

Louisiana—July 1st, 1912

On May 16th, 1912, a resolution to ratify the proposed Sixteenth Amendment was introduced into the Louisiana State Legislature—

House Concurrent Resolution No. 8—

By Mr. Johnson:

Ratifying the Sixteenth Amendment to the Constitution of the United States.

Whereas, The Congress of the United States on the — day of July, 1909, adopted a joint resolution proposing an amendment to the Constitution of the United States as follows:

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 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.

And the foregoing amendment having been laid before the General Assembly of the State of Louisiana for consideration and action; now, therefore, be it

Resolved by the General Assembly of the State of Louisiana, That the foregoing amendment to the Constitution of the United States, be and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.

(2) That the Governor of the State of Louisiana, is hereby requested to forward to the President of the United States and to the Secretary of State of the United States an authentic copy of the foregoing joint resolution.

Lies over under the rules. (HJ at 43)

There is no indication in the journals whether or not the Governor of Louisiana transmitted a certified copy of the Congressional Joint Resolution to the Louisiana Legislature. An acknowledgment letter, dated July 31st, 1909, was sent to Philander Knox, the Secretary of State of the United States, by the Governor's private secretary; however, there was no indication of whether the Governor was going to transmit the copy he received to the Legislature. If the Legislature did, in fact, receive a copy of the Congressional Joint Resolution, the Louisiana legislators apparently were unable to correctly decipher any date of passage of the Congressional Joint Resolution on the copy of the resolution—the date on H. C. R. No. 8 is misrepresented as "the — day of July, 1909" on all versions of H. C. R. No. 8 whether in the journals, the archival original or the published laws.

Furthermore, every version of H. C. R. No. 8 contains errors of punctuation in both the preamble of the Congressional Joint Resolution (comma added after "assembled"; parentheses removed from around the phrase "two-thirds of each House concurring therein") and in the wording of the proposed amendment (comma removed after the word "incomes") in violation of the duty of the Louisiana Legislature to concur only in the exact wording as proposed in U. S. 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 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. The standard of compliance with which the States are held is 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 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 concur exactly and precisely with Congress in a proposed Constitutional amendment.

On May 20th, H. C. R. No. 8 was referred to the Committee on Federal Relations. (HJ at 61) On the 29th of that month, H. C. R. No. 8 was favorably reported out of committee, (HJ at 157) and on the next day, it was taken up for a vote—

Mr. Johnson moved that the resolution be adopted.

The yeas and nays were called for.

The yeas and nays were ordered.

The roll being called on the adoption of the resolution, resulted as follows:

YEAS.
* * *
Total-101.
NAYS.
* * *

Total-6.
ABSENT.
* * *
Total-9.

And the resolution was adopted.

Mr. Johnson moved to reconsider the vote by which the resolution was adopted, and, on his own motion, the motion to reconsider was laid on the table. (HJ at 177)

Two days after the vote in the House on H. C. R. No. 8, it was transmitted to the Senate. (SJ at 147) On June 3rd, H. C. R. No. 8 had its first reading and was referred to the Committee on Federal Relations. (SJ at 172) On June 13th, H. C. R. No. 8 was favorably reported. (SJ at 259) The next day, H. C. R. No. 8 was read the second time and was passed to a third reading. (SJ at 291)

On the 18th of June, H. C. R. No. 8 was taken up for consideration on its third reading and on a successful motion it was recommitted to the Committee on Federal Relations. (SJ at 325) H. C. R. No. 8 was reported out of committee favorably again on the 26th of June. (SJ at 451) The next day, when H. C. R. No. 8 came up again for a vote, an attempt was made to substitute a joint resolution for a State income tax for H. C. R. No. 8, which failed. Then, an attempt was made to indefinitely postpone consideration of H. C. R. No. 8, which also failed, and the resolution was passed to a third reading, (SJ at 539) which took place on June 28th—

The Concurrent Resolution was read in full.

Mr. Leon R. Smith moved the final passage of the concurrent resolution.

The roll was called with the following result:

YEAS.
* * *
Total-30.
NAYS.
* * *
Total-8.
ABSENT.
* * *
Total-3.

Mr. Parkerson changed his vote from "no" to "yes" with a view of making a motion to reconsider the vote by which the concurrent resolution was concurred in.

And the Concurrent Resolution was concurred in.

Mr. Leon R. Smith moved to reconsider the vote by which the concurrent resolution was concurred in and on his own motion the motion to reconsider was laid on the table. (SJ at 554)

Shortly thereafter, the Senate sent a communication to the House informing it of the Senate vote on H. C. R. No. 8. (HJ at 756) On July 1st, the House Committee on Enrollment reported that H. C. R. No. 8 had been duly and correctly enrolled. (HJ at 809) That same day, the following message was sent to the Senate—

I am directed to inform your honorable body that the Speaker of the House of Representatives has signed the following enrolled House Bills and House Concurrent resolutions . . . (SJ at 590)

H. C. R. No. 8 was duly signed by the Speaker, the President of the Senate and the

Governor, on July 1st, but the copy sent to Washington was unsigned in violation of Congressional Concurrent Resolution No. 6 and of Section 205 of the Revised Statutes of 1878.

Finally, H. C. R. No. 8 violated Articles 224 and 227 of the Louisiana State Constitution. Article 224 provided that—

The taxing power may be exercised by the General Assembly for State purposes, . . . (emphasis added)

Article 227 provided that—

The taxing power shall be exercised only to carry on and maintain the government of the State and the public institutions thereof, to educate the children of the State, to preserve the public health, to pay the principal, and interest of the public debt, to suppress insurrection, to repel invasion or defend the State in time of war, to provide pensions for indigent Confederate soldiers and sailors, and their widows, to establish markers or monuments upon the battlefields of the country commemorative of the services of Louisiana soldiers on such fields, to maintain a memorial hall in New Orleans for the collection and preservation of relics and memorials of the late civil war, and for levee purposes, as hereinafter provided. (emphasis added)

Obviously, H. C. R. No. 8 was a grant of power far outside these State Constitutional limits.

The ratification of the proposed Sixteenth Amendment in Louisiana was deficient for the following reasons—

1. Apparent lack of jurisdiction of the certified copy of the Congressional Joint Resolution;

2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. C. R. No. 8 contained the following changes to the official Congressional Joint Resolution:

a. the preamble was modified;

b. the comma following the word "incomes" was deleted;

3. 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;

4. Violation of Articles 224 and 227 of the Louisiana State Constitution in that H. C. R. No. 8 exercised taxing power outside of the Constitutional constraints.