion No. 90, dated January 19, 1972)). In that opinion, we noted the advisory opinion of the Nebraska Supreme Court in the case of ***In re Senate File 31,*** 25 Neb. 864, 41 N.W. 981 (1889), in which the court expressed the view that "the Legislature's submission of an amendment to the Constitution is not a legislative act or law in the constitutional sense, but is a mere `proposal.' Therefore, no title to the proposal is necessary, and the proposal may encompass more than one subject." 1971-72 Rep. Att'y Gen. at 211. As the court stated in the ***Senate File 31*** case:

> A proposition to amend the constitution. . .is in no sense a law. It is a mere proposal, based, it is to be presumed, upon a public demand for its submission, but it will possess no validity until ratified by a majority of all the votes cast at the election. If two or more propositions are submitted, they are to be submitted separately. There is a good reason why but one subject should be embraced in a bill designed to become a law by the action of the legislature and governor, and that the subject should be clearly expressed in the title, as without such condition experience has shown that provisions of a very objectionable character, which there was no possibility of passing independently, were attached to meritorious bills and smuggled through, or knowingly voted for by members to prevent the defeat of meritorious measures. . .No such reasons obtain, however, in submitting a proposition to amend the constitution, and the provisions of the constitution are not applicable thereto.

25 Neb. at 882, 41 N.W. at 986. ***See also Weston v. Ryan,*** 70 Neb. 211, 212, 97 N.W. 347, 348 (1903) ("The submission by the legislature to the electors of a proposed constitutional amendment is not a legislative act.") (syllabus of court).

Relying on the Supreme Court's discussion in ***Senate File 31,*** we concluded in our earlier opinion that, "[u]nder the present language of Article XVI, Section 1, Constitution of the State of Nebraska, therefore, in proposing amendments thereunder, the Legislature is not bound by the Article III, Section 14, Constitution of the State of Nebraska, prohibition against a bill's containing more than one subject." 1971-72 Rep. Att'y Gen. at 212. Thus, as to your question regarding whether your proposed amendment

to LR 43CA would offend the single subject requirement of article III, § 24, we conclude that it cannot, as this requirement has no application to acts of the Legislature proposing the submission of constitutional amendments.

While your question refers only to the application of the single subject requirement of article III, § 14, to your proposed amendment to LR 43CA, we believe that, in order to fully address the issue raised by your request, we must also address the application of Neb. Const. art. XVI, § 1, pertaining to amendment of the Constitution. In particular, the last sentence of this section directs that, "[w]hen two or more [constitutional] amendments are submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately."

Recently, in Op. Att'y Gen. No. 95089 (Nov. 21, 1995), we discussed the requirement of article XVI, § 1, pertaining to separate presentation of constitutional amendments on the ballot submitted to voters presenting constitutional amendments proposed by the Legislature. We noted that "[a] number of states have constitutional provisions which require that, when more than one proposed constitutional amendment is proposed to the voters, each of those amendments must be presented to the voters so that it can be voted on separately." *Id.* at 2; *see generally* Annot., ***Proposition submitted to people as covering one or more than one proposed constitutional amendment within contemplation of constitutional provision in that regard,*** 94 A.L.R. 1510 (1935); 16 C.J.S. ***Constitutional Law*** § 13 (1984). "Their purpose is to prevent deceit of the public along with logrolling, hodge-podge legislation or jockeying, where voters are required to vote for something which they do not support in order to also vote for something which they do support." Op. Att'y Gen. No. 95089 at 2 (*citing* 16 Am. Jur. 2d ***Constitutional Law*** § 48 (1979)).

Our recent opinion referenced the 1971 Attorney General Opinion discussing the requirement for separate submission of constitutional amendments and the ***Senate File 31*** case, which stated that

> [t]he quality of independence of intent and effect, therefore, seems to be the criterion in determining whether separate [constitutional] amendments are involved [under Art. XVI, § 1]. Thus, two provisions which are logically independent of each other, in that either would have full effect and purpose without the other, and would reflect a whole popular wish, should be considered two amendments and submitted separately. This conclusion would apply even where the two provisions relate to the same section of the Constitution.

Op. Att'y Gen. No. 95089 at 3 (*quoting* 1971-72 Rep. Att'y Gen. at 213)).

We also noted that the Nebraska Supreme Court had indirectly considered the separate submission requirement of article XVI, § 1, in ***Munch v. Tusa,*** 140 Neb. 457, 300 N.W. 385 (1941). In discussing the necessity for separate presentation of proposals to amend the Omaha City Charter, the court in ***Munch v. Tusa*** stated:

> `The rule has been laid down that a constitutional amendment which embraces several subjects, all of which are germane (near or akin) to the general subject of the amendment, will, under such a requirement, be upheld as valid and may be submitted to the people as a single proposition'. . . .[T]he controlling consideration in determining the singleness of an amendment is its singleness of purpose and the relationship of the details to the general subject.
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> ***The rule followed by a majority of American jurisdictions is to the effect that where the limits of a proposed law, having natural and necessary connection with each other, and, together, are a part of one general subject, the proposal is a single and not a dual proposition.***

140 Neb. at 463, 300 N.W. at 389 (emphasis added).

Upon examination of the separate submission issue, we recently concluded that,

> [o]ur 1972 opinion notwithstanding, we believe that the Nebraska Supreme Court would be most likely to follow its formulation of the dual amendments rule in the more recent ***Munch*** case in determining whether two amendments proposed for the Nebraska Constitution require separate presentation to the voters, in part because the ***Munch*** rule appears to be the majority rule. Under that rule, two proposals may be submitted as a single proposition if they have a natural and necessary connection with one another, and if they are part of one general subject.

Op. Att'y Gen. No. 95089 at 3-4.

You have not provided us with any specific language proposing to amend LR 43CA, but indicate that your amendment would add language "to provide for a gaming commission to regulate any gaming expansion which might be authorized by the Legislature" under the constitutional amendment. It seems to us that a "natural and

necessary connection" exists between the proposal to amend the Constitution to expand the Legislature's authority to authorize additional forms of gaming and the creation of a commission to regulate any such expanded gaming activity. The establishment of a gaming commission is certainly germane to the general subject of the amendment, which proposes to permit the Legislature to allow expanding gaming for specified purposes. Therefore, we believe that the question of creation of a gaming commission to regulate any expanded gaming authorized under the amendment would not have to be set forth separately on the ballot, and that, if LR 43CA is amended in the manner you suggest, presentation to the electorate of the proposal as a single amendment would be consistent with article XVI, § 1.

Very truly yours,

DON STENBERG
Attorney General

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Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

7-22-7.1

APPROVED BY:

DON STENBERG, Attorney General