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ATTORNEY GENERAL OPINION NO. 90- 44

The Honorable Fred Kerr
State Senator, 33rd District
Senate Majority Leader
State Capitol, Room 120-S
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Constitutional Amendment and Revision -- Proposals by Legislature; Approval by Electors; Submitting More Than One Amendment at the Same Election

Synopsis: A proposition for amendment of the Kansas Constitution which modifies the classification categories and rates prescribed by article 11, section 1 of the Kansas Constitution, and which also increases the state sales and compensating taxes by one percent in order to fund a "property tax rollback," constitutes two constitutional amendments. Accordingly, under article 14, section 1 of the Kansas Constitution, if such amendments are submitted at the same election, they must be submitted so as to enable electors to vote on each amendment separately. Cited herein: Kan. Const., Art. 11, § 1; Art. 14, § 1.

* * *

Dear Senator Kerr:

You request our opinion as to whether two proposals for amendment of article 11, section 1 of the Kansas Constitution

may be submitted to the electorate as one constitutional amendment. The two proposals are included within a rough draft of a concurrent resolution which is attached hereto as Exhibit A. One of the proposals would modify the classification categories and rates prescribed by article 11, section 1 of the Kansas Constitution, and the other would increase the state sales and compensating taxes by one percent in order to fund a "property tax rollback."

Section 1 of article 14 of the Kansas Constitution relates to legislative proposals to amend the constitution, and the pertinent portion thereof provides as follows:

> "When more than one amendment shall be submitted at the same election, such amendments shall be so submitted as to enable the electors to vote on each amendment separately. One amendment of the constitution may revise any entire article, except the article on general provisions, and in revising any article, the article may be renumbered and all or parts of other articles may be amended, or amended and transferred to the article being revised. Not more than five amendments shall be submitted at the same election."

In Moore v. Shanahan, 207 Kan. 645 (1971), the Kansas Supreme Court considered what was meant by the language "more than one amendment" in the first sentence of the above quoted excerpt from section 1 of article 14. The court stated as follows:

> "Just what is meant by 'more than one amendment' which shall be so submitted to enable electors to vote on 'each amendment separately,' as used in Section 1, is not an easy matter to determine. It was evidently the intention of this provision to require that amendments which are incongruous, or which do not relate to the same subject matter or have the same object and purpose, should be considered as separate amendments. The question of duplicity of an amendment was decided by the Wisconsin Supreme Court in the early case of The State ex rel. Hudd vs.

Timme, Secretary of State, 54 Wis. 318, 11 N.W. 785, which has been followed by a vast majority of the courts of the country as stating a sound rule. The Wisconsin court held that a proposal to amend separate sections of the legislative article, involving the subject of a change of legislative sessions from annual to biennial sessions, was properly submitted as a single amendment, even though there where provisions therein for increasing compensation, and for necessary changes of tenure and of the time and method of election of the senators and representatives for such biennial sessions. In the opinion it was said:

'We think amendments to the constitution, which the section above quoted requires shall be submitted separately, must be construed to mean amendments which have different objects and purposes in view. In order to constitute more than one amendment, the propositions submitted must relate to more than one subject, and have at least two distinct and separate purposes not dependent upon or connected with each other. Tested by this rule, the propositions submitted to the electors contained but one amendment. . . .' (l.c. 336.) (Emphasis supplied.)

"See, also, Livermore v. Waite, supra, and McFadden v. Jordan, 32 Cal.2d 330, 196 P.2d 787.

"In Kerby v. Luhrs, 44 Ariz. 208, 36 P.2d 549, 94 A.L.R. 1502, the supreme court of Arizona cited many authorities, and approved and clarified the test laid down in Timme, supra. There, one amendment was submitted which related to the subject of taxation, and provided the method in which copper mines should be taxed; it also provided the manner in which public utility corporations should be assessed and taxed, and further provided that the State Tax Commission

which was previously created by legislative enactment, was created and declared to be a constitutional commission. In the opinion it was said:

'If the different changes contained in the proposed amendment all cover matters necessary to be dealt with in some manner, in order that the Constitution, as amended, shall constitute a consistent and workable whole on the general topic embraced in that part which is amended, and if, logically speaking, they should stand or fall as a whole, then there is but one amendment submitted. But, if any one of the propositions, although not directly contradicting the others, does not refer to such matter, or if is not such that the voter supporting it would reasonably be expected to support the principle of the others, then there are in realty two or more amendments to be submitted, and the proposed amendment falls within the constitutional prohibition. Nor does the rule as stated unduly hamper the adoption of legitimate amendments to the Constitution. Such a document was presumably adopted deliberately, after careful preparation, as a harmonious and complete system of government. Changes suggested thereto should represent the free and mature judgment of the electors, so submitted that they cannot be constrained to adopt measures of which in reality they disapprove, in order to secure the enactment of others they earnestly desire.' (1. c. 221.)

"It was further said:

'. . . It is evident that there are at least three distinct propositions contained therein, no two of which are necessarily required for proper operation of the third. On their face they have no direct relation to each other. Their only connection is that they are all

> embraced in a broader general subject, to wit, that of taxation. It is clear that the provision in regard to the method in which copper mines should be taxed is in no way necessary to or concerned with the method of taxation of public utility corporations, and it is equally clear that both of those propositions could be inserted in the Constitution without the slightest need of adopting the one establishing the tax commission as a constitutional body which in effect would be independent of the regular executive and legislative branches of the state government in many particulars, and perhaps even of the judicial.' (1. c. 221, 222.)
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> "See, also, 94 A.L.R. 1510 Anno: Proposed Constitutional Amendment.
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> "This court adopts the test of duplicity in a constitutional amendment as set forth in Timme and as adopted and clarified in Kerby." (Emphasis added).

It appears that the underscored portion of the above-quoted excerpt is particularly pertinent to the question of whether the attached concurrent resolution contains more than one amendment. Specifically, could a voter who supports the classification changes in the resolution reasonably be expected to support the principle of increasing sales and compensating taxes under the circumstances prescribed elsewhere in the resolution? In this regard, one must take notice of the fact that there are electors who would oppose any increase whatsoever in the state sales or compensating taxes. While such persons might support the classification changes proposed in the concurrent resolution, they would be utterly opposed to the sales tax increase and property tax rollback. Thus, applying the test set forth Moore v. Shanahan, it is our opinion that the concurrent resolution attached hereto constitutes two constitutional amendments, and must be submitted so as to enable electors to vote on each amendment separately. Further, the two proposals are not interdependent; each could stand on its own.

Although you have not specifically requested an opinion relative thereto, we are impelled to consider whether the two

proposals discussed above may be submitted as one amendment revising article 11 of the Kansas Constitution. This would require a concurrent resolution which: modifies the classification categories and rates prescribed by article 11, section 1; adopts the sales tax increase and "property tax rollback" as section 2 of article 11; and renumbers and readopts the remainder of article 11 as it presently exists.

In regard to revisions, article 14, section 1 of the Kansas Constitution provides as follows:

> "One amendment of the Constitution may revise an entire article, except the article on general provisions, and in revising any article, the article may be renumbered and all or parts of other articles may be amended, or amended and transferred to the article being revised."

In VanSickle v. Shanahan, 212 Kan. 426 (1973), the Kansas Supreme Court held that "an entire article of the Kansas Constitution may be revised in a single amendment and still enjoy the benefit of judicial approval." 212 Kan. at 433. Additionally, under the Shanahan case, one amendment of the Constitution may revise an "entire article" even though one section of the article is not changed. 212 Kan. at 431. However, notwithstanding these pronouncements of the court, we are not satisfied that a proposed modification of article 11 as outlined above would constitute a revision of "the entire article." In this regard, article 11 consists of 13 sections, and only two sections thereof would be affected by the two proposals discussed above. In our judgment, these modifications are not extensive enough to constitute "a revision of an entire article."

Very truly yours,

Robert T. Stephan

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