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#02021

NO.
STATE OF NEBRASKA
OFFICIAL
AUG 14 2002
DEPT OF JUSTICE

DATE: August 13, 2002

SUBJECT: Scope of the Governor's Special Session Call; LB 32 and LB 46.

REQUESTED BY: Senator Chris Beutler
Nebraska Legislature

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

You have requested our opinion as to whether two legislative bills, LB 32 and LB 46, 97th Legislature, Second Special Session, are within the scope of the Governor's call dated July 24, 2002. We received your opinion request on the morning of August 13, 2002, and you requested a response from us by 9:00 A.M. the next day, on August 14, 2002. As a result, our analysis of the issues raised in your request will necessarily be brief, given the time you have allowed us for research and a response.

Art. IV, § 8 of the Nebraska Constitution provides as follows:

> 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 are called together.

We have discussed this constitutional provision in numerous previous opinions, and we have noted that the final portion of art. IV, § 8 places an express limitation on the power

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of the Legislature to act during a special session. Op. Att'y Gen. No. 89069 (November 9, 1989). That limitation was described in *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134, 137 (1964):

> It is well established that the Legislature while in special session can transact no business except that for which it was called together. 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 it must confine itself to the matters submitted to it by the proclamation.

(Citations omitted). While the court in *Arrow Club* noted the express constitutional limitation on the power of the Legislature to act in a special session, it also stated:

> 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. *The Legislature while in special session may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened. . . .* The presumption is always in favor of the constitutionality of legislation, and an act should be held to be within the call if it can be done by any reasonable construction.

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

The final reading version of LB 32 would reduce the collection fees retained by retailers for collection of sales taxes in Nebraska, and incidently reduce the collection fees for lodging and tobacco products taxes in Nebraska. That bill would also eliminate the $10 permit fee charged to retailers for issuance of a permit in connection with the collection of those taxes. The final reading version of LB 46 would reduce the discount available to cigarette wholesalers who stamp cigarette packages in the process of imposing state taxes on cigarettes. Both bills would generally increase revenues available to the State of Nebraska, not by increasing taxes or fees, but by reducing the share of state tax revenues received by retailers and cigarette wholesalers for collecting or imposing state taxes. The actual language of both bills would result in increased revenues directly in the State's General Fund. In addition, it is our understanding that various State cash funds would also receive additional revenues under the bills, either as a result of a transfer from the General Fund, or as a result of the incidental effects of the bills.