

Texas—August 17th, 1910

In July of 1910, T. M. Campbell, Governor of Texas, called the Third Special Session of the Thirty-first Legislature of the State of Texas. In his proclamation, the Governor did not present to the legislators the issue of the ratification of the proposed Sixteenth Amendment. However, on August 2nd, he finally presented that issue to the Legislature pursuant to Article III, Section 40 of the Texas State Constitution, requiring that the Governor present to the Legislature all subjects for consideration in any special session.

There had been great difficulty in securing a quorum to do business in that session because of the fact that the election primaries were being held at that point in time. It was reported, in the Texas newspapers, that those legislators who were closest to the Governor were among the first arrivals in Austin, the State Capitol, trying to organize the special session. There were also reports that the House attempted to take action on proposed legislation without the Senate having a quorum. On July 26th, a quorum was finally had in both houses.

One of the first issues presented to the legislators was the problem of the accusations of bribery which had been recently made concerning some of the legislation taken up by that Legislature in the previous session and in the gubernatorial race just ended. The result was the following amended resolution—

Substitute for
H. C. R. No. 1

WHEREAS, there have been charges repeatedly made by men of high standing and responsibility and published broadcast in the newspapers throughout the State to the effect that (words crossed out) Legislation was influenced or prevented during the Regular (sic) and former Called Session of this Legislature, by the use of money and other corrupt influences: and whereas certain other charges have been made to the effect that submission was defeated by corruption;

AND WHEREAS, it has also been charged that favor-seeking interests used large sums of money and other corrupting agencies with said Legislature and in the campaign just closed for the purpose of influencing the result in the primary election held on Saturday, July 23d, 1910,

AND WHEREAS, the good name of the Legislature and the integrity and the honor of our State demands that this called session of the Legislature give attention to these charges and that ample means be provided at once for a thorough and effective investigation to the end that if these charges are found groundless the stigma may be removed, and if true the guilty ones brought to justice and punished for their crime; and if the laws of the State are insufficient that suitable laws may be enacted to prevent the recurrence of such acts.

THEREFORE BE IT RESOLVED, by the House of Representatives, the Senate concurring, that a committee of ten, six from the House and four from the

Sentate (sic), to be selected by the Speaker of the House and the President of the Senate, respectively, be appointed to investigate and ascertain the truth or falsity of these charges and any other charges as this Legislature, from time to time, by concurrent resolutions may give said committee to investigate. That said committee be, and the same is hereby created and empowered and give n (sic) such authority as is provided in Chapter 7 of the Acts of the Thirtieth Legislature, providing for Investigating Committees.

This resolution would have given the Texas legislators the power to investigate themselves for corruption. This resolution, however, died in the Senate. (HJ at 33)

On August 2nd, Senate Joint Resolution No. 1, though not reported as having been referred to committee, was reported out of committee—

Sir: We, a majority of your Committee on Constitutional Amendments, to whom was referred

Senate Joint Resolution No. 1, To ratify the Sixteenth Amendment to the Constitution of the United States of America, relating to the power of Congress to levy a tax on incomes,

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass and be not printed. (SJ at 50) (emphasis added)

The next day, S. J. R. No. 1 was found correctly engrossed in its final draft. (SJ at 50) However, since it was not printed, the only text which the Texas legislators had been presented was that which had been read to them on the previous day—“relating to the power of Congress to levy a tax on income.”

On the 4th, S. J. R. No. 1 was taken up again—

The Chair laid before the Senate, on third reading, Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United States of America. The resolution was read third time, and passed by the following vote:

Yeas-28.

* * *

Nays-1.

* * *

Absent.

* * *

Absent-Excused.

* * *

(SJ at 51)

After the vote in the Senate, a message was received by the House informing that body of the Senate's action. (HJ at 69) S. J. R. No. 1 was then read the first time and referred to the Committee on Constitutional Amendments. (HJ at 69)

On August 6th, the House ratification resolutions, introduced in the House on August 2nd, were sent to the Senate—

House Joint Resolution No. 1 (C. S. H. J. R. Nos. 1 and 2), Ratifying the Sixteenth Amendment to the Constitution of the United States of America. (SJ at 56)

That same day, H. J. R. Nos. 1 and 2 were referred to committee in the Senate. (SJ at 57)

On August 14th, the House took up S. J. R. No. 1 for consideration and decided not to print S. J. R. No. 1—

On motion of Mr. Mason, it was ordered that Senate Joint Resolution No. 1, ratifying the income tax amendment to the Federal Constitution, be not printed. (HJ at 170) (emphasis added)

That same day, S. J. R. No. 1 was taken up for consideration again in the House with the following result—

The Speaker laid before the House on second reading and passage to third reading,

Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United State of America.

The resolution was read a second time, and was passed to third reading. (HJ at 171)

On the 15th, S. J. R. No. 1 was reported out of committee—

Sir: Your Committee on Constitutional Amendments, to whom was referred Senate Joint Resolution No. 1, have had same under consideration, and we are instructed to report it back to the House, with a recommendation that it do pass." (HJ at 186)

Having not reported S. J. R. No. 1 out of committee until the 15th, though the resolution was considered several times prior, the House was in violation of Article III, Section 37 of the Texas State Constitution, which provides that—

No bill shall be considered unless it has been first referred to a committee and reported thereon; . . .

On the 16th, S. J. R. No. 1 was taken up for a vote as follows—

The Speaker laid before the House, on third reading and final passage, Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United States of America.

The resolution was read third time.

Question-Shall the resolution be passed.

The Clerk was directed to call the roll, and the resolution was passed by the following vote:

Yeas-106.

* * *

Nays-1.

* * *

(Absent-16.)

* * *

(Absent-Excused.-9) (HJ at 192)

In the Senate, on the 15th, the resolutions which had originated in the House were properly reported prior to any other consideration by the Senate—

Sir: We, your Committee on Constitutional Amendments, to whom was

referred

Concurrent Senate and House Joint Resolutions Nos. 1 and 2, Ratifying the Sixteenth Amendment to the Constitution of the United States of America, Have had same under consideration, and beg leave to report it back to the Senate, with the recommendation that it do pass, and be not printed. (SJ at 173) (emphasis added)

These resolutions, however, died on the calendar according to the index of the Senate journal.

On August 17th, S. J. R. No. 1 was duly signed in the House—

The Speaker signed, in the presence of the House, after giving due notice thereof, and their captions had been read severally, the following bills:

* * *

Senate Joint Resolution No. 1, Ratifying the Sixteenth Amendment to the Constitution of the United States of America. (HJ at 229)

There is no record of the signing of S. J. R. No. 1 in the Senate journal in violation of Article III, Section 38 of the Texas State Constitution—

The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

The absence of the record of such signing is evidence of the failure of the Senate to have the title of S. J. R. No. 1 publicly read prior to signing, another violation of the same Section.

In the official publication of the State of Texas, *GENERAL AND SPECIAL LAWS OF THE STATE OF TEXAS*, Passed by the Thirty-first Legislature at its Third Called Session, S. J. R. No. 1 is properly listed under General Laws according to the provisions of Article VIII, Section 3 of the Texas State Constitution which states that "Taxes shall be levied and collected by general laws and for public purposes only," as follows—

RATIFYING PROPOSED SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

S. J. R. No. 1.] SENATE JOINT RESOLUTION.
Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.

Whereas, both Houses of 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 the 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 Senate and House of Representatives of the State of Texas, That the said proposed Amendment to the Constitution of the United States of America, be and the same is hereby ratified by the Legislature of the State of Texas.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, the Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

[NOTE.-The enrolled bill shows that the foregoing Resolution passed the Senate by the following vote, yeas 28, nays 1; and passed the House by the following vote, yeas 101, nays 1.]

Approved August 17th, 1910.

(It should be noted that Article III, Section 30 of the Texas State Constitution also provides that "No law shall be passed except by bill . . .")

Never having been printed by recorded legislative intent, the foregoing is not the text upon which the Texas legislators voted. In the Senate, the vote was upon the short phrase—"relating to the power of Congress to levy a tax on incomes." In the House, the vote was upon nothing more than three readings of the title of S. J. R. No. 1. The vote in neither house was sufficient in any way as a vote in ratification of the official Congressional Joint Resolution. This constituted a clear violation of the duty which the Texas 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.

On January 3rd, 1911, four months after the purported passage of S. J. R. No. 1, Governor Campbell transmitted a copy of S. J. R. No. 1 to Washington, which read as follows—

S. J. R. No. 1.

Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America.

Whereas, both Houses of 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 income, 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 and House of Representatives of the State of Texas, That the said proposed Amendment to the Constitution of the United States be and the same is hereby ratified by the Legislature of the State of Texas.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the the President of the United States, the Secretary of State of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

There is no other apparent record of the text of this resolution, but, even if this unsigned document had been printed for the use of the Texas legislators, it contained the following changes to the original Congressional Joint Resolution—

1. the preamble was modified:
 - a. the word "article" was changed to "Article";
 - b. the word "amendment" was changed to "Amendment";
 - c. the word "legislatures" was changed to "Legislatures";
 - d. the colon following the second instance of the word "Constitution" was changed to a comma;
 - e. the word "namely" and a following comma were added following the second instance of the word "Constitution";
2. the word "Congress" was changed to a common noun;
3. the comma following the word "States" was deleted.

None of these changes, by the same principle as set forth above, were permitted. Finally, S. J. R. No. 1 was in violation of the following sections of the Texas State Constitution—

Article III, Section 48—

The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

- ✓ The payment of all interest upon the bonded debt of the State;
- ✓ The erection and repairs of public buildings;
- ✓ The benefit of the sinking fund, which shall not be more than two per centum of the public debt, and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate;
- ✓ The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas;
- ✓ The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employes of the State government, and all incidental expenses connected therewith;
- ✓ The support of the Blind Asylum, the Deaf and Dumb Asylum, and the Insane Asylum; the State cemetery and the public grounds of the State;
- ✓ The enforcement of quarantine regulations on the coast of Texas;
- ✓ The protection of the frontier.

The purpose of S. J. R. No. 1 was, of course, to impose a burden upon the citizens of the State of Texas and not for any of the particular uses to which the Legislature of Texas was limited under the provisions of the foregoing Section.

Article III, Section 33—

All bills for raising revenue shall originate in the House of Representatives, . . .

Obviously, S. J. R. No. 1 did not originate in the House.

The purported ratification of the proposed Sixteenth Amendment by the State of Texas was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that, by the record, the Texas legislators did not vote upon even a semblance of the official Congressional Joint Resolution, and even if S. J. R. No. 1 may be considered to be the wording upon which the Texas legislators voted, that document contained the following changes—

- a. the preamble was modified:
 - i. the word "article" was changed to "Article";
 - ii. the word "amendment" was changed to "Amendment";
 - iii. the word "legislatures" was changed to "Legislatures";
 - iv. the colon following the second instance of the word "Constitution" was changed to a comma;
 - v. the word "namely" and a following comma were added following the second instance of the word "Constitution";
- b. the word "Congress" was changed to a common noun;
- c. the comma following the word "States" was deleted;

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. Violation of Article III, Section 37 of the Texas State Constitution by the House in taking up S. J. R. No. 1 for consideration prior to having had it reported out of a committee;

4. Violation of Article III, Section 38 by the Senate in failing to have the signing of S. J. R. No. 1 recorded upon the journal, and, thus, to have also failed to publicly read the title of S. J. R. No. 1 immediately prior to such signing;

5. Violation of Article III, Section 48 in that S. J. R. No. 1 imposes a burden upon the citizens of the State of Texas outside of the particular uses to which the State Legislature in Texas is limited;

6. Violation of Article III, Section 33 in that S. J. R. No. 1 originated in the Senate, not the House.