



## CHRONOLOGICAL HISTORY OF NEBRASKA LEGISLATIVE REAPPORTIONMENT

- 1934 -- Nebraska voters approved Constitutional Amendment authorizing unicameral legislative system.
- 1935 -- Legislature established unicameral system, provided for 43 districts -- the boundaries of which followed county lines. Counties in which the population warranted having two or more senators also had to have definite boundaries.
- 1937 -- Unicameral legislative system was implemented.
- 1961 -- The 1961 Legislature passed two bills concerning future apportionment of the Legislature and terms of its members. These bills were proposed Constitutional amendments to be submitted to the voters at the 1962 general election: LB 217 -- the so-called area amendment which would authorize the Legislature to give 20% to 30% consideration to area in establishment of legislative districts, and also providing that in establishing such districts county lines should be followed whenever practicable, but that other established lines could be followed at the discretion of the Legislature; and the second bill, LB 96 -- the proposed amendment which would establish four-year terms for senators, with one-half of the membership to be elected each two years.
- 1962 -- In March, 1962, the U. S. Supreme Court handed down its decision in the Baker v. Carr case holding: 1) that federal courts have jurisdiction over legislative apportionment; 2) that apportionment cases are justiciable (the courts should exercise their jurisdiction), and 3) that plaintiffs may have standing to challenge legislative apportionment acts under the "equal protection" 14th Amendment to the Federal Constitution.

NEBRASKA PUBLICATIONS  
CLEARINGHOUSE

MAR 3 1982

NEBRASKA LIBRARY COMMISSION  
LINCOLN, NEBRASKA 68508

- In July, 1962, a suit was filed in the Federal District Court (League of Nebraska Municipalities v. Marsh -- the League ultimately dropped from the suit and the action was continued under private citizens -- most of whom were mayors of cities). The suit sought to compel legislative reapportionment on a population-only basis, and to bar submission of the proposed reapportionment amendment to the voters.
- In September, 1962, the three-judge panel of the Federal District Court (District Judges Robert Van Pelt of Lincoln and Richard Robinson of Omaha, and Circuit Court of Appeals Judge Harvey Johnsen of Omaha) denied both requests. The Court declared it would "not rush into a field where there is reason to think that the state government, through its appropriate agencies, can and will afford relief." The Court noted, however, that there had been no reapportionment since 1935, and retained jurisdiction saying it might act later if necessary.
- In November, 1962, Nebraska voters approved both the proposed amendments dealing with the Legislature. The reapportionment proposal was approved 218,019 to 175,613; the four-year term amendment was approved 214,651 to 168,618.
- 1963 --- During the course of the 1963 session, the Nebraska Legislature enacted its first reapportionment act since 1935. It first passed LB 629 in which reapportionment was based on a formula giving 20% weight to area in establishing legislative district boundaries, and the number of districts was increased from 43 to 49. A corrective bill, LB 796, subsequently was enacted amending LB 629. This action was necessitated because a mistake was made in drawing the boundaries of District 12 in the earlier bill. The population variance between

the largest and smallest districts under this act ranged from a high of 35,757 in District 35 (Hall County), to a low of 21,703 in District 43 (Sheridan, Cherry and Brown counties).

Also approved in the 1963 session, was LB 785 which implemented the four-year terms for state senators. This law provided that members representing odd-numbered districts would be elected to four-year terms beginning with the 1964 general election, and that members representing even-numbered districts would be elected to two-year terms in 1964 and then to four-year terms beginning in 1966.

-- In August, 1963, a supplemental complaint was filed under the initial suit brought by the League in Federal District Court -- this time contesting the constitutionality of the 1963 Reapportionment Act, challenging the area weighting factor.

1964 -- On June 15, 1964, the U. S. Supreme Court handed down a number of decisions on legislative apportionment -- including the landmark Reynolds v. Sims case which came to be known as the "one man, one vote" edict. The main effect of the June 15 decisions was to establish that the 14th Amendment of the Federal Constitution requires that both houses of a state legislature must be apportioned "as nearly of equal population as is practicable." ;

-- In July, 1964, the Federal District Court held in the League case that the 1964 elections to the Nebraska Legislature could be held under the existing (1963) reapportionment, but that the 1965 Legislature must reapportion Nebraska's single house on a population basis, in accordance with the June 15 decisions of the U. S. Supreme Court. In its decision, the Federal District Court knocked out the area factor of the reapportionment amendment to the Nebraska Constitution. The

Court did not speak directly on the matter of crossing county lines other than to say that it was a question "unnecessary to be decided here."

-- In December, 1964, Attorney General Clarence Meyer delivered an opinion on the matter of crossing county lines in answer to questions from Senators Arnold Ruhnke and Elvin Adamson. In that opinion Mr. Meyer held that the area factor was the greatest inducement to the passage of the reapportionment amendment at the 1962 general election, that only slight consideration had been given to that portion pertaining to crossing county lines. He contended that he did not believe the amendment would have been placed on the ballot by the Legislature, nor have won public support, had the issue been solely that of crossing county lines. Therefore, since the Federal Court had knocked out the area portion of the amendment, Mr. Meyer said in his opinion the entire amendment must be declared invalid and county lines could not be crossed.

1965 -- In March, 1965, the Nebraska Legislature enacted a new reapportionment law -- LB 628. This act increased the size of the Legislature to a total of 50 districts, the boundaries of which continued to follow county lines. Under this first reapportionment act of 1965, the largest district population-wise was still District 35 (Hall County) with 35,757, and the smallest was District 44 (Morrill, Garden, Deuel, Keith, Arthur and Grant counties) with a population of 22,301. The new reapportionment act immediately was submitted to the Federal District Court for review.

-- On May 12, 1965, the Federal District Court three-judge panel, by a 2-1 decision, ruled the new apportionment act did not meet the standards of the 14th Amendment. While recognizing the unique organization

of the Nebraska Legislature, the Court declared in its majority decision that a population variance of 1.6 between the largest and smallest districts was not acceptable. The Court declined to formulate an apportionment plan of its own and indicated the Legislature, before the adjournment of its regular 1965 session, must adopt a constitutionally valid reapportionment plan. Otherwise, the Court ruled, all members of the Legislature will have to be nominated and elected at-large in the 1966 elections.

Judge Harvey Johnsen was the member of the Federal Court panel who dissented from the majority opinion. It was several weeks before he had time to issue a formal opinion giving fuller expression to his reasons for dissenting. In that statement, however, he said he was not persuaded that the plan under LB 628 was of such imbalance as to constitute gross unfairness or invidious discrimination, as between urban and rural interests or between any other population groups, segments and classes. He maintained there seemed to be a sound basis for recognizing a margin of population variance of some flexibility in order to allow a State to adhere to its policy of keeping legislative districts within county lines.

-- On May 17, 1965, at the request of the Legislature, the Attorney General appeared before that body to advise its members of his views of what should be done as a result of the Federal Court ruling. Mr. Meyer noted that many questions had been left unanswered in the Court ruling -- but reiterated his belief that in the absence of any Court ruling to the contrary, he must maintain his stand against crossing county lines in establishing legislative districts. He also noted that under the other 1962 amendment it had been provided that after 1964, all members of the Legislature were to be elected to four-year

terms, and that the Federal Court had been silent on a provision of the Nebraska Constitution under which the Nebraska Supreme Court has made it very clear that an officer whose term is fixed by the Constitution cannot have that term cut short by a legislative act. Mr. Meyer said the Federal Court had made it abundantly clear that the Legislature could not have a membership of 49 or 50 members if county lines were to be followed --, that its membership could not exceed 40 if this plan is followed. He said that in its ruling, the Federal Court had suggested the alternative that members run at-large in 1966. The remaining alternative, he said, was to appeal the Federal Court decision to the U. S. Supreme Court. That course would be his choice for the moment, the Attorney General said, but he urged that the Legislature not act in haste -- that it take time to give full consideration to every facet of the issue before taking action.

-- Following the Federal Court ruling, the Speaker of the Legislature had appointed a special five-member committee to consider what steps should next be taken. It was the conclusion of that group that the standing Committee on Committees should be the sifting committee to consider plans which various senators were proposing -- and then recommend whatever action should be taken further.

✓ During the course of its deliberations, seven different reapportionment plans were presented this committee. Some of the plans crossed county lines, some did not. This committee ultimately decided to introduce three bills for consideration by the Legislature. The first of these, LB 923, was a proposed amendment to the Constitution dealing with reapportionment. The second, LB 924, was a specific reapportionment plan calling for 50 legislative districts crossing county lines. The

third measure, LB 925, was a specific reapportionment plan calling for 46 legislative districts, not crossing county lines.

The bills were set for public hearing before the Government and Military Affairs Committee. This committee subsequently amended and sent to the floor LB 923, killed LB 924 -- the plan crossing county lines, and amended LB 925 to provide for 47 districts (still staying within county lines) and reported it to the floor.

- After the Government Committee took that action, and before LB 925 was considered on the floor, Sen. George Gerdes began drafting a new reapportionment plan for 49 districts -- crossing county lines -- which he planned to submit as a substitute for LB 925.
- On July 28, the first day LB 925 was considered in floor debate, the Legislature approved the substitute plan and a majority of the members approved the policy of crossing county lines. Many changes were considered, some formally by the Legislature as a whole -- others informally by individual senators, before the final plan under LB 925 was adopted. The issue served as a forum for some of the most heated debate of the 1965 session. Each time a revision was proposed in a specific district under LB 925, the whole fury of whether or not county lines should be crossed would erupt anew. But finally, on the last day of the session, the Legislature approved LB 925 on final reading by a vote of 34 to 12.
- Because of the protracted debate and the uncertainty of what the Legislature would ultimately decide, the Attorney General earlier had filed with the U. S. Supreme Court notice of intention to appeal the Federal Court ruling on LB 628. Then in July he filed the notice of appeal and a jurisdictional statement so that in the event the

LB 925

Legislature did not pass a new reapportionment act, and LB 628 would wind up as the only reapportionment act on the books, the avenue would be open to appeal the Federal Court ruling on LB 628.

-- In August, after the Legislature had adjourned, Omaha attorney August Ross -- one of the attorneys representing the individuals involved in the earlier suit, filed with the U. S. Supreme Court a motion to dismiss the State's appeal from the Federal ruling on LB 628. Mr. Ross contended that in passing LB 925, the Legislature had repealed LB 628, and that an appeal on LB 628 was now a moot question.

-- On September 2, Sen. Terry Carpenter -- acting as a private citizen, filed a petition in original action with the Nebraska Supreme Court seeking a declaratory judgment that LB 925 was unconstitutional because it crossed county lines in establishing legislative districts.

-- At this point, the Attorney General went before the Executive Board of the Legislative Council and asked its approval for his employing a special counsel -- Mr. Cecil Johnson, Omaha attorney -- to represent the State in the Carpenter suit on LB 925. Mr. Meyer felt that since he had taken such a strong stand against crossing county lines in establishing legislative districts and held so vigorously to the belief that crossing such lines was unconstitutional -- it would not be fair for him to be the one to defend the Legislature's action in doing so. The Executive Board of the Council gave its approval to the hiring of Mr. Johnson.

-- Also, following filing of the Carpenter suit, the Attorney General filed with the U. S. Supreme Court a motion to defer ruling on Mr. Ross's motion to dismiss the State's appeal on the Federal Court ruling on LB 628. The Attorney General contended that since the

question of the constitutionality of LB 925 was now pending before the Nebraska Supreme Court and the possibility existed that LB 925 would be found in violation of Nebraska's Constitution and therefore an invalid act, it was not a moot question to consider an appeal of LB 925.

-- The U. S. Supreme Court then asked Mr. Ross to respond to the State's motion to defer ruling on his motion to dismiss the appeal. Mr. Ross had earlier advised the Attorney General that he agreed with Mr. Meyer's contention that the motion to dismiss should be deferred pending the outcome of the case before the Nebraska Supreme Court. However, by the time the U. S. Supreme Court asked him to respond, Mr. Ross had changed his mind and answered that the time delay requested by the Attorney General would only compound whatever problems there might be in the coming legislative elections, and asked that the U. S. Supreme Court proceed to rule on his motion to dismiss the appeal.

-- On November 10, the U. S. Supreme Court agreed to defer ruling on Mr. Ross' motion to dismiss the State's appeal on the Federal Court ruling on LB 628 until after the Nebraska Supreme Court had delivered its decision on LB 925.

Also, on November 10, the Nebraska Supreme Court set brief and hearing dates on Sen. Carpenter's appeal of LB 925. The Court ordered Mr. Edward F. Carter, Jr., Sen. Carpenter's attorney, to file his brief December 6, and Mr. Johnson to file the State's brief on December 27, and it set oral arguments on the case for January 3, 1966.

-- On December 2, the Carpenter brief was filed. It first established the plaintiff's contention that in declaring the area portion of the 1962 amendment invalid, the Federal Court's ruling had the effect of knocking out also the portion of that amendment relating to crossing of county lines. Then the plaintiff held that LB 925 was invalid

for four reasons: 1) that LB 925 crossed county lines in violation of the State Constitution; 2) it permitted delegation of apportionment powers to cities through the annexation process (citing Beatrice specifically; 3) it disenfranchised citizens in areas which were transferred from even-numbered to odd-numbered legislative districts because of staggered terms, and 4) its definition of district boundaries was vague and indefinite.

--- On December 27, the State's brief was filed. The defendant first established its contention that that portion of the 1962 amendment to the Nebraska Constitution pertaining to crossing of county lines was a valid and enforceable act. Thus, the defendant held: 1) that the Legislature's enactment of LB 925 was valid in establishing legislative districts which included some whose districts crossed county lines; 2) that it did not delegate apportionment powers to cities because the boundaries established therein were specific; 3) that it made no attempt to extend the term of any legislator beyond that to which he was duly elected and took cognizance of Article III, Section 7, of the Nebraska Constitution, which prohibits terminating any office established by the Constitution, and 4) again, that LB 925 did establish precise, definite district boundaries.

1966 --- On January 3, the Nebraska Supreme Court heard oral arguments on the second 1965 reapportionment act. Lancaster District Judge William Hastings sat on the bench in place of Justice Edward F. Carter, Sr. who disqualified himself because of his son's involvement in the suit.

--- On January 25, the Nebraska Supreme Court rendered its verdict on LB 925 holding unanimously that it was a valid act under the Nebraska Constitution. In holding that Constitutional provisions are not subject to the rules of strict construction, the Court declared that the remaining portion

of the 1962 amendment relating to the crossing of county lines was a valid and enforceable clause of the Constitution. It held that LB 925 did not constitute a delegation of power to the City of Beatrice to alter legislative boundaries, nor deprive the city from its power of annexation; that it did not create any unconstitutional hindrance or impediment to the right of a qualified voter to exercise the elective franchise, and that unless specifically defined otherwise, LB 925 referred to boundaries as established by Nebraska law as of April 1, 1960

- On January 27, the Federal District Court, on its own volition, set February 7 as the day for hearing oral arguments on whether LB 925 would meet the Federal Constitution requirements.
- On February 7, the three-judge panel of the Federal District Court heard oral arguments on LB925. Mr. August Ross, again representing those individuals who had contested the previous reapportionment acts, argued that the Legislature still had not succeeded in attaining the most equitable population distribution possible between legislative districts. One of the witnesses subpoenaed by Mr. Ross to testify at the hearing -- a professor of political science at Creighton University -- presented to the Court a reapportionment plan he had drawn which provided legislative districts with a population disparity of approximately 2%, as opposed to the 19+% contained in LB 925. Attorneys for the State of Nebraska, Assistant Attorney General Richard Williams and Special Assistant Attorney General Robert Nelson, argued that LB 925 represented a conscientious effort on the part of the Legislature to meet the Federal Court mandate; that the population disparity of LB 925 did not constitute invidious discrimination, and noted the two major unanswered questions prevailing when LB 925 was drawn: whether county lines could be crossed, and the preservation of existing four-year terms.

- On February 10, the Federal District Court announced that it unanimously upheld the validity of LB 925 as meeting the apportionment requirements of the Federal Constitution. The Court said it was announcing its decision in abbreviated form at the earliest possible moment in order to expedite the filing of legislative candidates prior to the filing deadline of March 11. The Court said it would file an expanded explanation of its findings on LB 925 in a formal opinion as soon as possible following the February 10 decree.
- On April 12, the Federal District Court filed its formal opinion upholding the constitutionality of LB 925, and stated that "the suit in all its aspects shall accordingly stand dismissed."

-----

Prepared by Betty Person, Research Assistant  
Nebraska Legislative Council