

## North Dakota—February 21st, 1911

The Governor of North Dakota, John Burke, delivered his address to the Twelfth Session of the Legislative Assembly on January 4th, 1911. Included was the transmittal of the Congressional Joint Resolution to the Legislature and the Governor's considered opinion on the proposed amendment—

It is my duty to submit this resolution to you for ratification or rejection. The purpose of this amendment is to enable Congress to pass a constitutional law taxing incomes . . . unless there is something objectionable in the language of the amendment itself, you ought in justice to the demands of the people of this state ratify this amendment. Some of the ablest lawyers in the land object to the broad terms in which the language giving the power to tax is couched. It is claimed that the power to levy and collect taxes on incomes from whatever source derived is too broad and that under it Congress would have the power to impair the obligations and destroy the credit of the state. While upon the other hand just as able lawyers insist that the constitution contemplates the independent exercise by the nation and the state of their constitutional powers and the obligations of the state cannot be impaired by this grant of power.

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This amendment . . . is intended to raise revenue by taxing the incomes of those who are most able to pay. This is right because those who have the most property have the most protection of the law. Next to life property is our most sacred asset. Next to life it has and should have the fullest protection of the law. It is property that gives us stable government and the taxes paid and invested for the protection of property under laws that make property safe, are good investments . . . . The ratification may be by joint resolution signed by the governor and certified to the secretary of state at Washington and to the presiding officer of each house. (emphasis added)

On the 12th of January, 1911, Representative Doyle introduced House Bill No. 1, entitled—

A joint resolution ratifying the sixteenth amendment to the constitution of the United States.

Which was read the first and second time and  
Referred to the committee on judiciary. (HJ at 67)

According to Article II, Section 63, of the Constitution of the State of North Dakota of 1889, the first and third readings of a bill must be readings at length—

Every bill shall be read through three times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill only, unless a reading at length be demanded. The first and third

readings shall be at length . . .

On the 21st of January, the committee on judiciary reported H. B. No. 1 with recommendations for amendments to be made to the bill.

Have had the same under consideration and recommend that the same be amended as follows:

In line 24 of the original bill strike out the word "general" and substitute the word "legislative," and also in the last paragraph of the original bill strike out all after the word "Washington" and insert the following words: "and to the President of the Senate and the Speaker of the House of Representatives of the National Congress."

And when so amended recommend the same do pass. (HJ at 150)

Two days later, the committee of the whole recommended the same amendments. Rep. Homnes made a motion that the report of the committee of the whole be adopted.

Which motion prevailed, and

The report of the committee was adopted. (HJ at 161)

The day following the amendment of H. B. No. 1, the 24th, the bill was found correctly engrossed. (HJ at 164) Later that same day, H. B. No. 1—

Was read the third time. (HJ at 173)

If this reading had properly been the third reading, it should have been at length by Article II, Section 63 of the North Dakota State Constitution. However, this particular reading should have been a first reading, because Article II, Section 64 reads—

No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.

Having been amended, those amendments to H. B. No. 1 should have gone back to the start of the enactment, or legislative, process and should have been published at length, according to this provision of the North Dakota State Constitution. Neither was ever done. (HJ at 173) H. B. No. 1 was set for consideration for 3 o'clock Monday, January 30th. (HJ at 173)

Later that day, Rep. Price made a motion that the vote setting H. B. No. 1 for consideration for Monday at 3 o'clock, be reconsidered. That motion was adopted and, then, Mr. Price made another motion that the rules be suspended and House Bill No. 1 be placed upon its third reading and final passage, which also passed; however, that roll call was not recorded in the journal. (HJ at 176)

House Bill No. 1.

A joint resolution ratifying the sixteenth amendment to the constitution of the United States.

Was read the third time.

The question being on the final passage of the bill.

The roll was called and there were 98 ayes, 1 nay, 4 absent and not voting.

The roll call vote was then recorded.

So the bill passed and the title was agreed to. (HJ at 176)

This third reading should have been at length according to the Constitution of North Dakota. The rules may have been suspended, however, the Constitution of North Dakota contained no provision for the suspension of the Constitutional provisions for the Legislature in a suspension of the rules. Article II, Section 48 only provided that—

Each house shall have the power to determine the rules of proceeding . . .

This did not include changing the Constitutional constraints.

On the 25th of January, the House transmitted H. B. No. 1 to the Senate. (SJ at 185) Later in the day, H. B. No. 1 was read the first time, but not at length. It was then read the second time and referred to the committee on federal relations. (SJ at 200)

The Senate committee on federal relations reported H. B. No. 1 with another recommendation to amend.

Have had the same under consideration and recommend that the same be amended as follows:

In line 1 of the engrossed bill, strike out the words "both houses of."

In line 19 of the engrossed bill, strike out the words "Senate and House of Representatives," and insert in lieu thereof the words "legislative assembly."

In line 24 of the engrossed bill, strike out the words "further be it resolved," and insert in lieu thereof the words "be it further resolved."

And when so amended recommend the same do pass.

Mr. Gibbens moved

That the report be adopted.

Which motion prevailed, and

The report of the committee was adopted. (SJ at 569)

Having been amended again, the provisions of Article II, Section 64 should have put H. B. No. 1 back at square one in the Senate, relative to the amendments; however, on the 16th—

Mr. Gibbens moved

That House Bill No. 1 be now placed on its third reading and final passage.

Which motion prevailed. (SJ at 681)

Later that day, H. B. No. 1 was read a third time, not at length, and then amended again.

Mr. Pierce moved that the bill be amended as follows:

In line 20 of the printed bill, strike out the words "The Senate and the House of Representatives," and in line 21, strike out the words "Senators" and by inserting in lieu thereof the words "Legislative Assembly."

Which motion prevailed.

The question being on the final passage of the bill.

The roll was called and there were 45 ayes, 1 nay, 3 absent and not voting.

The roll call vote was then recorded.

So the bill passed and the title was agreed to. (SJ at 684)

The foregoing amendment to H. B. No. 1 should have, again, sent H. B. No. 1, relative to its amendments, back to the beginning of the legislative process.

On the 17th of February, H. B. No. 1 was returned to the House with the amendments that the Senate had passed along with the bill. (HJ at 742) Later that day, the following

repetitive Constitutional violations took place in the House—

Mr. Doyle of Foster moved

That the House do now concur in the Senate amendments to House Bill No. 1.  
Which motion prevailed.

House Bill No. 1.

A joint resolution ratifying the sixteenth amendment to the constitution of the United States.

Was read the third time.

The question being on the final passage of the bill as amended by the Senate,  
The roll was called and there were 92 ayes, no nays, 11 absent and not

voting . . .

Roll call recorded.

So the bill passed and the title was agreed to.

Mr. Doyle of Foster moved

That the vote by which House Bill No. 1 passed be reconsidered and the motion to reconsider be laid on the table.

Which motion prevailed. (HJ at 757)

On the 20th, following the vote in the House and the Senate, H. B. No. 1 was examined and found correctly enrolled. (HJ at 856) H. B. No. 1 was then signed by the Speaker of the House, (HJ at 872) and then by the President of the Senate. (SJ at 797) H. B. No. 1 was signed by the Governor on the 21st of February.

The Department of State received a copy of the North Dakota ratification which contained no errors in the wording, punctuation or capitalization of the amendment proper. However, that copy was unsigned. A certificate accompanying H. B. No. 1 states—

I, P. D. Norton, Secretary of the State of North Dakota, do hereby certify that the foregoing joint resolution is a true and correct copy of the enrolled House Bill No. 1., duly filed in this office on the 21st day of February, A. D. 1911, at 5 o'clock P. M. of said day.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of North Dakota, this 20th day of February, A. D. 1912.

This document, however, is not signed by P. D. Norton, it is signed by his Deputy, John Andrews; nor is the Great Seal of the State of North Dakota affixed to this document. It is also a fraudulent document, the Great Seal having been affixed the day prior to receipt by the Secretary of State of North Dakota. There is no original on file of H. B. No. 1 in the North Dakota archives due to a fire which occurred on December 28th, 1930. H. B. No. 1 is also absent from the Session Laws of North Dakota which cannot be attributed to a fire. The State Historical Society has stated that the reason why H. B. No. 1 is missing from the Session Laws is that this bill of the legislature of the State of North Dakota cannot be considered a law of the state and was merely a concurrent resolution. If that statement is true, then the legislators of North Dakota, knowing full well that H. B. No. 1 would result in the levying of a tax, violated Article XI, Section 175 of the State Constitution which provided that—

No tax shall be levied except in pursuance of law . . .

The contention of the State Historical Society that a bill once passed is not a law because it is in reality a concurrent resolution begs the question, Why did Mr. Doyle, with the approval of the entire Legislature, call that concurrent resolution a bill?

Regardless of the answer, no certified copy of H. B. No. 1 was ever transmitted to Washington, of which, Philander Knox, the Secretary of State of the United States, was well aware.

The completely uncertified and unofficial copy of H. B. No. 1 which was transmitted to Washington read as follows—

*HOUSE BILL NO. 1.*

TWELFTH LEGISLATIVE ASSEMBLY, STATE OF NORTH DAKOTA,  
BEGUN AND HELD AT THE CAPITOL IN THE CITY OF BISMARCK ON  
TUESDAY, THE THIRD DAY OF JANUARY, ONE THOUSAND NINE  
HUNDRED AND ELEVEN.

*A JOINT RESOLUTION.*

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

WHEREAS, the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to-wit:

“A 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, namely,

“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 Legislative Assembly of the State of North Dakota, that the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the Legislative Assembly of the State of North Dakota.

And be it further resolved that certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State at Washington, and to the President of the Senate and the Speaker of the House of Representatives of the National Congress.

Even were the above an officially certified copy of H. B. No. 1, the preamble has been changed from the original as transmitted to the Legislature by the Governor. Having claimed that “the Sixty-first Congress . . . made the following proposition to amend the Constitution of the United States of America in the following words, to-wit”: the Legislature of North Dakota held itself to the liability to concur precisely in the Congressional Joint Resolution. To do any less would have been a violation of their duty 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 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. 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 ratification of the Legislature of the State of North Dakota was deficient because of the following—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the preamble was changed;

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. Violations of the Constitution of North Dakota:

a. failure of the House to re-enact and to publish their amendments in violation of Article II, Section 64 of the Constitution of North Dakota;

b. failure of the Senate to re-enact and to publish their amendments in violation of Article II, Section 64 of the Constitution of North Dakota;

c. failure of both the House and the Senate to read H. B. No. 1 at length on their respective first and third readings in violation of Article II, Section 63 of the Constitution of North Dakota;

d. if it is contended that a bill, such as H. B. No. 1, once passed is not law, then H. B. No. 1 was passed in violation of Article XI, Section 175 of the Constitution of North Dakota in that H. B. No. 1 was not a law.