

Tennessee—April 7th, 1911

On January 12th, 1911, a telegram from a Jno. W. Gaines was sent to Philander Knox, Secretary of State of the United States, informing Knox that the State of Tennessee was without a certified copy of the Congressional Joint Resolution—

Close search today in office of the Governor and Secretary of State develops the fact that no copy of proposed sixteenth amendment to Constitution of the United States to empower Congress to levy an income tax is on file in either office. Have forwarded to proper authority here copy said instrument.

Upon receiving that telegram, Knox immediately sent a certified copy of the resolution to Tennessee on January 13th, 1911 and a telegram to Mr. Gaines informing him of that action—

A Certified copy of the proposed Amendment to the Constitution has been sent to the Governor of Tennessee today.

No previous acknowledgment letter from the State of Tennessee exists.

Shortly after receiving its certified copy of the Congressional Joint Resolution, a ratification resolution was introduced in the Senate of Tennessee, on the 25th of January, 1911—

By consent of the Senate, Mr. Jones introduced Senate Joint Resolution No. 14—To adopt an amendment to the Federal Constitution.

Under the rules, the resolution lies over. (SJ at 118)

In so doing, the Senate of Tennessee was immediately in violation of Article II, Section 32 of the State Constitution which provided that—

No Convention or General Assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States; unless such Convention or General Assembly shall have been elected after such amendment is submitted. (emphasis added)

Obviously, the Tennessee Legislature of 1911 could not have been elected after the submission of the certified copy of United States Senate Joint Resolution No. 40 which had just been transmitted on January 13th, 1911.

The next day, S. J. R. No. 14 was referred to the Committee on Constitutional Amendments. (SJ at 122) The Index in the journal indicates that this entry represents the adoption of S. J. R. No. 14.

Over two months later, on April 6th, 1911, S. J. R. No. 14 was favorably reported out of committee as amended, though no indication is given about the amendment to the

resolution. (SJ at 529) S. J. R. No. 14 was then taken up for a vote on the amendment to the resolution—

By consent of the Senate, Mr. Adams was allowed to call up Senate Joint Resolution No. 14—To ratify the proposed income tax amendment to the Federal Constitution.

The Committee on Constitutional Amendments offered an amendment to the resolution in the nature of a substitute, which was, on motion, adopted by the following vote:

Ayes . . . 24

Noes . . . 4

Senators voting aye were: . . . -24.

Senators voting no were: . . . -4. (SJ at 529)

This journal entry was listed in the Index of the journal under "Other Action," which was logical, since it may be seen that the above recorded vote was upon an amendment to the resolution and not upon the resolution itself.

That same day, however, S. J. R. No. 14 was found correctly engrossed and ready to transmit to the House. (SJ at 539) If the Senate considered the previous vote on an amendment to S. J. R. No. 14 to be a vote upon S. J. R. No. 14 itself, that determination was premature at best, in that S. J. R. No. 14 was never properly read in the Senate in violation of Article II, Section 18 of the State Constitution which provided that—

Every bill shall be read once, on three different days, and be passed each time in the House where it originated, before transmission to the other. No bill shall become a law, until it shall have been read and passed, on three different days in each house, and shall have received, on its final passage in each house, the assent of a majority of all the members, to which that house shall be entitled under this constitution;

S. J. R. No. 14 not only was required to be read on three different days, it was necessary that, at each of those readings, the resolution be passed by vote to the next reading.

Nevertheless, S. J. R. No. 14 was sent on to the House for concurrence. (HJ at 718)

The following day, the 7th of April, S. J. R. No. 14 was taken up in the following manner—

Senate Joint Resolution No. 14—Relative to income tax.

Mr. Worley moved that the resolution be rejected.

On motion of Mr. Puryear, the motion to reject was tabled.

Mr. Worley moved that the resolution be tabled.

The motion to table failed by the following vote:

Ayes . . . 9

Noes . . . 77

Representatives voting aye were: . . . -9.

Representatives voting no were: . . -77.

Thereupon the resolution was concurred in by the following vote:

Ayes . . . 82

Noes . . . 3

Representatives voting aye were: . . . -82.

Representatives voting no were: . . . -3.

A motion to reconsider was tabled. (HJ at 769)

As in the Senate, the passage of S. J. R. No. 14 in the House violated Article II, Section

18 of the Tennessee State Constitution. A message was transmitted to the Senate, that same day, informing them that the House had concurred in S. J. R. No. 14. (SJ at 592) S. J. R. No. 14 was then found correctly enrolled and sent to the President of the Senate for his signature. (SJ at 595) The President then announced the signing of S. J. R. No. 14. (SJ at 596) On the 10th, S. J. R. No. 14 was sent back to the House for the signature of the Speaker of the House. (HJ at 772) (HJ at 774)

On April 11th, Governor Hooper returned S. J. R. No. 14 to the Senate with his signature. (SJ at 639) Shortly thereafter, S. J. R. No. 14 was delivered to the Secretary of State. (SJ at 640)

Whatever form S. J. R. No. 14 may have taken, it violated Article II, Sections 28 and 29 of the Tennessee State Constitution, which provided that—

... The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem.

The General Assembly shall have power to authorize the several Counties and incorporated towns in this State, to impose taxes for County and Corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to state taxation.

The Legislature of Tennessee had the authority to levy taxes upon stocks and bonds that were not otherwise taxed according to value and the authority to confer the power to tax upon county and municipal corporations within the State according to State taxation methods. The Legislature did not have the authority to confer any other taxing powers to cause taxes to be levied upon the people of the State of Tennessee.

Accompanied by a certificate signed by Governor Hooper, the Secretary of State of Tennessee transmitted two unsigned copies of S. J. R. No. 14 to Knox. The text of that document, never having appeared in the journals, read as follows—

SENATE JOINT RESOLUTION NO. 14

WHEREAS, The Sixty-first Congress of the United States of America at its first session begun and holden at Washington, in the District of Columbia, on Monday, the 15th day of March, 1909, by joint resolution proposed an amendment to the Constitution of the United States in words and figures as follows, to wit:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid in all intents and purposes as a part of the Constitution.

“ART. XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

Now, therefore, Be it resolved by the Senate and House of Representatives of the State of Tennessee, that said amendment to the Constitution of the United States be and is hereby ratified: and Be it further resolved, That certified copies of the foregoing preamble and resolution be forwarded by His Excellency the Governor of Tennessee to the President of the United States, to the Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the House of Representatives, respectively.

Adopted April 7, 1911.
N. BAXTER, JR.,
Speaker of the Senate.
Approved, April 11, 1911.
A. M. LEACH,
BEN W. HOOPER, Governor.
Speaker of the House of Representatives.

The Solicitor of the Department of State in his memorandum of February 15th, 1913 to Knox listed the legislation of the State of Tennessee as without error. That isn't precisely true. The following changes are evident in the text of S. J. R. No. 14 as transmitted to Washington, D. C.—

1. the preamble was changed:
 - a. the phrase "to all intents and purposes" was changed to "in all intents and purposes";
 - b. the closing colon was changed to a period;
2. the designation "Article XVI." was changed to "ART. XVI".

An "error" in the designation in Delaware was duly noted by the Solicitor, while this obvious intentional change was not.

The force of the Solicitor's own words testify to the error in his assessment of S. J. R. No. 14 being without "error." Any change in the official resolution was a violation of the duty which the Tennessee Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor, in the memorandum of February 15th, 1913 responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

... under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

... Each amendment must be inserted in precisely the proper place in the bill, with the spelling and punctuation exactly the same as it was adopted by the House. Obviously, it is extremely important that the Senate receive a copy of the bill in the precise form in which it passed the House. The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must

prepare meticulously the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment exactly as agreed to, and *all punctuation must be in accord with the action taken.* (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

In a recent search of the Tennessee State Library and Archives and of the Tennessee Secretary of State's files performed by State officials, the only material found in either location which related to a resolution in ratification of the proposed Sixteenth Amendment was for House Joint Resolution No. 46 which died in both houses of the Tennessee Legislature of 1911. There is apparently no original documentation for S. J. R. No. 14.

Thus, the purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Tennessee was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 14 as received by Washington contained the following changes to the official Congressional Joint Resolution:

- a. the preamble was modified;**
- b. the designation "Article XVI." was changed to "ART. XVI.";**

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878;

3. Failure of both the House and Senate to read and pass S. J. R. No. 14 on three different days in violation of Article II, Section 18 of the Tennessee State Constitution;

4. Violation of Article II, Section 32 of the Tennessee State Constitution in that the Legislature took action upon an amendment to the United States Constitution before it was authorized to do so;

5. Violation of Article II, Sections 28 and 29 of the Tennessee State Constitution in that the Legislature did not have the authority to confer the taxing power which S. J. R. No. 14 comprehended;

6. Failure of the Senate to vote on S. J. R. No. 14.