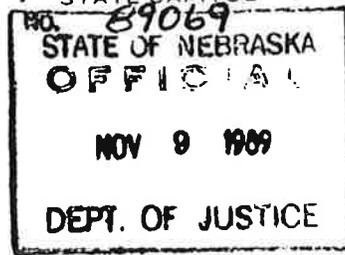


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA
TELEPHONE 402/471-2682

STATE CAPITOL

LINCOLN, NEBRASKA 68509



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

DATE: November 9, 1989
SUBJECT: Scope of Governor's Special Session Call
REQUESTED BY: Senator Ron Withem
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 Governor's Proclamation calling the Legislature into special session is unduly "narrow," and, consequently, restricts the Legislature's ability to exercise its legislative function, in contravention of the separation of powers requirement in Article II, Section 1 of the Nebraska Constitution. In particular, your question focuses solely on one of the five subjects stated in the Proclamation, which calls the Legislature into special session "[t]o enact legislation to extend to railroad rolling stock the same treatment already granted by section 306(1)(d) of the Federal 4-R Act and federal court interpretations of the Act;"

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

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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.

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).

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In a previous opinion, we specifically noted ". . . 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." Attorney General Opinion No. 86078, Nov. 14, 1986. Accordingly, the Governor's authority to outline the subjects for legislative consideration at a special session must be reasonably interpreted in a manner consistent with the separation of powers requirement. See Empire Savings, Building & Loan Association v. Otero Savings & Loan Association, 640 P.2d 1151 (Colo. 1982); 1 Sutherland Statutory Construction §5.08 (4th ed. C.D.Sands 1985).

With regard to your specific question, we do not believe the Governor's Proclamation, while somewhat narrow in scope, is stated in such a manner as to unconstitutionally infringe on the Legislature's power to enact legislation, in violation of Article II, Section 1. The extraordinary occasion which has resulted in the Governor's call bringing the Legislature into special session is the concern which has arisen as to the stability and certainty of Nebraska's current property tax system by virtue of various federal court actions brought under the 4-R Act, as well as the Nebraska Supreme Court decisions in Northern Natural Gas Co. v. State Board of Equalization and Assessment, 232 Neb. 806, 443 N.W.2d 249 (1989) and Trailblazer Pipeline Co. v. State Board of Equalization and Assessment, 232 Neb. 823, 442 N.W.2d 386 (1989). The Governor's Proclamation outlines several subject areas for legislative consideration in response to this situation. In our view, the subjects listed in the Proclamation, viewed as a whole and in the context of the extraordinary occasion giving rise to the calling of the special session, do not appear to represent any unconstitutional infringement upon the power of the Legislature, in contravention of Article II, Section 1. The Legislature is free to consider and act upon legislation within the scope of any or all of the subjects outlined, and, if it chooses, may decline to enact legislation relating to any of the subjects enumerated. Under the circumstances, we cannot say that the Proclamation necessarily

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restricts the Legislature's power to act in a manner which violates
the separation of powers requirement.

Very truly yours,

ROBERT M. SPIRE
Attorney General

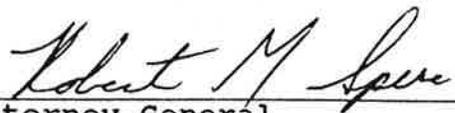


L. Jay Bartel
Assistant Attorney General

7-273-2

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

APPROVED BY:



Attorney General