



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 20, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 33

The Honorable Neal D. Whitaker
State Representative, Ninety-First District
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Amendment
and Revision--Submission of Proposition by
Legislature

Synopsis: Article 14, Section 1, of the Kansas Constitution limits the power of the legislature to submit propositions for the amendment of the Constitution. If enacted, 1979 Senate Bill No. 66, as amended by Senate Committee of the Whole, would be an exercise of legislative power in excess of such limitation, by requiring that each such proposition be accompanied on the ballot by an explanatory statement as to the intent and purpose of such proposition.

* * *

Dear Representative Whitaker:

You inquire whether it is constitutionally permissible for the Kansas Legislature to statutorily supplement the provisions of Article 14 of the Kansas Constitution, by requiring that a statement explaining the intent or purpose of a proposed amendment to the Kansas Constitution be published and printed on the ballot. Such is the purpose of 1979 Senate Bill No. 66, as amended by the Senate Committee of the Whole, which provides, in pertinent part:

The Honorable Neal D. Whitaker
Page Two
March 20, 1979

"Section 1. Concurrent resolutions for the amendment of the constitution of the state of Kansas shall include a separate section containing a brief written statement in non-technical language expressing the intent or purpose of the proposition and the effect of a vote for or against it.

"Sec. 2. The secretary of state shall cause such statement to be published with each official newspaper publication of the proposition for the amendment or title thereof and to be printed on the ballot or the ballot label if submitted in a voting machine with such proposition or title."

Article 14, Section 1, of the Kansas Constitution establishes the "legislative method" for amending the Constitution, to which the bill in question relates. That section provides in relevant part:

"Propositions for the amendment of this constitution may be made by concurrent resolution originating in either house of the legislature, and if two-thirds of all the members elected to each house shall approve such resolution, the same, with the ayes and nays thereon, shall be entered on the journal of each house. The secretary of state shall cause such resolution to be published in one newspaper in each county of the state where a newspaper is published, once each week for five (5) consecutive weeks immediately preceding the next election for representatives, or preceding a special election called by concurrent resolution of the legislature for the purpose of submitting constitutional propositions. At such election, such proposition to amend the constitution shall be submitted either by a title generally descriptive of the contents thereof, or by the amendment as a whole, to the electors for their approval or rejection. If such proposition is submitted by title, such title shall be specified in the concurrent resolution making the proposition. If the majority of the electors voting on any such amendment shall vote for the amendment, the same shall become a part of the constitution"
(Emphasis added.)

The Honorable Neal D. Whitaker
Page Three
March 20, 1979

The emphasized portion of the foregoing quoted provision indicates that, in essence, there are but two means by which a proposed amendment may be submitted for a vote under Section 1--by title or by the amendment as a whole. Since the enactment of 1979, Senate Bill No. 66 would impose an additional requirement that an explanatory statement as to the intent or purpose of any such proposition also be placed on the ballot, the issue is whether such requirement is an appropriate exercise of legislative power.

We have found no cases which specifically answer the question you have raised; however, there are two Kansas cases which enunciate important rules bearing on this issue. The first of these is State, ex rel., v. Shanahan, 183 Kan. 464 (1958). In that case, the attorney general brought an original quo warranto proceeding in the Supreme Court against the secretary of state to prevent the publication of a proposed constitutional amendment in accordance with the legislature's concurrent resolution, which directed that the proposition be placed on the ballot by reference only to its title. It should be noted that no provision was made in the Kansas Constitution for submission of a proposed amendment thereto by title until Article 14 thereof was amended in 1970, and at the time of this decision, Article 14, Section 1 provided in part:

"Propositions for the amendment of this constitution may be made by either branch of the legislature; and if two-thirds of all the members elected to each house shall concur therein, such proposed amendments, together with the ayes and nays, shall be entered on the journal; and the secretary of state shall cause the same to be published in at least one newspaper in each county of the state where a newspaper is published, for three months preceding the next election for representatives, at which time the same shall be submitted to the electors, for their approval or rejection; and if the majority of the electors voting on said amendments, at said election, shall adopt the amendments, the same shall become a part of the constitution"

Id. at 468.

The Honorable Neal D. Whitaker
Page Four
March 20, 1979

The attorney general argued that the words "the same" in the phrases "the secretary of state shall cause the same to be published" and "the same shall be submitted to the electors" referred to the proposed amendment or amendments. The attorney general urged, and the Court agreed, that these provisions required that the proposed amendment be published as prescribed and be printed on the ballot in full.

In this case, the Court was greatly concerned that the "exact procedure" for amending the Constitution be followed, a procedure which the Court found to be "plain, clear, unambiguous, concise, definite and self-executing in every respect." (Emphasis added.) Id. at 468. The Court then noted that the article prescribed limited duties for the constitutional officers named therein:

"The first portion of the constitution, article 14, section 1, limits the legislature to the function of drafting and properly adopting a concurrent resolution to amend the constitution with a proposed constitutional amendment. As shown by the very terms of this resolution, the legislature in this particular instance has done everything it can do under that constitutional limitation and any past practice developed by the legislature expanding that constitutional limitation of its power . . . cannot be condoned. Thus, in this case the legislative directive regarding the ballot title whereby the proposed amendment to the constitution is to be submitted to the voters infringes upon the express limitations of article 14, section 1, and for that reason the directive is ineffectual." (Emphasis added.) Id. at 469.

The same theme was controlling in the case of Moore v. Shanahan, 207 Kan. 645 (1971). At issue there was the validity of constitutional amendments submitted at the general election in 1970. The Supreme Court found that certain of the proposed amendments were defective by reaffirming the rule of strict construction of Article 14.

The Honorable Neal D. Whitaker
Page Five
March 20, 1979

"Under the legislative method, the power of the legislature to initiate any change in the Constitution is of greatly less extent than that of calling a constitutional convention, and, being a delegated power, is to be strictly construed under the limitations by which it is conferred. In submitting propositions for specific amendments to the Constitution, the Legislature does not act in the exercise of its ordinary legislative power (Sec. 1, Art. 2), but it possesses and acts in the character and capacity of a convention pursuant to the power delegated to it in Section 1, Article 14, and is quoad hoc, a convention expressing the supreme will of the people; it is limited in its power of proposing amendments to the Constitution by the provisions of that section and article, except with respect to such powers as may be, or have been previously delegated by the people to the Constitution of the United States." Id. at 652.

In support of its conclusion, the Court cited the prior case of State, ex rel., v. Sessions, 87 Kan. 497 (1912), where the Court quoted from Kadderly v. Portland, 44 Ore. 118, 74 Pac. 710, 75 Pac. 222, as follows:

"A legislature, in proposing and agreeing to amendments and submitting them to the people, is acting under a limited authority, and its powers must be strictly construed. It may propose and submit amendments in the manner provided by the constitution, and in no other way. In doing so, it does not exercise ordinary legislative powers, but rather acts as the agent of the people in the discharge of a ministerial duty, deriving its authority alone from the provisions of the constitution regulating its own amendment.'" 87 Kan. at 502.

The Honorable Neal D. Whitaker
Page Six
March 20, 1979

In summary of these cases, it is apparent that the legislature is limited in its power of submitting proposed constitutional amendments to the electors by the provisions of the Constitution itself. Article 14, Section 1, of the Kansas Constitution contains express limitations on the submission of proposed amendments, and since the legislature's power with respect thereto is delegated, as opposed to a power not expressly withheld by the Constitution, it cannot exercise such power to expand or infringe upon these constitutional limitations. Therefore, such power must be strictly construed.

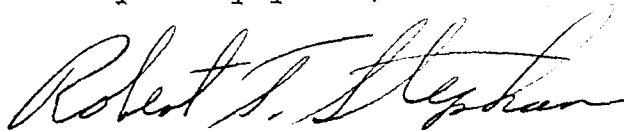
In analyzing the provisions of 1979 Senate Bill No. 66 in light of these constitutional restraints, it is our opinion that this legislation, if enacted, would be an exercise of legislative power that is not constitutionally permissible. As previously noted, Article 14, Section 1, of the Kansas Constitution provides two methods for the legislature to submit to the electors a proposition for the amendment of the Constitution. Such proposition "shall be submitted either by a title generally descriptive of the contents thereof, or by the amendment as a whole." Notwithstanding the apparent and laudable purpose of 1979 Senate Bill No. 66 to provide for an informed electorate, the enactment of this bill would expand these limitations by engrafting a further requirement that, in either case, such proposition be accompanied on the ballot by the explanatory statement provided for by section 1 of the bill. Even though such explanatory statement is not technically part of the proposition itself, the proposed legislation would require that it be placed on the ballot as an explanation of such proposition. In accordance with our understanding of the rule of strict construction adhered to by the Kansas Supreme Court, such requirement would effectively amend the constitutionally prescribed procedure for submitting such propositions.

In our judgment, therefore, if 1979 Senate Bill No. 66 (as amended by Senate Committee of the Whole) were enacted, it would be an exercise of legislative power in excess of constitutional limitations thereon. Where Article 14, Section 1, of the Kansas Constitution provides that either the amendment itself or a title generally descriptive thereof be submitted,

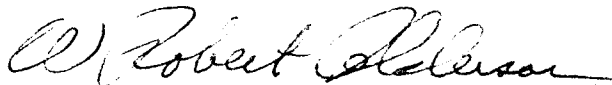
The Honorable Neal D. Whitaker
Page Seven
March 20, 1979

i.e., placed on the ballot, the legislature has no power to impose the additional requirements contained in 1979 Senate Bill No. 66.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk