

Opinion No. 69-64

June 17, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Jesse F Bingaman,
Assistant Attorney General

TO: Senator Edmundo R. Delgado, 325 East Berger, Santa Fe, New Mexico

QUESTIONS

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1. Under Section 2, Article XIX of the New Mexico Constitution can the Constitutional Convention submit its proposed changes to the electorate in a manner in which the electorate would vote for or against individual proposals?
2. What alternative methods can the Convention utilize in submitting the adopted constitution for ratification by the people of the State of New Mexico?

CONCLUSIONS

1. Yes.
2. See Analysis.

OPINION

{*95} ANALYSIS

Since no provision of the United States Constitution is relevant to the question of how a state constitutional convention will present its proposals to the voters for ratification, any limitation on how the New Mexico Constitutional Convention may present its proposals must be contained in Federal legislation, the New Mexico Constitution, or New Mexico statutes. We will discuss these possible sources of restriction in order.

There are two pieces of Federal legislation relevant to the question of how a Constitutional Convention in New Mexico may present its proposed changes to the voters. These are the Enabling Act for New Mexico, 36 Statutes at Large 557, Ch. 310, approved June 20, 1910, and the Joint Resolution of August 21, 1911, No. 8, 37 Statutes at Large, p. 39, making provision for the admission of New Mexico and Arizona into the Union. However, as our analysis of these two enactments will disclose, neither provides a definite answer as to how the changes proposed by the Constitutional Convention are to be presented to the people.

The Enabling Act only indirectly bears upon the question of how a Constitutional Convention in New Mexico in 1910 may present its proposals. The Act provides for the calling of the 1910 Constitutional Convention for the purpose {*96} of drafting the State's Constitution and states that following the Convention there shall be an election at which "the qualified voters of New Mexico shall vote directly for or against said constitution and for or against any provisions thereof separately submitted." (Sec. 3). At one other place in Section 3 and three places in Section 4 Congress repeats these words allowing for the submission to the voters of a single Constitution and/or separate provisions, "separately submitted to and voted upon by the people." We, therefore, conclude that Congress left the determination of whether to present the proposed Constitution to the voters as a package or separately up to the 1910 Constitutional Convention. In the Enabling Act Congress did not express itself on the question of how later Constitutional Conventions in the state were to present their proposed changes to the voters.

The Joint Congressional Resolution of August 21, 1911 deals more explicitly with the procedure for the calling of a Constitutional Convention after the granting of statehood and the ratification of the convention's work by the people. Specifically, Section 3 of the Congressional Resolution required a revision of Article XIX of the New Mexico Constitution adopted by the Constitutional Convention. The revised version which Congress required New Mexico to accept as part of its Constitution had the effect of modifying the strict procedures which were required to be met in order to amend the Constitution. The revised version of Article XIX states in pertinent part as follows:

"Whenever, . . . ' the legislature, . . . ' by a two-thirds vote of the member elected to each house, shall deem it necessary to call a convention **to revise or amend** this Constitution, they shall submit the question of calling such convention to the electors at the next general election, and if a majority of all the electors voting on such question at said election in the state shall vote in favor of calling a convention, the legislature shall, at the next session, provide by law for calling the same. . . . **The Constitution adopted by such convention shall have no validity until it has been submitted to and ratified by the people.**" (Emphasis added by this writer)

Although the underlined portions of the section bear on the question of how the Constitutional Convention's proposals are to be presented for ratification, they do not provide a definitive answer to that question. The statement that the convention can be called to "revise or amend" would suggest that the U.S. Congress envisaged a situation in which the Convention might present proposals separately to the voters. On the other hand the last sentence in the section, in its reference to "the Constitution adopted by such convention" and the requirement that "it" be "submitted to and ratified by the people," seems to imply that a single proposed constitution was contemplated which the people would have to either accept or reject **en bloc**. The most that can be concluded from the language of Article XIX, Section 2 included in Section 3 of the Congressional Resolution is that Congress did not require in that language that the Convention present its proposals in any particular form.

As stated above, New Mexico agreed to include in its Constitution Article XIX as rewritten by the U.S. Congress. Section 2 of Article XIX is all that the New Mexico Constitution says about the manner in which the Constitutional Convention must present its work. Consequently the conclusion we have reached concerning Congress' intent on this matter is valid also as regards the intent of the framers of the New Mexico Constitution. This is doubly true in that the underlined language of Section 2 was not altered by Congress in its revision of Article XIX. In other words the U.S. Congress would appear to have agreed with {*97} the framers of the New Mexico Constitution as regards the question of how proposed changes in that document should be submitted to the people. We must, therefore, conclude that the authors of the New Mexico Constitution and the U.S. Congress concurred in not imposing restrictions on how the Convention "packages" its end product.

The last area where restriction might be found on the question of the convention's power to present its proposed changes as it sees fit, is the New Mexico Statutes. Section 1 of Chapter 134, Laws of 1969, states, "There is called pursuant to Article 19, Section 2 of the Constitution of New Mexico a constitutional convention for the purpose of considering, revising, or amending the Constitution of New Mexico." Section 27 of the same Act provides that, "The governor by proclamation shall call a special statewide election for the purpose of ratification or adoption of any proposed constitution or constitutional amendment adopted by the constitutional convention." Both of these sections are open to various interpretations as regards the question of separate versus **en bloc** presentation to the voters. This office is of the opinion that to the extent that the Act does deal with this question the "plain language" interpretation is that the Convention is not required to present its proposed changes in any certain manner. This opinion should not be construed as expressing any view on the legal effect which a legislative mandate on this or any other subject would have on the Constitutional Convention.

The above analysis of the Federal legislation, the New Mexico Constitutional provisions, and the New Mexico statutes relevant to how the Constitutional Convention's proposed changes must be submitted to the voters leads us to the conclusion that the determination is left to the Constitutional Convention itself. Absent any constitutional or statutory directive on the subject either at the federal or state level the Convention is free to prescribe the method of presentation to the voters as it sees fit.

In answer to your question regarding what alternative methods the Convention can utilize in submitting its proposed changes to the people, these alternatives are available. First, the Convention could submit its proposed changes as a single constitution or amendment which the people would then have to accept or reject in its entirety. Second, the people could be presented with separate proposed changes which they would then be called upon to ratify or reject separately. Third, the people could be presented with a new document containing the unchanged portion of the old Constitution and the non-controversial changes which the convention proposes, along with separately presented amendments embodying more controversial changes in the basic document. This third alternative would give the people of New Mexico the opportunity to vote on a

modernized and improved constitution, in its entirety, and also to vote separately on controversial provisions which the Convention itself favors.