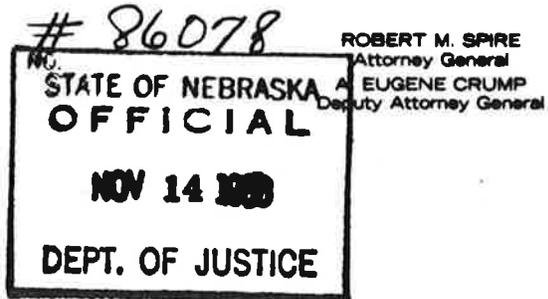


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



DATE: November 14, 1986

SUBJECT: Scope of Governor's Special Session Call

REQUESTED BY: Senator John W. DeCamp  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to whether the enactment of legislation to repeal Laws 1986, LB 999, would be within the scope of the subjects listed in the Governor's proclamation calling the Legislature into special session.

Article IV, Section 8 of the Nebraska Constitution, provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

The last portion of this constitutional provision places an express limitation on the power of the Legislature to act during a special session. In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court, discussing the nature of this limitation, stated:

It is well established that the Legislature while in special session can transact no business except that for which it was called together. Chicago, B. & Q. R.R. Co. v. Wolfe, 61 Neb. 502, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but

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it must confine itself to the matters submitted to it by the proclamation.

The court in Arrow Club, supra, quoting at length from the Pennsylvania Supreme Court's decision in Commonwealth ex rel. Schnader v. Liveright, 308 Pa. 35, 161 A. 697 (1932), continued as follows:

"This constitutional provision contemplates that there shall first exist in the executive mind a definite conception of the public emergency which demands an extraordinary session. His mental attitude or intention is expressed in his proclamation, the purpose of which is to inform the members of the legislature of subjects for legislation, and to advise the public generally that objections may be presented if desired. It is not only a guide or chart with respect to which the legislature may act, but also a check restricting its actions so that rights may not be affected without notice. The proclamation may contain many or few subjects according to the governor's conception of the public need. While the subjects may be stated broadly or in general terms, the special business, as related to the general subject on which legislation is desired, should be designated by imposing qualifying matter to reduce or restrict. Although the subjects should be sufficient to evoke intelligent and responsive action from the legislature, it is not necessary that they include all the methods of accomplishment. The guiding principle in sustaining legislation of a special session is that it be germane to, or within, the apparent scope of the subjects which have been designated as proper fields for legislation. In construing a call the words of any portion thereof must be interpreted not only as commonly and universally understood, but also as applicable to the subject intended to be affected by legislation.

While the legislature must confine itself to the matters submitted, it need not follow the views of the governor or legislate in any particular way. Within the special business or designated subjects submitted, the legislature cannot be restricted or dictated to by the governor. It is a free agent, and the governor, under the guise of definition, cannot direct or control its action."

Id. at 689-90, 131 N.W.2d at 137. (Emphasis added).

The decision in Arrow Club, supra, reflects certain general principles regarding the limitations imposed on legislative action by virtue of the scope of the executive's call for a special legislative session. First, courts uniformly agree that, for a legislative enactment to be valid under the call, the legislation must be "germane" or "related to" the subjects stated in the call. Second, it is universally held that the governor's call cannot be used to inhibit legislative discretion, and that . . . "the governor may not, under the guise of naming a subject, limit its scope so drastically that he in effect imposes upon the Legislature his own view of what policy should be adopted." Comment, Scope of Governor's Call as Constitutional Limitation on Business of Special Session of the Legislature, 43 Neb. L. Rev. 605, 608-09 (1964). In applying these principles, the majority of courts deciding cases challenging legislation enacted at special legislative sessions as outside the scope of the call have adopted a liberal construction, upholding legislative acts if they can conceivably fall within the subjects mentioned within the call. Id. at 610-615.

In response to your specific question, the key inquiry concerns whether the subject of your proposed legislation, providing for the repeal of LB 999, is "germane to", "relates to", or possesses a "natural connection with" the subject matter designated in the Governor's proclamation. Upon examination of the proclamation, it is apparent that the only portion thereof relevant to this inquiry is the first subject stated therein, which authorizes the Legislature to act as follows:

To adopt a Farm Homestead Protection Act; to change the right to cure default in certain actions involving agricultural land; to protect farm homesteads subject to mortgages or trust deeds executed prior to the effective date of the act by permitting designation and repurchase of the homestead by the mortgagor or trustor through a two-sale process in the event of foreclosure or exercise of a power of sale; to provide for predesignation or disclaimer of farm homesteads in mortgages or trust deeds executed on or after the effective date of the act; to protect farm homesteads subject to mortgages or trust deeds or judgments executed or entered on or after the effective date of the act by permitting redemption of the homestead through an appraisal procedure in the event of foreclosure or exercise of a power of sale or execution on a judgment; and to repeal sections 1 and 4 of Laws 1986, L.B. 999, Eighty-ninth Legislature, Second Session, and to amend the remaining sections thereof in accordance with the foregoing; and to declare an emergency.

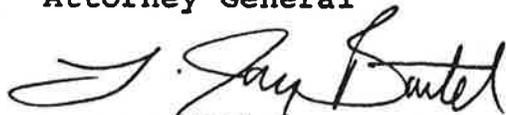
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Applying the principles previously articulated regarding the interpretation of the scope of the call, we believe legislation to repeal LB 999 is germane or related to the subject matter in the item first stated in the Governor's proclamation. While it is true that the Governor may specify or narrow the scope of the subjects for legislative consideration, it is equally true that the Legislature may not be unduly limited or restricted in acting upon the subject matter designated. Arrow Club, supra, 177 Neb. at 690, 131 N.W.2d at 137. In this instance, the call specifically includes the subject of LB 999 by making reference to the repeal of sections 1 and 4 of the act, and the amendment of the remaining sections. To interpret the call to preclude legislation repealing LB 999 would, in our view, represent an unduly narrow and restrictive construction with respect to the Legislature's authority to act under the subjects presented. Our conclusion is, in part, guided by the recognition that the task of formulating and enacting legislation is constitutionally committed to the Legislature, and the Governor's authority to establish the agenda for a special session is an exception to the normal separation of powers provided for under Article II, Section 1 of the Nebraska Constitution. Thus, the Governor's authority to prescribe the subjects for legislative consideration at a special session must be reasonably interpreted in a manner consistent with the separation of powers requirement. Empire Savings, Building and Loan Association v. Otero Savings and Loan Association, 640 P.2d 1151 (Colo. 1982).

On the basis of the foregoing, it is our conclusion that, under the subject matter contained in the Governor's special session call, the Legislature is not precluded from considering and enacting legislation which would, in effect, repeal LB 999.

Very truly yours,

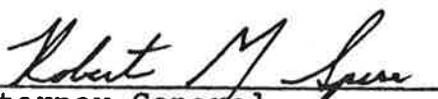
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cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

  
Attorney General