NEVADA LEGISLATURE

Thirty-Second Special Session, 2020

ASSEMBLY DAILY JOURNAL

THE FOURTH DAY

CARSON CITY (Monday), August 3, 2020

Assembly called to order at 1:20 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Richard Snyder.

Creator God, we give You thanks for this new day and for the new opportunities that it provides. Be with the members of the Nevada Assembly and with the staff this day. Guide them, comfort them, renew them in Your Spirit so that all that is done here may glorify You.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, August 2, 2020

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 1, 2, 4; Senate Bill No. 1.

Also, I have the honor to inform your honorable body that the Senate on this day passed Assembly Joint Resolutions Nos. 1, 2.

SHERRY RODRIGUEZ
Assistant Secretary of the Senate

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 1.

Assemblywoman Benitez-Thompson moved that the bill be referred to the Committee of the Whole.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 1, 2, 4; Assembly Joint Resolutions Nos. 1 and 2; Assembly Concurrent Resolution No. 1; Assembly Resolutions Nos. 1, 2, and 3; Senate Joint Resolution No. 1.

Mr. Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 1:26 p.m.

ASSEMBLY IN SESSION

At 5:02 p.m.
Mr. Speaker presiding.
Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Benitez-Thompson moved the Assembly resolve itself into a Committee of the Whole for the purpose of considering Senate Bill No. 1.
Motion carried.

COMMITTEE OF THE WHOLE IN SESSION

At 5:02 p.m.
Chair Frierson presiding.
Quorum present.
Senate Bill No. 1.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Assemblyman Yeager moved to do pass Senate Bill No. 1.
Assemblywoman Carlton seconded the motion.
Motion carried.

On motion of Assemblywoman Benitez-Thompson, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 6:29 p.m.
Mr. Speaker presiding.
Quorum present.

REPORTS OF COMMITTEES

Mr. Speaker:
Your Committee of the Whole, to which was referred Senate Bill No. 1, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.
JASON FRIERSON, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, August 3, 2020

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bill No. 3; Senate Bill No. 2.

SHERRY RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Mr. Speaker requested the privilege of the Chair for the purpose of making the following remarks:

There have been questions as to whether joint resolutions proposing state constitutional amendments are subject to the two-thirds majority requirement. This legal opinion from the LCB Legal Division addresses those legal questions and concludes that a joint resolution proposing state constitutional amendments is not subject to the two-thirds majority requirement, regardless of whether the joint resolution creates, generates, or increases any public revenue in any form.

August 2, 2020

Nevada Assembly
Assembly Chambers
Dear Members of the Assembly:

You have asked this office a legal question relating to joint resolutions proposing state constitutional amendments under Article 16, Section 1 of the Nevada Constitution. In particular, you have asked whether such a joint resolution is subject to the two-thirds majority requirement in Article 4, Section 18 of the Nevada Constitution if the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2).

During the 2013 legislative session, this office was asked the same legal question with regard to Senate Joint Resolution No. 15 (S.J.R. 15), which proposed state constitutional amendments relating to the taxation of mines, mining claims and the proceeds of all minerals extracted in this state. S.J.R. 15, 2011 Nev. Stat., File No. 44, at 3871; 2013 Nev. Stat., File No. 40, at 3958. The Legislature passed S.J.R. 15 during the 2011 and 2013 legislative sessions as required by Article 16, Section 1. However, the voters did not approve S.J.R. 15 at the 2014 general election by a vote of 49.70% in favor and 50.30% against the proposed state constitutional amendments.

When the Legislature was considering S.J.R. 15 during the 2013 legislative session, this office was asked whether a joint resolution proposing state constitutional amendments is subject to the two-thirds majority requirement if the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2). On February 22, 2013, this office issued a written legal opinion concluding that such a joint resolution is not subject to the two-thirds majority requirement, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2). On March 26, 2013, when the Senate Committee on Revenue and Economic Development conducted a hearing on S.J.R. 15, the Chair authorized this office to provide testimony regarding the potential legal effects and consequences of the state constitutional amendments proposed by S.J.R. 15, and the written legal opinion from this office was entered into the legislative record. Legislative History of S.J.R. 15, 77th Leg., at 114-15 & 133 (Exhibit G) (Nev. LCB Research Library 2011).[1]

[1] Available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2011/SJR15,2011_2013 pdf.

As explained in the legal discussion below, the opinion of this office has not changed from our written legal opinion issued in 2013. Therefore, it is the opinion of this office that a joint resolution proposing state constitutional amendments is not subject to the two-thirds majority requirement, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2).

DISCUSSION

Article 16, Section 1 authorizes the Legislature to propose any amendment or amendments to the Nevada Constitution, stating that:

> Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a Majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon. such amendment or amendments shall, unless precluded by subsection 2 or section 2 of article 19 of this constitution, become a part of the Constitution.

Nev. Const. art. 16, § 1 (emphasis added).

Although Article 16, Section 1 authorizes the Legislature to propose constitutional amendments, it does not specify the type of legislative measure that must be used to make such proposals. When a state constitution does not specify the type of legislative measure that must be used to propose constitutional amendments, the general rule is that the legislative body may use a resolution adopted by both Houses to make such proposals. Mason's Manual of Legislative Procedure § 145(2) (2010).

Consistent with this general rule, the Legislature has from its earliest sessions proposed state constitutional amendments by the use of resolutions. See Senate Journal, 3rd Sess., at 43, 48 (Nev. 1867); Senate Journal, 4th Sess., at 17, 27 (Nev. 1869). Even though the Legislature has consistently used resolutions to propose state constitutional amendments, it has not consistently used the same term to describe the resolutions. In the legislative sessions before 1919, the Legislature employed multiple terms to describe such resolutions, including "concurrent resolution," "joint resolution," "joint and concurrent resolution," "conjoint resolution" and "proposal to amend the Constitution," and sometimes the Legislature employed several of these terms within the same legislative session.[2] However, beginning with the 1919 legislative session, the Legislature adopted the practice of using only the term "joint resolution" to describe resolutions proposing state constitutional amendments, and the Legislature has consistently followed that practice since 1919. See, e.g., 1919 Nev. Stat., File Nos. 6, 19 & 20, at 478 & 486-87; 2019 Nev. Stat., File Nos. 40 & 44, at 4630 & 4636.

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[2] See. e.g., 1869 Nev. Stat., File Nos. 1 & 2, at 307 ("Proposal to Amend the Constitution"); 1877 Nev. Stat., File No. 6, at 213-14 ("Conjoint Resolutions"); 1877 Nev. Stat., File No. 23, at 221 ("Concurrent Resolution"); 1879 Nev. Stat., File No. 6, at 149 ("Concurrent Resolution"); 1879 Nev. Stat., File No. 7, at 149 ("Conjoint Resolution"); 1879 Nev. Stat., File No. 26, at 166 ("Concurrent Resolution"); 1903 Nev. Stat., File No. 13, at 232 ("Joint and Concurrent Resolution"); 1903 Nev. Stat., File No. 23, at 240 ("Concurrent Resolution").

When the Nevada Constitution was ratified in 1864, Article 4, Section 18 provided that "a majority of all the members elected to each House shall be necessary to pass every bill or joint resolution." Nev. Const. art. 4, § 18 (1864) (emphasis added). Thus, as originally ratified by the voters, both Article 4, Section 18 and Article 16, Section 1 required the same number of votes to pass legislation or to propose a constitutional amendment—a majority of all the members elected to each House.

In 1994 and 1996, however, the voters approved several amendments to Article 4, Section 18 that were proposed by an initiative petition pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that "an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2) (emphasis added). The amendments ·also include an exception which provides that "[a] majority of all of the members elected to each House may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Because the two-thirds majority requirement in Article 4, Section 18 refers to "joint resolutions," we must consider two legal issues. First, we must consider whether the two-thirds majority requirement applies to joint resolutions proposing state constitutional amendments given that Article 16, Section 1 contains its own specific voting requirement which requires only a majority of all the members elected to each House to propose state constitutional amendments. Second, even if the two-thirds majority requirement applies to joint resolutions proposing state constitutional amendments, we must consider whether those joint resolutions qualify for the exception from the two-thirds majority requirement because the proposed state constitutional amendments become effective only if approved by voters.

To date, there are no reported decisions from Nevada's appellate courts that have addressed these legal issues. In the absence of any controlling decisions from Nevada's appellate courts, we must apply the rules of constitutional construction, and we must consider historical evidence, case law from other jurisdictions and other legal sources for guidance in this area of the law.

In 1798, the United States Supreme Court addressed a similar legal issue in a case where the plaintiffs argued that Congress did not validly propose the Eleventh Amendment to the Federal Constitution. Hollingsworth v. Virginia, 3 U.S. 378 (1798). The plaintiffs argued that when Congress exercised its power to propose the Eleventh Amendment under the Amendments Article of the Federal Constitution, Congress failed to submit the proposed amendment to the President for approval or disapproval under the Legislative Article, which provides that:

> Every Order. Resolution. or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be .presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

U.S. Const. art. I, § 7 (emphasis added).

The Supreme Court rejected the plaintiffs' argument and held that the Eleventh Amendment was constitutionally adopted. 3 U.S. at 382. Although the Supreme Court did not provide any explanation in its opinion for rejecting the plaintiffs' argument, Justice Chase stated that "[t]here can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." Id. at 381 n.

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).[3] 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 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:

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[3] 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).

> [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 courts 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 state constitutional amendments under Article 16, Section 1 do not have to satisfy the two-thirds majority 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 state constitutional amendments. The Legislature would not be required to comply with the two-thirds majority requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2).

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 state constitutional amendments qualifies for the exception from the two-thirds majority requirement because the proposed state 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 material."* 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 majority 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).[4]

Additionally, the court has noted that the two-thirds majority 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." Guinn II, 119 Nev. 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).

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[4] In Guinn v. Legislature, the Nevada Supreme Court issued two reported opinions—Guinn I and Guinn II—that discussed the two-thirds majority requirement. Guinn v. Legislature (Guinn I), 119 Nev. 277 (2003), *opinion clarified on denial of reh'g,* Guinn v. Legislature (Guinn II), 119 Nev. 460 (2003). In 2006, the court overruled certain portions of its Guinn I opinion. Nevadans for Nev. v. Beers, 122 Nev. 930, 944 (2006). However, even though the court overruled certain portions of its Guinn I opinion, the court has not overruled any portion of its Guinn II opinion, which remains good law.

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 state constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds majority requirement under Article 4, Section 18 because the proposed state 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 MaineConstitution. 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 majority requirement at issue in Lockman, Nevada's two-thirds majority requirement does not apply to measures that become effective only if approved by the voters. It follows, therefore, that Nevada's two-thirds majority requirement does not apply to joint resolutions proposing state constitutional amendments because such measures become effective only if approved by voters. Therefore, it is the opinion of this office that a joint resolution proposing state constitutional amendments is not subject to the two-thirds majority requirement, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2).

CONCLUSION

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 state constitutional amendments, and it would not be required to comply with the two-thirds majority requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2).

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 state constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds majority requirement under Article 4, Section 18 because the proposed state constitutional amendments become effective only if approved by voters.

Therefore, it is the opinion of this office that a joint resolution proposing state constitutional amendments is not subject to the two-thirds majority requirement, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2).

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

Sincerely,
Kevin C. Powers
General Counsel

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 2.

Assemblywoman Benitez-Thompson moved that the bill be referred to the Committee of the Whole.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 1.

Bill read third time.

Remarks by Assemblymen Torres, Benitez-Thompson, Tolles, Carlton, and Frierson.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Senate Bill No. 1:

YEAS—38.

NAYS—Edwards, Ellison, Titus, Wheeler—4.

Senate Bill No. 1 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

REMARKS FROM THE FLOOR

Assemblywoman Benitez-Thompson moved that the Assembly adjourn until Tuesday, August 4, 2020, at 9 a.m.

Motion carried.

Assembly adjourned at 6:43 p.m.

Approved: JASON FRIERSON
Speaker of the Assembly

Attest: SUSAN FURLONG
Chief Clerk of the Assembly