

## Mississippi—March 7th, 1910

In a letter dated July 30th, 1909, E. F. Noel, Governor of the State of Mississippi, acknowledged receipt of a certified copy of the Congressional Joint Resolution proposing the Sixteenth Amendment to the Constitution of the United States. At the beginning of the next session of the Mississippi Legislature, a special session commencing January 4th, 1910, Governor Noel included the following opinion in his address to the legislators—

### INCOME TAX AND CONSTITUTIONAL AMENDMENT.

The most equitable of all taxes are those upon net incomes in excess of the few thousands of dollars, exempted to meet expenses of living or unexpected business reverses. This power of the Federal Government, after its exercise for many years, was nullified by an almost evenly divided decision of the United States Supreme Court. As a revenue collector, in times of war, its use might avert greater disaster. Through our own, or party, tax, which can noly (sic) be realized through an amendment to the Federal Constitution, which amendment is submitted to you for action by Congress.

The income tax on corporations is fought on the ground of its not applying to individuals. The adoption of this amendment meets that objection and empowers the Federal Government, in its discretion, to call for a share of the net incomes of those who are most able to contribute to tme (sic) expense of government.

The very next day,

The following Senate joint resolution was introduced by Senator Franklin, of the Thirty-first District, and referred to the Committee on Constitution:

Of the Legislature of the State of Mississippi, ratifying the sixteenth amendment of the Constitution of the United States.

This resolution was accompanied by a nearly accurate certified copy of the Congressional Joint Resolution as received by the Governor. (SJ at 27)

Representative Dorroh introduced a House version of the ratification resolution on the 24th of January—

House Joint Resolution No. 14, A Joint Resolution of the Legislature of the State of Mississippi ratifying and approving the amendment to the Constitution of the United States relative to income tax.

Read twice and referred to Committee on Judiciary. (HJ at 171)

Under Article IV of the Mississippi State Constitution, Section 59 provided that—

Bills may originate in either house and be amended or rejected in the other; and every bill shall be read on three different days in each house unless two-thirds of the house where the same is pending shall dispense with the rules; and every bill shall be read in full immediately before the vote on its final passage; and every bill

having passed both houses, shall be signed by the president of the senate and the speaker of the house of representatives, in open session; but before either shall sign any bill, he shall give notice thereof, suspend business in the house over which he presides, have the bill read by its title, and on the demand of any member, have it read in full; and all such proceedings shall be entered on the journal. (emphasis added)

Of course, every legislator in the State of Mississippi must have read that section of the State Constitution. Each of them had supposedly taken the oath of office prescribed by Section 40 of that Constitution.

Members of the legislature before entering upon the discharge of their duties shall take the following oath: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully support the constitution of the United States and of the State of Mississippi . . . that I will faithfully discharge my duties as a legislator; that I will, as soon as practicable hereafter, carefully read (or have read to me) the constitution of this State, and will endeavor to note, and as a legislator, to execute all the requirements thereof imposed on the legislature . . . So help me God." (emphasis added)

There not having been a prior and proper suspension of the rules for H. J. R. No. 14, that resolution was invalid at that point, the first two readings in the House having been on the same day.

On the 27th, H. J. R. No. 14 was reported out of committee with a favorable recommendation.

#### REPORT OF COMMITTEE ON JUDICIARY.

MR. SPEAKER: The Committee on Judiciary has had under consideration the following bills referred to them, and have instructed me to report them back with the following recommendations:

Joint Resolution No. 14 of the Legislature of the State of Mississippi, ratifying and approving the amendment to the Constitution of the United States relative to income tax.

Title sufficient; resolution be adopted. (HJ at 189) (emphasis added)

Two days later, H. J. R. No. 14 was taken up and then voted upon.

Mr. Quin called up for consideration House Joint Resolution No. 14, A Joint Resolution of the Legislature of the State of Mississippi, ratifying and approving the amendment to the Constitution of the United States relative to the income tax.

Mr. McCullough offered the following amendment:

Strike out the words "two-thirds of the House and Senate concurring therein."

On motion of Mr. McCullough the amendment was adopted.

Whereupon, on motion of Mr. Dorroh, the resolution, as amended, was read and the Clerk called the roll, and the resolution was adopted by the following vote:

Yeas- . . . -Total 85.

Absent and those not voting- . . . -51. (HJ at 214)

As is duly recorded in Document No. 240 of the 71st Congress, the Mississippi House did not approve the proposed amendment, the Yeas carrying only 62.5% of the vote, less than a two-thirds majority.

On the 31st of January, the House sent the following message to the Senate—

. . . the House of Representatives has passed the following entitled bills, which are herewith transmitted, to-wit:

\* \* \*

House Joint Resolution of the Legislature of the State of Mississippi ratifying and approving the amendment to the Constitution of the United States relative to income tax. (emphasis added)

The Senate then suspended the rules and read H. J. R. No. 14 twice and referred it to the Judiciary committee. (SJ at 163) On February 8th, H. J. R. No. 14 was favorably reported out. (SJ at 244, 245)

On March 7th, the following occurred in the Senate—

Mr. Anderson called up House Joint Resolution No. 14, A Joint Resolution of the Legislature of the State of Mississippi ratifying and approving the amendment to the Constitution of the United States relative to the income tax, and moved that Senate concur in the adoption of the resolution, which motion was ratified by the following vote:

Yeas- . . . -Total 28.

Nays- . . . -Total 2.

Absent and those not voting- . . . -Total 15.

In like manner as the House, the Senate failed to ratify the proposed Sixteenth Amendment in that the vote on H. J. R. No. 14 was only 62.2% in favor.

The Senate vote was, also, in violation of Article IV, Section 59 of the Mississippi State Constitution. Suspension of the rules only applied to the constitutional requirement of three readings. Unsatisfied was the constitutional requirement that—

. . . every bill shall be read in full immediately before the vote on its final passage . . . and all such proceedings shall be entered on the journal. (emphasis added)

On the 8th, the Senate sent a message to the House that the Senate had concurred in H. J. R. No. 14. (HJ at 758) On the 10th, the resolution was duly signed according to the State Constitution. (HJ at 814, SJ at 562)

The Mississippi version of the proposed amendment, H. J. R. No. 14, as received in Washington, but, never recorded in the Mississippi journals, read as follows—

**HOUSE JOINT RESOLUTION No. 14.**

**JOINT RESOLUTION** of the Legislature of the State of Mississippi ratifying and approving the proposed amendment to the constitution of the United States relative to Income Tax.

**WHEREAS**, The 61st 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 incomes from whatever source derived without apportionment among the several states, and without regard to any census of enumeration”:

**NOW, THEREFORE**, Be it resolved by the legislature of the State of Mississippi, That the foregoing resolution, being the Sixteenth Amendment to the Constitution of the United States be and the same is hereby approved and ratified.

The following changes were made by the Mississippi Legislature to the official Congressional Joint Resolution—

1. the original preamble was deleted;
2. the first instance of the word “The” was deleted;

3. the commas before and after the phrase "from whatever source derived were deleted;
4. the word "States" was changed to a common noun;
5. the word "or" was changed to "of";
6. the period was changed to a colon;
7. the final paragraph in the resolution was added to the proposed amendment by virtue of the final colon.

These changes were in violation of the duty which the Mississippi 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.

Finally, the copies of H. J. R. No. 14 transmitted to Washington were unsigned.

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

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 14 contained the following changes:
  - a. the preamble was deleted;
  - b. the first instance of the word "The" was deleted;
  - c. the commas before and after the phrase "from whatever source derived" were deleted;
  - d. the word "States" was changed to a common noun;
  - e. the word "or" was changed to "of";

- f. the period was changed to a colon
  - g. the final paragraph of H. J. R. No. 14 was appended to the 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 House violated the Mississippi State Constitution in failing to read H. J. R. No. 14 three times on three separate days.
  - 4. The Senate violated the Mississippi State Constitution in failing to read H. J. R. No. 14 in full immediately before the vote on its final passage.
- Perhaps the legislators of Mississippi had an excuse for the violations of process that they committed, an excuse which was exposed in a House investigation conducted in March of 1910, entitled—

**INVESTIGATION BY A COMMITTEE OF THE HOUSE REPRESENTATIVES OF THE REPORT OF EMPTY WHISKEY BOTTLES FOUND IN THE CAPITOL. COMMITTEE: HON. A. C. ANDERSON, CHAIRMAN; HON. W. M. COX, HON. EUGENE GERALD, HON. C. E. SLOUGH, HON. I. L. DORROH.**

March 8 to —, 1910 . . . (HJ at 1536)

Though "keeper of the Capitol," the Secretary of State, Joseph W. Power denied knowledge of "any whiskey having been brought into the Capitol or dispensed from any room in the Capitol," and he did not have "any reason to suspect" it. Power's engineer of the Capitol, Joe McDonald, refuted Power's testimony, stating that he had reported to Power the presence of whiskey in the building. McDonald indicated that about 80 empty bottles had been found by the porter in cleaning up. State Representative Blakeslee, initially intimated as having something to do with all those whiskey bottles, identified the porter who discovered the whiskey bottles as under the supervision of Power. (HJ at 1541)

The porter testified that there had been no previous similar incident. (HJ at 1543) After persistent questioning, he admitted that McDonald ordered him to keep quiet about the incident.

The question is, what was there to keep quiet? Why the big binge right at the time that the House had taken up consideration of the ratification of the proposed Sixteenth Amendment? Any why would Mr. McDonald want his porter to shut up about the incident? And why would Secretary of State Power stonewall the incident? Did the whiskey help grease H. J. R. No. 14's way through the House? Was this incident related to the charge, the investigation of which was reported on April 16th, 1910 in the House journal, of whiskey being used to influence the votes in the Democratic caucus?

In an archival document labeled "1910 House Journal Eightieth Day April 16/1910 Duplicate" the following is recorded—

Mr. Cavett offered the following:

In view of the scandalous rumors which have been circulated touching the recent Senatorial contest , (sic) the House of Representatives takes pleasure in saying to the people of Mississippi that we are convinced that the conduct of every candidate in the Senatorial contest was dignified and honorable and upright and that no vote in the caucus nomination was procured by any improper means or corrupt influence, and that the election of Senator Percy is free from fraud or corruption.

And regardless of whether we have supported Senator Percy in the recent contest, or will support him in the approaching primary, we record with pleasure our

confidence in the chivalrous honor and personal integrity and our desire to hold up his hands in the performance of his high duties as a representative of this great commonwealth in the Senate of the United States.

On motion of Mr. Cavett, the Resolution was UNANIMOUSLY ADOPTED.  
(at 41)

Mr. Johnston of Coahoma offered the following Concurrent Resolution:

Resolved . . . to call and hold a special primary election . . . to be participated in only by white Democratic qualified electors . . . (42)

Mr. Speaker:

We, your Committee appointed (cross out) under the Foy Resolution Mch 19, 1910 with the duty of investigating whether certain charges of corruption and fraud, (sic) which were alleged to have been used in the recent Democratic caucus at which Senator LeRoy Percy was nominated; beg leave to report as follows:—

We have examined 67 (67 filling in an apparent blank) witnesses and all the testimony including questions and answers is now being transcribed by the stenographers and will be published as heretofore provided for by Resolution of the House. In the examination of witnesses we have spared no time or expense in trying to arrive at the truth, bringing (sic) witnesses here from all parts of the State and running down (sic) each and every rumor that came to our knowledge and examined every witness that we had any knowledge of (sic) who was even supposed to know, or even if it were rumored that he knew any (sic) facts that would aid us in our investigation.

After what we believe to be a full and thorough investigation, we have been unable to find any evidence of a single instance where the vote of a member was corruptly influenced and because thereof (sic) voted for some candidate other than his own choice.

In the opinion of your Committee Senator (sic) LeRoy Percy was fairly and honorably nominated by the Democratic Caucus. (at 49)

Mr. Speaker and Members of the House. We, the undersigned members of the House Investigating Committee under the Foy resolution of March 19, 1910, beg leave to submit this our minority report.

\* \* \*

First. We believe that undue influence by the improper use of liquor was used upon at least one member of the House. This member was changed from his original conviction and, being unfortunately addicted to the use of strong drink was, by this improper influence, overpersuaded (sic) to vote against his real convictions.

Second. The evidence shows further that in other instances other members of the Legislature were approached and asked if money or political position would persuade them to change their vote, and this, we believe, was very improper.

Third. Even the patronage of the Federal government is shown to have been brought into play and used in this caucus . . .

Fourth. We submit that the executive patronage of Mississippi was used with telling effect . . . the Governor conferred and advised continually—and this was well known to every member of the caucus—with all the “opposition” candidates, their friends and members of the caucus as to the best methods to solidify the “opposition” and to persuade some members supporting ex-Gov. Vardaman to change their vote, was highly improper (sic)

\* \* \*

Seventh. Whiskey was used excessively during the caucus. But there is no proof that any intoxicants were dispensed in the headquarters of any candidate. (at 50)