THE SIXTY-FOURTH DAY

CARSON CITY (Monday), April 11, 2011

Assembly called to order at 1:14 p.m.
Mr. Speaker presiding.
Roll called.
All present.
Prayer by the Chaplain, Elder Ralph Burns.

Creator, thank You for this day. Bless all people gathered here. Bless all decision makers. It is bad times for all of us. Any decisions made here will be hard, but make your decisions not only with your mind but with your heart. The Creator will be with you all in your decisions made. Bless our mother earth, our water, our air, and all green growth that provides food for us. Creator, anything I forgot You shall fulfill.

Go in a good way.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin 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, April 11, 2011

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day adopted Senate Concurrent Resolution No. 6.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

By Senators Breeden, Brower, Cegavske, Copening, Denis, Gustavson, Halseth, Hardy, Horsford, Kieckhefer, Kihuen, Lee, Leslie, Manendo, McGinness, Parks, Rhoads, Roberson, Schneider, Settelmeyer, and Wiener; Assemblymen Segerblom, Aizley, Anderson, Atkinson, Benitez-Thompson, Bobzien, Brooks, Bustamante Adams, Carlton, Carrillo, Conklin, Daly, Diaz, Dondero Loop, Ellison, Flores, Frierson, Goedhart, Goicoechea, Grady, Hambrick, Hammond, Hansen, Hardy, Hickey, Hogan, Horne, Kirkpatrick, Kirner, Kite, Livermore, Mastroluca, McArthur, Munford, Neal, Oceguera, Ohrenschall, Pierce, Sherwood, Smith, Stewart, and Woodbury:

Senate Concurrent Resolution No. 6—Memorializing Marie H. Soldo.

WHEREAS, The members of the Nevada Legislature were deeply aggrieved to learn of the passing of Marie H. Soldo on February 5, 2010; and

WHEREAS, Marie was born on February 11, 1941, in New York City, New York, to Lenfranco and Mary Soldo and lived in Las Vegas, Nevada, since September of 1984; and

WHEREAS, During her time in Las Vegas, she served as the Executive Vice President of Government Affairs and Special Projects for Sierra Health Services; and

WHEREAS, Marie represented the interests of Sierra Health Services, the Nevada Association of Health Plans and many other health care-related causes in the hallways of the State Legislature since 1984; and

WHEREAS, Marie was always willing to step in to help others and often put the interests of others before herself; and

WHEREAS, Marie traveled extensively and engaged her passion for helping the underserved, including being instrumental in the development of health care programs in Africa and helping children in Belize get specialized health care in the United States; and

WHEREAS, Marie's love and passion for helping others led her to support the St. John's University of Tanzania School of Nursing and its medical clinic in Tanzania, where she often traveled to work in the clinic; and

WHEREAS, St. John's University of Tanzania School of Nursing has recognized Marie's contributions by dedicating its computer center to her, the Marie Soldo Nursing Computer Center; and

WHEREAS, Marie leaves behind her son Christopher Soldo Hamner, his wife Kristina, her grandson William, a loving extended family and many dear friends and acquaintances who miss her generous heart, her passion and her spirit; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the members of the 76th Session of the Nevada Legislature hereby extend their earnest condolences to Marie's family and friends; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to Marie's son Christopher Soldo Hamner.

Assemblyman Segerblom moved the adoption of the resolution.

Remarks by Assemblymen Segerblom, Carlton, and Conklin.

Resolution adopted unanimously.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which was referred Assembly Bill No. 296, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

KELVIN ATKINSON, *Chair*

Mr. Speaker:

Your Committee on Health and Human Services, to which was referred Assembly Bill No. 534, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

APRIL MASTROLUCA, *Chair*

Mr. Speaker:

Your Committee on Transportation, to which was referred Assembly Bill No. 26, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARILYN DONDERO LOOP, *Chair*

Mr. Speaker:

Your Committee on Ways and Means, to which were referred Assembly Bills Nos. 523 and 556, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Ways and Means, to which was rereferred Assembly Bill No. 19, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass

DEBBIE SMITH, *Chair*

COMMUNICATIONS

MESSAGES FROM THE GOVERNOR

OFFICE OF THE GOVERNOR

CARSON CITY, NEVADA, April 7, 2011

MAJORITY LEADER STEVEN HORSFORD, SPEAKER JOHN OCEGUERA, NEVADA LEGISLATURE, 401 South Carson Street, Carson City, Nevada 89701

DEAR MAJORITY LEADER HORSFORD AND SPEAKER OCEGUERA:

On February 7, 2011, Initiative Petition 1 ("the petition") was introduced in the Assembly. The petition is entitled:

> AN ACT relating to taxation; requiring the establishment of an arena district in certain larger counties; requiring the imposition of an additional sales and use tax in such a district; providing for the use of the proceeds of such a tax for the construction, improvement, equipment, operation and maintenance of a sports and entertainment arena through public and private cooperation; and providing other matters properly relating thereto.

On March 23, 2011, Senate Concurrent Resolution 4 was enrolled and delivered to the Secretary of State, thus reflecting the Legislature's rejection of the petition.

Article 19 of our state's constitution requires that in the event the Legislature rejects an initiative petition proposing a statutory change or constitutional amendment, "the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election."

The plain meaning of Article 19 provides for a scenario in which, upon rejection of an initiative petition by the Legislature, the Governor has the discretion to recommend an alternative measure on the same subject. Upon doing so, and only upon doing so, the Legislature may propose an alternative measure, setting it before me for my approval or disapproval. If approved, the proposal shall be submitted to the people for a vote.

That my recommendation is a prerequisite to the Legislature's proposal is reflected in the legislative history of Article 19. Prior to 1962, Article 19 provided only that, upon rejection by the Legislature, the Legislature "may, with the approval of the governor, propose a different measure on the same subject . . . ."

In the general election of 1962, the people chose to change the procedure in the event of a legislative rejection, requiring not only my approval of the Legislature's ultimate proposal, but my recommendation to make such a proposal as well.

On March 28, 2011, Senate Bill 495 was introduced in the Senate, and referred to the Senate Committee on Revenue, as a competing measure with the petition. SB 495 is entitled:

AN ACT relating to taxation; proposing a competing measure to Initiative Petition No.1 by requiring a uniform and equal rate of sales and use tax in a county and prohibiting the creation of

special districts in which a higher sales and use tax rate applies in a certain portion of the county; and providing other matters properly relating thereto.

In the exercise of my constitutional authority under Article 19, Section 2 of our state's constitution, I hereby recommend to the Legislature SB 495 as a different measure on the same subject as the petition. My recommendation today in no way undermines my constitutional authority to disapprove of the measure once it is ultimately proposed by the Legislature. Rather, it reflects the fact that I believe it is important for the people of Nevada to be afforded options when passing judgment on important questions of public policy.

Sincere regards,
BRIAN SANDOVAL
Governor

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

April 11, 2011

Senator Steven A. Horsford
Majority Leader of the Senate

Assemblyman John Oceguera
Speaker of the Assembly

Legislative Building
401 S. Carson Street
Carson City, NV 89701

DEAR SENATOR HORSFORD AND SPEAKER OCEGUERA:

You have asked this office a question relating to the constitutional procedure for the Legislature to propose a legislative measure to compete on the general election ballot with an initiative petition that proposes a statute or an amendment to a statute (statutory initiative). In particular, you have asked whether the Governor's recommendation to the Legislature of a competing measure is a prerequisite or condition precedent to the Legislature's introduction, consideration or passage of a competing measure under Article 19, Section 2(3) of the Nevada Constitution.

Your question has arisen because of a letter Governor Brian Sandoval sent to legislative leadership on April 7, 2011. In his letter, the Governor contends that his "recommendation is a prerequisite" to the Legislature's introduction, consideration and passage of a legislative measure to compete on the 2012 general election ballot with Initiative Petition No. 1 (I.P. 1), which was circulated under the name "Building an Arena for a Stronger Future."

After examining relevant provisions of the Nevada Constitution, reviewing historical evidence and prior legislative practice and applying the fundamental rules of constitutional construction, it is the opinion of this office that the Governor's recommendation to the Legislature of a competing measure is not a prerequisite or condition precedent to the Legislature's introduction, consideration or passage of a competing measure under Article 19, Section 2(3) of the Nevada Constitution. Furthermore, because this issue involves the interpretation of a constitutional provision affecting legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

BACKGROUND

Under the Nevada Constitution, when a statutory initiative has met all the requirements for circulation and has been proposed by the required number of registered voters, the Secretary of State must transmit the statutory initiative to the Legislature when it convenes in regular session. Nev. Const. art. 19, § 2(3). If the statutory initiative is enacted by the Legislature without change or amendment within 40 days and approved by the Governor in the same manner as other statutes, the statutory initiative becomes law. Id. If the statutory initiative is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State must submit the question of approval or disapproval of the statutory initiative to the voters at the next general election. Id.

If the statutory initiative will be submitted to the voters at the next general election, the Legislature may propose a different legislative measure on the same subject to compete on the ballot with the statutory initiative. Id. Specifically, Article 19, Section 2(3) provides:

> If the Legislature rejects such proposed statute or amendment, *the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject*, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election.

Nev. Const. art. 19, § 2(3) (emphasis added).

On February 7, 2011, the Secretary of State transmitted I.P. 1 to the Legislature when it convened the 76th Regular Session. On March 18, 2011, the Legislature adopted Senate Concurrent Resolution No. 4, which rejected the statutory initiative and expressed the Legislature's intent to "to propose a competing measure for submission to the voters on the November 2012 general election ballot." On March 28, 2011, without the Governor's recommendation, the Senate introduced Senate Bill No. 495 (S.B. 495), which proposes a competing measure to I.P. 1.

On April 7, 2011, the Governor sent a letter to legislative leadership stating that "I hereby recommend to the Legislature S.B. 495 as a different measure on the same subject as the petition." The Governor also expressed a legal opinion that his "recommendation is a prerequisite" to the Legislature's introduction, consideration and passage of a legislative measure to compete on the 2012 general election ballot with I.P. 1. The Governor explained his legal opinion as follows:

> The plain meaning of Article 19 provides for a scenario in which, upon rejection of an initiative petition by the Legislature, the Governor has the discretion to recommend an alternative measure on the same subject. Upon doing so, *and only upon doing so*, the Legislature may propose an alternative measure, setting it before me for my approval or disapproval. If approved, the proposal shall be submitted to the people for a vote.
>
> That my *recommendation is a prerequisite to the Legislature's proposal* is reflected in the legislative history of Article 19. Prior to 1962, Article 19 provided only that, upon rejection by the Legislature, the Legislature "may, with the approval of the governor, propose a different measure on the same subject . . . "
>
> In the general election of 1962, the people chose to change the procedure in the event of a legislative rejection, requiring not only my approval of the Legislature's ultimate proposal, but my recommendation to make such a proposal as well.

(Emphasis added.)

DISCUSSION

The Nevada Constitution vests the state's legislative power in the Legislature. Nev. Const. art. 4, § 1; Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1103 (2009). Because the legislative power of this state is vested in the Legislature, the Governor cannot exercise legislative power unless the Governor's exercise of that power is *expressly* permitted by the Constitution. Nev. Const. art. 3, § 1; see State of Nev. Employees Ass'n v. Daines, 108 Nev. 15, 21 (1992); Galloway v. Truesdell, 83 Nev. 13, 20-21 (1967). In other words, under the separation of powers in the Nevada Constitution, the Governor cannot exercise legislative power by implication. Furthermore, in the absence of *express* constitutional authority, the Governor may not interfere with the Legislature's exercise of its core legislative functions, including the introduction, consideration and passage of legislation. See Hardy, 212 P.3d at 1103-06; Heller v. Legislature, 120 Nev. 456, 466 (2004).

Under Article 5, Section 10 of the Nevada Constitution, the Governor is given the power to "recommend such measures as he may deem expedient." However, the Governor's power to recommend legislation under Article 5, Section 10 does not give the Governor any power to originate or introduce legislation in the Legislature because that is a legislative power. See 1 Thomas M. Cooley, Constitutional Limitations 325 (8th ed. 1927) (explaining that the Governor may recommend legislation but "cannot originate or introduce bills."); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 632 (1952) (Douglas, J., concurring) ("The power to recommend legislation, granted to the President, serves only to emphasize that it is his function to recommend and that it is the function of the Congress to legislate."). Thus, under the separation of powers in the legislative process, the Governor and the Legislature each have separate and mutually exclusive powers when it comes to recommending and proposing legislative measures. The Governor may recommend a legislative measure to the Legislature, but the Legislature may decline to propose the legislative measure despite the Governor's recommendation. Conversely, the Governor may choose not to recommend a legislative measure to the Legislature, but the Legislature may propose the legislative measure without the Governor's recommendation.

Given how the legislative process traditionally operates under the separation of powers, an interpretation of Article 19, Section 2(3) which makes the Governor's power to recommend a competing measure a prerequisite or condition precedent to legislative action would be a significant departure from traditional separation-of-powers principles. When the Legislature proposes a competing measure, the Legislature is exercising legislative power because it is proposing a law to the voters through the passage of a bill. See Nev. Const. art. 4, § 23 ("no law shall be enacted except by bill."). Consequently, when the Legislature proposes a competing measure, it is performing its core legislative function of introducing, considering and passing legislation. Because the Legislature's proposal of a competing measure may only be accomplished through the passage of a bill, the Legislature adheres to the traditional legislative process prescribed by Article 4 of the Nevada Constitution when it introduces, considers and passes a competing measure.

Despite the fact that a competing measure is processed in the same manner as other legislation, the Governor contends that his power to recommend a competing measure under Article 19, Section 2(3) is greater than his power to recommend legislation under Article 5, Section 10 in the traditional legislative process. For such a deviation from traditional separation-of-powers principles to be true, the provisions of Article 19, Section 2(3) would need to state, in clear and unmistakable terms, that the Governor's power to recommend a competing measure is an *express* condition precedent to the Legislature's exercise of its legislative power. Such an extraordinary restriction on legislative power could not arise by implication. Therefore, to answer your question, we must review the language of Article 19, Section 2(3) to determine whether it creates an *express* condition precedent which limits the Legislature's power to propose a competing measure.

I. Plain meaning and the Framers' intent.

When reviewing the language of Article 19, Section 2(3), we must follow the same rules of construction that apply to statutes. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). Under those rules, the primary task is to ascertain the intent of the Framers of the constitutional provision and to adopt an interpretation that best captures their objective. Id. The first step in determining the intent of the Framers is to review the language used in the provision because that is the best evidence of intent. Miller v. Burk, 124 Nev. 579, 590 (2008). The language used in the provision must be given its plain meaning unless doing so would violate the spirit of the provision or would lead to an unreasonable or absurd result. Id. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

The language of Article 19, Section 2(3) states that "[i]f the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject." The Governor interprets his executive power to "recommend" a competing measure as a condition precedent to the Legislature's exercise of its legislative power to propose a competing measure. However, the Governor's interpretation ignores the grammatical structure of the sentence, and it requires reading an implied condition into the constitutional language contrary to its plain meaning.

If the Framers of the constitutional provision had intended for the Governor's power of recommendation to be an express condition precedent, they could have drafted the provision to state that "[i]f the Legislature rejects such proposed statute or amendment *and* the Governor recommends to the Legislature a different measure, the Legislature may propose a different measure on the same subject." If the Framers had drafted the provision in this manner, the language would have provided, in clear and unmistakable terms, that the Governor's power of recommendation operates as an express condition precedent to the Legislature's exercise of its legislative power to propose a competing measure.

However, that is not how the Framers drafted the constitutional provision. Instead, the Framers drafted the provision so that the Legislature's rejection of the statutory initiative is the only express condition precedent to the Governor's power to recommend a competing measure *and* the Legislature's power to propose a competing measure. In other words, when the Legislature rejects a statutory initiative, the Governor and the Legislature each have separate and mutually exclusive powers under Article 19, Section 2(3) that may be exercised independently of each other. Thus, the Governor may recommend a competing measure, but the Legislature may decline to propose a competing measure. Conversely, the Governor may decline to recommend a competing measure, but the Legislature may elect to propose a competing measure. Because this is how the legislative process traditionally operates under the separation of powers, it would be unreasonable and absurd to interpret the Governor's power of recommendation under Article 19, Section 2(3) as having greater force than the Governor's power of recommendation under Article 5, Section 10, especially since the Framers did not draft Article 19, Section 2(3) to make the Governor's power of recommendation an express condition precedent to legislative action.

This conclusion is supported by the presumption that the Framers drafted Article 19, Section 2(3) with full knowledge of all other provisions relating to the same subject. See State v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 295 (2000) ("when the legislature enacts a statute, this court presumes that it does so 'with full knowledge of existing statutes relating to the same subject.'"). Because the Framers used the term "recommend" in Article 19, Section 2(3), it must be presumed that the Framers intended for that term to have the same meaning ascribed to it in Article 5, Section 10. See Savage v. Pierson, 123 Nev. 86, 94 (2007) ("when the same word is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense, unless the statutes' context indicates otherwise."). Under Article 5, Section 10, the Governor's recommendation of legislative measures is not a prerequisite or condition precedent to legislative action. Because the Framers only gave the Governor the power to "recommend" competing measures under Article 19, Section 2(3), it must be presumed

that the Governor's power to recommend competing measures under that section is no greater than the Governor's power to recommend legislative measures under Article 5, Section 10, and that the Governor's recommendation of competing measures is not a prerequisite or condition precedent to legislative action.

Furthermore, because any competing measure passed by the Legislature must be presented to the Governor for approval or veto like any other bill under Article 4, Section 35 of the Nevada Constitution, it would be unreasonable and absurd to interpret Article 19, Section 2(3) to give the Governor absolute power to control whether the Legislature may propose a competing measure at the beginning of the legislative process when the Governor also has the power to approve or veto the competing measure at the end of the legislative process. Such a substantial and unusual shift in the balance of power in favor of the Governor could be accomplished only through the most clear and unmistakable language. Because the Framers did not draft Article 19, Section 2(3) with such clear and unmistakable language, it is the opinion of this office that the Governor's interpretation of Article 19, Section 2(3) is inconsistent with the constitutional provision's plain meaning and the Framers' intent and that such an interpretation would produce unreasonable and absurd results.

II. Historical evidence and legislative practice.

It is also the opinion of this office that the Governor's interpretation of Article 19, Section 2(3) is inconsistent with historical evidence and legislative practice. As noted by the Governor, Article 19 was substantially revised in 1962. However, based on the history and purpose of the 1962 constitutional amendment, it is clear that the revisions to Article 19 did not change the constitutional procedure for the Legislature to propose competing measures to statutory initiatives. Furthermore, since the ratification of the 1962 constitutional amendment, the Legislature has proposed several competing measures to statutory initiatives without the Governor's recommendation. This long-standing legislative practice under Article 19, Section 2(3) is entitled to great weight and deference, and it would not be readily disturbed by the courts.

Turning first to the 1962 constitutional amendment that revised Article 19, the intent of voters who approved the amendment may be determined by reviewing the ballot materials placed before the voters at the election, including the ballot question, the ballot explanation and the arguments for and against passage. Nev. Mining Ass'n, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001). The ballot explanation for the 1962 constitutional amendment stated:

> Although entirely rewritten to clarify its provisions, the proposed amendment leaves Article 19 *substantially unchanged*, except that the method of *amending the Constitution* by the people is different.

Constitutional Amendments to be Voted Upon in State of Nevada at General Election, November 6, 1962, at p. 11 (Nev. Sec'y of State 1962) (emphasis added).

As clearly stated in the ballot explanation for the 1962 constitutional amendment, the purpose of the amendment was to change only the method of amending Nevada's Constitution by initiative petition. The 1962 constitutional amendment did not change the method of amending Nevada's statutes by initiative petition. It merely clarified those provisions without making substantive changes.

Thus, contrary to the Governor's contention, the voters at the 1962 general election did not change the constitutional procedure for the Legislature to propose competing measures to statutory initiatives because the 1962 constitutional amendment did not make substantive changes to that procedure. Therefore, the 1962 constitutional amendment did not make the Governor's recommendation a prerequisite or condition precedent to legislative action under Article 19, Section 2(3) because that would have been a substantive change that fell outside the intent of the voters. This fact is confirmed by long-standing legislative practice over the past 50 years during which the Legislature has proposed several competing measures to statutory initiatives without the Governor's recommendation.

When interpreting constitutional provisions, courts often use extrinsic evidence to help ascertain the intent of the Framers, including historical evidence and long-standing legislative practices. See State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 761-71 (2001); State ex rel. Herr v. Laxalt, 84 Nev. 382, 387 (1968); State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901). Typically, courts give great weight and deference to a long-standing legislative construction of a constitutional provision, especially if that construction is reasonable in light of the history and purpose of the provision. See State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883); Halverson v. Miller, 124 Nev. 484, 489 (2008). Thus, a long-standing legislative construction will be "treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 400 (1876).

Since the revision of Article 19 in 1962, the Legislature has been presented with statutory initiatives during the 1981, 1989, 2003, 2005 and 2009 regular sessions.[1] Under Article 4, Section 14 of the Nevada Constitution, the Journals of the Senate and Assembly are the official records of the Legislature, and under the Joint Standing Rules of the Senate and Assembly, each message and proclamation received from the Governor is read and entered in full in the Journals. Based on an examination of the Journals, there is no official record of any message from a Nevada Governor recommending a specific bill as a competing measure to a statutory initiative even though the Legislature has introduced, considered and passed competing measures to statutory initiatives on several occasions.

For example, during the 61st Regular Session in 1981, the Legislature introduced three bills—A.B. 58, A.B. 85 and A.B. 473—which were proposed as competing measures to a statutory initiative relating to the protection of utility customers through the creation of a division of consumer advocacy in the office of the Attorney General. Assembly Journal, 61st Reg. Sess., at p. 53, 65, 498 (Nev. 1981). The competing measures were considered extensively by the Assembly Standing Committee on Government Affairs and the Senate Standing Committee on Commerce and Labor. Legislative History for A.B. 473, 61st Reg. Sess. (Nev. 1981). Although Governor List supported A.B. 58 as a competing measure, there is no official record in the Journals of a message from the Governor specifically recommending A.B. 58, A.B. 85 or A.B. 473 as a competing measure to the statutory initiative. Ultimately, the Legislature passed A.B. 473, which was approved by the Governor and submitted to the voters as a competing measure at the 1982 general election where it prevailed over the statutory initiative. Questions to be Voted Upon in State of Nevada at General Election, November 2, 1982, at pp. 20-32 (Nev. Sec'y of State 1982).

It is reasonable to conclude that if Governor List or the Legislature had interpreted Article 19, Section 2(3) to make the Governor's recommendation of a competing measure a prerequisite or condition precedent to legislative action, there would be an official record in the Journals of the Governor's message recommending a specific bill as a competing measure. The fact that no such official record exists for any year in which the Legislature has been presented with a statutory initiative is compelling evidence that neither the executive branch nor the legislative branch has previously interpreted Article 19, Section 2(3) to make the Governor's recommendation a prerequisite or condition precedent to legislative action on competing measures. Therefore, it is the opinion of this office that the Governor's interpretation of Article 19, Section 2(3) is inconsistent with historical evidence and legislative practice.

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[1] Assembly Journal, 61st Reg. Sess., at p. 6, 29 (Nev. 1981) (protection of utility customers); Assembly Journal, 65th Reg. Sess., at p. 8, 9, 23 (Nev. 1989) (corporate net profits tax for educational purposes); Senate Journal, 72nd Reg. Sess., at p. 158, 982, 1082 (Nev. 2003) (medical malpractice); Assembly Journal, 73rd Reg. Sess., at p. 159 (Nev. 2005) ([1] Nevada Clean Indoor Air Act; [2] Responsibly Protect Nevadans from Second-Hand Smoke Act; [3] regulation of the sale, use and possession of one ounce or less of marijuana); Assembly Daily Journal, 75th Reg. Sess., at p. 17 (Nev. Feb. 2, 2009) (additional tax on gross receipts from rental of transient lodging in certain counties).

III. Any uncertainty or ambiguity in a constitutional provision must be resolved in favor of the power of the Legislature.

Even if there were some uncertainty or ambiguity regarding whether the Governor's recommendation is a prerequisite or condition precedent to legislative action on competing measures, that uncertainty or ambiguity would have to be resolved in favor of the Legislature. This rule of construction stems from the fact that the Governor possesses only express and limited powers under the Constitution, while the Legislature possesses almost unlimited powers under the Constitution.

The office of governor did not originate under the common law. The office is primarily a creature of the American system of constitutional government. See Royster v. Brock, 79 S.W.2d 707, 709 (Ky. 1935); 38 Am. Jur. 2d Governor § 1 (1999). As a result, courts have generally found that a governor has little or no inherent power or prerogative power which arises merely by virtue of the office. See Clark v. Boyce, 185 P. 136, 138 (Ariz. 1919); City of Bridgeport v. Agostinelli, 316 A.2d 371, 376 (Conn. 1972); Royster v. Brock, 79 S.W.2d 707, 709 (Ky. 1935); Richardson v. Young, 125 S.W. 664, 669 (Tenn. 1910). Instead, a governor possesses only those express and limited powers that are granted to the office by the State Constitution or by statute. Id.; Litchfield Elementary Sch. Dist. No. 79 v. Babbitt, 608 P.2d 792, 797 (Ariz. Ct. App. 1980).

In contrast to the Governor, the Legislature does not derive its constitutional powers from the text of the Constitution. Rather, the Legislature possesses all inherent power of the people unless that power is clearly limited by the Federal or State Constitution. Ex parte Boyce, 27 Nev. 299, 332, 334 (1904); Sarkes Tarzian, Inc. v. Legislature, 104 Nev. 672, 675 (1988). Whereas the Governor must be able to point to express provisions of the Constitution to justify the Governor's exercise of constitutional power, the Legislature does not need express constitutional authorization to justify its exercise of constitutional power because "[t]he constitution allows the legislature every power which it does not positively prohibit." City of Las Vegas v. Ackerman, 85 Nev. 493, 502 (1969) (quoting Sharpless v. Mayor of Phila., 21 Pa. 147 (1853)). As often noted by the Nevada Supreme Court, the power of the Legislature is extremely broad and "except where limited by Federal or State Constitutional provisions, that power is practically absolute." Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Even when the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). Additionally, because the powers of the executive and judicial branches are expressly defined by the Nevada Constitution, any power which is not clearly committed to those branches by the text of the Constitution is completely denied to them and is left exclusively to the legislative branch. See City of Pawtucket v. Sundlun, 662 A.2d 40, 44 (R.I. 1995). Therefore, because the provisions of the Nevada Constitution are to be strictly construed in favor of the power of the legislative branch, it is a fundamental rule of constitutional construction that any doubt or ambiguity concerning the constitutional powers of the executive branch must be resolved in favor of the power of the legislative branch.

Accordingly, even if the provisions of Article 19, Section 2(3) were considered to be uncertain or ambiguous, that uncertainty or ambiguity would have to be resolved in favor of the Legislature's power to introduce, consider and pass competing measures without the Governor's recommendation. Furthermore, the Nevada Supreme Court has held that when the meaning of a constitutional provision affecting legislative procedure is in doubt or subject to uncertainty, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining Ass'n, 117 Nev. at 540. Therefore, because an interpretation of Article 19, Section 2(3) involves legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision, and the

judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

CONCLUSION

After examining relevant provisions of the Nevada Constitution, reviewing historical evidence and prior legislative practice and applying the fundamental rules of constitutional construction, it is the opinion of this office that the Governor's recommendation to the Legislature of a competing measure is not a prerequisite or condition precedent to the Legislature's introduction, consideration or passage of a competing measure under Article 19, Section 2(3) of the Nevada Constitution. Furthermore, because this issue involves the interpretation of a constitutional provision affecting legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

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

Very truly yours,

BRENDA J. ERDOES
Legislative Counsel

BY KEVIN C. POWERS
Senior Principal Deputy Legislative Counsel

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Assembly Bills Nos. 12, 20, 25, 32, 48, 55, 91, 102, 138, 143, 194, 195, and 199 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 62.

Bill read third time.

Remarks by Assemblywoman Bustamante Adams.

Roll call on Assembly Bill No. 62:

YEAS—42.

NAYS—None.

Assembly Bill No. 62 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 83.

Bill read third time.

Remarks by Assemblyman Hansen.

Roll call on Assembly Bill No. 83:

YEAS—42.

NAYS—None.

Assembly Bill No. 83 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 97.
Bill read third time.
Remarks by Assemblywoman Smith.
Roll call on Assembly Bill No. 97:
YEAS—42.
NAYS—None.
Assembly Bill No. 97 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.

Assembly Bill No. 147.
Bill read third time.
Remarks by Assemblywoman Mastroluca.
Roll call on Assembly Bill No. 147:
YEAS—42.
NAYS—None.
Assembly Bill No. 147 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 168.
Bill read third time.
Remarks by Assemblywoman Dondero Loop.
Roll call on Assembly Bill No. 168:
YEAS—42.
NAYS—None.
Assembly Bill No. 168 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.

Assembly Bill No. 203.
Bill read third time.
Remarks by Assemblyman Carrillo.
Roll call on Assembly Bill No. 203:
YEAS—42.
NAYS—None.
Assembly Bill No. 203 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 214.
Bill read third time.
Remarks by Assemblywoman Bustamante Adams.
Roll call on Assembly Bill No. 214:
YEAS—42.
NAYS—None.
Assembly Bill No. 214 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 225.
Bill read third time.
Remarks by Assemblymen Smith, Kirner, Bobzien and Hansen.
Roll call on Assembly Bill No. 225:
YEAS—34.
NAYS—Atkinson, Carlton, Carrillo, Horne, Munford, Neal, Pierce, Segerblom—8.
Assembly Bill No. 225 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

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

Assembly in recess at 2:01 p.m.

ASSEMBLY IN SESSION

At 2:04 p.m.
Madam Speaker pro Tempore presiding.
Quorum present.

Assembly Bill No. 229.
Bill read third time.
Remarks by Assemblymen Oceguera, Hansen, Dondero Loop, and Hambrick.
Roll call on Assembly Bill No. 229:
YEAS—33.
NAYS—Atkinson, Carlton, Carrillo, Flores, Horne, Munford, Neal, Pierce, Segerblom—9.
Assembly Bill No. 229 having received a constitutional majority, Madam Speaker pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Senate.

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

Assembly in recess at 2:14 p.m.

ASSEMBLY IN SESSION

At 2:15 p.m.
Mr. Speaker presiding.
Quorum present.

Assembly Bill No. 262.
Bill read third time.
Remarks by Assemblyman Grady.
Roll call on Assembly Bill No. 262:
YEAS—42.
NAYS—None.
Assembly Bill No. 262 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.

Assembly Bill No. 280.
Bill read third time.
Remarks by Assemblywoman Mastroluca.
Roll call on Assembly Bill No. 280:
YEAS—42.
NAYS—None.
Assembly Bill No. 280 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

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

Assembly in recess at 2:21 p.m.

ASSEMBLY IN SESSION

At 2:22 p.m.
Mr. Speaker presiding.
Quorum present.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bill No. 193.

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Bobzien, the privilege of the floor of the Assembly Chamber for this day was extended to Chingiz Koktemserikovich Lepsibayev, Mervin Wright, Della John, Aisha Paya, and Kevin Eben.

On request of Assemblywoman Carlton, the privilege of the floor of the Assembly Chamber for this day was extended to Frankie Sue Del Papa.

On request of Assemblywoman Dondero Loop, the privilege of the floor of the Assembly Chamber for this day was extended to Judi Steele.

On request of Assemblyman Kirner, the privilege of the floor of the Assembly Chamber for this day was extended to Michael Johnson and Katie Powell.

On request of Assemblyman Livermore, the privilege of the floor of the Assembly Chamber for this day was extended to the following students and chaperones from Fritsch Elementary School: Jade Blackeye, Taryn Encinas, Clayton Enox, Sydney Espinoza, Kieren Ford-Abbott, Seanna LeMaster, Drake Lemon, Bryce Peterson, Shayleen Plummer, Charity Rosier, Kayla (Seanna) Salazar, Rylee Scott, Brianna Snooks, Emerson Spence, Delaney Vazquez, Joselyn Vieira, Jayden Wingfield, Madison Wishner, Emily Wolf, Katherine Bakst, Raynelle Heaton, Rachelle Hernandez, and Amy Bransetter.

On request of Assemblyman Munford, the privilege of the floor of the Assembly Chamber for this day was extended to Tyler Sumpter, Leona Collins, and Connor Dunn.

On request of Assemblyman Oceguera, the privilege of the floor of the Assembly Chamber for this day was extended to Ralph Burns, Christina Thomas, Ben Rupert, and John Rupert.

On request of Assemblyman Ohrenschall, the privilege of the floor of the Assembly Chamber for this day was extended to Bakjodirzhon Abdulrasulovich Radzhapov.

On request of Assemblywoman Pierce, the privilege of the floor of the Assembly Chamber for this day was extended to Sujeewa Arjuna Senasingha.

On request of Assemblyman Segerblom, the privilege of the floor of the Assembly Chamber for this day was extended to Chris Hamner, Kristina Vajcnerova, Marie Vajcnerova, and William Hamner.

On request of Assemblywoman Smith, the privilege of the floor of the Assembly Chamber for this day was extended to Justin Fong, Tony Marlon, and Linda Morris.

Assemblyman Conklin moved that the Assembly adjourn until Friday, April 15, 2011, at 11 a.m., and that it do so in memory of civil rights leader Onie Cooper and Carson High School students Keegan Aiazzi and Stephen Anderson.

Motion carried.

Assembly adjourned at 2:24 p.m.

Approved: JOHN OCEGUERA
Speaker of the Assembly

Attest: SUSAN FURLONG
Chief Clerk of the Assembly