

## Missouri—March 16th, 1911

The Governor of Missouri received a certified copy of the Congressional Joint Resolution on September 3rd, 1909. In sending Philander Knox, the Secretary of State of the United States, an acknowledgment, the Governor stated that he would submit that copy to the Missouri Legislature at the 1911 session. There is, however, no apparent record of that certified copy being transmitted as such.

On February 15th, 1911, Senator McAllister introduced Senate Joint and Concurrent Resolution No. 8, entitled—

A joint and concurrent resolution of the House and Senate ratifying the proposed amendment to the Constitution of the United States submitted by the Sixty-first Congress; Which was read first time and 400 copies ordered printed. (SJ at 262)

That resolution read as follows—

WHEREAS, the Congress of the United States, at the session thereof begun and holden in the city of Washington on Monday, the fifteenth day of March A.D. nineteen hundred and nine, did propose in the manner and form provided in the Constitution, as an amendment to the Constitution of the United States the following:

ARTICLE XVI. The congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration, and did submit the same to the legislatures of the several states for ratification;

Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further,

Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington. (archives)

In the last paragraph, the word "given" had been scratched out, and the word "transmitted" substituted. A deliberate change. In the body of Article XVI, the word "lay" was scratched out, and the word "levy" substituted. Also, a deliberate change. This was in addition to the discarding of the preamble, changing the word "Congress" and the word "States" to common nouns and to the appending of the phrase "and did submit the same to the legislatures of the several states for ratification; Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same

may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further, Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington" by virtue of the comma inserted after the word "enumeration".

These deliberate changes were a violation of the duty which the Missouri 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.

S. J. C. R. No. 8, proposing an amended Sixteenth Amendment, made its way through the Senate in uneventful fashion. On the 21st of February, No. 8 was "taken up, read second time and referred to Committee on Ways and Means." (SJ at 367) On the 22nd, it was reported out of the Committee on Ways and Means, which recommended that the resolution pass. On the 27th, the resolution "was taken up, and on motion of Senator Humphrey, ordered engrossed and printed." (SJ at 443) On March 3rd, it was found to be correctly engrossed. (SJ at 544) And, finally, on March 7th, No. 8 "(w)as taken up, and on motion of Senator McAllister, put upon its third reading, and passed . . ." The vote

in the Senate was 30 in favor and none against. (SJ at 606)

The President declared the bill passed.

The title was read and agreed to.

Senator McAllister moved that the vote by which the bill passed be reconsidered.

Senator Welch moved that the motion lie on the table.

The latter motion prevailed.

No. 8 went on to consideration by the House. On March 8th, it was announced as having passed the Senate and recommended to pass the House. (HJ at 857) It was also read for the first time. On the 10th, "Senate joint and concurrent resolution No. 8 was read second time and referred to Committee on Ways and Means." (HJ at 953) On March 14th, the House Committee on Ways and Means recommended that the resolution pass. (HJ at 1029) On the 16th, a motion to substitute House Joint and Concurrent Resolution No. 16 for Senate Joint and Concurrent Resolution No. 8 was passed. The resolution, as amended, was read the third time and was passed by a vote of 113 in favor, 9 against, 26 absent. Then the title to S. J. C. R. No. 8 was read and agreed to. Representative Hull made a motion that the vote by which S. J. C. R. No. 8 had passed be reconsidered, and that that motion lie on the table, which motion carried. (HJ at 1117)

On March 17th, Senate Joint and Concurrent Resolution No. 8 was presented in the Senate with the amendment to title from the House (SJ at 843, 846), however, the amendment was not set forth in full, nor was any vote recorded as having been taken upon the resolution as amended in violation of Article IV, Section 32 of the Missouri State Constitution of 1875 which provided—

No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; . . .

On the 20th of March, No. 8, along with other bills, was "taken up, and the President announced that the same had passed both branches of the General Assembly; that all other business would be suspended; that the bills be read at length, and that unless objection be made he would sign the same, to the end that they become laws, and directed the Secretary, and no objection being made, the presiding officer, in the presence of the Senate, in open session, and no business intervening, affixed his signature thereto." (SJ at 1035)

Later that day, the same procedure was followed in the House—

All other business was suspended, Senate joint and concurrent resolution No. 8 . . . (others) were read at length, and, no objections being made, the Speaker, in open session, in the presence of the House, affixed his signature thereto, as provided by the Constitution. (HJ at 1383)

The title of the certified copy of S. J. C. R. No. 8 received at Washington reads—

A joint and concurrent resolution of the house and senate ratifying the proposed amendment to the Constitution of the United States, submitted by the sixty-first Congress:

Note that the words "house," "senate" and "sixty-first" are all changed to common

nouns from the original Senate title, confirming that the Senate resolution had been amended in the House.

The copy of S. J. C. R. No. 8 transmitted to Washington, D. C. was in proper order as to the signatures by both presiding officers; however, the Governor's signature is absent as is any record in the journals of presentation to the Governor. This was a violation of Article V, Section 14 of the Missouri State Constitution which required that—

Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this Constitution, shall be presented to the Governor, and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill . . .

Finally, S. J. C. R. No. 8 was passed in violation of Article X, Section 1 of the State Constitution which provided that—

The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporation, under authority granted to them by the General Assembly, for county and other corporate purposes. (emphasis added)

Obviously, S. J. C. R. No. 8 granted a taxing power completely outside of the jurisdiction of the General Assembly of the State of Missouri and of the State itself.

The ratification of the State of Missouri was, thus, 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. C. R. No. 8 contains the following deliberate changes:

- a. the official preamble was discarded;
- b. the word "lay" was changed to "levy";
- c. the word "Congress" was changed to a common noun;
- d. the word "States" was changed to a common noun;
- e. the phrase "and did submit the same to the legislatures of the several states for ratification; Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further, Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington" was appended to S. J. C. R. No. 8 by virtue of the comma inserted after the word "enumeration";

2. S. J. C. R. No. 8 was amended as to title in its final form in violation of Article IV, Section 32 of the Missouri State Constitution;

3. Though the certified copy of S. J. C. R. No. 8, as transmitted to Washington, D. C., was proper by appearances, the failure of the Legislature to submit the resolution to the Governor violated Article V, Section 14 of the Missouri State Constitution;

4. Violation of Article X, Section 1 of the State Constitution in granting taxing powers which the Legislature had not the authority to grant.