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STATE OF NEBRASKA
OFFICIAL
JUN 4 1991
DEPT. OF JUSTICE

DATE: June 4, 1991

SUBJECT: Legislative Resolution 24CA; Will Certain Proposed Constitutional Language Allow Payment of Industrial Savings Depositors Out of State Lottery Proceeds?

REQUESTED BY: Senator Loran Schmit
Nebraska State Legislature

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

Legislative Resolution 24CA would propose constitutional amendments to the voters of Nebraska with respect to the operation of a state lottery. Under Section 1 of Legislative Resolution 24CA, the following language would be added to Article III, Section 24 of our state constitution:

> The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for other purposes as directed by the Legislature. No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

Section 1 of Legislative Resolution 24CA would also add the following additional language to Article III of the Nebraska Constitution:

> If the Legislature establishes a lottery operated and regulated by the state pursuant to this Constitution, the Legislature may use the proceeds or a portion of the

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> proceeds from such lottery to compensate depositors of industrial loan and investment companies for unreimbursed losses of guaranteed deposits held by industrial loan and investment companies which filed for bankruptcy or entered receivership after November 1, 1983, notwithstanding any other provision of this Constitution. The Legislature shall not be empowered to make appropriations to compensate such depositors pursuant to this provision after July 1, 1997.

Section 2 of Legislative Resolution 24CA apparently contemplates that these two proposed constitutional amendments shall be submitted to the citizens of this state separately, so as to allow the voters to make a decision independently on both provisions.

You have now requested our opinion concerning two questions involving Legislative Resolution 24CA. We received your opinion request at 2:00 p.m. on the afternoon of the 88th day of the current 90-day legislative session. Moreover, your request states, "since this issue will be up almost immediately, please respond as quickly as possible." Obviously, these time frames do not allow any deliberate consideration of the issues which you have raised. Nevertheless, we will endeavor to respond to your opinion request.

You first ask whether the language in Legislative Resolution 24CA which allows the spending of lottery funds "for other purposes as directed by the Legislature" would allow the Legislature to spend lottery money for purposes which would otherwise be prohibited by the constitutional provisions cited in Haman v. Marsh, 237 Neb. 699, ___ N.W.2d ___ (1991). In Haman, our state supreme court indicated that a previous plan for the repayment of depositors who lost funds when certain industrial savings institutions failed was unconstitutional as a violation of Article III, Section 18 of the Nebraska Constitution prohibiting special legislation, and Article XIII, Section 3 of the Nebraska Constitution prohibiting lending the credit of the state.

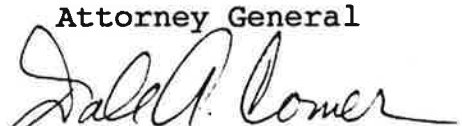
In Nebraska, constitutional amendments added to our state constitution must be construed and harmonized with all other provisions of the constitution so as to give effect to every section and clause as well as to the whole instrument. Banner County v. State Board. of Equalization and Assessment, 226 Neb. 236, 411 N.W.2d 35 (1987). As a result, the initial portion of Legislative Resolution 24CA quoted above would be read in conjunction and in harmony with Article III, Section 18 and Article XIII, Section 3 of the Nebraska Constitution. That language would not suspend those constitutional provisions unless it specifically so provided in some fashion. The proposed language at issue

allowing payment of lottery funds "for other purposes as directed by the Legislature" does not, standing alone, suspend the operation of Article III, Section 18 and Article XIII, Section 3. Therefore, if only the initial portion of Legislative Resolution 24CA were added to the Nebraska Constitution, those other constitutional provisions would remain in effect, and the Legislature could not spend lottery money for purposes prohibited in Haman.

You next ask if the Legislature would be specifically prohibited from paying money for Commonwealth purposes under the first portion of Legislative Resolution 24CA quoted above should the initial lottery proposal be enacted by the voters and should the provision dealing with Commonwealth fail. For the reasons discussed above, we believe that the initial portion of Legislative Resolution 24CA is insufficient to allow payment of depositors of industrial savings institutions from lottery proceeds. This would be even more true if the voters were to specifically reject the Commonwealth payment proposal in the second part of Legislative Resolution 24CA. Therefore, for depositors to be paid under Legislative Resolution 24CA, the citizens of Nebraska must pass that portion of the proposed constitutional amendments making provision for such payment.

Sincerely yours,

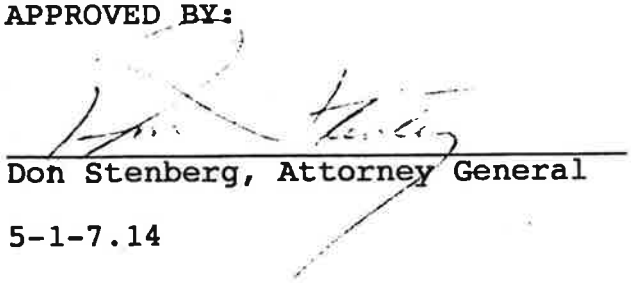
DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature

APPROVED BY:



Don Stenberg, Attorney General

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