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Opinion No. 11

CONSTITUTIONAL LAW; Amendment by convention—CONSTITUTIONAL LAW; Conventions; limitation on powers of—LEGISLATURE; Powers; restriction of powers of constitutional convention—Article XIX, Section 8, Montana Constitution.

HELD: The Legislature can, pursuant to the provisions of Section 8 of Article XIX of the Montana Constitution, call a constitutional convention and limit its powers to the amendment of certain articles.

November 2, 1967

Montana Legislative Council
State Capitol
Helena, Montana

Gentlemen:

You have requested my opinion with regard to the following question:

Can the legislature, under the provisions of Section 8, Article XIX, of the Montana Constitution call a constitutional convention and limit its powers to the amendment of certain articles?

Section 8 of Article XIX of the Montana Constitution provides in part:

The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. * * *

The general rule, especially under constitutional provisions such as ours which require the submission of the question to the electors, is that the legislature can propose the calling of a limited constitutional convention. 16 Am. Jur. 2d, "Constitutional Law", §30, pp. 201-202, states:

The customary manner of calling constitutional conventions in the United States is by resolution of the legislature followed by a submission of the question to the electorate. The legislature may submit to a popular vote the question of having a constitutional convention with restricted powers, and the voters may approve such a convention unless forbidden by the constitution itself. * * *

See also: 16 C.J.S., "Constitutional Law", §8, 158 A.L.R. 512.

In Jameson on Constitutional Conventions, 4th Ed., p. 364, it is said:

By universal custom, as well as by the express provision of most of the American Constitutions, no person or body in a State has the power to call a convention but the legislature; and none but the legislature can either prescribe or indicate the purposes for which it is to assemble. Accordingly, as we shall see, our legislatures nearly always expressly declare, with more or less precision, those purposes, whether to make a general revision of the Constitution, or to consider specific subjects, accompanying that declaration sometimes with a prohibition to consider other subjects. While a legislature, however, has a clear constitutional right, in its discretion, to prescribe the scope of the duties of the convention it calls, it would seem to be unwise to hamper, by too stringent limitations, a body which, if it meet at all, ought to meet for some rational purpose, and that, in general, it could not do if its work were laid out for it too minutely in advance, by imperative provisions of law.

The question of whether the legislature can limit the powers of a constitutional convention has been decided by a number of states. In the case of **Cummings v. Beeles**, 223 S.W. 2d 913, the Tennessee Supreme Court held that a statute submitting to the voters the question of whether a constitutional convention should be called with limited power to propose amendments was held valid. They noted that:

It is not the legislature who limit the scope of a convention but it is the people themselves who by their vote under the terms of this act limit the scope of the convention. * * *

The holding in this case was re-affirmed by the same court in the recent case of **West v. Carr**, 370 S.W. 2d 469.

The Virginia Supreme Court, in **Staples v. Gilmer**, 33 S.E. 2d 49, 158 A.L.R. 495, upheld the constitutionality of an act providing for the submission to the electors the question of calling a constitutional convention to consider revising only the suffrage portions of their constitution. The Court in discussing the powers of the convention as a body pointed out:

The sovereign power being in the people, it can be exercised only through an agency of the people. Cooley's Constitutional Limitations, 8th Ed., Vol. 1, p. 87. The constitutional convention is an agency of the people to formulate or amend and revise a Constitution. The convention does not possess all of the powers of the people but it can exercise only such powers as may be conferred upon it by the people. The people may confer upon it limited powers.

The Governor of Rhode Island asked the state supreme court for an advisory opinion on the question of whether a constitutional convention could be limited in its deliberations. **In Re Opinion to the Governor**, 178 A. 433, 452, they answered the question in the affirmative.

In the second instance, the Legislature summons the convention only after the people have expressed their will to this effect. If, at the time the question of calling the convention is submitted to them, the people are informed of the scope of the convention and the manner in which it is to conduct its deliberations, and report its results by virtue of the act of the General Assembly specifying such matters, then a convention called in this manner will be limited as therein set forth and the convention will then be bound to confine itself within the stated limits of the act of the Assembly. The reason for this is that it is the people, under such circumstances, who prescribe the conditions in the legislative act by approving the call for the convention in accordance with the provisions of such act. The Legislature merely proposes the conditions. It is the vote of the people for the convention that ratifies them and makes them binding upon the delegates. * * *

Section 8 of Article XIX of our constitution, hereinabove quoted, requires that the question of whether there will be a constitutional convention be submitted to the electors. If the question, as submitted, specifies that the powers of the convention will be limited to the consideration of particular subjects then such limitation would be deemed

to have been prescribed by the electors. There being no constitutional provision forbidding such procedure, it is my opinion that it can be done.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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