



STATE OF KANSAS

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August 29, 1985

ATTORNEY GENERAL OPINION NO. 85- 110

Gary Hayzlett
Kearny County Commission
Kearny County Courthouse
P.O. Box 86
Lakin, Kansas 67860

Re: Constitution of the State of Kansas--
Constitutional Amendment and Revision -- Proposals
by Legislature; Approval by Electors

Synopsis: Pursuant to Article 14, Section 1 of the Kansas
Constitution, the legislature may submit a
constitutional amendment to a vote of the electors
of Kansas by means of a concurrent resolution
passed by both houses. A concurrent resolution
adopted by the legislature during the 1985 session
may be amended in the 1986 session, prior to being
submitted to the voters in November, 1986.
Alternatively, a separate concurrent resolution may
be passed as a substitute for one earlier
approved. In either event, the same requirements
for passage must be met as were required for the
initial resolution, namely two-thirds affirmative
vote of the entire membership of both houses.
Cited herein: L. 1985, ch. 348; Kansas
Constitution, Art. 14, §1.

* * *

Dear Mr. Hayzlett:

As a member of the Kearney County Board of Commissioners,
you request our opinion on a question concerning the possible

amendment of 1985 House Concurrent Resolution No. 5018. That resolution, which places the question of reclassification of property for taxation purposes on the 1986 general election ballot, also contains language that implements the new system effective January 1, 1989. In that this would require all property in the state to be reappraised within three and one-half years at most (assuming reappraisal is begun now, and not until after the result of the 1986 vote is known), you express concern that the resources of the counties may not be equal to the task. Accordingly, you inquire whether it would be possible for the 1986 Legislature to amend the concurrent resolution in such a way to eliminate the specific deadline and replace it with wording that implements reclassification upon completion of reappraisal, whenever that is achieved.

Article 14, Section 1 of the Kansas Constitution sets forth the procedure which must be followed whenever the legislature desires to submit a proposed constitutional amendment to the voters of Kansas. In pertinent part, it states as follows:

"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 yeas 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 a 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 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 a 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.)

A reading of the above language indicates no imitation on the power of the legislature to amend or revoke any concurrent resolution which proposes a constitutional amendment prior to the time such amendments published prior to the election. Likewise, we find nothing in the rules of either the house of representatives (L. 1985, ch. 348, art. 21) or the senate (L. 1981, ch. 403, rule 44) which distinguishes between amendments to bills and ordinary resolutions and amendments to concurrent resolutions. In the absence of such language, we may look to decisions of Kansas courts and to general authorities for any indication that the amendment of concurrent resolutions containing proposed constitutional amendments is prohibited.

The Prohibitory Amendment Cases, 24 Kan. 700 (1881) were four cases that were considered together by the Kansas Supreme Court, each of which challenged the validity of the amendment adopting prohibition in Kansas approved in 1880. In discussing the role of the legislature in placing a constitutional question before the voters, the court, per Justice David Brewer (who later was appointed to the United States Supreme Court), held:

"Again, in constitutional changes the popular voice is the paramount act. While to guard against undue haste and temporary excitement, to prevent unnecessary and frequent appeals for constitutional amendments, the assent of two-thirds of the legislature is prescribed as a condition precedent, yet after all, that which determines constitutional changes is the popular will. This is a government by the people, and whenever the clear voice of the people is heard, legislatures and courts must obey. True, a popular vote without previous legislative sanction must be disregarded. There is no certainty that all who could would take part in such a vote, or that they who did, all realize

that it was a final action. It lacks the sanction of law, is a disregard of constitutional methods and limitations, and should be taken as a request for a change, rather than as a change itself. But notwithstanding this, legislative action is simply a determination to submit the question to popular decision. It is in no sense final. No number of legislatures and no amount of legislative action can change the fundamental law. This was made by the people, who alone can change it. The action of the legislature in respect to constitutional changes is something like the action of a committee of the legislature in respect to the legislative disposition of a bill. It presents, it recommends, but it does not decide. And who ever thought of declaring a law invalid by reason of any irregularities in the proceedings of the committee which first passed upon it? It is the legislative action which is considered in determining whether the law has been constitutionally passed; and it is the popular action which is principally to be considered in determining whether a constitutional amendment has been adopted." 24 Kan. at 711-712." (Emphasis added.)

The court further discussed the argument that the amendment was defective due to procedural flaws in the way the matter had been adopted by the legislature. In noting that nearly two years had passed between the time the concurrent resolution had been adopted and the vote held, the court determined that if objections had been raised before the popular vote, "the legislature could have been easily convened, and the defect remedied." 24 Kan. at 720. Implicit in both this language and that quoted above is the assumption that the legislature may alter a concurrent resolution containing a constitutional change prior to its submission to the voters.

In a later case, the authority of the legislature to revise previously passed concurrent resolutions was made more

specific. The decision of State ex rel. v. Shanahan, 183 Kan. 464 (1958) discussed several challenges to the submission of an amendment to the voters in 1958 which had been approved by the legislature in the proceeding year. One of the challenges concerned a procedural point, namely that the concurrent resolution had not been properly entered in the journal of the senate after being initially approved in the house. At oral argument, this objection was abandoned by the plaintiff, Attorney General John Anderson, in that the 1958 special session of the legislature had corrected the defect following the filing of the suit. The ability of the legislature to amend a previously-passed concurrent resolution was again not questioned. See also State ex rel. v. Sessions, 87 Kan. 497, 501 (1912) ("The right [of the legislature] to determine what form a proposed amendment on a particular subject shall take implies the right to reject a proposal submitted at a former session, and this implies the right to control absolutely the matter of amendment to be submitted at the ensuing election.")

General authorities are also unanimous in concluding that a state legislature may alter or repeal a concurrent resolution containing a proposed constitutional change prior to the time that such question is presented for a popular vote. 16 C.J.S. Constitutional Law §11, p. 52 (1984) states:

"Prior to ratification by the people, a proposed legislative amendment is of no effect whatever, . . . , and it may be amended before submission for ratification.

"The legislature may reconsider its action on a constitutional amendment, and it may recall its bill proposing a constitutional amendment, from a state official for further consideration and amendment, while it is still in session."

16 Am.Jur.2d Constitutional Law §38, p. 354 (1979) is in accord.

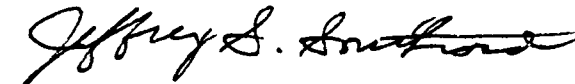
Accordingly, it is our opinion that the 1986 session of the Kansas Legislature is free to either amend the provisions of 1985 House Concurrent Resolution No. 5018 in any fashion it desires, to revoke the resolution and replace it with another dealing with the same subject, or to remove the question

entirely from consideration by the voters in the general election in 1986. Under any of these possible options, the same vote will be needed as was originally required for passage of the resolution (two-thirds of the total membership of both houses of the legislature).

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw