

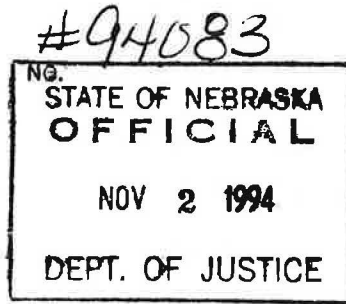


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DATE: November 2, 1994

SUBJECT: Nebraska Constitution Article I, § 13 -
 Attendance of Victims at Trial

REQUESTED BY: Senator Carol McBride Pirsch

WRITTEN BY: Don Stenberg, Attorney General
 Sam Grimminger, Deputy Attorney General

In relevant part, your proposed constitutional amendment would read, "A victim of a crime, as shall be defined by law, or his or her guardian or representative shall have the right to be present at trial unless the trial court finds sequestration necessary for a fair trial for the defendant." You ask whether legislation implementing the foregoing "would necessarily conflict with or limit any 'attendance rights' of a victim under the open court provisions of Art. I, Sec. 13 of the constitution of the state of Nebraska." Neb. Const. art. I, § 13, provides, "All courts shall be open, and every person, for any injury done him in his lands, goods, person or reputation, shall have a remedy by due course of law, and justice administered without denial or delay." It is presumed that your concern arises because under your proposed amendment, a victim-witness would be barred from being physically present in the courtroom during the period of time in which he or she would be sequestered.

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If the proposed constitutional amendment is adopted, your proposed legislation would not run afoul of art. I, § 13, assuming, of course, that the legislation would conform to the proposed amendment. This is so because the proposed amendment would become part of the Nebraska Constitution and would, therefore, have the same footing as art. I, § 13. The question then becomes whether there is a conflict between art. I, § 13, and the proposed constitutional amendment and, if so, the result.

As the court explained in *Jaksha v. State*, 241 Neb. 106, 110-11, 486 N.W.2d 858, 863 (1992) (citation omitted):

A constitutional amendment becomes an integral part of the instrument and must be construed and harmonized, if possible, with all other provisions so as to give effect to every section and clause as well as to the whole instrument. If inconsistent, a constitutional amendment prevails over a provision in the original instrument

The open courts provision was included within the original Nebraska Constitution. See *First Trust Co. v. Smith*, 134 Neb. 84, 106, 277 N.W. 762, 774 (1938). Whether one attempts to harmonize art. I, § 13, and the proposed constitutional amendment or views the proposed amendment as a specific exception to art. I, § 13, the result would be the same. A victim-witness could be sequestered under the specific language of your proposed amendment.

Sincerely,

DON STENBERG
Attorney General

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APPROVED BY:


Attorney General

14-038-10