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LB 729

opinions. I couldn't...didn't find anything in the constitution that gives him that authority. I assume that's all statutory authority. Therefore, there is no constitutional argument that says we have to pay any attention to advisory opinions. The Secretary of State's Office testified in favor of this bill and didn't see any abuse of constitutional powers in establishing the provisions of LB 729. Secondly, the AG's Opinion acknowledges that an administrative agency can have duties of a quasi-judicial nature. I submit that the powers conferred upon the Secretary of State in this bill are quasi-judicial in nature, as I already discussed a little while ago. The decisions of the Secretary of State are subject to judicial review, and thus arguably are not a violation of the separation of powers doctrine. The third argument that could be made, or the third argument that ballot questions...or that was made is that ballot questions are a justiciable issue. If you look at the AG's Opinion, on page 7, I think the opinion answers or substantiates the argument when it says, "In the context of the case or controversy doctrine a justiciable issue requires a present substantial controversy between the parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement." LB 729 sets up a scenario in which the issue is justiciable. In addition, it should be noted the court has decided on occasion that an issue is justiciable before an issue goes to the ballot. And I recall the whole question about LR 411 and LR 412 which, if you recall, the Attorney General separated, and the people who were supporting those amendments did take it to court and the court did say that it should be separated, that there were two issues involved here. So it's not like the court has never acted before. The final argument in the AG's Opinion is that LB 729 possibly interferes with the rights of citizens in the initiative and referendum process. At one point in the opinion, on page 8, it says that, "we believe that this concern presents the most significant objection to the constitutionality of LB 729." If that in fact is the...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...strongest argument that can be mustered, then in fact the entire opinion is questionable, in my opinion. Indeed, the provisions of 729 would serve to make the initiative