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DATE: November 13, 1995

SUBJECT: Application of the Requirements of Art. XVI, § 1 of the Nebraska Constitution Pertaining to Separate Presentation of Constitutional Amendments on the Ballot to Constitutional Amendments Proposed by the Nebraska Legislature

REQUESTED BY: Senator Ron Withem
Nebraska State Legislature

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

Art. XVI, § 1 of the Nebraska Constitution pertains to amendment of that document, and the final sentence of that constitutional provision directs, "[w]hen two or more [constitutional] amendments are submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately." In your opinion request, you state, "I intend to introduce a constitutional amendment during the upcoming legislative session which will attempt to address both the issue of property tax relief and equal educational opportunity for all of Nebraska's students." You then ask,

> . . . whether, pursuant to 49-202.01 and Article XVI, Section 1 of the Constitution of the State of Nebraska, the Executive Board [of the Nebraska Legislature] would be required to submit ballot language to the Secretary of State in such a way as to require a vote on the changes made in each of Articles VII and VIII separately, or whether the amendment could be submitted in its entirety requiring only one vote on the proposal as a whole.

Neb. Rev. Stat. § 49-202.01 (Cum. Supp. 1994) generally pertains to the duties of the Executive Board of the Legislative Council with respect to the preparation of ballot titles for constitutional amendments proposed by the Legislature. That statute does not deal directly, in any way, with the portion of Art. XVI, § 1 which requires that separate constitutional amendments must be presented to the voters separately. Therefore, we must focus on the constitutional provision in order to answer your inquiry.

A number of states have constitutional provisions which require that, when more than one proposed constitutional amendment is proposed to the voters, each of those amendments must be presented to the voters so that it can be voted upon separately. ***Fugina v. Donovan***, 259 Minn. 35, 104 N.W.2d 911 (1960); Annotation, ***Proposition submitted to people as covering one or more than one proposed constitutional amendment within contemplation of constitutional provision in that regard***, 94 A.L.R. 1510 (1935); 16 C.J.S. ***Constitutional Law*** § 13. Such provisions are mandatory. ***State ex rel. Thompson v. Winnett***, 78 Neb. 379, 110 N.W. 1113 (1907); 16 C.J.S. ***Constitutional Law*** § 13. Their purpose is to prevent deceit of the public along with logrolling, hodge-podge legislation or jockeying, where voters are required to vote for something which they do not support in order to also vote for something which they do support. 16 Am. Jur. 2d ***Constitutional Law*** § 48. As noted in the ***Fugina*** case from Minnesota:

> The constitutional mandate that multifarious amendments shall be submitted separately has two great objectives. The first is to prevent imposition upon or deceit of the public by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable. The second is to afford voters freedom of choice and prevent "logrolling," or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts.

104 N.W.2d 911 at 914.

Our research disclosed no Nebraska cases in which the Nebraska Supreme Court has directly considered the requirements of Art. XVI, § 1 of the Constitution pertaining to the separate presentation of separate constitutional amendments. However, in ***In re Senate File 31***, 25 Neb. 864, 41 N.W. 981 (1889), the Court noted that separate constitutional amendments must be presented to voters separately, and the court concluded that the Constitution was not violated in that case by alternative constitutional amendments which were not so mutually dependent upon each other as to give the impression

that the Legislature intended them to be considered as a whole. Based upon language from the ***Senate File 31*** case, we stated in 1971-72 Rep. Att'y Gen. 211 (Opinion No. 90, dated January 19, 1972) that:

> [t]he quality of independence of intent and effect, therefore, seems to be the criterion in determining whether separate [constitutional] amendments are involved [under Art. XVI, § 1]. Thus, two provisions which are logically independent of each other, in that either would have full effect and purpose without the other, and would reflect a whole popular wish, should be considered two amendments and submitted separately. This conclusion would apply even where the two provisions relate to the same section of the Constitution.

Id. at 213.

Apart from the ***Senate File 31*** case, the Nebraska Supreme Court also indirectly considered the requirements of the final sentence of Art. XVI, § 1 in ***Munch v. Tusa***, 140 Neb. 457, 300 N.W. 385 (1941). That case, in part, involved the necessity for separate presentation of proposals to amend the Omaha City Charter, and the Nebraska Supreme Court stated:

> The rule has been laid down that a constitutional amendment which embraces several subjects, all of which are germane (near or akin) to the general subject of the amendment, will, under such a requirement, be upheld as valid and may be submitted to the people as a single proposition. . . . In State v. Wetz [40 N.D. 299, 168 N.W. 835 (1918)], it was said that the controlling consideration in determining the singleness of an amendment is its singleness of purpose and the relationship of the details to the general subject.
>
> ***The rule followed by a majority of American jurisdictions is to the effect that where the limits of a proposed law, have natural and necessary connection with each other, and, together, are a part of one general subject, the proposal is a single and not a dual proposition.***

Id. at 463, 300 N.W. 389. (Emphasis added).

Our 1972 opinion notwithstanding, we believe that the Nebraska Supreme Court would be most likely to follow its formulation of the dual amendments rule in the more recent ***Munch*** case in determining whether two amendments proposed for the Nebraska Constitution require separate presentation to the voters, in part because the ***Munch*** rule appears to be the majority rule. Under that rule, two

proposals may be submitted as a single proposition if they have a natural and necessary connection with one another, and if they are part of one general subject.

In the present instance, you have not provided us with any particulars of your proposed amendments for Art. VII and Art. VIII of the Nebraska Constitution except to state that they "will attempt to address both the issue of property tax relief and equal educational opportunity for all of Nebraska's students." Without the particulars of your proposals including the specific language at issue, it is impossible for us to evaluate them under the standard set out above. However, it seems to us, in a general sense, that proposals related to property tax relief and equal educational opportunity do not have such a natural and necessary connection with one another as to make them part of one general subject. As a result, we believe that those proposals should be separately set forth on the ballot based upon the information currently before us.

In your opinion request, you also asked, "whether language submitted for a vote of the people by initiative petition or referendum would be subject to the same requirements as those you determine to apply to the Executive Board of the Legislature in light of the language of Article III, Section 4 referring to constitutional amendments." For the reasons set out below, we must respectfully decline to provide you with the opinion which you requested in this area.

In our Op. Att'y Gen. No. 157 (December 24, 1985) to Senator Beutler, we noted that state officers are entitled to opinions of the Attorney General with respect to questions of law which arise "in the discharge of their duties." Based upon that premise, we will normally provide opinions to members of the Legislature only with respect to pending legislation or with respect to the performance of some function of the Legislature itself. Your second question involves amendment of the Nebraska Constitution through the Initiative process where the parties involved in placing amendments on the ballot are the sponsors of the Initiative measure and the Secretary of State. Since the Legislature has no direct involvement in amendment of the Nebraska Constitution through the Initiative process, we must respectfully decline to

issue an opinion to you concerning that process for the reasons stated in our 1985 opinion to Senator Beutler.[1]

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

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

Approved by:

Attorney General

[1] While we cannot issue a formal opinion to you in this instance, we will note, for your information, that our preliminary research on the constitutional amendment process has disclosed no Nebraska cases which deal directly with the issues raised in your second question.