

New Mexico—February 5th, 1913

Although no transmittal of the certified copy of the Congressional Joint Resolution to the Legislature of New Mexico was ever recorded, on January 16th, 1913, the following three Senate Joint Resolutions were introduced—

Senate Joint Resolution No. 1, Ratifying an Amendment Proposed by the Sixty-First Congress of the United States of America on the 15th day of March, 1909, to the Constitution of the United States and Designated as Article XVI. Introduced by Mr. Evans. Read first and second time by title, ordered translated and printed, and referred to the Committee on Constitutional Amendments.

Senate Joint Resolution No. 2, Ratifying a proposed amendment to the Constitution of the United States authorizing Congress to lay and collect taxes on income. Introduced by Mr. Hinkle. (SJ orig at 10)

Read first and second time by title, ordered translated and printed, and upon motion by Mr. Holt referred to the Committee on Constitutional Amendments.

Senate Joint Resolution No. 3, Ratifying the proposed Sixteenth Amendment to the Constitution of the United States. Introduced by Mr. Clark. Read first and second time by title, ordered translated and printed, and referred to the Committee on Constitutional Amendments. (SJ orig at 11)

On the 30th of that month, without any intervening action on any of the Senate Joint Resolutions introduced on the 16th, the following took place—

By unanimous consent the Senate reverted to bills on third reading and the following was taken up for consideration:

Senate Substitute for Senate Joint Resolution No. 3 read a third time in full preparatory to its passage.

Mr. Holt moved that Senate Substitute for Senate Joint Resolution No. 3, do now pass, and the roll call resulted as follows . . .

The roll call showed 19 Ayes, 1 Nay and 4 paired (4 pairs of Senators, wherein one Senator in each pair was absent and showed that he would vote in the opposite manner as the Senator in the pairing who was present).

The result being in the affirmative, the President declared Senate Substitute for Senate Joint Resolution No. 3, to have passed the Senate. (SJ at 59)

There had been no previous indication that S. J. R. No. 3 was being amended or that any amendments to S. J. R. No. 3 had been approved by the Senate and there was no subsequent action on Senate Substitute for Senate Joint Resolution No. 3 in the Senate.

The Constitution of the State of New Mexico contains the following legislative provisions in Article IV—

Section 15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose. . . . No bill, except bills to provide to the public peace, health and safety, and the codification or revision of the laws, shall become a law unless it has been printed, and read three different times in each house, not more than two of which readings shall be on the same day, and the third of which shall be in full.

Section 21. Any person who shall, without lawful authority, materially change or alter, or make away with, any bill pending in or passed by the legislature, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one year nor more than five years.

A substitute resolution is a resolution which is substituted for the original resolution and is different than, or amended from, the original resolution. No indication was ever given in the Senate journal of an amendment to, or substitution for, S. J. R. No. 3. It cannot be determined whether S. J. R. No. 3 was altered or amended in violation of Article IV, Section 15 because the original version of S. J. R. No. 3 is not printed in full in the journals and the archival original is also not available. If that resolution was, in fact, in violation of Article IV, Section 15, whoever amended S. J. R. No. 3 was guilty of a violation of Section 21 and, thus, of a felony.

Immediately after the purported passage of Senate Substitute for Senate Joint Resolution No. 3 in the Senate, that resolution was not "enrolled and engrossed," nor was it "read publicly in full" in the Senate, nor was it "signed by the presiding officer" of the Senate "in open session," nor was that "fact of such reading and signing ... entered on the journal," all in violation of Article IV, Section 20 which provided that—

Immediately after the passage of any bill or resolution, it shall be enrolled and engrossed, and read publicly in full in each house, and thereupon shall be signed by the presiding officers of each house in open session, and the fact of such reading and signing shall be entered on the journal. No interlineation or erasure in a signed bill, shall be effective, unless certified thereon in express terms by the presiding officer of each house quoting the words interlined or erasure be publicly announced in each house and entered on the journal.

On February 3rd, a message was sent to the House which reported that Senate Substitute for Senate Joint Resolution No. 3 had passed the Senate. The following action on Senate Substitute for S. J. R. No. 3 then took place immediately in the House—

Upon motion by Mr. Clancy the rules were suspended and Senate Substitute for Senate Joint Resolution No. 3 was taken up and read in full.

Mr. Clancy moved the adoption of the resolution; roll call ordered and resulted as follows . . .

(36 Ayes, no Nays)

Whereupon the Speaker declared Senate Substitute for Senate Joint Resolution No. 3 to have been unanimously adopted. (HJ at 63 & 64)

A suspension of rules in the New Mexico Legislature cannot suspend the provisions of the New Mexico State Constitution for the reading of bills three times, since there is no clause in Article IV, Section 15 allowing for such a suspension. Therefore, the House violated Section 15 by failing to read S. Sub. S. J. R. No. 3 three times as required. As in

the Senate, there was no action taken in the House subsequent to the vote on S. Sub. S. J. R. No. 3 and all the Constitutional violations which applied in the Senate applied in the House.

Since the full text, either in English or as translated into Spanish, of neither S. Sub. S. J. R. No. 3 nor the original resolution ever appeared in either journal of the New Mexico Legislature, it is uncertain exactly upon what the legislators in New Mexico voted. However, what appeared in Washington, D. C. on or about February 5th, 1913 were signed copies of the following—

1. A Certificate of Comparison from Antonio Lucero, the Secretary of State of New Mexico, dated February 5th, 1913, for "SENATE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 3" which contained the Secretary's following sworn statement—

. . . I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

There is no indication given in this statement that the accompanying copy of the resolution was that which was actually passed by the New Mexico Legislature.

2. A copy of the resolution signed by the President of the Senate, the Chief Clerk of the Senate, the Speaker of the House, the Chief Clerk of the House, and the Governor—

SENATE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 3
Ratifying an Amendment Proposed by the Congress of the United States of America to the Federal Constitution.

Whereas, the Congress of the United States of America 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 Legislature of the State of New Mexico, that the State of New Mexico, by its Legislature, ratifies and assents to this amendment.

This is the wording which also appears in the publication, *Laws of the State of New Mexico*, for the legislative session of the New Mexico Legislature of January 14th, 1913 to March 3rd, 1913. The Solicitor's memorandum of February 15th, 1913 indicates that New Mexico was one of only four States the resolution of which contained no "errors." While the wording of the amendment itself contains no discrepancies from the original and official Congressional Joint Resolution, the original preamble was discarded. As the preamble to the Constitution of the United States itself explains the intent of the framers of that instrument, so does the preamble to a resolution proposing an amendment to that Constitution. It is impossible to give assent to the wording without also having given assent to the intent. And as the various original thirteen States had to agree to the preamble, the statement of intent, as well as to the body of the Constitution, so do all States in any subsequent modification of that Constitution have to agree to the statement of intent of any proposed amendment.

Thus, even changes in the preamble were in violation of the duty of the New Mexico Legislature 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 letter of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the 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.

The journals having given no indication that S. Sub. S. J. R. No. 3 was ever signed as required by Article IV, Section 20 of the State Constitution, coupled with the lack of any record in the journals of the text of S. Sub. S. J. R. No. 3, there is no way to tell whether the copy signed and sent to Washington was a copy of that which was supposedly passed in the Legislature.

In what was then the new State of New Mexico, the purported ratification of the Sixteenth Amendment in 1913 was deficient for the following reasons—

1. The Governor never made any apparent transmittal of the Congressional Joint Resolution to the Legislature leaving the Legislature without jurisdiction to act (see Kentucky);

2. As voted upon in the Senate, S. J. R. No. 3 was amended in potential violation of Article IV, Sections 15 and 21 of the New Mexico State Constitution;

3. After the vote in the Senate upon S. Sub. S. J. R. No. 3, the provisions of Article IV, Section 20 of the New Mexico Constitution requiring enrollment and engrossment, public reading in full, signing by the presiding officers and the recording of all those acts in the journal were not followed;

4. In the House, the provision in Article IV, Section 15 for the reading of the resolution three times was violated;

5. After the vote in the House, the same Constitutional provisions which were violated in the Senate were also violated in the House;

6. The New Mexico Legislature failed to assent to the intent of the proposed Sixteenth Amendment.