

Opinion No. 59-13

February 16, 1959

BY: FRANK B. ZINN, Attorney General

TO: Honorable T. E. Lusk State Senator State Capitol Building Santa Fe, New Mexico

Passage of resolution proposing constitutional amendment requires affirmative vote of at least seventeen senators.

OPINION

{*18} This is in reply to your inquiry relative to the action of the state senate upon Senate Joint Resolution No. 6, proposing an amendment to the constitution.

Your question was whether the required number of votes were cast for the passage of Senate Joint Resolution No. 6, proposing a constitutional amendment, so as to have complied with the requirements of the constitution governing the action of the legislature on such proposals.

In my opinion the requisite number of senators did not vote in favor of Senate Joint Resolution No. 6 to have effectively complied with the constitutional requirement for proposing the amendment for a vote of the people. The senate journal indicates that sixteen votes were cast for the resolution and and sixteen against it, with the Lieutenant Governor having cast a tie-breaking vote in favor. Since the senate is composed of thirty-two "elected" members it is my opinion that the requisite number of senators voting in favor of presenting a constitutional amendment to the people must be seventeen {*19} to comply with the requirement of the constitution.

The role of the legislature in enactment of resolutions proposing amendments to the state constitution is a very special one. The courts of many states and the Supreme Court of this state have held the legislature when proposing constitutional amendments to be functioning in a ministerial capacity. In *Hutcheson v. Gonzales*, 41 N.M. 474, 71 Pac. 2d 140, citing 6 R.C.L. 28 with approval, stated:

"In submitting propositions for the amendment of the constitution, the legislature is not in the exercise of its legislative power, or of any sovereignty of the people that has been intrusted to it, but it is merely acting under a limited power, conferred upon it by the people, . . ."

The cases almost uniformly held that the provisions of a constitution regulating its amendment are not directory but are mandatory and that a strict observance of every substantial requirement is essential to the validity of any proposed amendment.

It is my opinion that the plain and unambiguous meaning of Article XIX, Section 1, stating:

"Any amendment or amendments to this Constitution may be proposed in either house of the legislature at any regular session thereof; and if a majority of all members elected to each of the two houses voting separately shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays thereon."

leads to the inevitable conclusion that it requires a vote of not less than seventeen members of the senate in favor of a proposed amendment to the constitution before the proposal can be submitted to the voters.

It is my view that the key language in the constitutional provision is that which requires:

". . . a majority of **all members elected**. . . shall vote in favor thereof . . ."

In my opinion this leaves no room for doubt.

I am cognizant of the provision of Article V, Section 8 of the constitution which states:

"The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided."

It is my view that this general provision in no way modifies the special requirements of Article XIX, Section 1.