

Colorado—February 20th, 1911

In the official publication *LAWS PASSED AT THE Eighteenth Session of the General Assembly of the State of Colorado*, 1911, the following concurrent resolution is recorded —

SENATE CONCURRENT RESOLUTION NO.3.

INCOME TAX.

(By Senator Garman.)

Concurrent 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 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 General Assembly of the State of Colorado, That the said proposed amendment to the Constitution of the United States be, and the same is hereby ratified by the General Assembly of the State of Colorado.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, 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.

Approved February 20, 1911.

This version of S. C. R. No. 3 is not the same as that introduced on the 16th of January, 1911, in the Senate of the State of Colorado which was as follows—

The following Senate concurrent resolutions were introduced and read, and

referred to committees as indicated:

S. C. R. NO. 3, by Senator Garman.

Concurrent 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 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 General Assembly of the State of Colorado, That the said proposed amendment to the Constitution of the United States be, and the same is hereby, ratified by the General Assembly of the State of Colorado.

That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, 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.

Referred to Committee on Constitutional Amendments. (SJ at 79)

This version in the journal contains the following changes to the official Congressional Joint Resolution—

1. the preamble was modified:

- a. a comma was inserted after the word "Resolved";
- b. the word "by" was changed to "By";
- c. the word "legislatures" was changed to "Legislatures";
- d. a comma was added after the second instance of the word "Constitution";
- e. the word "namely" was added following the second instance of the word "Constitution";

2. the ending period was deleted.

The version of this resolution in the published session laws contains the last two changes mentioned in the journal version of the preamble, however, the version of the proposed amendment in the published session laws has the period in the correct place, but is missing the comma after the word "States". The Legislature of the State of Colorado was, thus, in 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 reading of S. C. R. No. 3 on the 16th of January was at length. S. C. R. No. 3 was recommended for printing on January 19th, and that report was adopted. (SJ at 100) Four days later, S. C. R. No. 3 was reported as having been printed. (SJ at 121) On the 1st of February, S. C. R. No. 3 was referred to the Committee of the Whole. (SJ at 218)

One week later, without having been read at length a second time, S. C. R. No. 3 was reported favorably by the Committee of the Whole for referral to the Committee on Revision and Engrossment, for a third reading and for final passage. That report was then taken up for a vote on roll call and was passed. (SJ at 320)

On February 9th, the following report was made—

Mr. President—Your Committee on Revision and Engrossment, to which was referred S. C. R. No. 3, concurrent resolution ratifying the sixteenth amendment to the Constitution of the United States of America, has had the same under consideration, and begs leave to report the same as properly revised and engrossed.

HARVEY E. GARMAN,
Chairman. (SJ at 327)

On the same day, without having been read the third time at length, S. C. R. No. 3 was taken up for a vote—

S. C. R. No. 3, by Senator Garman—Concurrent resolution ratifying the sixteenth amendment to the Constitution of the United States of America.

The question being, "Shall the Resolution Pass?" the roll was called, with the following result:

Yeas- . . . -Total, 30.

Nays- . . . -Total, 3.

Absent, Excused and Not Voting- . . . -Total, 2.

A majority having voted in the affirmative, the resolution was declared passed.

(SJ at 331)

If S. C. R. No. 3 had been a bill or joint resolution, the failure to read S. C. R. No. 3 the second and third times would have been a violation of Article V, Section 22 of the Colorado State Constitution—

Every bill shall be read at length, on three different days, in each House; all substantial amendments made thereto shall be printed for the use of the members, before the final vote is taken on the bill; and no bill shall become a law except by vote of a majority of all the members elected to each House, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

Under ordinary circumstances, a concurrent resolution would not be held to the same standards as a bill or joint resolution and, in fact, would normally be held to a lower procedural standard. However, S. C. R. No. 3 was considered as having the force of law, having been printed in the session laws. It also involved a highly significant question of the modification of the Supreme Law of the land. The higher standards should have applied. The inclusion of S. C. R. No. 3 in the session laws conforms to the provisions of Article X, Section 3 of the Colorado State Constitution which requires that—

All taxes . . . shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal . . .

There can be no question that the legislators of the State of Colorado understood perfectly that S. C. R. No. 3 was in the nature of general law for taxation upon the citizens of that state. The inclusion of S. C. R. No. 3 in the session laws confirms that intent and understanding. The legislators were, thus, obligated by their recorded intent to accord S. C. R. No. 3 the same treatment as any other tax law passed by bill or joint resolution. In fact, the House referred to S. C. R. No. 3 as "a bill for an act." (see below)

After the vote in the Senate, the following message was transmitted to the House—

To the Honorable the Speaker of the House of Representatives.

Sir-I am instructed to inform your honorable body that the Senate has passed . . .

* * *

S. C. R. No. 3, by Senator Garman-Concurrent resolution ratifying the sixteenth amendment to the Constitution of the United States of America.

The same are herewith transmitted.

Respectfully submitted,

CHAS. H. LECKENBY,

Secretary of the Senate. (HJ at 392)

S. C. R. No. 3 was then read by title only and referred to the House Committee on Federal Relations. (HJ at 393) On February the 10th, S. C. R. No. 3 was reported out of committee, but not out of the Committee on Federal Relations—

Mr. Speaker—Your Committee on Constitutional Amendments, to which was

referred S. C. R. No. 3, by Mr. Garman, a bill for an act ratifying the Sixteenth Amendment to the Constitution of the United States of America, has had the same under consideration and begs leave to recommend that same be referred to the Committee of the Whole and do pass. (HJ at 421) (emphasis added)

On the 13th, the Committee of the Whole made the following report—

Mr. Speaker—Your Committee of the Whole begs leave to report it has had under consideration the following resolution, in the course of which it was read at length, being the second reading thereof, and makes the following recommendations thereon:

S. C. R. No. 3, by Senator Garman—A concurrent resolution, ratifying the sixteenth amendment to the Constitution of the United States of America.

The Committee of the Whole recommends that this resolution be referred to the Committee on Revision and Constitution, be engrossed, and placed upon the Calendar for third reading and final passage.

The Committee of the Whole desires to arise and report.

Mr. Proske moved the adoption of the report of The Committee of the Whole. Motion carried. (HJ at 435)

On the 15th of February, S. C. R. No. 3 was taken up for a final vote—

S. C. R. No. 3, by Senator Garman-Ratifying the Sixteenth Amendment to the Constitution of the United States of America, was placed on third reading and final passage.

The question being, "Shall S. C. R. No. 3 Pass?" the roll was called, with the following result:

Yeas- . . . -Total, 63.

Nays-None.

Absent, Excused and Not Voting- . . . -Total, 2.

A majority of all members elected to the House having voted in the affirmative, S. C. R. No. 3 was duly passed.

Title read and agreed to. (HJ at 483)

On the following day, the House sent the following communication to the Senate—

To the Honorable the President of the Senate.

Sir—I am instructed to inform your honorable body that the House of Representatives has passed the following bills:

S. C. R. No. 3, by Senator Garman-Concurrent resolution ratifying the Sixteenth Amendment to the Constitution of the United States of America. (SJ at 408)

On the 17th, S. C. R. No. 3 was reported as having been correctly enrolled. (SJ at 429)
Later that day, the following took place—

The President announced that he was about to sign, would sign, and thereupon did sign, S. C. R. No. 3, by Senator Garman. (SJ at 432)

On the 18th, the signing in the House took place—

The Speaker announced that he was about to sign, would sign, and thereupon did sign, . . . S. C. R. No. 3. (HJ at 531)

In neither the House nor the Senate was the title of the resolution read publicly immediately prior to its signing, a violation of Article V, Section 26 of the Colorado State Constitution which provided that—

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 General Assembly, after their titles shall have been publicly read, immediately before signing; and the fact of signing shall be entered on the journal.

On February 24th, the Governor sent a message of confirmation to the Senate—

S. C. R. No. 3-Ratifying the Sixteenth Amendment to the United States Constitution, in re income tax.

Date of approval, February 20, 1911.

Yours truly,

JOHN F. SHAFROTH,

Governor. (SJ at 523)

An unsigned copy of S. C. R. No. 3 was transmitted to Washington, D. C. along with a certificate from the Secretary of State of Colorado on February 23rd, but, subsequently, a signed copy of S. C. R. No. 3 was transmitted along with another certificate on May 20th. The version of S. C. R. No. 3 transmitted in both cases, to Washington contained the same changes to the official Congressional Joint Resolution as the version published in the session laws.

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

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. C. R. No. 3 contained the following changes to the official Congressional Joint Resolution—

a. the preamble was changed;

b. the comma after the word "States" was deleted;

2. Violation of Article V, Section 22 of the Colorado State Constitution in the failure of the Senate to read S. C. R. No. 3 the second and third times at length and by the failure of the House to read S. C. R. No. 3 the first and third times at length;

3. Violation of Article V, Section 26 of the Colorado State Constitution in the failure of the Senate and of the House to read S. C. R. No. 3 publicly by title immediately before its signing, by the President and Speaker, respectively.