The third meeting of the Senate Committee on Legislative Functions was called to order on Thursday, February 1, 1979, in Room 243 at 1:40 p.m. Senator Gene Echols in the Chair.

PRESENT: Chairman Echols
Vice-Chairman Close
Senator Ford
Senator Gibson
Senator Young

ABSENT: Senator Wilson

GUESTS: Lt. Governor Myron Leavitt
Senator Dodge
Senator Hernstadt
Dennis Myers
Sherman Simmons

Chairman Echols introduced SJR-20 which proposes to amend Nevada Constitution to remove Lieutenant Governor as President of the Senate. Chairman Echols stated that at the last meeting held on January 25, it was passed out of Committee with a "Do Pass"; however, since no one appeared to testify a hearing was rescheduled for February 1.

Chairman Echols introduced Myron E. Leavitt, Lt. Governor of the State of Nevada. The following is Mr. Leavitt's testimony in opposition to SJR-20:

Mr. Leavitt stated that one of the biggest arguments he has been able to ascertain in favor of SJR-20 is the Separation of Powers Doctrine. Mr. Leavitt said the legislative duties of the Lt. Governor, as President of the Senate, are very minimal. He stated that the Lt. Governor has very little discretion and that any ruling the Lt. Governor makes under the Senate Rule can be appealed by two Senators and can be overruled by the body itself. He also stated that the Lt. Governor can only vote in case of a tie. Mr. Leavitt stated that Senate Rule 30 was amended this session which allows for the non-voting vote to count as a vote instead of being interpreted as "yes" or "no". This means the chances of the Lt. Governor, as President of the Senate, ever having to vote are now even more remote. Mr. Leavitt stated that it has been 114 years since the Constitution was adopted and there has not been any question, until recently, over the fact that the Lt. Governor presides over the Senate. Mr. Leavitt stated that he has examined the Nevada Constitutional Debates and Proceedings and they all indicate that when the Constitution was adopted in 1864, Sections 17 and 18 of Article 5 were adopted without discussion or debate. Mr. Leavitt stated that it was obvious the reason for this was the fact that the Constitution was remodeled after the Federal Constitution

in which the Vice President of the United States presides over the United States Senate. He stated that Section 17 also provides that the President Pro Tempore of the Senate, a legislative office, is next in line to the Lt. Governor for succession to the Governor should vacancy occur. Mr. Leavitt said if you're talking about a true doctrine of separation of powers, perhaps you should consider changing that section because there you have two executive offices and a legislative office. Mr. Leavitt stated that we have another doctrine in our democracy called "Checks and Balances". When you read Article 5, Sections 17 and 18 with the principle in mind that our system does provide for checks and balances, you might be able to understand what was in mind when the Constitution was drafted in 1864. First of all, the Lt. Governor can be impartial in his views because he does not necessarily campaign or work for the passage of any particular bill; therefore when there is a debate on a particular bill, he can check with the parliamentary rules without getting involved in that particular debate. Mr. Leavitt stated that the tie vote problem is still going to exist even if you remove the Lt. Governor from the office as President of the Senate. Mr. Leavitt read to the Committee from Mason's Legislative Manual, Page 358, the procedure taken in case of a tie vote when the President of the Senate is a member of the body. Mason's Legislative Manual reads that where the presiding officer is a member of the body and as such member is entitled to vote with the other members, the fact that he was chosen to act as presiding officer will not deprive him of the priviledge of voting as a member, but gives him a second vote as presiding officer in the case of a tie. Mr. Leavitt stated that this may create an unwanted situation. Mr. Leavitt stated that one of the suggestions by the Legislative Counsel Bureau and their study on the role of the Lt. Governor in 1974 was that if you wanted to strengthen or do away with the legislative role or minimize the role of the Lt. Governor in a legislative aspect, this could be done simply by amending the rules of the Senate. All this would require would be a revision of Senate Rule 1 to restrict the Lt. Governor to constitutional duties only. On Page 11 of the Legislative Counsel Bureau's 1974 study, former Lt. Governor's were asked whether or not they agreed with the 5th alternative which would remove all legislative duties from the office and strengthen the Separation of Powers Doctrine with a Constitutional amendment. In the study, all that were questioned opposed this alternative except former Lt. Governor Harry Reed who stated that he would support the alternative providing the executive duties are expanded. Mr. Leavitt stated that he is in favor of expanding the executive duties of the office of Lt. Governor, but he doesn't think it is necessary to do it with a constitutional amendment; the executive role of the Lt. Governor can be increased with a statute.

In conclusion, Mr. Leavitt stated that it is not necessary to amend the Constitution to take the Lt. Governor out as President of the Senate; the removal would only be symbolic since the legislative duties are so minimal that it does no violence to the Separation of Powers Doctrine.

* * * * * * * * *

Senator Young asked Mr. Leavitt, "Assuming the amending of the Constitution to remove the Lt. Governor as President of the Senate is approved, would there then be, unless there is additional legislation, one presiding officer who would be a member of the Senate and nineteen members of the Senate?"

Mr. Leavitt stated that the way he understood it the President of the Senate would be elected the same way the House elects the Speaker; but unless the Senate changes its rules, the President of the Senate may end up having two votes in the case of a tie.

Senator Young stated there wouldn't be a tie but the President would have the right to vote as the presiding officer; therefore, if it were ten to nine, he could vote with the nine and make it a tie and then, in addition, add another vote.

Senator Gibson stated a tie would be handled just like the Assembly; if you had a ten to ten vote, it would fail because it doesn't have a majority.

Senator Ford asked Mr. Leavitt what extra duties, either executive or administrative, he thinks are options in this state and which ones appear to be appropriate for today.

Mr. Leavitt stated that in the State of California the Lt. Governor is the head of the Commission on Economic Development which is a Commission consisting of Senators, Assemblymen and people appointed by the Governor. Mr. Leavitt said he has requested a similar bill to be drafted for us.

Senator Ford asked if that is advisory, or do they actually have power.

Mr. Leavitt stated it's an advisory Commission that meets quarterly and makes annual reports.

Discussion followed regarding expansion of the Lt. Governor's executive duties. Mr. Leavitt felt that additional executive duties should be added gradually with salary increases accordingly. Chairman Echols stated that the Lt. Governor should be more involved in the Governor's daily activities and more knowledgeable about what's happening in state government since he is, as the term implies, an assistant governor. Senator Ford agreed.

Chairman Echols referred back to Mr. Leavitt's statement that the Lt. Governor can be impartial. Chairman Echols stated that he finds it difficult to believe anyone can be impartial and that there have been a few instances in previous sessions indicating it wasn't the case. He stated this isn't the only reason this method was chosen to correct that. Chairman Echols said he is concerned about the ambiguity in two sections of the Constitution; one says the Lt. Governor has a casting vote therein and the other says that to pass a bill or resolution, it requires a constitutional majority of the members elected to that body. Chairman Echols said we should either pass this or proceed with a constitutional amendment to correct the ambiguity.

Senator Gibson said he regrets this issue has been tied up with any specific action because it has been a continuing effort for some years. He said this is part of our effort to strengthen the legislative branch as a co-equal branch of government.

Senator Young stated that he voted for SJR-20 but after listening to Lt. Governor Leavitt, has some reservations. Senator Young said he respects his colleague, Senator Gibson, greatly, but when you merely say it "strengthens the legislature", "it makes it more co-equal", that's a pretty infinitesimal amount of co-equality. He said there are a lot of things he would do rather than tamper with a proven system to get greater equality.

Senator Ford stated that she agrees with Senator Gibson. Senator Ford gave her interpretation of "strengthening the legislature" as meaning strengthening it as an institution rather than talking about any specific action.

Senator Dodge testified in support of SJR-20. He said that we should proceed with the amendment but if we don't, we should clear up the ambiguity in the Constitution about when the Lt. Governor can break a tie vote.

* * * * * * * * * * *

Chairman Echols asked if there were any questions.

Senator Hernstadt testified in opposition to SJR-20 because of the burden it would put on the Senator who is chosen as the President of the Senate and the disadvantage it would impose to the other Senators because they would have to take care of parliamentary procedure along with all their other duties. He stated that he urges this particular resolution be defeated.

* * * * * * * * * * *

Discussion followed regarding the Speaker of the Assembly's duties and the Assembly's procedure in case of a tie.

Chairman Echols stated that he would discuss the days events with the Committee to see what procedure they want to follow regarding SJR-20.

Dennis Myers (from the general public) stated that he wanted to correct the Lt. Governor's statement that the provisions on the Lt. Governorship went into the state constitution without debate. He disagreed and stated it had been debated extensively.

* * * * * * * * * *

Chairman Echols introduced SB-73 which repeals the authority of the Governor to veto joint resolutions. He asked if there was anyone who wanted to speak in favor of this resolution.

Senator Gibson stated that he was primarily responsible for the drafting of SB-73. He said he was motivated after last session when the Governor vetoed the joint resolution calling for the constitutional convention. Senator Gibson stated that he did some research through the Counsel Bureau and found that the authority the Governor utilized in taking that action was statutory; it is found in Chapter 218 of NRS. Senator Gibson stated that Andy Grose did some research for him on the Governor's vetoes of joint resolutions (see Exhibit "A"). Senator Gibson stated that if the legislature wants to express their sentiment to Congress or to have Congress consider a constitutional amendment, a joint resolution is the voice of the legislature. If the Governor wants them to or doesn't want them to, he in his capacity as the Governor of the State has means of communicating that to Congress. He stated that he believes the Governor should have no role in a resolution of the legislature and for that purpose asks that this legislation be drawn.

Sherman Simmons, the Governor's assistant, stated that the Governor would like the opportunity to present a paper on his position regarding SB-73.

Chairman Echols said the Committee would wait for the paper before any action would be taken on SB-73.

* * * * * * * * * *

Chairman Echols introduced SB-97 which corrects names of certain divisions of the Legislative Counsel Bureau.

Senator Gibson explained that SB-97 clarifies the language of the law to conform to practicalities of the organization.

> Senator Gibson moved that SB-97 be passed out of the Committee with a "Do Pass". (See Exhibit "B").
>
> Senator Young seconded the motion.
>
> Motion carried.

Chairman Echols discussed with the Committee the possibility of getting bids from other sources for the legislative pictures because a few people were displeased with them last session.

The Committee decided to let Chairman Echols pursue the situation.

Chairman Echols stated that Senator Neal has introduced a bill to begin the procedure for authorizing a state bank. He said that Herbert L. Thorndall, President of the Bank of North Dakota, has agreed to appear before the Committee to give the history of their Bank and how it operates. Chairman Echols said the bill takes a resolution, which has already been prepared, so all that would be needed is Committee introduction. He asked for the Committee's feelings on this.

Senator Gibson stated that the proper Committee for this would be Government Affairs since that's where the hearing is to be held.

Chairman Echols agreed.

Senator Gibson said he would bring it to the attention of the Committee on Government Affairs.

Chairman Echols discussed with the Committee the possibility of doing an interim study on the functions of the legislature to get public input.

Senator Ford said she didn't think an interim study was necessary because one was done in 1974. She stated that there were a lot of things proposed and adopted and we should go back to that study and see what's happened to it - where things stand. Senator Ford said that a study relating to the fiscal process, narrowing it down to a specific area, might be a good idea.

Senator Young agreed with Senator Ford.

Chairman Echols asked Senator Ford to get an update on the study and the Committee would discuss it at a future meeting.

There being no further business, the meeting was adjourned at 2:56 p.m.

Conni J. Horning

Respectfully Submitted By:
Conni J. Horning, Secretary

Gene Echols

Approved By:
Senator Gene Echols
Chairman

STATE OF NEVADA

LEGISLATIVE COUNSEL BUREAU

EXHIBIT "A"

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Arthur J. Palmer, Director, Secretary

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Ronald W. Sparks, Senate Fiscal Analyst
William A. Bible, Assembly Fiscal Analyst

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January 28, 1979

M E M O R A N D U M

TO: Senator James I. Gibson

FROM: Andrew P. Grose, Research Director

SUBJECT: Governors' Vetoes of Joint Resolution

In researching the question of how a constitutional convention might be handled and what it could or couldn't consider, I came across a 1974 American Bar Association publication on the subject. It is entitled Amendment of the Constitution: By the Convention Method Under Article V.

I've enclosed a copy of the pages on which the ABA discusses the right of a governor to veto a resolution calling for a constitutional convention. The ABA study squarely concludes that the governor has no role in this process and thus no right to veto a resolution of the legislature calling for a convention. Following the reasoning of this study, our law requiring the governor's signature on joint resolutions may be unconstitutional in terms of the U.S. Constitution as it affects joint resolutions dealing with amending the U.S. Constitution.

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Encl.

not obtained, a two-thirds vote of each House would be required before a call could issue. Certainly, the parallelism between the two initiating methods would be altered, in a manner that could only thwart the intended purpose of the convention process as an "equal" method of initiating amendments.

While the language of Article I, Section 7 expressly provides for only one exception (*i.e.*, an adjournment vote), it has been interpreted as not requiring presidential approval of preliminary votes in Congress, or, as noted, the proposal of constitutional amendments by Congress, or concurrent resolutions passed by the Senate and the House of Representatives for a variety of purposes.* As the Supreme Court held in *Hollingsworth*, Section 7 applies to "ordinary cases of legislation" and "has nothing to do with the proposition or adoption of amendments to the Constitution." Thus, the use of a concurrent resolution by Congress for the issuance of a convention call is in our opinion in harmony with the generally recognized exceptions to Article I, Section 7.

(ii) State Governor

We believe that a state governor should have no part in the process by which a state legislature applies for a convention or ratifies a proposed amendment. In reaching this conclusion, we are influenced by the fact that Article V speaks of "state legislatures" applying for a convention and ratifying an amendment proposed by either Congress or a national convention. The Supreme Court had occasion to focus on this expression in *Hawke*

*The concurrent resolution is used to express "the sense of Congress upon a given subject," Watkins, C.L., & Riddick, F.M., *Senate Procedure: Precedents and Practices* 208 (1964); to express "facts, principles, opinions, and purposes of the two Houses," Deschler, L., *Jefferson's Manual and Rules of the House of Representatives* 185-186 (1969); and to take a joint action embodying a matter within the limited scope of Congress, as, for instance, to count the electoral votes, terminate the effective date of some laws, and recall bills from the President. Evins, Joe L., *Understanding Congress* 114 (1963); Watkins and Riddick, *supra* at 208-9. A concurrent resolution was also used by Congress in declaring that the Fourteenth Amendment should be promulgated as part of the Constitution. 15 Stat. 709-10. Other uses include terminating powers delegated to the President, directing the expenditure of money appropriated to the use of Congress, and preventing reorganization plans taking effect under general powers granted the President to reorganize executive agencies. For an excellent discussion of such resolutions, see S. Rep. No. 1335, 54th Cong., 2d Sess. (1897).

v. *Smith*[55] (*No. 1*) in the context of a provision in the Ohio Constitution subjecting to a popular referendum any ratification of a federal amendment by its legislature. The Court held that this requirement was invalid, reasoning that the term "legislatures" had a certain meaning. Said the Court: "What it meant when adopted it still means for the purpose of interpretation. A Legislature was then the representative body which made the laws of the people."[56] The ratification of a proposed amendment, held the Court, was not "an act of legislation within the proper sense of the word" but simply an expression of assent in which "no legislative action is authorized or required." The Court also noted that the power to ratify proposed amendments has its source in the Constitution and, as such, the state law-making procedures are inapplicable.

That the term "Legislature" does not always mean the representative body itself was made clear by *Smiley* v. *Holm.*[57] That case involved a bill passed by the Minnesota legislature dividing the state into congressional districts under Article I, Section 4. The bill was vetoed by the governor and not repassed over his veto. As for the argument that the bill was valid because Article I, Section 4 refers to the state "Legislatures," the Court stated:

> "The use in the Federal Constitution of the same term in different relations does not always imply the same function .... Wherever the term 'legislature' is used in the Constitution it is necessary to consider the nature of the particular action in view ...."[58]

The Court found that the governor's participation was required because the function in question involved the making of state laws and the veto of the governor was an integral part of the state's legislative process. In finding that Article I, Section 4 contemplated the making of laws, the Court stated that it provided for "a complete code for congressional elections" whose requirements "would be nugatory if they did not have appropriate sanctions." The Court contrasted this function with the "Legislature's" role as an electoral body, as when it chose Senators, and a ratifying body, as in the case of federal amendments.

It is hard to see how the act of applying for a convention invokes the law-making processes of the state any more than its act of ratifying a

proposed amendment. If anything, the act of ratification is closer to legislation since it is the last step before an amendment becomes a fundamental part of our law. A convention application, on the other hand, is several steps removed. Other states must concur, a convention them must be called by Congress, and an amendment must be proposed by that convention. Moreover, a convention application, unlike legislation dividing congressional districts, does not have the force of law or operate directly and immediately upon the people of the state. From a legal point of view, it would seem to be contrary to *Hawke* v. *Smith* and *Leser* v. *Garnett* to require the governor's participation in the application and ratification processes.[59]

The exclusion of the governor from the application and ratification processes also finds support in the overwhelming practice of the states,[60] in the views of text-writers,[61] and in the Supreme Court's decision in *Hollingsworth* v. *Virginia* holding that the President was excluded from any role in the process by which amendments are proposed by Congress.[62]

Article V Applications (i) Content

A reading of Article V makes clear that an application should contain a request to Congress to call a national convention that would have the authority to propose an amendment to the Constitution. An application which simply expressed a state's opinion on a given problem or requested Congress itself to propose an amendment would not be sufficient for purposes of Article V. Nor would an application seem proper if it called for a convention with no more authority than to vote a specific amendment set forth therein up or down, since the convention would be effectively stripped of its deliberative function.* A convention should have latitude to amend, as Congress does, by evaluating and dealing with a problem.

On the other hand, an application which expressed the result sought by an amendment, such as providing for the direct election of the President, should be proper since the convention itself would be left free to decide on the terms of the specific

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*In commenting on the ratification process, the Supreme Court stated in *Hawke* v. *Smith (No. 1)*. "Both methods of ratification, by legislatures or conventions, *call for action by deliberative assemblages* representative of the people, which it was assumed would voice the will of the people." 253 U.S. at 226-27 (emphasis added).

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EXHIBIT A

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January 19, 1979

MEMORANDUM

TO: Senator James I. Gibson

FROM: Andrew P. Grose, Research Director

SUBJECT: BDR 17-730

The several provisions in chapter 218 of NRS that use "bill" and "joint resolution" together and requiring that both, except joint resolutions to amend the state constitution, be presented to the governor for signature, first appeared in the law in 1949.

Jeff Springmeyer was legislative counsel then and he remembers writing that 1949 bill. His intent was to regularize and formalize procedures that had developed by precedent and practice but had never been codified. Jeff recalls this effort as a part of an overall attempt at modernization that included histories and a standardized manner of drafting bills in terms of material added, material removed and so forth.

His recollection of why he wrote the bill the way you see it in chapter 218 now is that the practice at that time and for many years had been to present all joint resolutions, except those amending the state constitution, to the governor for signature. The rationale was found in section 18 of article 4 of the constitution in which bills and joint resolutions are treated the same concerning reading by sections on final passage, a constitutional majority required to pass either, and the necessity for the signatures of the presiding officers and the clerks on either. This section, of course, says nothing about the governor's veto. That is in section 35 of article 4 and it speaks only of bills.

Jeff said the fact the joint rules for many years had clearly stated that joint resolutions, except those amending the state constitution, were to be presented to the governor was precedent for the 1949 law. I checked our earliest legislator handbook from 1917. Joint Rule 8 in that year said:

> All joint and concurrent resolutions addressed to Congress, or either House thereof, or to the President of the United States, or the heads of any of the National Departments, or proposing amendments to the State Constitution, shall be treated in all respects as bills.

This rule is not entirely clear on the subject but the 1943 Joint Rules leave no doubt as to the procedure in that session. Joint Rule 7 said, in part:

> * * * Joint Resolutions, other than as enumerated in the preceding paragraph (those to amend the state constitution), shall be used as a means in addressing the President of the United States, Congress, or either House thereof, Representatives in Congress and the National Departments, and shall be delivered by the Chairman of the Enrolling Committee or such person as he shall designate in writing to the Governor for action as provided by law.

Section 18 of article 4 does not address the sending of any measure to the governor. That is found in section 35 on the veto and there only "bill" is used. The 1949 law then was based on practice as Jeff recalls but seems to have no constitutional basis.

The current joint rules, however, at Rule 7, still explicitly say that joint resolutions other than those to amend the state constitution are to "* * * be delivered to the Governor for action as provided by law." I mention this as a reminder to amend the joint rules as well as chapter 218 of NRS in case you have not already requested such a bill.

EXHIBIT A

Finally, I checked vetoes from 1945-1977. That is 18 regular sessions. There were 68 bills vetoed. No joint resolution was vetoed in that period until 1977. By the way, the only override I could find was A.B. 4 of the 1965 session which opened the accounts of the labor commissioner to examination by the legislature's fiscal analyst.

APG/jld

EXHIBIT "B"

S. B. 97

SENATE BILL NO. 97—COMMITTEE ON JUDICIARY

JANUARY 24, 1979

Referred to Committee on Legislative Functions

SUMMARY—Corrects names of certain divisions of legislative counsel bureau. (BDR 17-108)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to the legislative counsel bureau; correcting the names of certain divisions; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

1 SECTION 1. NRS 218.085 is hereby amended to read as follows:
2 218.085 1. The legislative fund is hereby created as a continuing
3 fund in the state treasury for the use of the legislature, and where
4 specifically authorized by law, for the use of the legislative counsel
5 bureau.
6 2. Support for the legislative fund shall be provided by legislative
7 appropriation from the general fund.
8 3. Expenditures from the legislative fund shall be made for:
9 (a) The payment of necessary operating expenses of the senate;
10 (b) The payment of necessary operating expenses of the assembly;
11 (c) The payment of necessary operating expenses of but not limited
12 to:
13 (1) The legislative commission;
14 (2) The legal division;
15 (3) The research [and fiscal analysis] division;
16 (4) The audit division; and
17 (5) [The statute revision operation,] *The fiscal analysis division,*
18 of the legislative counsel bureau.
19 4. Expenditures from the legislative fund for purposes other than
20 those specified in subsection 3 [of this section] shall be made only upon
21 the authority of a concurrent resolution regularly adopted by the senate
22 and assembly.
23 5. All moneys in the legislative fund shall be paid out on claims
24 approved by the director of the legislative counsel bureau or his designee
25 as other claims against the state are paid.

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.