

## Kansas—February 18th, 1911

On January 10th, 1911, the Governor of the State of Kansas, W. R. Stubbs, delivered his address to the Legislature by his private secretary. Included in that address was a short comment on the proposed Sixteenth Amendment—

### FEDERAL INCOME TAX.

1. The sixty-first Congress of the United States submitted the following joint resolution, proposing an amendment to the constitution of the United States: "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 to all intents and purposes as a part of the Constitution: Article 16. 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 enumeration."

2. I recommend that your honorable body ratify this proposed amendment to the constitution of the United States at as early a date as possible. (HJ at 19)

The record shows no further indication that the actual certified copy of Congressional Joint Resolution No. 40 was transmitted to the Kansas legislators. Later, on the day of the Governor's address, Senate concurrent resolution No. 2, entitled "Relating to the adoption of the sixteenth amendment to the constitution of the United States," was introduced in the Senate and was read the first time. (SJ at 14)

On the 12th, the following resolution was considered—

By Senator Glenn: Senate resolution No. 2, Approving the sixteenth amendment to the constitution of the United States. Referred to the Judiciary Committee. (SJ at 25)

This resolution, referred to the Judiciary Committee, did not have the same title as that concurrent resolution which was introduced by Senator Glenn, two days previous. On the 17th of January, S. C. R. No. 2 was reported out of the Judiciary Committee favorably. (SJ at 52) Two days later, a S. C. R. No. 2 with yet another title was brought up for consideration as a special order, even though no special order made on S. C. R. No. 2 had ever been recorded in the journal.

The president announced that the hour, 10:30 A. M., having arrived for the consideration of the special order, Senate concurrent resolution No. 2, Relating to the sixteenth amendment to the constitution of the United States, the same would now be considered. The resolution was read section by section. A roll call upon the resolution was demanded and had, with the following result:

Yeas: . . . 25.

Nays: . . . 14.

Absent (by leave), Chapman.

A majority having voted in favor of the adoption of the concurrent resolution, the same was adopted. (SJ at 68)

The number of Yeas recorded was insufficient to pass a resolution proposing the ratification of an amendment to the federal Constitution. A two-thirds majority would have required two-thirds of all the members elected to the Senate (that total of the members being 40), or 27 voting in favor. (reference Art. 2, Sec. 131, Kansas State Constitution) By contrast, the House in voting for their own substitute S. C. R. No. 2 stated the following on the record—

A constitutional two-thirds majority having voted in the affirmative, the resolution was adopted. (HJ at 493) (emphasis added)

The deficiency in the vote in the Kansas Senate is documented in Senate Document No. 240, 71st Congress. (See Appendix)

The Senate then transmitted S. C. R. No. 2 to the House, although it is not known which of the several different titles was transmitted. (HJ at 100) On the 20th, without S. C. R. No. 2 having been recorded as read the first time, the following took place—

The following Senate bills were read the second time and referred to committees as follows:

\* \* \*

Judiciary.

Senate concurrent resolution No. 2. (HJ at 113)

On the 24th of January, the following report of the Committee on Judiciary was made, recommending—

. . . that the following be substituted for . . . Senate concurrent resolution No. 2:

“Relating to a certain proposed amendment to the constitution of the United States:

“Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:

“WHEREAS, The Congress of the United States has submitted the following proposed amendment to the constitution of the United States, to the legislatures of the several states of the Union for their ratification, 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 of the State of Kansas, the House of Representatives concurring, That the foregoing proposed amendment to the constitution of the United States be and the same is hereby ratified.

Be it further resolved, That a copy of this resolution, duly certified by the presiding officers of the two Houses of the Legislature, the chief clerk of the House and secretary of the Senate, by the governor of the state of Kansas, certified under the great seal of the state of Kansas, to the President of the United States, and to the president of the Senate and speaker of the House of Representatives of the Congress of the United States.”

And that the same be adopted as substituted, as Senate concurrent resolution

No. 2.

CLIFF MATSON, Chairman.  
(HJ at 150)

It is not certain what changes were made between whatever Senate version of S. C. R. No. 2 was sent to the House and the foregoing House version, since the Senate version of S. C. R. No. 2 is apparently not in the archives and was never printed in full in the journal. The House version, however, is not identical to that version which was sent to Washington, D. C. nor is it identical to that version which originally came from Washington in the certified copy of the Congressional Joint Resolution.

On February 10th, the House substitute for Senate concurrent resolution No. 2 was made a special order for February 15th, in the committee of the whole. (HJ at 381) There is no indication that any action occurred on the substitute for S. C. R. No. 2 in the House on the 15th. On the 18th, the substitute came up for consideration—

Substitute for Senate concurrent resolution No. 2 was read the third time. The question being, Shall the substitute for Senate concurrent resolution No. 2 be adopted? the roll was called, with the following result: Yeas 81, nays 0; absent or not voting, 44.

Members voting in the affirmative were: . . .

Members absent or not voting were: . . .

A constitutional two-thirds majority having voted in the affirmative, the resolution was adopted. (HJ at 493)

The true constitutional majority would have been 84, two-thirds of 125, the latter figure representing the total of all members elected to the House. (see above reference in Senate)

In addition, in contrast to the Senate record, this House substitute was not read section by section as required by Article 2, Section 133 of the Kansas State Constitution which provided that—

Every bill shall be read on three separate days in each house, unless in case of emergency. Two-thirds of the house where such bill is pending may, if deemed expedient, suspend the rules; but the reading of the bill by sections on its final passage shall in no case be dispensed with.

The House then sent a message to the Senate informing it of the House action on substitute S. C. R. No. 2, along with the resolution. (SJ at 477)

On March 2nd, without any record of Senate consideration of the House substitute for S. C. R. No. 2, or of a vote, the following message was sent to the House from the Senate—

MR. SPEAKER: I am directed by the Senate to inform the House that . . .

\* \* \*

. . . the Senate has concurred in the House amendment to Senate concurrent resolution No. 2. (HJ at 666)

The failure of the Senate to record a vote on the amended version of their S. C. R. No. 2 was in violation of Article 2, Section 128 of the Kansas State Constitution which provided that—

Each house shall keep and publish a journal of its proceedings. The yeas and

nays shall be taken and entered immediately on the journal, upon the final passage of every bill or joint resolution. . . .

Furthermore, all of the versions of S. C. R. No. 2 were in violation of Article 11, Section 205 of the Kansas State Constitution which provided that—

No tax shall be levied except in pursuance of a law, which shall state distinctly the object of the same; to which object only such tax shall be applied.

In other words, no authorization could be given to access the public's money in Kansas unless the object of the funds to be raised by any such authorization were specifically stated. The proposed amendment, of course, stated no such specific object.

On the 7th of March, the Governor, again through his private secretary, notified the Senate that he had approved S. C. R. No. 2. (SJ at 777)

The following April 4th, an unsigned copy of S. C. R. No. 2 was sent to Washington, D. C.—

#### SENATE CONCURRENT RESOLUTION NO. 2.

Relating to a certain proposed amendment to the constitution of the United States.

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:

WHEREAS, The Congress of the United States has submitted the following proposed amendment to the constitution of the United States, to the Legislatures of the several states of the Union, for their ratification, 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 of the State of Kansas, the House of Representatives concurring, That the foregoing proposed amendment to the constitution of the United States be and the same is hereby ratified.

Be it further resolved, That a copy of this resolution, duly certified by the presiding officers of the two Houses of the Legislature, the chief clerk of the House and secretary of the Senate, by the governor of the state of Kansas, certified under the great seal of the state of Kansas, to the President of the United States, and to the President of the Senate and Speaker of the House of Representatives of the Congress of the United States.

I hereby certify that the above concurrent resolution originated in the Senate, and passed that body

January 19th, 1911.

House Amendment concurred in 3/2/1911.

Richard J. Hopkins,  
President of the Senate.

Walter A. Johnson,  
Secretary of the Senate.

Passed the House February 18, 1911.

G. H. Buckman,  
Speaker of the House.

Earl Akers,  
Chief Clerk of the House.

Approved March 6, 1911.

W. R. Stubbs,  
Governor.

Accompanying the unsigned copy of S. C. R. No. 2 was a certificate from Charles H. Sessions, the Secretary of State, which stated—

I, CHAS.H.SESSIONS, Secretary of State of the State of Kansas do hereby certify that the following and hereto attached is a true copy of Senate Concurrent Resolution No. 2, relating to a certain proposed amendment to the constitution of the United States, passed by the Legislature of the State of Kansas and approved by the Governor March 6, 1911.

The title of S. C. R. No. 2, in this certificate, is the same as that which was substituted for the original S. C. R. No. 2. Additionally, the following changes are evident in S. C. R. No. 2 from the official Congressional Joint Resolution—

1. the official preamble was discarded
2. word "States" was changed to a common noun

Each such change constituted a violation of the duty which the Kansas 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—

. . . 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 amendment to the Supreme Law of the land.

**The purported ratification of the Legislature of the State of Kansas is, therefore, void because of the following deficiencies in the process—**

- 1. Failure to concur in Congressional Joint Resolution No. 40 as passed by Congress in that S. C. R. No. 2 contains the following changes:**
  - a. the official preamble was discarded;**
  - b. word "States" was changed to a common noun;**
- 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 to pass S. C. R. No. 2 by a Constitutional majority in either house;**
- 4. Failure to record a vote on substitute S. C. R. No. 2 in the Senate in violation of Article 2, Section 128 of the Constitution of the State of Kansas;**
- 5. Failure to specify the object of the tax distinctly, in violation of Article 11, Section 205 of the Kansas State Constitution.**