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# CITY OF NORTH PLATTE, NEBRASKA, A MUNICIPAL CORPORATION, APPELLEE AND CROSS-APPELLANT, V. WILLIAM L. TILGNER ET AL., APPELLANTS AND CROSS-APPELLEES.

803 N.W.2d 469

Filed September 23, 2011. No. S-10-540.

1. **Statutes.** Statutory interpretation presents a question of law.
2. **Constitutional Law.** Constitutional interpretation presents a question of law.
3. **Declaratory Judgments: Appeal and Error.** When a declaratory judgment action presents a question of law, an appellate court decides the question independently of the conclusion reached by the trial court.
4. **Municipal Corporations: Declaratory Judgments: Initiative and Referendum: Notice.** Under Neb. Rev. Stat. § 18-2538 (Reissue 2007), when a municipality does not seek a declaratory judgment until after it is notified that a ballot measure petition contains the required signatures, a court cannot bar the measure from being placed on the ballot.
5. **Initiative and Referendum.** A court order forbidding a county clerk from considering the votes cast for a proposed ballot measure or reporting the results keeps the measure off the ballot.
6. **Municipal Corporations: Declaratory Judgments: Initiative and Referendum: Notice: Time.** Under Neb. Rev. Stat. § 18-2538 (Reissue 2007), if a city brings a declaratory judgment action challenging a ballot measure within 40 days of receiving notice of the requisite signatures, a court may invalidate the measure because of a deficiency in form or procedure even if the voters approved it.
7. **Statutes: Appeal and Error.** Absent a statutory indication to the contrary, an appellate court gives words in a statute their ordinary meaning.
8. ____: ____. In construing statutory language, an appellate court attempts to give effect to all parts of a statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.
9. ____: ____. When possible, an appellate court will try to avoid a statutory construction that would lead to an absurd result.
10. **Initiative and Referendum: Contracts: Ordinances: Taxation.** Under Neb. Rev. Stat. § 18-2528(1)(a) (Reissue 2007), a general tax ordinance cannot be a measure necessary to carry out a contractual obligation if an obligation did not exist when the municipality passed it.
11. **Initiative and Referendum: Contracts: Immunity.** Under Neb. Rev. Stat. § 18-2528(1)(a) (Reissue 2007), the Legislature has immunized from the referendum process measures necessary to carrying out contractual obligations for projects previously approved by a measure which was, or is, subject to referendum or limited referendum.
12. **Municipal Corporations: Initiative and Referendum: Contracts.** Neb. Rev. Stat. § 18-2528(1)(a) (Reissue 2007) does not shield from the referendum process a revenue measure that funds a city's subsequent contractual obligations for a project that was not previously approved by a measure that was subject to referendum.

13. **Municipal Corporations: Initiative and Referendum: Appeal and Error.** An appellate court liberally construes grants of municipal initiative and referendum powers to permit, rather than restrict, the power and to attain, rather than prevent, its object.
14. **Municipal Corporations: Initiative and Referendum.** To determine whether petitioners for a municipal ballot measure are acting under their initiative power or their referendum power, a court should look to the function of their proposed ballot measure—not its label.
15. **Municipal Corporations: Initiative and Referendum: Ordinances.** The correct distinction for determining whether a proposed municipal ballot measure falls under the petitioners' initiative power or their referendum power is whether the proposed measure would enact a new ordinance or would amend an existing ordinance.
16. **Constitutional Law: Legislature: Municipal Corporations: Statutes: Ordinances.** The Legislature's authority to enact statutes providing a right for municipal voters to enact or repeal municipal ordinances does not depend on the existence of article III, §§ 2 and 3, of the Nebraska Constitution.
17. **Constitutional Law: Legislature.** The Nebraska Constitution is not a grant, but a restriction, on legislative power, and the Legislature may legislate upon any subject not proscribed by the Constitution.
18. **Constitutional Law: Courts: Intent.** In ascertaining the intent of a constitutional provision from its language, a court may not supply any supposed omission, or add words to or take words from the provision as framed.
19. ____: ____: ____. If the meaning is clear, the Nebraska Supreme Court gives a constitutional provision the meaning that laypersons would obviously understand it to convey.
20. **Constitutional Law.** It is a fundamental principle of constitutional interpretation that each and every clause within a constitution has been inserted for a useful purpose.
21. **Constitutional Law: Ordinances.** Neb. Const. art. III, § 2, neither applies to proposed municipal ordinances nor requires that they comply with a single subject rule.
22. **Constitutional Law: Municipal Corporations: Initiative and Referendum.** The constitutional power of referendum under Neb. Const. art. III, § 3, does not confer a right to refer municipal measures to the voters.
23. **Constitutional Law: Ordinances: Judgments.** The constitutional requirement in Neb. Const. art. III, § 14, that bills and resolutions contain only one subject does not apply to city ordinances, nor the adoption thereof, and decisions thereunder are valuable only as analogies.
24. **Constitutional Law: Municipal Corporations: Initiative and Referendum: Statutes.** The initiative and referendum powers of municipal voters are established by statute in this state—not the Constitution.
25. **Ordinances: Voting.** The Nebraska Supreme Court has adopted a common-law single subject rule of form that preserves the integrity of the municipal electoral process. The rule invalidates proposed ordinances that require voters to approve distinct and independent propositions in a single vote.

26. ____: ____. A proposed ordinance is invalid if it would (1) compel voters to vote for or against both propositions—when they might not do so if presented separately; (2) confuse voters on the issues they are asked to decide; or (3) create doubt as to what action they have authorized after the election.
27. **Municipal Corporations: Voting.** A municipal ballot measure with separate provisions does not violate the single subject rule if each of its provisions has a natural and necessary connection with each other and together are part of one general subject.

Appeal from the District Court for Lincoln County: JOHN P. MURPHY, Judge. Affirmed in part, and in part reversed and vacated.

V. Gene Summerlin, of Ogborn, Summerlin & Ogborn, P.C., for appellants.

Steve Grasz, of Husch Blackwell, L.L.P., and Douglas L. Stack for appellee.

HEAVICAN, C.J., GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

## I. SUMMARY

The appellants, William L. Tilgner, Dallis C. Dye, and Edward L. Rieker, filed an "initiative and referendum" petition to refer a proposed ballot measure to the voters of the City of North Platte, Nebraska (the City). The ballot measure would have amended a 1999 city ordinance that imposed an occupation tax.

After being notified that a sufficient number of voters had signed the petition, the City filed this declaratory judgment action to have the proposed measure declared invalid. The district court ruled that the petition proposed a referendum measure that violated Neb. Rev. Stat. § 18-2528(1)(a) (Reissue 2007). In some circumstances, § 18-2528(1)(a) prohibits referendums that interfere with a city's contractual obligations. The electors voted on the proposed amendment. But the court ordered the county clerk not to count the votes cast and not to report or certify the results.

Our holding will be spelled out with some specificity in the following pages, but briefly stated, it is this:

(1) The court lacked the authority to block a count of the votes cast because the City failed to comply with the statutory requisites that would allow a court to take that action. We reverse and vacate that portion of the order.

(2) We reverse the court's ruling that the proposed referendum violated § 18-2528(1)(a) by interfering with a contractual obligation.

(3) We reject the City's cross-appeal claim that the petition was an improper combination of initiative and referendum measures.

(4) We find merit, however, to the City's cross-appeal claim that the proposed referendum violated a common-law single subject rule. That rule invalidates proposed ballot measures that ask voters to approve independent and distinct measures in a single vote.

Accordingly, we affirm in part, and in part reverse and vacate.

## II. BACKGROUND

The parties stipulated to the following facts: In February 1999, the City adopted an ordinance providing for an occupation tax (the ordinance). The ordinance stated in relevant part:

> [R]evenue collected on hotel accommodations shall be used by the [C]ity to assist the [C]ity in constructing and operating a visitors center promoting the [C]ity's railroad heritage until 12:00 a.m. (midnight) February 17, 2029, after which time the same shall be deposited into the General Fund of the [C]ity.

In November 2004, the City entered into an "Option Agreement" to purchase a completed visitor center from Golden Spike Tower & Visitor Center, a Nebraska nonprofit corporation (Golden Spike). The record fails to show how the City approved this contract.

Under the contract, Golden Spike would purchase real estate upon which it would construct a "tourism/museum/educational facility and visitor center promoting the community's railroad heritage." The contract stated that Golden Spike intended to borrow money from the U.S. Department of Agriculture (USDA) to fund the project.

Paragraph A.1 required the City to make option payments to Golden Spike, which payments were to be applied toward the purchase price. Paragraph A.1 comprised two components. Under paragraph A.1(a), all of the (unspecified) revenues from the occupation tax that the City had already paid to Golden Spike constituted one option payment. Paragraph A.1(b) required the City to pay Golden Spike each month an amount equal to the previous month's collected revenues from the occupation tax—until the occupation tax expired in February 2029. The contract stated that upon the City's exercise of its option to purchase the visitor center, the purchase price "shall be the aggregate of the amounts paid pursuant to Paragraph A.1." Golden Spike would use these funds to pay off its USDA loan, make improvements, and fund operating costs.

The City could exercise its exclusive option to purchase the property within 1 year after the earlier of two events occurred: (1) the date that Golden Spike paid the USDA loan in full or (2) February 27, 2029, when the City's use of the tax revenues for a visitor center was scheduled to end. If the City failed to exercise its purchase option, its payments to Golden Spike were nonrefundable.

In March 2009, the appellants filed an "Initiative and Referendum Petition" with the city clerk. The appellants collected signatures, and on January 28, 2010, the petition was certified to have been signed by 15 percent of the City's qualified electors. The petition proposed to amend the occupation tax ordinance as follows:

> [R]evenue collected on hotel accommodations shall be used by the [C]ity to ~~assist the [C]ity in constructing and operating a visitors center promoting the [C]ity's railroad heritage~~ retire debt to the [USDA], secured by [Golden Spike] until 12:00 a.m. (midnight) February 17, 2029[.] ~~after which time the same shall be deposited into the general fund of the City.~~ Any occupation tax revenue collected on hotel accommodations beyond the amount paid to retire the [USDA] debt on [Golden Spike] shall be paid into the City's General Fund to be used by the City for property tax relief.

In February 2010, the city council considered amending the ordinance to reflect the petition's language but declined to do so. Instead, on February 18, the City filed a complaint for declaratory relief, seeking to have the petition declared invalid.

The City claimed that the petition was invalid under three theories: (1) It proposed a referendum on a measure that was not subject to referendum under § 18-2528(1)(a); (2) it violated Neb. Rev. Stat. §§ 18-2523 and 18-2527 (Reissue 2007) by impermissibly joining an initiative and a referendum in the same petition; and (3) it impermissibly combined two or more separate and unrelated questions for voters to approve in a single vote.

The appellants claimed that the purchase price under the contract was indefinite and illusory. The court concluded, however, that the purchase price was the revenues collected from the occupation tax over the course of the agreement, even if the City changed the rate or the revenues varied. That ruling is not part of this appeal. The court also declared that the petition violated § 18-2528(1)(a). The court reasoned that the proposed measure would interfere with a contractual obligation created by the original ordinance. It stated:

> [T]he referendum is clearly an attempt to amend and impair the obligation of the contract and is, thus, violative [sic] of Sec. 18-2528(1)(a) . . . .
>
> . . . The people, acting through their representatives, have determined that referendum may not be used if there is an obligation of contract that will be impaired by the referendum process. That is specifically the situation in this case. . . .
>
> . . . .
>
> The only issue presented to this Court is whether or not the ordinance as adopted creates a contractual obligation that may not be impaired by the action of a referendum. The Court has reached the conclusion that it is and finds that a referendum is not the proper method to attack the ordinance in question.

Because the court concluded that the proposed ballot measure violated § 18-2528, it ordered the county clerk not to count the votes and not to report or certify the results of the vote.

## III. ASSIGNMENTS OF ERROR

The appellants assign that the district court erred as follows:

(1) ruling that the appellants' referendum measure violated § 18-2528(1)(a); and

(2) ruling that their referendum measure did not qualify for inclusion on the May 2010 election ballot.

In its cross-appeal, the City assigns, restated, that the district court erred in failing to make the following rulings:

(1) The petition violated §§ 18-2523 and 18-2527 by improperly combining an initiative and a referendum within a single petition; and

(2) the petition unconstitutionally combined two separate and unrelated questions for a single vote.

## IV. STANDARD OF REVIEW

[1-3] Statutory interpretation presents a question of law.[1] Constitutional interpretation also presents a question of law.[2] When a declaratory judgment action presents a question of law, we decide the question independently of the conclusion reached by the trial court.[3]

## V. ANALYSIS

### 1. Direct Appeal

#### (a) The Court Lacked Authority to Stop a Count of the Vote

Although the parties have not raised the issue, we conclude that the court lacked authority to order the county clerk not to count and certify the votes cast for or against the ballot measure. Because the court's lack of authority raises a jurisdiction issue, we address it first.

The jurisdiction issue arises under Neb. Rev. Stat. § 18-2538 (Reissue 2007), which authorized the City's declaratory judgment action:

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[1] *McLaughlin Freight Lines v. Gentrup*, 281 Neb. 725, 798 N.W.2d 386 (2011).

[2] See *State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006).

[3] See *State ex rel. Johnson v. Gale*, 273 Neb. 889, 734 N.W.2d 290 (2007).

> The municipality or any chief petitioner may seek a declaratory judgment regarding any questions arising under Chapter 18, article 25, . . . including, but not limited to, determining whether a measure is subject to referendum or limited referendum or whether a measure may be enacted by initiative. . . . Any action brought for declaratory judgment for [these] purposes . . . may be filed in the district court at any time after the filing of a referendum or initiative petition with the city clerk for signature verification until forty days from the date the governing body received notification pursuant to section 18-2518. *If the municipality does not bring an action for declaratory judgment to determine* [*these issues*] *until after it has received notification pursuant to section 18-2518, it shall be required to proceed with the initiative or referendum election in accordance with sections 18-2501 to 18-2537 and this section.* If the municipality does file such an action prior to receiving notification pursuant to section 18-2518, it shall not be required to proceed to hold such election until a final decision has been rendered in the action. . . . When an action is brought to determine [one or more of these issues], a decision shall be rendered by the court no later than five days prior to the election.

(Emphasis supplied.)

We specifically discussed the requirements of this statute in *Sydow v. City of Grand Island*.[4] There, whether the petitioners had obtained sufficient signatures depended upon which statute governed their ballot measure. The city council refused to put the initiative on the ballot. It believed that the petition presented a general initiative measure, which required the petition to have verified signatures from 15 percent of the qualified electors.[5] But it was undisputed that the petition had sufficient signatures to satisfy the 10-percent requirement for a sales tax proposal.[6] The petitioners filed for a writ of mandamus to

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[4] *Sydow v. City of Grand Island*, 263 Neb. 389, 639 N.W.2d 913 (2002).

[5] See Neb. Rev. Stat. § 18-2524 (Reissue 2007).

[6] See Neb. Rev. Stat. § 77-27,142.03 (Reissue 2009).

have the initiative put on the ballot, which request the district court granted. In affirming that judgment, we explained that to keep a ballot measure off the ballot, a city must comply with § 18-2538:

> Under § 18-2538, either party may seek a declaratory judgment determining whether a proposed measure is a measure that may be enacted by initiative up to 40 days after the governing body receives notification of the verified signatures pursuant to § 18-2518. But, if a city does not bring an action before notification is received, it must proceed with an election on the initiative. If a city files a declaratory judgment action before notification is received, it will not be required to place the challenged proposal on the ballot until a final decision has been rendered in the action. Thus, the plain language of § 18-2538, which we are obligated to respect and enforce, specifically contemplates a circumstance in which a municipality may be required to place an initiative measure on the ballot before a court determines whether the measure would be legally valid if enacted by the voters. . . .
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> . . . [T]he parties stipulated that the election commissioner formally notified the city council of the number of verified signatures in compliance with § 18-2518. The [c]ity did not at any time seek a declaratory judgment that the proposal was not a measure that may be enacted by initiative. Thus, under § 18-2538, the [c]ity was required to place the proposal on the ballot. Had the [c]ity wished to avoid placing the proposal on the ballot while it challenged whether it could be enacted by initiative, it was required to file a declaratory judgment action before notification of the verified number of signature was received. Because the [c]ity failed to seek a declaratory judgment before it received notification pursuant to § 18-2518, the [c]ity has a ministerial duty to place the proposal on the ballot.[7]

[4,5] In this appeal, the parties' stipulation shows that the City did not seek a declaratory judgment until after it was

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[7] *Sydow, supra* note 4, 263 Neb. at 401-02, 639 N.W.2d at 923-24.

notified that the ballot measure petition contained the required signatures. Therefore, under § 18-2538, the court could not bar the measure from being placed on the ballot. In effect, however, a court order forbidding the county clerk from counting the votes cast for a proposed ballot measure or reporting the results keeps the measure off the ballot.

The time requirements under § 18-2538 were obviously intended to avoid having elections left in limbo whenever a city challenges a ballot measure. We conclude that the order frustrated the Legislature's specific requirement that a municipality "shall be required to proceed with the initiative or referendum election."[8] Here, the City did not file its declaratory judgment action before receiving notification of the requisite signatures. Thus, the court's order blocking a count of the votes was an unauthorized act that was outside of the court's jurisdiction.[9] We reverse and vacate that portion of the court's order.

### (b) The Court Had Jurisdiction to Decide the City's Challenges

[6] Although the court lacked authority to block a count of the vote, the City filed its complaint within 40 days of receiving notification of the verified signatures.[10] And in *City of Fremont v. Kotas*,[11] we held that under § 18-2538, if a municipality claims that a proposed ballot measure violates a statute under chapter 18, article 25, of the Nebraska Revised Statutes, the claim is a challenge to the procedure or form of the proposal that may be raised in a preelection declaratory judgment action.[12] So under § 18-2538, if a city brings a declaratory judgment action challenging a ballot measure within 40 days of receiving notice of the requisite signatures, a court may invalidate the measure because of a deficiency in form or procedure even if the voters approved it.

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[8] § 18-2538.

[9] See *In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011).

[10] See § 18-2538.

[11] *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

[12] See 5 Eugene McQuillin, The Law of Municipal Corporations § 16:68 (rev. 3d ed. 2004).

In its first two claims, the City challenged the proposed measure as violating the statutes under chapter 18, article 25. These challenges focused on the petition's failure to comply with procedural requirements or requirements for the form of the proposed measure. In addition, the City claimed that the proposed measure violated the single subject rule. In *City of Fremont*, we stated that a single subject challenge is a request for a procedural review of a city initiative.[13] So all of the City's claims regarding procedure or form were ripe for adjudication in a preelection declaratory judgment action.

### (c) The Petition Did Not Impair a Contractual Obligation Incurred Under a Previously Approved Measure

Under § 18-2528, the Legislature has specified the circumstances under which citizens can exercise their municipal referendum power. The district court concluded that § 18-2528(1)(a) barred the referendum measure. In deciding the direct appeal, we assume that the court correctly concluded that the petition proposed a referendum measure. It characterized the issue as whether "the ordinance as adopted create[d] a contractual obligation that may not be impaired by the action of a referendum" and concluded that it had.

Section 18-2528 provides in part:

> (1) The following measures shall not be subject to referendum or limited referendum:
>
> (a) Measures necessary to carry out contractual obligations, including, but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was, or is, subject to referendum or limited referendum or previously approved by a measure adopted prior to July 17, 1982.

The Legislature has defined a measure as "an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to

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[13] *City of Fremont, supra* note 11.

pass, and which is not excluded from the operation of referendum by the exceptions in section 18-2528."[14]

*(i) Parties' Contentions*

The appellants contend that the court erred in concluding that § 18-2528(1)(a) prohibited their proposed referendum. They argue that they sought only to amend the 1999 ordinance passing an occupation tax to assist the City in constructing and operating a visitor center. They contend that the tax ordinance was a measure that contemplated a visitor center but did not formally approve one. Moreover, they argue that no measure approving of a visitor center exists. So they conclude that under § 18-2528(1)(a), there was no measure that was subject to a referendum. They also contend that because the tax ordinance was not a measure that was necessary to carry out a contractual obligation for a previously approved project, it fell under § 18-2528(6), which states that measures not exempted are subject to a referendum at any time.

The City does not contend that the tax ordinance was a measure approving of the visitor center project. And it agrees that the option contract with Golden Spike was not a measure. Although the City makes vague assertions that the contract presupposed an authorizing resolution, it points to no resolution that could have been referred to voters. Instead, the City argues that § 18-2528(1)(a) does not require a project to be previously approved. It contends that the statute protects from the referendum process any measure necessary to carrying out a city's contractual obligations. It argues that the clause in § 18-2528(1)(a) referring to "projects previously approved" modifies only the immediately preceding phrase referring to measures "relating to the issuance of or provided for in bonds, notes, warrants, and other evidences of indebtedness." And because the statute explicitly states that measures necessary to carrying out contractual obligations are not limited to measures such as bonds, notes, et cetera, the City argues that the statute protects any measure necessary to carry out a contractual obligation. We disagree.

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[14] Neb. Rev. Stat. § 18-2506 (Reissue 2007).

*(ii) Analysis*

[7-9] Absent a statutory indication to the contrary, we give words in a statute their ordinary meaning.[15] In construing statutory language, we attempt to give effect to all parts of a statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.[16] And when possible, we will try to avoid a statutory construction that would lead to an absurd result.[17]

[10] The Legislature unambiguously excluded from the referendum process "[m]easures necessary to carry out contractual obligations."[18] Regardless of the language following this phrase, under § 18-2528(1)(a), a general tax ordinance cannot be a measure necessary to carry out a contractual obligation if an obligation did not exist when the municipality passed it. Here, no contractual obligation existed in 1999 when the City passed the occupation tax ordinance. The 1999 occupation tax contemplated only a future construction of a visitor center.

Accepting the City's logic would lead to an absurd result. Any general taxation measure that a city is authorized to pass could be considered a measure necessary to carrying out a city's later contractual obligations. It is true that without that revenue stream, a city may not meet its obligations. But the City's interpretation would mean that a city's general taxation measure to raise revenues for a general purpose is shielded from referendum—even if electors later learn that the City unlawfully entered into a contract to carry out that purpose or contracted to spend much more than the tax raised.

[11] Instead, under § 18-2528(1)(a), the Legislature has sensibly immunized from the referendum process measures necessary to carrying out contractual obligations "for projects previously approved by a measure which was, or is, subject to referendum or limited referendum."[19] Obviously, a city must be

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[15] *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011).

[16] See *State v. Stolen*, 276 Neb. 548, 755 N.W.2d 596 (2008).

[17] *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

[18] § 18-2528(1)(a).

[19] *Id.*

able to contract for services to implement approved projects without fear of referendum when its citizens did not petition for a referendum on the original measure approving the project. So we reject the City's argument that the phrase "for projects previously approved" in § 18-2528(1)(a) does not modify the type of measures necessary to carry out a contractual obligation. The City's interpretation renders that phrase meaningless. If the Legislature had intended to shield from the referendum process any revenue-raising measure, it would not have included this language.

[12] We conclude that § 18-2528(1)(a) does not shield from the referendum process a revenue measure that funds a city's subsequent contractual obligations for a project that was not previously approved by a measure that was subject to referendum. The court erred in ruling that § 18-2528(1)(a) shielded the occupation tax ordinance from a referendum. We now turn to the City's cross-appeal.

## 2. Cross-Appeal

### (a) The Petition Was Not an Improper Combination of Initiative and Referendum Proposals

As noted, in deciding the direct appeal, we assumed that the court correctly concluded that the petition proposed a referendum measure. But the City challenges that conclusion. It argues that the petition improperly combined an initiative measure and a referendum measure. It acknowledges that we have previously held that voters may use their municipal initiative power to repeal or amend a city ordinance.[20] But the City argues that the Legislature changed the statutes in 1982 to preclude combining initiative and referendum measures in the same petition. The City argues that the petition proposed an invalid referendum measure that included an initiative proposal "to enact a new provision."[21] That is, the City contends that the part of the proposed measure that would change the required use of the occupation tax revenues was an initiative proposal. We disagree with the City's interpretation.

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[20] See *State ex rel. Boyer v. Grady*, 201 Neb. 360, 269 N.W.2d 73 (1978).

[21] Brief for appellee on cross-appeal at 10.

[13] We liberally construe grants of municipal initiative and referendum powers "to permit, rather than restrict, the power and to attain, rather than prevent, its object."[22]

In 1978, we held that voters may use their municipal initiative power to repeal or amend an existing ordinance.[23] At that time, there were no limitations on the municipal initiative power.[24] But the municipal referendum power was more limited. Petitioners could refer an ordinance to the voters for their approval or rejection only if they had petitioned for a referendum within 30 days of the ordinance's passage.[25] We held that citizens could use their initiative power to take any action that the city council or mayor could take, including the repeal or amendment of an ordinance. We reasoned that over time, "circumstances may change or voters may simply find an ordinance undesirable and wish to abolish it, or amend it."[26]

In 1982, the Legislature substantially revised the statutes governing municipal initiative and referendum powers.[27] The Legislature placed some limits on the power of initiative. Under § 18-2523, the power of initiative is a right to *enact* measures. And a proposed initiative measure "shall not have as its primary or sole purpose the repeal or modification of existing law" unless "such repeal or modification is ancillary to and necessary for the adoption and effective operation of the initiative measure."[28]

But under § 18-2527, the Legislature expanded the power of referendum. It is true that § 18-2528 clarified when citizens could exercise the power. But under § 18-2527, the power of referendum is now the right "to repeal *or* amend existing measures." (Emphasis supplied.) So under the 1982 revisions, the power to amend an existing ordinance is part of the voters'

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[22] *State ex rel. Boyer, supra* note 20, 201 Neb. at 365, 269 N.W.2d at 76.

[23] See *State ex rel. Boyer, supra* note 20.

[24] See, *id.*; Neb. Rev. Stat. § 18-101 (Reissue 1977).

[25] See Neb. Rev. Stat. § 18-112 (Reissue 1977).

[26] *State ex rel. Boyer, supra* note 20, 201 Neb. at 366-67, 269 N.W.2d at 77.

[27] See 1982 Neb. Laws, L.B. 807.

[28] § 18-2523(1).

municipal referendum power, not their initiative power. The City, however, argues that § 18-2527 "prohibits municipal referendum petitions from proposing new measures."[29] We disagree that the appellants' petition proposed a new law.

[14] The problem stems in part from the appellants' incorrect labeling of their petition as an "Initiative and Referendum Petition." Despite this, the court clearly considered the proposal to be a referendum measure. We believe the court was correct in not relying on the appellants' label. As stated, we liberally construe the municipal initiative and referendum statutes to permit the exercise of these powers. To determine whether petitioners for a municipal ballot measure are acting under their initiative power or their referendum power, a court should look to the function of their proposed ballot measure—not its label.

The City incorrectly construes the statutes to preclude a proposed amendment of an ordinance in a referendum petition if it would constitute a new provision of law. It would require a court to construe any substantive change to an existing law as a proposal for a new law that must be presented in an initiative petition. This interpretation of the municipal initiative and referendum statutes would be unworkable.

The definition of "enact"—to "make into law by authoritative act"[30]—is broad enough to include any substantive amendment to an existing law. But a substantive change to an existing law cannot be both an enactment under § 18-2523 and an amendment under § 18-2527 because § 18-2523 precludes a proposed initiative (enactment) from having modification of an existing law as its primary or sole purpose. This prohibition of combined initiative and referendum proposals is consistent with Neb. Rev. Stat. § 18-2513(2) (Reissue 2007). That statute provides that "[p]roposals for initiative and referendum shall be submitted on separate ballots . . . ."

[15] But focusing on the distinction between an enactment and an amendment would obviously create confusion for trial courts applying § 18-2523. Instead, the correct distinction for

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[29] Brief for appellee on cross-appeal at 8.

[30] Black's Law Dictionary 606 (9th ed. 2009).

determining whether a proposed municipal ballot measure falls under the petitioners' initiative power or their referendum power is the one supported by the plain language of the statutes: whether the proposed measure would enact a *new* ordinance or would amend an *existing* ordinance. The appellants did not seek to enact a new ordinance in the same measure that would repeal or amend an existing ordinance. We agree with the court's conclusion that the petition proposed a referendum measure. The City's argument that the petition improperly combined initiative and referendum measures is without merit.

### (b) The Petition Violated a Common-Law Single Subject Rule to Protect the Integrity of the Electorate

The City contends that the petition unconstitutionally combined two separate and unrelated questions for a single vote. It argues that the Nebraska Constitution prohibits petitioners from log-rolling issues in a ballot measure. "Log rolling is the practice of combining dissimilar propositions into one proposed amendment so that voters must vote for or against the whole package even though they would have voted differently had the propositions been submitted separately."[31]

#### *(i) The Nebraska Constitution Does Not Impose a Single Subject Rule for Municipal Ballot Measures*

We reject the City's argument that Neb. Const. art. III, §§ 2 and 3, prohibit a municipal ballot measure from containing two distinct and independent propositions. It is true that one could read our decision in *City of Fremont* to imply that the Nebraska Constitution confers upon electors the power to propose municipal ordinances:

> The right to an initiative vote to enact laws independent of the Legislature is the first power reserved by the people in the Nebraska Constitution. See Neb. Const. art. III, § 2. The Legislature provides for initiatives and

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[31] *City of Fremont, supra* note 11, 279 Neb. at 727, 781 N.W.2d at 462-63.

> referendums for municipal subdivisions in chapter 18, article 25, of the Nebraska Revised Statutes. See Neb. Rev. Stat. §§ 18-2501 through 18-2538 (Reissue 2007). An initiative . . . may be used to enact a "[m]easure," defined as "an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to pass, and which is not excluded from the operation of referendum by the exceptions in section 18-2528."[32]

Further, in rejecting the argument in *City of Fremont* that the proposed municipal ordinance was unconstitutional because it contained more than one subject, we specifically applied a single subject rule from Neb. Const. art. III, § 2. Thus, we implicitly reasoned that constitutional requirements for the form of a statewide initiative petition apply to proposals for municipal ordinances. But on further reflection, we were wrong.

[16,17] First, the Legislature's authority to enact statutes providing a right for municipal voters to enact or repeal municipal ordinances does not depend on the existence of article III, §§ 2 and 3, of the Nebraska Constitution. The Nebraska Constitution is not a grant, but a restriction, on legislative power, and the Legislature may legislate upon any subject not proscribed by the Constitution.[33] Because the Nebraska Constitution does not restrict the right to petition for municipal ballot measures, the Legislature was free to grant these powers to municipal voters even if the same powers did not exist for statewide voters under the Constitution.

[18-20] Second, by its terms, the Nebraska Constitution reserves to the people the right to enact or repeal only *state laws*, not municipal ordinances. In ascertaining the intent of a constitutional provision from its language, a court may not supply any supposed omission, or add words to or take words from the provision as framed.[34] If the meaning is clear, we give a constitutional provision the meaning that laypersons would

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[32] *Id.* at 723, 781 N.W.2d at 460.

[33] See *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

[34] *State ex rel. Lemon, supra* note 2.

obviously understand it to convey.[35] And as we know, it is a fundamental principle of constitutional interpretation that each and every clause within a constitution has been inserted for a useful purpose.[36]

No clause in Neb. Const. art. III, § 2, refers to ordinances or municipal laws:

> The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people *independently of the Legislature*. . . . If the petition be for the enactment of a law, it shall be signed by seven percent of the registered *voters of the state*, and if the petition be for the amendment of the Constitution, the petition therefor shall be signed by ten percent of such registered voters. In all cases the registered voters signing such petition shall be so distributed as to include five percent of the registered voters of each of two-fifths of the counties of the state, and when thus signed, the petition shall be filed with the Secretary of State who shall submit the measure thus proposed to the *electors of the state* . . . . The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative. Initiative measures shall contain only one subject.

(Emphasis supplied.)

[21] This section unambiguously refers to state voters—not municipal voters. And the requirement of obtaining signatures from voters distributed in different counties shows that the constitutional provision governs the enactment only of state laws—not of municipal ordinances.[37] Further, article III of the Nebraska Constitution deals with the "legislative authority *of the state*."[38] So references to "the Legislature" in article III should not be construed to include municipal legislative bodies.

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[35] See *State ex rel. Johnson, supra* note 3.

[36] *State ex rel. Lemon, supra* note 2.

[37] See *Schroeder v. Zehrung*, 108 Neb. 573, 188 N.W. 237 (1922).

[38] See Neb. Const. art. III, § 1 (emphasis supplied).

Contrary to our reasoning in *City of Fremont*,[39] we hold that article III, § 2, of the Nebraska Constitution neither applies to proposed municipal ordinances nor requires that they comply with a single subject rule.

Furthermore, the power of referendum under Neb. Const. art. III, § 3, is even more explicitly limited to state laws:

> The second power reserved is the referendum which may be invoked, by petition, against *any act or part of an act of the Legislature*, except [specified appropriation measures]. Petitions invoking the referendum shall be signed by not less than five percent of the registered *voters of the state*, distributed as required for initiative petitions, and filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed shall have adjourned sine die or for more than ninety days. . . . No more than one act or portion of an act of the Legislature shall be the subject of each referendum petition.

(Emphasis supplied.)

[22,23] And so we have specifically held that the constitutional power of referendum under article III, § 3, does not confer a right to refer municipal measures to the voters.[40] We have similarly held that the constitutional requirement in Neb. Const. art. III, § 14, that bills and resolutions contain only one subject does not apply "to city ordinances, nor the adoption thereof, and [that] decisions thereunder are valuable only as analogies."[41]

[24] Summed up, the constitutional requirements for the initiative and referendum powers in article III were intended to give statewide voters equal legislative authority to enact state laws or to refer acts passed by the Legislature to the voters. But "[t]he initiative and referendum powers of municipal voters are established by statute in this state"[42]—not the Constitution.

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[39] *City of Fremont, supra* note 11.

[40] See *Schroeder, supra* note 37.

[41] See *Gembler v. City of Seward*, 136 Neb. 196, 198, 285 N.W. 542, 544 (1939), *modified* 136 Neb. 916, 288 N.W. 545.

[42] *State ex rel. Boyer, supra* note 20, 201 Neb. at 364, 269 N.W.2d at 76.

### *(ii) A Common-Law Single Subject Rule Applies to Municipal Ballot Measures*

Despite the Constitution's silence on municipal initiative and referendum powers, we agree with the City that a single subject rule does apply to proposed ballot measures for municipal ordinances. In many cases from other jurisdictions, courts have adopted a common-law single subject rule of form that applies to questions submitted to voters generally.[43] Although it was not explicitly stated, in *Drummond v. City of Columbus*,[44] we adopted a single subject rule for proposed municipal initiatives and held that the adopted ordinance was invalid under that rule.

In *Drummond*, a statute that governed the form of a municipal ballot measure provided the following: "If there is but one proposal submitted, the ballots shall be so printed as to give each voter a clear opportunity to designate by an (X) in parenthesis at the right, his answer 'Yes' or 'No' as approving or rejecting the same."[45] But the parties apparently did not raise that statute, and we did not discuss it. Instead, we relied on cases from other jurisdictions and applied a common-law single subject rule to ordinances that must be approved by the voters.[46]

[25] The common-law single subject rule of form that we adopted in *Drummond* preserves the integrity of the municipal electoral process by invalidating proposed ordinances that require voters to approve distinct and independent propositions in a single vote. Voters must be able to intelligently express what they are voting for or against.

Moreover, the single subject rule is consistent with the ballot form requirements under § 18-2513(1)(b) for initiative and

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[43] See, e.g., *Munch v. Tusa*, 140 Neb. 457, 300 N.W. 385 (1941), citing *Lang v. Cavalier*, 59 N.D. 75, 228 N.W.819 (1930); *Stern v. City of Fargo et al.*, 18 N.D. 289, 122 N.W. 403 (1909) (citing cases).

[44] *Drummond v. City of Columbus*, 136 Neb. 87, 285 N.W. 109 (1939).

[45] See Comp. Stat. § 18-511 (1929).

[46] See, *City of Denver v. Hayes*, 28 Colo. 110, 63 P. 311 (1900); *Leavenworth v. Wilson*, 69 Kan. 74, 76 P. 400 (1904); *Stern, supra* note 43; *Julson v. Sioux Falls*, 48 S.D. 452, 205 N.W. 43 (1925).

referendum measures. That section provides that the ballot title must include "[a] briefly worded question which plainly states the purpose of the measure and is phrased so that *an affirmative response to the question* corresponds to an affirmative vote on the measure." (Emphasis supplied.) This statutory rule of form anticipates that a ballot measure will permit voters to clearly express their approval or rejection of a single question. And if a municipality's governing body does not adopt a proposed initiative or referendum measure by resolution, it must submit the measure to voters as presented.[47] But if a proposed ballot measure combines two distinct proposals so that voters are compelled to vote for or against both when they might not do so if separate questions were submitted, then they cannot express a clear preference on both proposals.

[26] We conclude that a proposed municipal ballot measure is invalid if it would (1) compel voters to vote for or against distinct propositions in a single vote—when they might not do so if presented separately; (2) confuse voters on the issues they are asked to decide; or (3) create doubt as to what action they have authorized after the election.[48]

### *(iii) The Proposed Referendum Violated the Single Subject Rule*

The City argues that the petition contains the following distinct questions: (1) whether to continue paying the occupation tax to Golden Spike after the USDA loan is paid off and (2) whether to allocate the occupation tax to property tax relief. We agree that the voters were asked to approve of independent and distinct propositions in a single vote.

In *Drummond*, we determined that the initiative was invalid because it asked voters to decide whether the city should acquire an electrical distribution system "'and/or'" acquire transmission lines to connect to another source of electricity.[49] Instead of being asked to approve one proposal over another, voters could not express their preference for either proposal

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[47] See § 18-2524 and Neb. Rev. Stat. § 18-2530 (Reissue 2007).

[48] See *Drummond, supra* note 44.

[49] *Id.*, 136 Neb. at 88, 285 N.W. at 110.

without also authorizing city officials to take the action that the voters did not prefer. Because voters were compelled to approve either action, they were not expressing their own preference.

[27] In contrast, in *City of Fremont*, we held that a municipal initiative petition to regulate illegal aliens did not violate the single subject rule.[50] We concluded that a municipal ballot measure with separate provisions does not violate the single subject rule if the provisions have a natural and necessary connection with each other and together are part of one general subject.[51]

In this case, the proposed referendum would have amended the ordinance as follows:

> [R]evenue collected on hotel accommodations shall be used by the [C]ity to ~~assist the [C]ity in constructing and operating a visitors center promoting the [C]ity's railroad heritage~~ retire debt to the [USDA], secured by [Golden Spike] until 12:00 a.m. (midnight) February 17, 2029[.] ~~after which time the same shall be deposited into the general fund of the City.~~ Any occupation tax revenue collected on hotel accommodations beyond the amount paid to retire the [USDA] debt on [Golden Spike] shall be paid into the City's General Fund to be used by the City for property tax relief.

The tax ordinance does not include a time limit. The tax continues regardless of how the City uses the revenues. The original ordinance required the City to use the revenues for two purposes: (1) to assist with constructing and operating a visitor center until February 2029; and (2) after that date, to increase the City's general fund. The proposed amendment changed the original ordinance to impose two separate requirements on the City.

The petition's first proposed amendment required the City to use the tax revenues to retire Golden Spike's USDA debt until February 2029. The City could not use the revenues to construct and operate a visitor center. Even assuming that

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[50] *City of Fremont, supra* note 11.

[51] *Id.*

the building had already been constructed, the first proposed amendment would have prohibited the City from using any revenues to operate the facility. The petition's second proposed amendment required the City to use the additional collected revenues to provide property tax relief. So under the second proposed amendment, the City could not use the additional revenues to increase its general fund. The second proposed amendment took effect as soon as the USDA debt was retired.

These amendments were not separate provisions of the same law. But even if they could be construed as such, we conclude that they presented independent and distinct proposals instead of having a natural and necessary connection. The first amendment changed the ordinance by limiting the City's use of revenues to retiring Golden Spike's USDA debt until that debt was retired, instead of using revenues to operate the visitor center. Changing the City's use of additional revenues, however—to require property tax relief instead of increasing its general fund—did not have a natural and necessary connection to limiting the use of revenues for the visitor center to retiring the USDA debt. Because the petition presented distinct but dual propositions for a single vote, voters could not express a preference on either without approving or rejecting both. Because the appellants' referendum petition would not permit voters to express a clear preference on dual propositions, it violated the single subject rule and was invalid.

## VI. CONCLUSION

We conclude that although the district court had authority to decide the City's challenges to the proposed ballot measure, it erred in blocking a count of the vote on the measure. We vacate that portion of the court's order.

We determine that court correctly ruled that the proposed ordinance was a referendum measure, instead of a combined initiative and referendum. But we determine that it erred in ruling that § 18-2528(1)(a) barred the appellants' referendum. Section 18-2528(1)(a) does not shield from the referendum process general taxation measures that become necessary to meeting the City's *subsequent* contractual obligations for

municipal projects that the City had not previously approved in a measure subject to referendum.

We conclude, however, that the appellants' referendum petition violated a common-law single subject rule that invalidates proposed ordinances that require voters to approve distinct and independent propositions in a single vote. Accordingly, we affirm the remaining part of the judgment.

AFFIRMED IN PART, AND IN PART REVERSED AND VACATED.

CONNOLLY, J., participating on briefs.

WRIGHT, J., not participating.

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STATE OF NEBRASKA, APPELLEE, V.
STUART D. HOWARD, APPELLANT.

STATE OF NEBRASKA, APPELLEE, V.
ANTHONY M. LAWS, APPELLANT.

803 N.W.2d 450

Filed September 23, 2011. Nos. S-10-660, S-10-874.

1. **Investigative Stops: Warrantless Searches: Probable Cause: Appeal and Error.** When reviewing a district court's determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search, ultimate determinations of reasonable suspicion and probable cause are reviewed de novo. But findings of historical fact to support that determination are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial court.
2. **Investigative Stops: Motor Vehicles: Probable Cause.** A traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle.
3. **Investigative Stops: Motor Vehicles: Police Officers and Sheriffs.** Once a vehicle is lawfully stopped, a law enforcement officer may conduct an investigation reasonably related in scope to the circumstances that justified the traffic stop. This investigation may include asking the driver for an operator's license and registration, requesting that the driver sit in the patrol car, and asking the driver about the purpose and destination of his or her travel. Also, the officer may run a computer check to determine whether the vehicle involved in the stop has been stolen and whether there are outstanding warrants for any of its occupants.
4. **Investigative Stops: Motor Vehicles: Police Officers and Sheriffs: Probable Cause.** In order to expand the scope of a traffic stop and continue to detain the motorist for the time necessary to deploy a drug detection dog, an officer must