

Michigan—February 23rd, 1911

On July 30th, 1909, the Governor of the State of Michigan, Fred M. Warner, sent a letter acknowledging receipt of the certified copy of United States Senate Joint Resolution No. 40 to Philander Knox, the Secretary of State of the United States. In that letter, Governor Warner states that the Congressional Joint Resolution would—

. . . be called to the attention of the Legislature at its next regular session.

On January 5th, 1911, prior to the transmittal of that certified copy of the Congressional Joint Resolution to the legislature of Michigan, the following occurred—

Mr. Stewart introduced
House joint resolution No. 1, entitled
A joint resolution relative to the taxing of incomes and ratifying the proposed amendment to the Constitution of the United States.
The joint resolution was read a first and second time by its title.
The Speaker pro tem, announced that the joint resolution would be referred to the Committee on Revision and Amendment of the Constitution when appointed. (HJ at 26)

Later that day, Governor Warner, who was retiring, delivered his address to the Legislature. At the end of his message, the Governor included the following remarks—

JOINT RESOLUTION PROPOSING AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROVIDING FOR A TAX UPON INCOMES.

I have the honor to transmit herewith to the Legislature of the State of Michigan a communication from the Department of State with certified copy of a Resolution of Congress, entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States," in accordance with the request and the duty devolving upon the Executive, the proposed amendment is submitted for your consideration. (HJ at 62)(emphasis added)

The "duty" to which the Governor referred is that duty to make sure that the Legislature received the certified copy of the Congressional Joint Resolution in order to guarantee that it had the exact wording of that resolution in which it must concur exactly.

The actual transmission of the Congressional Joint Resolution to the Legislature did not take place until the 9th of January—

MESSAGES FROM THE GOVERNOR.

The Speaker laid before the House the following communication transmitted by the Retiring Governor, Fred M. Warner, in his exaugural message . . .

Included in this transmission to the House were the letter from Philander Knox, a copy of Section 205 of the Revised Statutes of the United States, a certificate from Knox, and a certified copy of the Congressional Joint Resolution. (HJ at 94)

The communication and accompanying resolution were referred to the Committee on Federal Relations. (HJ at 96)

Even though, as will be seen, H. J. R. No. 1, as introduced by Mr. Stewart, contained changes to the official text of the certified copy transmitted by Governor Warner, no amendments were recorded on the journal as having been made to H. J. R. No. 1 subsequent to the transmission of the certified copy to the Legislature. H. J. R. No. 1 was, thus, exactly as Mr. Stewart intended it to be.

On the 13th, a written request was made for the printing of H. J. R. No. 1, which was referred to the Committee on Printing. (HJ at 132) The Committee on Printing recommended that the request be granted, which recommendation was concurred in, and the joint resolution was ordered printed. (HJ at 135)

On the 19th, H. J. R. No. 1, having been printed, was placed upon the files of the members. (HJ at 168) Later that day, H. J. R. No. 1 was reported favorably out of the Committee on Revision and Amendment to the Constitution and was referred to the Committee of the Whole and placed on the general orders for consideration. (HJ at 173)

On the 24th, the Committee of the Whole—

... rose, and, through its chairman, made a report, recommending the passage, without amendment, of the following named joint resolution:

House joint resolution No. 1 (file No. 1), entitled A joint resolution relative to the taxing of incomes and ratifying the proposed amendment to the Constitution of the United States.

The joint resolution was placed on the order of Third Reading of Bills for consideration on or after today. (HJ at 204)

Immediately thereafter, H. J. R. No. 1 was taken up for a vote—

The joint resolution was then read a third time and passed, two-thirds of all the members-elect voting therefor, by yeas and nays, as follows:

YEAS.
* * *
92
NAYS.
* * *
1

The House agreed to the title of the joint resolution. (HJ at 204) (emphasis added)

The next day, the 25th of January, the House sent a message to inform the Senate that H. J. R. No. 1 had passed. H. J. R. No. 1 was then introduced into the Senate and read the first and second time by title only and referred to the Committee on Federal Relations. (SJ at 110) On February 23rd, H. J. R. No. 1 was favorably reported out of committee, and taken up for consideration on passage—

Mr. Mapes moved that the rules be suspended and that the joint resolution be placed on its immediate passage.

The motion prevailed, two-thirds of the Senators present voting therefor.

The question being on the passage of the joint resolution,

The joint resolution was then read a third time and passed, a majority of the Senators-elect voting therefor, by yeas and nays as follows:

YEAS.

* * *

23

NAYS.

* * *

1

The title of the joint resolution was agreed to. (SJ at 307)

On the 27th, the Senate sent a message of concurrence to the House returning H. J. R. No. 1. (HJ at 535) On March 17th, it was announced in the House that H. J. R. No. 1 had been engrossed, signed and presented to the Governor on March 15th. (HJ at 772) It appeared that the Legislature of Michigan had correctly followed State Constitutional procedure in all respects, except one. In Article X, which dealt with Finance and Taxation, Section 6 provided that—

Every law which imposes, continues or revives a tax shall distinctly state the tax, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such a tax or object.

On the 17th of March, the Governor sent Knox a copy of H. J. R. No. 1 by registered mail. The document appeared to be signed by both the Speaker of the Michigan House and the President of the Senate; however, it is not signed by the Governor, and, more importantly, the origin of this document is not apparent, since there is no indication in the journals of the text of H. J. R. No. 1, nor is there any evidence in the official records of the State of Michigan of any such document of any kind (letter of January 4th, 1985—see below) related to H. J. R. No. 1.

The document received by Washington, D. C. from the State of Michigan purporting to be H. J. R. No. 1 was on parchment paper and hand-written in stylized, intricate lettering, and read as follows—

House Joint Resolution No. 1

Introduced by Mr. Stewart

A JOINT RESOLUTION.

Relative to the taxing of incomes and ratifying the proposed amendment to the *Constitution of the United States*.

Whereas, The *Congress of the United States of America*, after solemn and mature deliberation therein, by a vote of two-thirds of both houses, passed a concurrent resolution, submitting to the legislatures of the several states a proposition to amend the *Constitution of the United States*, which resolution is in the following words:

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.”

Resolved, by the *Senate and House of Representatives of the State of Michigan*,

That in the name and behalf of the people of this state, we do hereby ratify, approve and assent to the said amendment.

Resolved, That a copy of this assent and ratification, engrossed on parchment, be transmitted by his Excellency, the Governor, to the Senate and House of Representatives of the United States in Congress assembled, and to the Secretary of State of the United States. (See Appendix)

The Michigan legislators having had a certified copy of the Congressional Joint Resolution knew exactly what the wording of that resolution was. Despite that, the following changes were made to the original, official resolution—

1. the preamble was modified:
 - a. the word "Constitution" was changed to a common noun;
 - b. the second instance of the word "States" was changed to a common noun;
 - c. a comma was added after the word "intents";
2. the word "States" was changed to a common noun.

Any change whatsoever by the Legislature of the State of Michigan was 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 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.

Thus, the Legislature of the State of Michigan failed to ratify the proposed Sixteenth Amendment because of the following deficiencies—

1. Lack of jurisdiction of the certified copy of the Congressional Joint Resolution at the time of its introduction in the Michigan House of Representatives;

2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 1 included the following changes to the official resolution:

a. the preamble was modified:

i. the word "Constitution" was changed to a common noun;

ii. the second instance of the word "States" was changed to a common noun;

iii. a comma was added after the word "intents";

b. the word "States" was changed to a common noun;

3. Violation of Article X, Section 6 of the Constitution of the State of Michigan, forbidding the imposition of a nonspecific tax upon the people of Michigan, or of the passing of any tax legislation which would require the reference to any other law.

Finally, there is a serious question as to the authenticity of the version of H. J. R. No. 1 received by Washington since there are no documents whatsoever to support that version in the records at Michigan. In a letter from Gay Meese, Great Seal & Registration Section, Michigan Department of State, dated January 18th, 1984, she states—

I have reviewed the Michigan Public Acts books for the years 1909 through 1913 and can find no concurrent resolution adopted by the Legislature ratifying the 16th amendment to the U. S. Constitution.

In another letter from Martin McLaughlin, Local Records Specialist, Michigan Department of State, dated January 4th, 1985, referring to a search performed by Mr. McLaughlin to find documents related to the resolution sent by Michigan officials to Washington, D. C. as official notice of ratification of the proposed Sixteenth Amendment—

The search uncovered no documents related to House Joint Resolution No. 1, 1911