

Georgia—August 3rd, 1910

On the 29th of July, 1909, Governor Joseph M. Brown of the State of Georgia sent the following communication to the General Assembly of the State of Georgia—

I have the honor to transmit to you for such consideration as your wisdom may direct a copy of a Resolution of Congress entitled: "Joint Resolution Proposing an Amendment to the Constitution of the United States," the same being certified as correct by Honorable P. C. Knox, Secretary of State.

On August 3rd, the following resolution was read for the first time in the Georgia Senate, by Senator Gordy—

A resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source desired without apportionment among the several States.

Resolved further, That said amendment be and the same is hereby ratified by the General Assembly of Georgia. (SJ at 621)

Although the Governor had transmitted the official version of the Congressional Joint Resolution only five days previous, Senator Gordy added the word "Resolved" and an accompanying comma to the beginning of the proposed wording of the amendment, changed the first instance of "The" to "That", the word "lay" to "levy", and the word "derived" to "desired", and completely omitted the entire phrase "and without regard to any census or enumeration". The Congressional preamble and the designation "Article XVI." were discarded as well. This resolution was then referred to the Committee on General Judiciary.

Immediately following Gordy's effort, Senator Jackson introduced another version, even more inaccurate—

A resolution authorizing Congress to levy and collect income tax from whatever source desire without apportionment among the several States. (SJ at 621)

The next day, Senator Perry indicated that he thought that Senator Jackson's resolution should be removed from consideration by committee—

Mr. Perry gave notice that at the proper time he would move to reconsider the action of the Senate in referring the Jackson resolution relative to tax on incomes to the General Judiciary Committee. (SJ at 623)

The next week, on the 11th, Messrs. Jackson and Gordy brought up and read for the third time a resolution reading simply "A resolution to ratify the 16th amendment to the

Constitution of the United States." (SJ at 972) Senator Burwell's motion to table the resolution prevailed by a vote of 18 to 17.

* * *

Nearly a year passed before Senator Jackson made another attempt, in the next regular session, to get the proposed Sixteenth Amendment ratified in Georgia. On July 6th, 1910—

The following special order was taken up, which is as follows:

By Mr. Jackson—

A Resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several States of the Union. (SJ at 260)

There is no indication of referral to committee, of printing, or of any reading in the Senate journal for 1910 of this resolution. The ending phrase—"among the several States of the Union"—is imaginative but not Congressional. Furthermore, the word "The" was still replaced by "That", "lay" was still replaced by "levy", all of the commas were still missing and the entire ending phrase "without regard to census or enumeration" was still missing. A successful motion for adjournment ended this day's business before consideration of Mr. Jackson's resolution.

On Thursday the 7th, Senator Jackson again tried to have the same resolution taken up and this time Senator Longley moved to table the resolution, but the motion was lost. Senator Irwin moved that the Senate adjourn, and that motion was lost. But they adjourned until Friday anyway. (SJ at 265)

The Senate journal shows that the day after Thursday, July 7th, 1910 was Thursday, July 7th, 1910, but it apparently is actually referencing the Senate's business as of Friday, July 8th, 1910. On the next day, Senator Jackson brought up the same resolution—

A Resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several States of the Union. (SJ at 271)

Once again, consideration was postponed—this time until Monday, the 11th. (SJ at 271) That Monday, Senator Jackson introduced another version of his resolution—

A Resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment to the State. (SJ at 281)

Whether or not Senator Jackson was attempting to exempt Georgia specifically in his reference to "the State" in this resolution is not clear.

Also unclear is how, and/or whether, Senator Jackson's resolution came to be designated Senate Resolution No. 23, which is entitled, "A Resolution. Proposing to ratify an amendment to the Constitution of the United States." That resolution, as entitled in the archival copy, never appeared in the journal, was never claimed in the journal as having been printed, was never claimed as having been referred to committee in the journal and was not read more than once during the regular session of 1910 according to the accounting included with this document in the archival record. (archival copy of SR No. 23) The archival copy of S. R. No. 23 shows a "38" stamped on

one edge of the legislative history, however, "23" is its hand-written designation and is consistent with the other hand-written text on the document. From the archives, S. R. 23 (38) reads as follows—

Whereas, The Congress of the United States, has under the fifth article of the Constitution of the United States proposed an amendment to said Constitution, as article 16, in the words following, to wit:

The Congress shall have power to levy and collect taxes on income from whatever sources derived without apportionment among the several States, and without regard to any census or enumeration, which amendment was approved on the day of July 1909.

Therefore, Be it resolved by the Senate, and the House of Representatives of the State of Georgia, in General Assembly met, That the said amendment of the Constitution of the United States, be and the same is hereby ratified and adopted.

BE IT FURTHER RESOLVED, That a certified copy of the foregoing preamble and resolution be forwarded by his Excellency, the Governor to the President of the United States, and also to the Secretary of State of the United States.

The above is approximately the same text received in Washington, D. C. as "INCOME TAX, AMENDMENT TO CONSTITUTION UNITED STATES AUTHORIZED, RATIFIED. No. 38. A Resolution." (sic) The archival copy of S. R. No. 23 (38) records the following—

In Senate,

Read 1st Time. Aug 3, 1909.

Read 2nd Time. July 11, 1910.

and adopted, Ayes 23, Nays 18.

(signed)

Secretary of Senate.

In House.

Read 1st Time. July 13, 1910.

Read 2nd Time. July 26, 1910.

and adopted, Ayes 129, Nays 32.

(signed)

Clerk House of Representatives.

The first recorded reading of this version of S. R. No. 23 is on August 3rd, 1909 in the previous session of the Legislature. Neither of the resolutions related to the proposed Sixteenth Amendment introduced on that day were entitled, "A Resolution. Proposing to ratify an amendment to the Constitution of the United States." The resolution entitled, "A Resolution to ratify the 16th Amendment to the Constitution of the United States," introduced on August 3rd, 1909 by Senator Gordy and substituted for by Senator Burwell was designated S. R. No. 23. That resolution, however, was tabled and not taken up again. (archival copy) A resolution, designated S. R. No. 23, with a similar title as that which was transmitted to Washington, "A Resolution proposing to ratify an amendment to Consti. (sic) U. S.," was adopted only by the Senate according to the archival copy of that resolution.

The preceding legislative history is, thus, fraudulent in several ways—one, a universal doctrine of legislation is that proposed bills and resolutions from previous sessions must be reintroduced and any previous action must be repeated and may not be relied upon for the current session; two, the archival documents show that the S. R. No. 23 of

the 1909 session of the Georgia Legislature was not taken up again, so that the legislative history shown above for S. R. No. 23 cannot be accurate, nor could the legislators have mistaken its inaccuracy; three, the archival documents show that the S. R. No. 23 adopted in the 1910 session on July 11th, 1910 was adopted only by the Senate.

Regardless of the source of "No. 38," it was an improperly composed resolution compared to the official Congressional Joint Resolution, which contained the following text—

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."

Besides the absence of the proper preamble in S. R. No. 23, the word "levy" was still substituted for the word "lay", the commas binding "from whatever source derived" were missing, and the word "source" was made plural while the word "incomes" was made singular, and the phrase—"which amendment was approved on the day of July 1909" was appended on the end but within the quotation marks delineating the proposed amendment, all of which were violations of the legislative duty which the Legislature of the State of Georgia 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 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 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. (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 concur precisely and exactly with Congress in a proposed Constitutional amendment.

It is not clear, however, upon what the Georgia Senate voted. The following took place upon Mr. Jackson's introduction of the last in his series of different resolutions, on the 11th of July—

A Resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment to the State.

Mr. Burwell moved the previous question on this resolution; the motion prevailed, and the main question ordered. (SJ at 281)

The problem with Senator Burwell's motion was that there was no previous question on this new resolution. It was a legislative nonsequitur. Nevertheless, a vote was taken and the result was "Ayes, 22; Nays, 18."—

The President voted aye, making 23.

The resolution having received the requisite Constitutional majority, was passed. (SJ at 282)

Two other problems are evident in this vote. First, the President of the Georgia Senate is not allowed to vote unless there is a tie. (Rules of the Senate, Rule 2) The vote was, therefore, 22 to 18, not 23 to 18. Either way, a Constitutional majority for the ratification of amendments to the Constitution in Georgia required a two-thirds majority. Senate Resolution No. 23 received only 56.1% in the latter instance, 55% in the former.

Second, S. R. No. 23 (38) was never read more than twice at any time in violation of Article 3, Section 7 of the Georgia State Constitution which provided for a reading of bills on three separate days.

The Georgia House of Representatives entertained their own resolution on July 6, 1910, reading it for the second time (the first in this series is unrecorded)—

The following resolution which was made the special order for this time was read the second time and put upon its passage, to-wit:

By Mr. Slade of Muscogee—

A resolution providing for the ratification by the State of Georgia of the proposed amendment to Article 16 of the United States Constitution. (HJ at 301)

The intent of the above resolution apparently was to amend Article 16. Nothing was done on this resolution, however, and two days later, Representative Slade introduced another resolution which proposed merely to ratify a proposed amendment—

The following resolution which was brought over as unfinished business was again taken up for passage, to-wit:

By Mr. Slade of Muscogee—

A resolution providing for the ratification by the State of Georgia of the proposed amendment to the Constitution of the United States, known as Article

16, so as to provide for a tax on incomes. (HJ at 341)

The House adjourned before consideration of this resolution. On the 12th of July, the Senate sent the following message to the House—

The Senate has adopted by a requisite Constitutional majority the following resolution of the Senate, to-wit:

A resolution proposing to ratify an amendment to the Constitution of the United States providing for the levy and collection of an income tax. (HJ at 381)

The resolution transmitted to the House came with a completely different title than any which had been introduced in the Senate. That title, however, was similar to that which appears in the archives on the bogus S. R. No. 23 (38).

One member of the House, Representative P. T. McCutchen, was so anxious that he wanted to vote in absentia by telegram. The Speaker of the House decided that allowing such a thing would be unwise and might result in difficulties in maintaining a quorum in the Legislature. Mr. Slade then introduced a resolution entitled—

A resolution providing for the ratification of an amendment to the United States Constitution providing for an income tax.

Exactly what happened next in the Georgia House is somewhat questionable—

Mr. Edwards, of Walton, moved that the previous question be ordered at 10:30 o'clock this morning.

Mr. Fullbright, of Burke, moved as a substitute that the previous question be ordered at 11:30 a.m., which was adopted.

The motion of Mr. Edwards was then adopted by substitute.

Mr. Johnson, of Bartow, asked the unanimous consent of the House to be recorded as voting aye on the passage of the above resolution when the same should come to a vote as at that time he would be compelled to be absent from the hall, which was granted.

By unanimous consent the time for the call of the previous question was extended for the purpose of allowing Mr. Ellis, of Bibb, to conclude his remarks.

The previous question was then called.

The original resolution was read the third time.

The substitute offered by Mr. Alexander, of De Kalb was read and adopted.

On passage of the resolution by substitute Mr. Hall, of Bibb, called for the ayes and nays which call was sustained . . . (HJ at 381)

The roll call showed a vote of 125 in favor to 44 against. It is not clear what was approved 125 to 44. It was not S. R. No. 23 (38) or anything else from the Senate. Even had it been the resolution from the Senate, it would not have mattered because a substitute was adopted instead. The "previous question," however, did not consist of consideration of the Senate resolution.

Two weeks later, Rep. Jackson took the following action—

The following special orders were read the third time and put upon their passage, to-wit:

By Mr. Jackson, of 21st District—

A resolution proposing to ratify an amendment to the Constitution of the United States, relative to an income tax.

Mr. Vinson, of Baldwin, proposed a substitute which was lost.

A vote was then taken on the named resolution and the result was Ayes—129, Nays—32. (HJ at 734) Which resolution was voted upon in this instance? This resolution was on its third reading. The archival copy of S. R. No. 23 (38) claims that S. R. No. 23 (38) was only on its second reading on this date. This resolution, thus, could not have been S. R. No. 23 (38).

Although the House never actually took a vote upon S. R. No. 23 (38), the purported history on S. R. No. 23 (38) falsely records two readings, which is not even the Constitutionally required three readings on separate days.

Federal statutes required that each State which ratified an amendment to the Constitution of the United States transmit a certified copy of the resolution of ratification to the Secretary of State of the United States. Joseph M. Brown, the Governor of Georgia did not transmit, and, indeed, could not have validly transmitted Senate Resolution No. 23 to Philander Knox, the Secretary of State of the United States. Brown transmitted an unsigned copy of a document entitled "INCOME TAX, AMENDMENT TO CONSTITUTION UNITED STATES AUTHORIZING, RATIFIED. No. 38. A Resolution," which was not sent until February 18, 1911, seven months after its supposed passage in the Georgia Legislature.

The State of Georgia did not ratify the proposed Sixteenth Amendment, in that the following fatal violations occurred during its course through the Georgia Legislature—

1. The Georgia Senate did not, in fact, pass S. R. No. 23 nor S. R. No. 23 (38), however, the latter fails in any event to concur in United States Senate Joint Resolution No. 40 as passed by Congress in the following respects:

- a. the preamble was modified from the original;
- b. the word "levy" was substituted for the word "lay";
- c. the commas binding "from whatever source derived" were missing;
- d. the word "source" was changed to "sources";
- e. the word "incomes" was changed to "income";
- f. the phrase—"which amendment was approved on the day of July 1909" was appended on the end and within the quotation marks delineating Georgia's proposed amendment;

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. The resolution indicated as passed in the Senate was only read once during its proper session, was not read more than twice, in any case, in violation of Article 3, Section 7 of the Georgia State Constitution;

4. The Senate did not pass their resolution with the required two-thirds majority;

5. The resolution which the Georgia House received from the Senate was not the same one which the Georgia Senate passed;

6. The Georgia House ratified a resolution which suffered from different, but similar, problems in wording deficiencies as did the Senate's version;

7. S. R. No. 23 (38) was indicated as having been read only twice in violation of Article 3, Section 7 of the Georgia State Constitution;

8. The original S. R. No. 23 was tabled and not taken up again;

9. The S. R. No. 23 adopted by the Senate was not adopted by the House;

10. S. R. No. 23 (38) is pieced together from the actions taken on several different

resolutions

Perhaps with a certain amount of embarrassment over the fiasco perpetrated in the legislative sessions of 1909 and 1910, the process was started all over again on July 2nd, 1912, but never finished.

The following communication was received from the Governor:

*** * ***

I have the honor to herewith to transmit to you for your consideration the accompanying copy of a joint resolution of the Congress of the United States submitting to the Legislatures of the States a proposed amendment to the Constitution of the United States, the same being transmitted as certified to this office by the Honorable Secretary of State of the United States and as now of file in the Executive Department.

Respectfully submitted,

**Joseph M. Brown,
Governor.**

The communication was read and referred to the Constitutional Amendments Committee. (HJ 165)

This transmittal letter is not the transmittal letter of July 29th, 1909. Nothing further was ever done with this letter. The Journal Index contains no other reference to consideration or vote on the proposed Sixteenth Amendment for the 1912 session.