

Following the Hollingsworth decision, many state courts have held that legislative proposals to amend the state constitution “are not the exercise of an ordinary legislative function nor are they subject to the constitutional provisions regulating the introduction and passage of ordinary legislative enactments, although they may be proposed in the form of an ordinary legislative bill or in the form of a Joint Resolution.” Collier v. Gray, 157 So. 40, 44 (Fla. 1934).⁶ As a general rule, these courts have found that the process of proposing constitutional amendments is a separate and independent function that is unconnected with the process of passing ordinary bills and resolutions. See, e.g., Edwards v. Lesueur, 33 S.W. 1130, 1135 (Mo. 1896) (“The provision for adopting resolutions proposing amendments is distinct from, and independent of, all provisions which are provided for the government of legislative proceedings.”); Commonwealth v. Griest, 46 A. 505, 508 (Pa. 1900) (“the separate and distinctive character of this particular exercise of the power of the two houses is preserved, and is excluded from association with the orders, resolutions and votes, which constitute the ordinary legislation of the legislative body.”). As further explained by the Colorado Supreme Court:

The power of the general assembly to propose amendments to the constitution is not subject to the provisions of article 5 regulating the introduction and passage of ordinary legislative enactments. . . . Section 2 of article 19 prescribes the method of proposing amendments to the constitution, and no other rule is prescribed. It is not, therefore, by the “legislative” article, but by the article entitled “amendments,” that the legality of the action of the general assembly in proposing amendments to the constitution is to be tested. Article 19 is *sui generis*; it provides for revising, altering and amending the fundamental law of the state, and is not *in pari materia* with those provisions of article 5 prescribing the method of enacting ordinary statutory laws.

Nesbit v. People, 36 P. 221, 223 (Colo. 1894).

Consequently, under the interpretative rule favored by a majority of state courts that have addressed the issue, “[a] proposal by the legislature of amendments to the constitution is not the exercise of ordinary legislative functions, and is not subject to constitutional

⁶ Jones v. McDade, 75 So. 988, 991 (Ala. 1917); Mitchell v. Hopper, 241 S.W. 10, 11 (Ark. 1922); Nesbit v. People, 36 P. 221, 223-24 (Colo. 1894); People v. Ramer, 160 P. 1032, 1032-33 (Colo. 1916); Cooney v. Foote, 83 S.E. 537, 539 (Ga. 1914); Hays v. Hays, 47 P. 732, 732-33 (Idaho 1897); State ex rel. Morris v. Mason, 9 So. 776, 795-96 (La. 1891); Opinion of Justices, 261 A.2d 53, 57-58 (Me. 1970); Warfield v. Vandiver, 60 A. 538, 538-43 (Md. 1905); Julius v. Callahan, 65 N.W. 267, 267 (Minn. 1895); Edwards v. Lesueur, 33 S.W. 1130, 1135 (Mo. 1896); In re Senate File 31, 41 N.W. 981, 983-88 (Neb. 1889); State ex rel. Wineman v. Dahl, 68 N.W. 418, 418-20 (N.D. 1896); Commonwealth v. Griest, 46 A. 505, 505-10 (Pa. 1900); Kalber v. Redfearn, 54 S.E.2d 791, 793-98 (S.C. 1949); Moffett v. Traxler, 147 S.E.2d 255, 258-60 (S.C. 1966).

provisions regulating the introduction and passage of ordinary legislative enactments.” Cooney v. Foote, 83 S.E. 537, 539 (Ga. 1914). Under this interpretative rule, a state legislature is required to comply only with the specific provisions in the Amendments Article that govern the proposal of constitutional amendments, and it is not required to comply with the general provisions in the Legislative Article that govern the passage of legislation.

It should be noted, however, that a small minority of state courts have rejected this interpretative rule. These courts have held that specific constitutional provisions governing the proposal of constitutional amendments must be interpreted and harmonized with general constitutional provisions governing ordinary legislative action. Geringer v. Bebout, 10 P.3d 514, 515-24 (Wyo. 2000); State ex rel. Livingstone v. Murray, 354 P.2d 552, 556-58 (Mont. 1960); Smith v. Lucero, 168 P. 709, 709-13 (N.M. 1917). As explained by the Wyoming Supreme Court:

[W]e do not find cited cases [from other states] persuasive because the interpretive rule, which led to a result which differs from our result in this case, was based on reading constitutional provisions as sequestered pronouncements. We continue to be persuaded that our rule of reading the Wyoming Constitution as an integrated document composed of separate parts but united together for a more complete, harmonious and coordinated entity is the proper rule of interpretation. . . . In several cases, an appellate court’s result was reached by distinguishing “law making” from proposals of constitutional amendments, which were viewed by those courts as not being “law making.” We perceive little if any difference between the process employed by the legislature in enacting bills which may become a part of Wyoming Statutes and the process used to propose constitutional amendments. To the extent there is a difference, it is not a meaningful distinction which we need to recognize. In the final analysis, the Legislature is engaged in the process of “law making.” We are unable to find anything in the cited decisions, which rely on that line of reasoning, that persuades us to adopt it.

Geringer, 10 P.3d at 523-24.

Because of the split in case law from other jurisdictions, we cannot determine with any reasonable degree of certainty whether the Nevada Supreme Court would follow the interpretative rule favored by the majority or minority view. However, we believe that when either interpretative rule is applied to the provisions of the Nevada Constitution at issue, the end result is the same—joint resolutions proposing constitutional amendments under Article 16, Section 1 do not have to satisfy the two-thirds voting requirement in Article 4, Section 18.

If the Nevada Supreme Court were to follow the interpretative rule favored by the majority view, the Legislature would be required to comply only with the specific majority

voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments. The Legislature would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution “creates, generates, or increases any public revenue in any form.”

By contrast, if the Nevada Supreme Court were to follow the interpretative rule favored by the minority view, the provisions of Article 16, Section 1 would have to be interpreted and harmonized with the provisions of Article 4, Section 18. But when those provisions are interpreted and harmonized together in accordance with the rules of constitutional construction, we believe that any joint resolution proposing constitutional amendments qualifies for the exception from the two-thirds voting requirement because the proposed constitutional amendments become effective only if approved by voters.

When interpreting the provisions of the Nevada Constitution, the Nevada Supreme Court applies the same rules of construction that are used to interpret statutes. Nev. Mining Ass’n v. Erdoes, 117 Nev. 531, 538 (2001). In applying those rules of construction, the court has indicated that its primary task is to ascertain the intent of the framers and to adopt an interpretation that best captures their objective. Id. As explained by the court, “[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law.” State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883). Thus, “[w]hatever meaning ultimately is attributed to a constitutional provision may not violate the spirit of that provision.” Miller v. Burk, 124 Nev. 579, 590-91 (2008); Lueck v. Teuton, 125 Nev. 674, 680 (2009).

When two or more constitutional provisions relate to the same subject matter, the court strives to “give effect to all controlling legal provisions *in pari materia*.” State of Nev. Employees Ass’n v. Lau, 110 Nev. 715, 718 (1994). In other words, whenever possible, constitutional provisions relating to the same subject matter must be read together and harmonized so that each of the provisions is able to achieve its basic purpose without creating conflicts or producing unintended consequences or unreasonable or absurd results. We the People Nev. v. Miller, 124 Nev. 874, 880-81 (2008) (“[W]hen possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results.”). To this end, when two or more constitutional provisions apply to a given situation and create an ambiguity, the court will endeavor to reconcile the provisions consistently with what reason and public policy would indicate the framers intended. See Halverson v. Miller, 124 Nev. 484, 489-91 (2008); We the People Nev., 124 Nev. at 883-89. As stated by the court, “[i]f a constitutional provision’s language is ambiguous, meaning that it is susceptible to ‘two or more reasonable but inconsistent interpretations,’ we may look to the provision’s history, public policy, and reason to determine what the voters intended.” Burk, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)); Lueck, 125 Nev. at 680.

Based on its review of the history of the two-thirds voting requirement, the Nevada Supreme Court has explained the purpose of the requirement as follows:

The supermajority requirement was intended to make it more difficult for the *Legislature* to pass new taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore new sources of revenue.

Guinn v. Legislature (Guinn II), 119 Nev. 460, 471 (2003) (emphasis added). The court has also noted that the two-thirds voting requirement contains an exception which “permits a majority of the Legislature to refer any proposed new or increased taxes for a vote at the next general election.” Id. at 472 n.27.

By requiring the Legislature to act by a two-thirds majority vote to pass revenue-generating measures, the framers of the constitutional provision clearly wanted to restrict the power of the Legislature to enact such measures into law through the ordinary legislative process. Nev. Const. art. 4, § 18(2). However, by also providing that the Legislature could act by a traditional majority vote to refer such measures to the people at the next general election, the framers clearly did not want to restrict the power of the Legislature to refer such measures to the voters for approval or disapproval. Nev. Const. art. 4, § 18(3).

Because the Legislature’s power to refer revenue-generating measures to the voters under Article 4, Section 18 is substantially the same as its power to refer constitutional amendments to the voters under Article 16, Section 1, we believe that the two provisions must be interpreted and harmonized together as substantially equivalent provisions. In describing the state legislature’s power to propose constitutional amendments to the voters, the Colorado Supreme Court has stated:

[I]n proposing an amendment to the constitution, the action of the general assembly is initiatory, not final; a change in the fundamental law cannot be fully and finally consummated by legislative power. Before a proposed amendment can become a part of the constitution, it must receive the approval of a majority of the qualified electors of the state voting thereon at the proper general election. When thus approved it becomes valid as part of the constitution by virtue of the sovereign power of the people constitutionally expressed.

Nesbit v. People, 36 P. 221, 224 (Colo. 1894).

We believe that the foregoing description applies equally to the Legislature’s power to propose revenue-generating measures to the voters under Article 4, Section 18. When the Legislature proposes such measures, its action is initiatory, not final, and its proposal cannot be fully and finally consummated by legislative power. Instead, the proposal must receive the

approval of the voters, and only then does it become law by virtue of the sovereign power of the people constitutionally expressed.

Thus, the spirit and purpose of the referral provisions in Article 4, Section 18 can be construed consistently and harmoniously with the spirit and purpose of the referral provisions in Article 16, Section 1. Under these equivalent referral provisions, the Legislature is authorized to refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. Consequently, when these equivalent referral provisions are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters.

Even though we have not found a case directly on point, we believe that our conclusion is supported by the reasoning in Lockman v. Secretary of State, 684 A.2d 415, 419 (Me. 1996). In Lockman, the Maine Legislature, by a majority vote, passed a joint resolution which proposed a competing measure to be placed on the general election ballot with an initiative petition pursuant to Article IV, Section 18 of the Maine Constitution. The plaintiffs argued that the joint resolution was invalidly enacted without a two-thirds vote under Article IV, Section 16 of the Maine Constitution. Section 16 provided that no act or joint resolution could take effect until 90 days after the adjournment of the session in which it was passed, unless the Maine Legislature, by a two-thirds vote, directed otherwise. Even though the joint resolution did not comply with the 90-day provision in section 16 because it was passed with only a majority vote, the Maine Supreme Court rejected the plaintiffs' argument and held that "section 16 applies to acts and resolves that have the force of law and *does not apply to the approval of competing measures that will become law only if approved by the voters.*" Id. at 419 (emphasis added).

Like the two-thirds voting requirement at issue in Lockman, Nevada's two-thirds voting requirement does not apply to measures that will become effective only if approved by the voters. It follows, therefore, that Nevada's two-thirds voting requirement does not apply to joint resolutions proposing constitutional amendments because such measures become effective only if approved by voters.

In sum, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless

approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

CONCLUSION

Although S.J.R. 15 will repeal the existing constitutional provisions exempting mines and mining claims from the property tax, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing statutes exempting the net proceeds of minerals extracted from the property tax. Because Article 10, Section 1(6) authorizes the exemption of personal property from the property tax, and because the net proceeds are a form of personal property, we believe that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. Additionally, because the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, there would be a reasonable basis for construing those existing statutes as a valid and enforceable tax on mineral production after the repeal of the existing constitutional provisions.

Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. As a result, it is the opinion of this office that if S.J.R. 15 becomes effective, the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

However, unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective. Furthermore, based on our examination of the Nevada Constitution, we have not found any other source of constitutional authority that would save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication, with one exception. Because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those mines and mining claims would still be exempt from the property tax under Article 10, Section 1(8),

which authorizes an exemption for property used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Outside of this limited exception, it is the opinion of this office that the existing statutes exempting patented and unpatented mines and mining claims from the property tax would not be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361.

Finally, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

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