

FOURTH DAY - NOVEMBER 9, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SPECIAL SESSION****FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, November 9, 2009

PRAYER

The prayer was offered by Senator Wallman.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Janssen and Pankonin who were excused; and Senator Ashford who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the third day was approved.

COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 12. Indefinitely postponed.

(Signed) Chris Langemeier, Chairperson

Health and Human Services

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Jodi Fenner, Director of the Division of Developmental Disabilities -
Department of Health and Human Services

Kerry T. Winterer, Chief Executive Officer - Department of Health and
Human Services

Aye: 6 Senators Campbell, Gay, Gloor, Howard, Pankonin, Wallman. Nay:
0. Absent: 1 Senator Stuthman.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Michael Hansen - Commission for the Blind and Visually Impaired

Aye: 6 Senators Campbell, Gay, Gloor, Howard, Pankonin, Wallman. Nay: 0. Absent: 1 Senator Stuthman.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Russell Hopp - State Board of Health
 Kenneth Kester - State Board of Health
 Rich Robinson - State Board of Health
 Gary Westerman - State Board of Health

Aye: 6 Senators Campbell, Gay, Gloor, Howard, Pankonin, Wallman. Nay: 0. Absent: 1 Senator Stuthman.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Margaret Ann "Peggy" Rogers - Nebraska Rural Health Advisory Commission
 Rebecca Schroeder - Nebraska Rural Health Advisory Commission
 Michael Sitorius - Nebraska Rural Health Advisory Commission
 Roger Wells - Nebraska Rural Health Advisory Commission

Aye: 6 Senators Campbell, Gay, Gloor, Howard, Pankonin, Wallman. Nay: 0. Absent: 1 Senator Stuthman.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Mark Goodman - Nebraska Rural Health Advisory Commission
 Suzanne Minarick Greenquist - Nebraska Rural Health Advisory Commission
 Shawn Kralik - Nebraska Rural Health Advisory Commission

Aye: 5 Senators Campbell, Gay, Gloor, Pankonin, Wallman. Nay: 0. Absent: 1 Senator Stuthman. Present and not voting: 1 Senator Howard.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the

appointments(s) be confirmed by the Legislature and suggests a record vote.

Edward Discoe - State Board of Health

Luisa Rounds - State Board of Health

Aye: 5 Senators Campbell, Gay, Gloor, Pankonin, Wallman. Nay: 0.
Absent: 1 Senator Stuthman. Present and not voting: 1 Senator Howard.

(Signed) Tim Gay, Chairperson

Government, Military and Veterans Affairs

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Joe Grant - Nebraska Accountability and Disclosure Commission

Jan Mumm - Nebraska Accountability and Disclosure Commission

Aye: 7 Senators Avery, Giese, Karpisek, Krist, Pahls, Price, Sullivan. Nay: 0. Absent: 1 Senator Janssen.

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Judd Lyons, Adjutant General - Military Department

Aye: 7 Senators Avery, Giese, Karpisek, Krist, Pahls, Price, Sullivan. Nay: 0. Absent: 1 Senator Janssen.

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Ronnie D. Mitchell, Director - Department of Aeronautics

Aye: 7 Senators Avery, Giese, Karpisek, Krist, Pahls, Price, Sullivan. Nay: 0. Absent: 1 Senator Janssen.

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

John Baroni - State Emergency Response Commission

Kimberly Plouzek - State Emergency Response Commission

Aye: 7 Senators Avery, Giese, Karpisek, Krist, Pahls, Price, Sullivan. Nay:
0. Absent: 1 Senator Janssen.

(Signed) Bill Avery, Chairperson

NOTICE OF COMMITTEE HEARINGS

Appropriations

Room 1524

Tuesday, November 10, 2009 1:30 p.m.

LB10
LB16

(Signed) Lavon Heidemann, Chairperson

Government, Military and Veterans Affairs

Room 1507

Tuesday, November 10, 2009 1:30 p.m.

LR4

(Signed) Bill Avery, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 090010

DATE: November 6, 2009

SUBJECT: LB 15 And The Scope Of The Governor's Call For The
First Special Session Of The One-Hundred-First
Nebraska Legislature

REQUESTED BY: Senator Tom White
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

The One-Hundred-First Nebraska Legislature began its First Special Session on November 4, 2009. The Governor convened that special session, under authority of art. IV, § 8 of the Nebraska Constitution, by issuance of a Proclamation dated November 2, 2009. The Governor's Proclamation called

the Legislature into special session to consider and enact legislation on the following subjects:

1. To reduce or eliminate appropriations and reappropriations approved by the 101st Nebraska Legislature;
2. To reduce or eliminate certain transfers from the State General Fund;
3. To authorize, increase, or make certain transfers to the State General Fund or to certain cash funds;
4. To modify or eliminate intent language and earmarks accompanying appropriations approved by the 101st Legislature;
5. To adopt statutory modifications necessary to reduce state aid appropriations and make formula adjustments contained in the Tax Equity and Educational Opportunities Support Act; and
6. To appropriate funds for the necessary expenses of the extraordinary session herein called.

You have now introduced LB 15 in the special session, and you have requested our opinion as to whether that bill is within the scope of the Governor's call. Our response to your inquiry is set out below.

APPLICABLE LAW

We have discussed the law relating to the scope of a Governor's call for special sessions of the Legislature frequently in previous opinions. In 2002, we stated:

Art. IV, § 8 of the Nebraska Constitution provides as follows:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they are called together.

We have discussed this constitutional provision in numerous previous opinions, and we have noted that the final portion of art. IV, § 8 places an express limitation on the power of the Legislature to act during a special session. Op. Att'y Gen. No. 89069 (November 9, 1989). That limitation was described in *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134, 137 (1964):

It is well established that the Legislature while in special session can transact no business except that for which it was called together. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the

consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

(Citations omitted). While the court in *Arrow Club* noted the express constitutional limitation on the power of the Legislature to act in a special session, it also stated:

While the Legislature must confine itself to the matters submitted, it need not follow the views of the governor or legislate in any particular way. Within the special business or designated subjects submitted, the legislature cannot be restricted or dictated to by the governor. It is a free agent, and the governor, under the guise of definition, cannot direct or control its action. *The Legislature while in special session may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened.* . . . The presumption is always in favor of the constitutionality of legislation, and an act should be held to be within the call if it can be done by any reasonable construction.

Id. at 689-90, 131 N.W.2d at 137 (Emphasis added).

Op. Att'y Gen. No. 02021 at 1-2 (August 13, 2002). More recently, in Op. Att'y Gen. No. 08008 (November 14, 2008), we also said:

In *Jaksha v. State*, 222 Neb. 690, 696, 385 N.W.2d 922, 926 (1986), the supreme court quoted favorably from *Stickler v. Higgins*, 269 Ky. 260, 265, 106 S.W.2d 1008, 1011 (1937), to the effect that a Kentucky constitutional provision very similar to Neb. Const. art. IV, § 8 confers upon the Governor "the power and authority to limit. . . the subjects that the Legislature might consider at [an] extraordinarily called session." The *Jaksha* court then went on to state:

We conclude that Neb. Const. art. IV, § 8, as part of the power of the executive branch of government, permits the Governor to determine when an extraordinary occasion exists, necessitating convention of a special session of the Nebraska Legislature. The subject matter restriction envisioned in Neb. Const. art. IV, § 8, empowers the Governor to set the boundaries of legislative action permissible at a special session of the Nebraska Legislature.

222 Neb. At 698, 385 N.W.2d at 927.

It is important to note in this regard that, while the supreme court has stated that during a special session the Legislature may enact legislation "relating to, germane to, and having a natural connection with the purpose for which it was convened," *Arrow Club*, 177 Neb. at 690, 131 N.W.2d at 137, the court, in fact, has "adopted a narrow view of

germaneness, limiting it to 'a specified phase of a general subject.'" Op. Att'y Gen. No. 01034 (Oct. 31, 2001) (quoting *Arrow Club*, 177 Neb. at 689, 131 N.W.2d at 137). As stated in Opinion No. 01034: "In light of the *Arrow Club* decision, it appears the Nebraska Supreme Court would take a restrictive view of what legislation is considered germane to a Governor's special session call."

Op. Att'y Gen. No. 08008 at 3-4 (November 14, 2008).

LB 15

LB 15 contains several parts. First of all, that legislation would amend various provisions of the Nebraska Property Tax Credit Act, Neb. Rev. Stat. §§ 77-4209 through 77-4212 (Cum. Supp. 2008). That Act generally provides for property tax relief for property taxes levied against all real property in the state by means of a property tax credit. The Act contemplates that General Fund monies (one hundred fifteen million dollars for tax year 2008) will be transferred to the Property Tax Credit Cash Fund for allocation to the counties to create a credit against the real property taxes which have been levied in each county. LB 15 would limit property tax relief for tax years after 2009 to property taxes levied against homesteads as they are defined in Neb. Rev. Stat. § 77-3502 (2003), i.e., certain residences, mobile homes and residential units, and it would change the form of property tax relief for those tax years from a tax credit to a homestead exemption. As a part of that process, LB 15 would replace the Property Tax Credit Act with a new Property Tax Relief Act, and the Property Tax Credit Cash Fund with a new Property Tax Relief Cash Fund. It would also establish a specific procedure for exempting a specified portion of the assessed value of all homesteads in the state from taxation.

The second portion of LB 15 would require the State Treasurer to make a number of specified transfers from the State's General Fund to the new Property Tax Relief Cash Fund. In part, those transfers would be accomplished by amending the language of existing statutes providing for transfers from the General Fund to the Property Tax *Credit* Cash Fund.

Finally, the last portion of LB 15 would amend 2009 Neb. Laws LB 545A, § 1 so as to reduce a number of General Fund appropriations for Program No. 158 – Education Aid. That Program is administered by the State Department of Education, and includes appropriations for a number of funds and purposes including the Tax Equity and Educational Opportunities Fund (state aid to local schools), funds for early childhood education, funds for core services for educational service units, funds for adult basic education, and so forth.

ANALYSIS

We have carefully reviewed LB 15, and we believe that some portions of it are within the proposed call. Other portions are not.

The initial portion of LB 15 would make substantive changes in the Nebraska Property Tax Credit Act. Among other things, it would limit the scope of property tax relief to homesteads instead of all real property in the State, and it would change the form of property tax relief from a property tax credit to a homestead exemption. In contrast, the Governor's call focuses on generating additional monies for the State's General Fund by reducing appropriations, eliminating transfers from the General Fund, authorizing and making transfers to the General Fund, and reducing state aid appropriations. It seems to us that your proposed substantive changes to the property tax credit system have little to do with generating additional monies for the State's General Fund. As a result, those changes are not germane to and do not relate to the purpose for which the special session was convened. Moreover, those changes do not fit within any of the specific subjects set out in the Governor's Proclamation. For those reasons, we do not believe that the first portion of LB 15 is within the scope of the Governor's call.

For much the same reasons, we also do not believe that the second portion of LB 15 fits within the scope of the Governor's call. That portion of the bill would require various transfers from the General Fund into a new cash fund. While that process might appear to fit within the portion of the call which allows making transfers "to certain cash funds," the proposed transfers would occur to a cash fund created by legislation outside the call. Since the call does not allow the creation of the cash fund at issue, it seems to us that transfers to it are also outside the call. In addition, those transfers appear to be in contradiction of the general purpose of the call to gather monies *into* the General Fund.

The final portion of LB 15 would reduce a number of General Fund appropriations for state aid to schools. That portion of the bill appears to fall within the first and fifth subjects set out in the Governor's call. That is, they would "reduce or eliminate appropriations and reappropriations approved by the 101st Legislature," and they would effect a statutory modification "necessary to reduce [a] state aid appropriation." For those reasons, we conclude that those portions of LB 15 do fall within the scope of the Governor's call.

Sincerely,
JON BRUNING
Attorney General
(Signed) Dale A. Comer
Assistant Attorney General

Pc: Patrick J. O'Donnell
Clerk of the Nebraska Legislature

RESOLUTION**LEGISLATIVE RESOLUTION 8.** Introduced by Stuthman, 22.

WHEREAS, Amanda Soltero was named Miss Nebraska Teen USA for 2010; and

WHEREAS, Ms. Soltero, a seventeen-year-old senior at Columbus High School, took home the crown after competing against eleven other girls; and

WHEREAS, Ms. Soltero's win came in her first pageant competition, and she follows in the footsteps of her mother, Sharon, who was crowned Mrs. Nebraska for 2005; and

WHEREAS, the Legislature recognizes the achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature congratulates Amanda Soltero for being named Miss Nebraska Teen USA for 2010.

2. That a copy of this resolution be sent to Amanda Soltero.

Laid over.

ANNOUNCEMENT

The Chair announced November 8 was Senator Hansen's birthday.

The Chair announced today is Senator Cook's birthday.

MOTIONS - Approve Appointments

Senator Lathrop moved the adoption of the Business and Labor Committee report for the confirmation of the following appointment(s) found on page 45:

Boiler Safety Code Advisory Board
Kurt Eberspacher
Robert Kirkpatrick

Voting in the affirmative, 43:

Adams	Council	Hadley	Louden	Schilz
Avery	Dierks	Hansen	McCoy	Stuthman
Campbell	Dubas	Harms	McGill	Sullivan
Carlson	Fischer	Howard	Mello	Utter
Christensen	Flood	Karpisek	Nelson	Wallman
Coash	Fulton	Krist	Pahls	White
Conrad	Gay	Langemeier	Pirsch	Wightman
Cook	Gloor	Lathrop	Price	
Cornett	Haar	Lautenbaugh	Regot	

Voting in the negative, 0.

Present and not voting, 3:

Giese Heidemann Nordquist

Excused and not voting, 3:

Ashford Janssen Pankonin

The appointments were confirmed with 43 ayes, 0 nays, 3 present and not voting, and 3 excused and not voting.

Senator Adams moved the adoption of the Education Committee report for the confirmation of the following appointment(s) found on page 43:

Board of Educational Lands and Funds
M. Jane Keller

Voting in the affirmative, 42:

Adams	Cornett	Haar	Louden	Schilz
Ashford	Council	Hadley	McCoy	Stuthman
Avery	Dierks	Hansen	McGill	Sullivan
Campbell	Dubas	Howard	Mello	Utter
Carlson	Fischer	Karpisek	Nelson	Wallman
Christensen	Flood	Krist	Pahls	White
Coash	Fulton	Langemeier	Pirsch	
Conrad	Gay	Lathrop	Price	
Cook	Gloor	Lautenbaugh	Rogert	

Voting in the negative, 0.

Present and not voting, 4:

Giese Heidemann Nordquist Wightman

Excused and not voting, 3:

Harms Janssen Pankonin

The appointment was confirmed with 42 ayes, 0 nays, 4 present and not voting, and 3 excused and not voting.

Senator Adams moved the adoption of the Education Committee report for the confirmation of the following appointment(s) found on page 43:

Nebraska Educational Telecommunications Commission
Kenneth Bird
Phillip Dudley Jr.
J. Richard Shoemaker

Voting in the affirmative, 39:

Adams	Cornett	Gloor	Lautenbaugh	Rogert
Ashford	Council	Haar	Louden	Schilz
Avery	Dierks	Hadley	McCoy	Stuthman
Campbell	Dubas	Howard	McGill	Sullivan
Christensen	Fischer	Karpisek	Mello	Utter
Coash	Flood	Krist	Pahls	Wallman
Conrad	Fulton	Langemeier	Pirsch	White
Cook	Gay	Lathrop	Price	

Voting in the negative, 0.

Present and not voting, 7:

Carlson	Hansen	Nelson	Wightman
Giese	Heidemann	Nordquist	

Excused and not voting, 3:

Harms	Janssen	Pankonin
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The appointments were confirmed with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

Senator Adams moved the adoption of the Education Committee report for the confirmation of the following appointment(s) found on page 44:

Coordinating Commission for Postsecondary Education
William "Scott" Wilson

Voting in the affirmative, 39:

Adams	Cornett	Gloor	Lautenbaugh	Rogert
Ashford	Council	Haar	Louden	Schilz
Avery	Dierks	Hadley	McCoy	Stuthman
Campbell	Dubas	Howard	McGill	Sullivan
Carlson	Fischer	Karpisek	Mello	Utter
Christensen	Flood	Krist	Pahls	Wallman
Coash	Fulton	Langemeier	Pirsch	White
Cook	Gay	Lathrop	Price	

Voting in the negative, 0.

Present and not voting, 7:

Conrad	Hansen	Nelson	Wightman
Giese	Heidemann	Nordquist	

Excused and not voting, 3:

Harms Janssen Pankonin

The appointment was confirmed with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

UNANIMOUS CONSENT - Add Cointroducers

Senators Carlson, Cook, Dierks, Hadley, Karpisek, McGill, and Sullivan asked unanimous consent to add their names as cointroducers to LB16. No objections. So ordered.

ADJOURNMENT

At 9:19 a.m., on a motion by Senator Gay, the Legislature adjourned until 9:00 a.m., Tuesday, November 10, 2009.

Patrick J. O'Donnell
Clerk of the Legislature