Illinois—March 1st, 1910

The Governor of Illinois, Charles S. Deneen, delivered a message to the Illinois Legislature on the 14th of December, 1909, which contained the following remarks—

> AMENDMENT TO FEDERAL CONSTITUTION.
>
> The National Congress has adopted a joint resolution for submission to the General Assemblies of the states respecting an amendment to the Federal Constitution enabling Congress to impose an income tax. It is a disputed question whether or not such a tax should be imposed by the nation in ordinary times, but it seems to me that a nation should possess this power as one of the attributes of sovereignty. A nation which possesses the power to call upon its citizens for service on the battlefield, should possess the power to impose an income tax whenever it may be necessary to meet national emergencies. (SJ at 23) (emphasis added)

Governor Deneen urged ratification of the proposed Sixteenth Amendment so that, during a national emergency, Congress could impose an income tax.

In response to the above, Illinois Senator Hurburgh introduced a resolution to the Senate on January 18th, 1910—

> SENATE JOINT RESOLUTION NO. 7.
>
> WHEREAS, The Congress of the United States has proposed to the several states the following amendment to the Federal Constitution, viz.:
>
> "Article 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"; therefore, be it
>
> **Resolved, By the Senate, the House of Representatives concurring therein,** That the State of Illinois, by its Legislature, ratifies and assents to this amendment. (SJ at 197)

Upon Mr. Hurburgh's own motion, consideration of this motion was postponed until that afternoon as a special order. Also postponed were the first reading, the order for printing and the referral to committee required by Senate Rule 47. (SR at 57) "That afternoon" was delayed until the 9th of February, but when the resolution was brought up, the vote upon S. J. R. No. 7 came very quickly thereafter—

> The President of the Senate announced the special order for this hour to be the consideration of the following resolution offered by Mr. Hurburgh, January 18, 1910 . . .
>
> And the question being, "Shall the resolution be adopted?" and the yeas and nays being called, it was decided in the affirmative by the following vote: Yeas, 41. (SJ at 199)

This vote was taken in violation of Article IV, Section 13 of the Illinois State Constitu-

tion of 1870. S. J. R. No. 7 was not read at large on three different days in the Senate, nor was it printed before the vote was taken on its final passage.

In *Ryan v. Lynch*, 68 Ill. 160, a certificate of the Secretary of State purporting to give full and true copies of the journals of the senate and house relating to the passage of the bill was in evidence and did not show that the bill was read three times on three different days nor passed on a vote of the ayes and noes, as required by the constitution, and the court said that the bill never became a law and was as completely a nullity as if it had been the act or declaration of an unauthorized assemblage of individuals.

In *People v. Knopf*, 198 Ill. 340, the court again stated the rule that if the facts essential to the passage of a law are not set forth in the journal the conclusion is that they did not transpire, and if the journal fails to show that an act was passed in the mode prescribed by the constitution the act must fail.

Previously, in the Illinois House, Representative Dillon had offered the following resolution on January 4th, 1910—

HOUSE JOINT RESOLUTION NO. 1.

Resolved, By the House of Representatives of the State of Illinois, the Senate concurring therein, That the amendment proposed by the Congress of the United States to the Constitution of the United States in the words and figures following:

"Article 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 census or enumeration."

Be and the same is hereby ratified by the Legislature of the said State of Illinois.

The foregoing resolution was referred, under the rules, to Committee on Judiciary. (HJ at 76)

The House was, thus, in violation of their procedural Rule 20 (HR at 89), having complied in only one of their duties in the introduction of resolutions—referral to committee.

The Committee on Judiciary reported H. J. R. No. 1 back on February 2nd, with a recommendation for adoption and their report was ordered to lie on the Speaker's table for one day. (HJ at 222)

On the 15th of February, with H. J. R. No. 1 still lying on the Speaker's table, the House received the following message from the Senate—

A message from the Senate by Mr. Osgood, Assistant Secretary: Mr. Speaker—I am directed to inform the House of Representatives that the Senate has adopted the following preamble and joint resolution, in the adoption of which I am instructed to ask the concurrence of the House of Representatives, towit (sic):

SENATE JOINT RESOLUTION NO. 7.

WHEREAS, The Congress of the United States has proposed to the several states, the following amendment to the Federal Constitution, viz.:

"Article 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"; therefore, be it

Resolved, By the Senate, the House of Representatives concurring therein, That the State of Illinois, by its Legislature, ratifies and assents to this amendment.

Adopted by the Senate February 9, 1910.

J. H. Paddock,

Secretary of the Senate.

The foregoing Senate Joint Resolution No. 7 was ordered to lie on the Speaker's table. (HJ at 230)

On March 1st, 1910, S. J. R. No. 7 was quickly taken up for a vote—

> The Speaker laid before the House, Senate Joint Resolution No. 7 . . .
> Whereupon, Mr. Dillon moved that the House concur with the Senate in the adoption of the foregoing resolution.
> And on that motion a call of the roll was had, resulting as follows: Yeas, 80 [83]; nays, 8. (HJ at 318)

This vote did not meet the requirement of the Illinois State Constitution, Article IV, Section 12 which provided that—

> . . . no bill shall become a law without the concurrence of a majority of members elected to each house.

Of the 153 Representatives in the Illinois House, only 83, or 54.2%, voted to ratify the proposed Sixteenth Amendment.

The official version of S. J. R. No. 7 is recorded under the 46th General Assembly/Box 438-No.16179 of the record series, **Enrolled Acts** of the General Assembly (RS103.30)," as well as in *Laws of the State of Illinois Enacted by the 46th General Assembly at the Special Session* at 94—

> (Senate Joint Resolution No. 7.)
> WHEREAS, The Congress of the United States has proposed to the several states the following amendment to the Federal Constitution, viz.:
> "Article 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 renumeration.
> **Therefore be it resolved by the Senate, the House of Representatives concurring therein,** That the State of Illinois, by its legislature, ratifies and assents to this amendment.

This is the version of the resolution as received by Secretary of State of the United States, Philander Knox which was unsigned.

S. J. R. No. 7 contains the following changes to the official text of the Congressional Joint Resolution—

1. the word "States" was changed to a common noun;
2. the word "enumeration" was changed to the word "renumeration".

In addition, the preamble from the Congressional Joint Resolution was completely deleted.

Any modifications to the official Congressional Joint Resolution were a violation of the duty which the Illinois Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether 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—