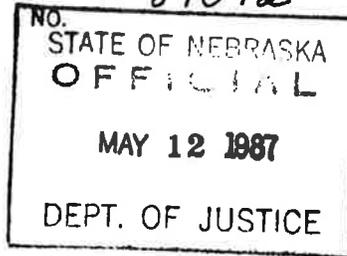


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

87072



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

May 12, 1987

SUBJECT: Article XVI, Section 1 of the Nebraska Constitution; may the Legislature propose a state constitutional amendment by legislative bill; what is the governor's authority in the constitutional amendment process?

REQUESTED BY: Senator Elroy Hefner
Nebraska Unicameral

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

Article XVI, Section 1 of the Nebraska Constitution provides, in pertinent part:

The Legislature may propose amendments to this Constitution. If the same be agreed to by three-fifths of the members elected to the Legislature, such proposed amendments shall be entered on the journal, with yeas and nays, and published once each week for three consecutive weeks, in at least one newspaper in each county, where a newspaper is published, immediately preceding the next election of members of the Legislature or a special election called by the vote of four-fifths of the members elected to the Legislature for the purpose of submitting such proposed amendments to the electors. At such election said amendments shall be submitted to the electors for approval or rejection upon a ballot separate from that upon which the names of candidates appear.

You now call our attention to LB 421 with its standing committee amendments which strike the original sections of the bill and insert provisions to place an amendment to the State Constitution upon the ballot. You ask a series of questions concerning the constitutional amendment process including:

L. Jay Bartel
Martel J. Bundy
Janie C. Castaneda
Elaine A. Catlin
Dale A. Comer
Laura L. Freppel

Lynne R. Fritz
Yvonne E. Gates
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson

Mel Kammerlohr
Sharon M. Lindgren
Charles E. Lowe
Lisa D. Martin-Price
Steve J. Moeller

Harold I. Mosher
Fredrick F. Neid
Bernard L. Packett
Marie C. Pawol
Jill Gradwohl Schroeder

LeRoy W. Sievers
James H. Spears
Mark D. Starr
John R. Thompson
Susan M. Ugai
Linda L. Willard

a. May the Legislature place an amendment to the State Constitution on the ballot by means of a legislative bill?

b. How many votes are needed for such legislation to pass?

c. What authority, if any, does the governor have in the constitutional amendment process?

Your final question includes a query as to whether a legislative bill involving a constitutional amendment must be submitted to the governor upon final passage, and whether the governor has authority to veto or sign such a legislative bill. Our conclusions are set out below.

Almost 100 years ago, our Supreme Court considered a situation involving questions similar, in great part, to the questions which you have raised. In In Re Senate File 31, 25 Neb. 864, 41 N.W. 981 (1889), the Court considered the propriety of procedures surrounding the passage, by both houses of our then two-house Legislature, of a legislative bill which proposed two amendments to the State Constitution. The constitutional provision governing amendment by legislative initiative in 1889 was substantially identical to Article XVI, Section 1 of our current State Constitution with the exception of language which was later changed to accommodate the Unicameral Legislature. As discussed in our opinion at Report of the Attorney General, 1965-66, No. 210 at 339, the court in In Re Senate File No. 31, drew two conclusions which are instructive concerning the issues which you have raised.

First of all, the court in In Re Senate File No. 31, upheld an amendment procedure whereby amendments to the State Constitution were proposed by legislative bill in spite of arguments by opponents of the legislation to the effect that constitutional amendments could not be proposed by bill. Therefore, as noted in our 1966 opinion cited above, it appears that proposed constitutional amendments to our State Constitution can be submitted to the voters by means of a legislative bill or by means of a legislative resolution.

Second, proposals for amendment to the State Constitution contained in a legislative bill apparently need not be submitted to the governor for his or her approval. As the court stated in In Re Senate File No. 31:

It will be conceded that under our constitution, it is unnecessary to submit a proposition to amend the constitution, duly passed by each branch of the legislature, to the governor for his approval, as

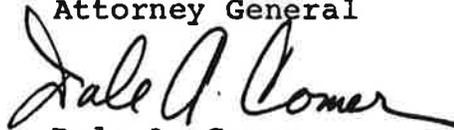
such proposition is not ordinary legislation. Id. at 877, 41 N.W. at 984.

Indeed, this latter holding is in accord with the general rule in other jurisdictions which holds that resolutions of the Legislature submitting constitutional amendments to the people need not be approved by the governor since the governor is not a party to the amendment function or process. 16 Am.Jur. 2d, Constitutional Law, §40.

As a result, it is our view that the Legislature may place a proposed state constitutional amendment on the ballot by means of a legislative bill so long as the bill is passed by the three-fifths majority required in Article XVI, Section 1 of our State Constitution, or by thirty affirmative votes. Further, it is our view that such a state constitutional amendment need not be presented to the governor upon final passage, and that the governor has no authority to sign or veto the legislative bill containing the amendment.

Sincerely,

ROBERT M. SPIRE
Attorney General

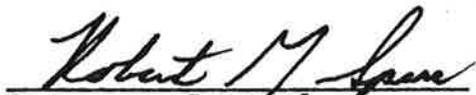


Dale A. Comer
Assistant Attorney General

DAC/kb

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

APPROVED:


Robert M. Spire
Attorney General