

## California—January 31st, 1911

With the perception that the State of California was facing severe financial difficulties, State Senator Burnett offered the following resolution, entitled "CASE OF URGENCY RESOLUTION," on January 5th, 1911—

**Resolved,** That Senate Bill No. 20 presents a case of urgency, as that term is used in Section 15 of Article IV of the Constitution, and the provision of that section requiring that the bill shall be read on three several days in each House is hereby dispensed with, and it is ordered that said bill be read the first, second, and third times, and placed upon its passage.

Senator Burnett's resolution to suspend the State Constitutional provisions for the passage of legislation passed by a margin of 31 to 0. The entire California Senate, having voted in favor of this resolution, unanimously believed that this was an urgent situation. Senate Bill No. 20 provided—

An Act to make an appropriation for the contingent expenses of the Senate for the session of the thirty-ninth Legislature of the State of California during the sixty-second fiscal year. (emphasis added)

Whether or not those "contingent expenses" should have been considered an "urgency" under the State Constitution is a question which shall not be debated here, although it's difficult to imagine what kind of contingencies could have caused such an urgent situation. Much more significant is that the California State legislators demonstrated that they knew what their State Constitutional rules were and what was necessary to bypass those rules—an urgent situation and a two-thirds vote in agreement of the urgency of a situation.

Article IV, Section 15 of the California State Constitution requires the following in the passage of bills—

1. Each bill must be printed, along with its amendments, for the legislators, prior to final passage.
2. Each bill must be read in each house on three separate days, unless an urgent situation exists, in which case, this particular rule may be suspended on two-thirds vote.
3. Each bill must be read at length on the final passage.
4. The vote on each bill must be by Yeas and Nays and those results must be entered upon the Journal.
5. Passage requires a majority of votes in each house.

In addition, procedural rules must be followed to ensure an orderly legislative process. Here is a simplified version of California's procedures in Senator Burnett's day—

1. The resolution is introduced in the originating house by a first reading and referred to an appropriate committee for a recommendation.

2. The resolution generally is printed at either step 1 or step 2 as a courtesy to the members of the house, and as a convenience to the members of the committee.

3. The resolution is reported out of committee with a recommendation to affirm as introduced, or to amend.

4. The resolution is read a second time and ordered to be engrossed, or if an amendment is approved, the resolution is corrected, reprinted, and, then, ordered to be engrossed.

5. The resolution must then be reported as having been engrossed correctly.

6. The resolution is then put to a vote, and if passed, ordered to the other house for consideration.

7. In the other house, the resolution is ordered enrolled and must be reported as having been correctly enrolled.

8. If the other house concurs, the resolution is ordered sent to the Governor and filed with the Secretary of State.

On January 5, 1911, California State Senator Sanford introduced Senate Joint Resolution No. 2—

Ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.

As introduced and subsequently printed S. J. R. No. 2 read—

WHEREAS, The Sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, QOPO (sic), proposed an amendment to the Constitution of the United States, in words and figures as follows:

ARTICLE)XVI. 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 census enumeration.

NOW, THEREFORE BE IT RESOLVED BY THE SENATE OF THE STATE OF CALIFORNIA, AND THE ASSEMBLY, JOINTLY,

That the foregoing resolution, being the sixteenth amendment to the Constitution of the United States, be, and the same is hereby approved and ratified.

It does not appear from the Senate Journal how Senator Sanford composed his version of the Sixteenth Amendment, i.e., there is no record of the transmittal of the certified copy of the Congressional Joint Resolution from Secretary of State Philander Knox. The official version of the Congressional Joint Resolution reads—

*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.

S. J. R. No. 2 amended the original by deleting the very first word in the official

version, "The", and the word "or" was deleted as well. In this truncated version, both commas bordering the phrase "from whatever source derived" were deleted, too. The word "States" was changed to a common noun.

Nevertheless, Sanford's version of S. J. R. No. 2 was referred to the Committee on Federal Relations which recommended amending what Sanford had introduced.

On the 20th, the resolution was reported out of committee and read for the first time.

During the reading of the joint resolution, the following amendments were submitted by committee:

On page 1, line 3, strike out the letters in capitals "Q. O. P. O.," and insert in lieu thereof "1909."

On page 1, line 10, strike out the semicolon and insert in lieu thereof a period; strike out all of the remainder of line 10 after said semicolon and of lines 11, 12, 13, and 14, and insert in lieu thereof the following:

"Now, therefore, be it

**Resolved by the Senate and Assembly, jointly, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the eighty-sixth amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified.**

Both amendments to the "eighty-sixth amendment to the Constitution of the United States" were adopted and were then ordered to be printed and engrossed. All the changes in the proposed amendment made by the California Legislature were in violation of the duty which the California 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 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.

On the 23rd of January, the Senate came up with their finalized version of S. J. R. No. 2—

Ratifying and approving the proposed amendment to the Constitution of the United States relative to income Tax.

WHEREAS, The sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:

ARTICLE XVI.

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 census enumeration; now, therefore, be it

Resolved by the Senate and Assembly, jointly, That the Legislature of the State of California, hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the sixteenth amendment to the Constitution of the United States, and said proposed constitutional amendment is hereby approved and ratified.

The resolution was then read for only the second time, a fact confirmed by the record in the State Archives, taken up for a vote and adopted by a margin of 33 to 0 and was then ordered transmitted to the Assembly.

On January 31st, the Assembly Journal shows that the House took up Senate Joint Resolution No. 2, whereupon the resolution was read for the third time, adopted, and ordered transmitted to the Senate, however, it cannot be reported what the vote was, because it isn't in the journal. Each house of the California Legislature in its "passage" of S. J. R. No. 2 violated Article 4, Section 15 of the California State Constitution—

. . . Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in the case of urgency, two thirds of the house where such bill may be pending shall, by vote of yeas and nays, dispense with this provision . . . on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal . . .

On July 27th, 1911, the Secretary of State of California, Frank C. Jordan, sent the following letter to Knox—

I am enclosing herewith Senate Joint Resolution No. 2, Chapter 8, in re Ratifying and Approving the proposed amendment to the Constitution of the United States relative to Income Tax, as passed by the last session of the legislature. Assembly Daily Journal of January 31, and Senate Daily Journal of January 23, are marked indicating the action of both Houses in this matter.

Same is forwarded to you by this office at the request of Walter V. Bowns, of the Ethic Association . . . it appearing from a communication just received from him that through some oversight the resolution has not reached your Depart-

ment as coming from the Secretary of the Senate, and the Clerk of the Assembly of the last session of the legislature.

Knox responded by sending a letter back to Jordan dated August 3rd, 1911 acknowledging receipt of Jordan's letter and requesting "a certified copy of the Resolution under the seal of the State, which is *necessary* in order to carry out the provisions of Section 205 of the Revised Statutes of the United States." Apparently Jordan hadn't bothered to transmit a certified copy of S. J. R. No. 2 to Knox. (See Appendix)

On February 3rd, 1912, Jordan finally got around to answering Knox's letter and sent a copy of S. J. R. No. 2 to Knox, however, the copy sent to Knox was neither under the great seal nor certified as requested.

California, thus, committed the following violations in its purported ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 2 changed the official Congressional Joint Resolution in the following ways:

- a. the first word, "The," was deleted;
- b. the word "or" was deleted;
- c. both commas bordering the phrase "from whatever source derived" were deleted;
- d. the word "States" was changed to a common noun;
- e. the ending period was changed to a semicolon, thereby appending the entire enacting clause of S. J. R. No. 2 onto the wording of the proposed amendment;
- f. the original preamble was completely modified;

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 as shown by Knox's letter;

3. Lack of jurisdiction of the certified copy of the Congressional version transmitted from the Governor;

4. Failure to read the resolution three times on different days in the Senate in violation of the provisions of Article 4, Section 15 of the California State Constitution;

5. Failure to record the Yeas and Nays in the Assembly vote in violation of Article 4, Section 15 of the California State Constitution.