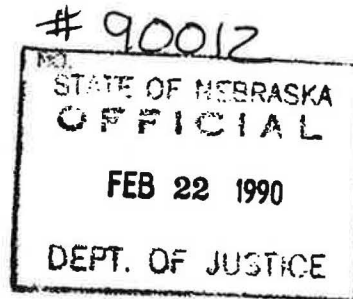


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA • STATE CAPITOL  
TELEPHONE 402/471-2682 • FAX 402/471-3297 • LINCOLN, NEBRASKA 68509-8920

ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General



DATE: February 20, 1990

SUBJECT: Publication of Judicial Nominating Commission Votes

REQUESTED BY: Senator Rex Haberman  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Linda L. Willard, Assistant Attorney General

You have inquired regarding the constitutionality of legislation concerning the publication of judicial nominating commission votes (LB 878). Specifically, you ask if this is a violation of Article V, Section 21, Subsection (5), of the Constitution of the State of Nebraska which states:

Members of the nominating commission shall vote for the nominee of their choice by roll call. Each candidate must receive a majority of the voting members of the nominating commission to have his name submitted to the Governor.

It is our determination that legislation concerning the publication of judicial nominating commission votes would not be contrary to the Constitution. The State Constitution is not a grant but rather a restraint on legislative power, and the Legislature may legislate on any subject not inhibited by the Constitution. Lenstrom v. Thone, 209 Neb. 783, 311 N.W.2d 884 (1981). See also, State ex rel. Creighton University v. Smith, 217 Neb. 682, 353 N.W.2d 267 (1984).

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Linda L. Willard

Senator Rex Haberman

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Since the Constitution does not prohibit the publication of the nominating commission votes, the statute requiring their publication would not be unconstitutional.

Sincerely,

ROBERT M. SPIRE  
Attorney General

  
Linda L. Willard  
Assistant Attorney General

28-02-14.2

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

  
\_\_\_\_\_  
Attorney General