Opinion No. 65-22

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BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Edwarl E. Triviz, Chairman, Constitutional Revision Commission, P.O. Box 359, Las Cruces, New Mexico

QUESTION

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If an entirely new judicial article is proposed as a single amendment to the constitution, is Section 1 of Article XIX violated?

CONCLUSION

We do not believe so.

OPINION

*{*37}* ANALYSIS

The constitutional provision involved in this question is Section 1 of Article XIX which provides in pertinent part as follows:

"If two or more amendments are proposed, they shall be so submitted as to enable the electors to vote on each of them separately."

This provision has never been construed by our Supreme Court, but similar provisions in other state constitutions have frequently been the subject of litigation. Apparently the first case considering a provision of this kind was **State ex rel. Hudd v. Timme,** 54 Wis. 318, 11 N.W. 785. It was there said that such a provision requires the separate submission of proposed amendments which have different objects and distinct purposes not dependent upon or connected with each other.

The reason for such "single amendment" provisions has been variously stated, but the following excerpt from **State ex rel. City of Fargo v. Wetz,** 40 N.D. 229, 168 N.W. 835 adequately states their purpose:

"Such a constitutional provision is designed to prevent the submission to the voters, as one amendment, of distinct propositions that are so far disconnected and independent of each other as to have no direct relation to a general subject. The vice it is designed to prevent is analogous to the log-rolling and joker practices which are so familiar to

students of legislation, and which are generally sought to be prevented by constitutional provisions requiring an expression of the subject of legislation in the title of the bill, and that the legislation shall concern but a single subject."

In the **Timme case,** supra, the court elaborated as follows:

"We do not contend that the Legislature, if it had seen fit, might not have adopted these changes as separate amendments, and have submitted them to the people as such; but we think, under the Constitution, the Legislature has a discretion, within the limits above suggested, of determining what shall be submitted as a single amendment, and that they are not compelled to submit as separate amendments the separate proposals necessary to accomplish a single purpose."

Numerous other decisions have substantially repeated this language. For example, the single constitutional amendment, involved in the case of **State ex rel Kemp v. City of Baton Rouge,** 215 La. 315, 40 S. 2d 477, accomplished *{*38}* a number of things. It changed the municipal limits of Baton Rouge; it redistributed the powers of local governmental units; it created industrial, rural and urban areas; it made these areas subject to different tax limits; and it changed the tax structure. This amendment was attacked on the ground that it violated the constitutional "single-amendment" requirement. In holding that it did not violate this provision, the court noted that the amendment

"must be logically viewed as a Plan of Government which, while embracing several subjects, are all germane to the general purpose of the amendment, and that the constitutional requirements have been met in their submission by one amendment. All constitutional provisions use broad terms and are designed to have a comprehensive scope and operation, and when we examine the constitutional amendment itself, it is apparent that it has **one purpose, one design --** a Plan of Government." (Emphasis is the court's)

The common phraseology utilized by the courts is that such a constitutional provision is not violated if the amendment may be "logically viewed as parts or aspects of a single plan." **State v. Anderson,** 49 Mont. 387, 142 Pac. 210; **Winget v. Holm,** Minn., 244 N.W. 331; **Hotard v. City of New Orleans,** 213 La. 843, 35 So. 2d 752.

In **State ex rel. Jones v. Lockhart,** 76 Ariz. 390, 265 P. 2d 447, a constitutional amendment was involved which embraced both (a) an increase in the size of the state senate, and (b) a limitation on the future membership of the house to freeze it at its present size, accomplished by a changed basis of apportionment. In concluding that this amendment did not conflict with the single submission requirement the court had this to say:

"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."

The court went on to note that both provisions in the amendment

"clearly relate to and are germane to, one general subject, i.e., the composition of the state legislature, and historically the people of this state have considered that but one subject was involved, towit: 'The Legislature', albeit that legislature is bicameral."

Holding the same way on a similar amendment the Oregon Supreme Court pointed out that the single-amendment provision does not prevent the adoption of an amendment which affects more than one article or section. **Baum v. Newbry,** Or., 267 P. 2d 220.

In **Fugina v. Donovan,** Minn., 104 N.W. 2d 911, a 1960 case, the court was considering an amendment which would permit the legislature to extend the term of sessions, which permitted legislators to serve as notaries, and which authorized legislators to seek election to other offices.

The court noted that while the cases use substantially the same language in setting forth the guidelines to be followed, it is difficult to reconcile the results. The court said that this is because the decisions reflect "two basically different attitudes," with some taking a narrow and strict view while others adopt a broader and more liberal view. The court in this case upheld the validity of the amendment even though "examination of the two parts of the proposal involved here shows clearly that they might easily and *{*39}* properly have been presented as separate amendments to the constitution." The rationale of the decision was that the proposals "while not necessarily related" were "rationally related since both have to do with the burdens of being a legislator." The court further said that "while the logical relationship between the propositions is somewhat remote . . . yet it exists." The court concluded that "In these circumstances, the controlling consideration is the deference due the legislative judgment that this is a proper proposal to amend the constitution."

Other courts have also noted that great deference should be paid to the legislative judgment in drafting and submitting proposed constitutional amendments. In **Hillman v. Stockett,** 183 Md. 641, 39 A. 2d 803, the court said:

"The Legislature was empowered in the first instance to determine what changes it considered advisable and to put these changes in one bill, this whether they were all in one section of the constitution or whether they were in several sections, or whether they were not in the constitution at all, and new sections had to be added.

* * * *

In the absence of clear violation, the judgment of the Legislature as to what is related and what is not related should be respected, and the courts should not interfere."

Accord: **Keenan v. Price,** 68 Idaho 423, 195 P.2d 662 where the court held that it was valid to submit as one amendment a proposition which concerned the general subject of executive state officers, their enumeration, tenure, residence and duty.

In **State v. Moore,** 76 Ark. 197, 88 S.W. 881 the court stated as follows:

"The courts should exercise their power of declaring an act of the Legislature void because in conflict with the Constitution with great caution, and only when the terms of the Constitution have been plainly violated.

The same presumption in favor of the validity of a legislative enactment is indulged with reference to its form and the observance of the constitutional prerequisites and conditions as in the case of the subject-matter of the legislation."

The more recent cases also state that the single-amendment provision should receive a liberal rather than a narrow or technical construction. **Rupe v. Shaw,** Okla., 286 P. 2d 1094; **Perry v. Jordon,** 34 Cal. 2d 87, 207 P.2d 47.

The test used by the courts in determining whether the single-amendment requirement has been complied with is singleness of subject matter. **Perry v. Jordan,** 34 Cal. 2d 87, 207 P. 2d 47. As an aid in making such a determination the courts frequently look to the decision rendered in cases where it has been alleged that a statute contains more than one subject in violation of the constitution. In the 1960 case of **Penrod v. Crowley,** Idaho, 356 P. 2d 73, the court said:

". . . the same reason ought to exist for determining the singleness of subject embraced in a legislative act as in determining whether more than one subject and essentially related matter is embodies in a single amendment."

Accord: **State ex rel. City of Fargo v. Wetz,** 40 N.D. 299, 168 N.W. 835.

While our Supreme Court has not had occasion to rule on the single-amendment provision of our constitution, it has had a number of cases before it regarding the single subject matter limitation on statutes. Article IV, Section 16. It *{*40}* is to these cases then that we must look in answering your question.

In the case of **State ex rel. Taylor v. Mirabal,** 33 N.M. 553, 273 Pac 928, our Supreme Court quoted with approval the following statement in **Johnson v. Harrison,** 47 Minn. 575, 50 N.W. 923:

"The term 'subject', as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is

meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."

Accord: **State v. Miller,** 33 N.M. 200, 263 Pac. 510; **Johnson v. Greiner,** 44 N.M. 230, 101 P. 2d 183; **State v. Williams,** 71 N.M. 210, 377 P. 2d 513.

In **State ex rel. Taylor v. Marabal,** supra the court also quoted with approval the following from **Lewis Sutherland, Statutory Construction,** Sec. 117:

"There is no constitutional restriction as to the scope or magnitude of the single subject of a legislative act. One to establish the government of the state embraces but a single subject or object, yet it includes all its institutions, all its statutes. The unity of such an act, covering the multiform concerns of a commonwealth, is the congruity of all the details as parts of one 'stupendous whole', of one government. That is the grand subject of such a statute or system of laws; is equally the object of all its varied titles of chapters and sections."

Keeping these principles in mind, let us see what the proposed amendment seeks to accomplish. Basically, S.J.R. 5, the proposed amendment in question, is designed to establish a unified, independent, efficient judiciary in this state. This, it seems to us, is one subject with all the parts thereof germane to this single subject.

While we cannot state with certainty how our Supreme Court would rule on this question, there are three reasons why we believe it would hold the proposed constitutional amendment valid as encompassing a single subject.

First, our Supreme Court has may times stated the separation of powers principle in an unequivocal fashion. **State ex rel. Hovey Concrete Products Co., Inc. v. Mechem,** 63 N.M. 250, 316 P. 2d 1069. And this, after all, is really an expression that each branch of government will pay considerable deference to the actions of the other branches in their particular spheres of responsibility.

Second, the State of Minnesota has adopted the liberal approach in determinations as to whether the single-amendment provision has been violated. **Fugina v. Donovan, supra.** It has also adopted the liberal view as to what constitutes a single subject (**Johnson v. Harrison,** supra) and our Supreme Court has quoted from this decision with approval. **State ex rel. Taylor v. Mirabal,** supra.

Third, the more recent cases in other jurisdictions have inclined toward a broad, liberal view rather than a strict view in construing the constitutional single-amendment provisions. See e.g. **Rupe v. Shaw,** supra; **Perry v. Jordan,** *{*41}* supra. While such decisions are in no way binding on our Supreme Court, it would most assuredly examine carefully the reasoning therein.

As a caveat we would point out that the Constitutional Revision Commission recognized the possible difficulties that the single amendment provision (Art. XIX, Section 1) might cause and thus recommended as a change of immediate priority the repeal of Section 5, of Article XIX and the subsequent amendment of the single-amendment provision in Section 1, Article XIX. See page 53, 1964 Report of the Constitutional Revision Commission.