

## Montana—January 31st, 1911

In an acknowledgment letter dated July 31st, 1909, from the Governor of Montana, Edwin L. Norris, to the Secretary of State of the United States, Philander Knox, the Governor stated the following—

I shall submit the [certified copy of the Congressional Joint Resolution] to the next session of the Legislative Assembly of Montana, when convened, according to law. (emphasis added)

Governor Norris, thus, set forth his duty "according to law" to submit the Congressional Joint Resolution to the Legislature of Montana.

At the next session of the Legislative Assembly of Montana, there was no apparent record of Norris' submission of the Congressional Joint Resolution to that Assembly "according to law." The Governor's address to the Legislature on January 3rd, 1911 was devoid of any mention of Senate Joint Resolution No. 40. Nevertheless, on January 5th, 1911, a resolution was introduced by Representative Whaley which was entitled—

House Joint Resolution No. 2.

A Joint Resolution ratifying the Sixteenth Amendment to the Constitution of the United States.

H. J. R. No. 2 was then read the first and second times at length and referred to the Committee on Federal Relations. (HJ at 29)

On the 12th, H. J. R. No. 2 was favorably reported out of committee. The report was adopted and H. J. R. No. 2 was referred to the Printing Committee. (HJ at 66) On the 14th, H. J. R. No. 2 was favorably reported out of the Committee of the Whole and that report was adopted. (SJ at 92)

Without any further action in the House, the Senate received the following message from the House—

I am directed by the House to inform your Honorable Body that House Joint Resolution No. 2 has this day been read three times and passed, title agreed to, and is herewith transmitted to the Senate for your concurrence.

Respectfully,  
FINLAY McRAE, Chief Clerk.  
(SJ at 107)

H. J. R. No. 2 was then introduced in the Senate, read the first and second times, and then referred to the Committee on Federal Relations. (SJ at 107) On the 19th of January, the Senate received another message from the House—

I am directed by the House to request that the Honorable Senate return House

Joint Resolution No. 2 to the House for the purpose of allowing it to correct an error which has taken place in regard to its final passage by the House.

Respectfully,  
FINLAY McRAE, Chief Clerk.

Moved by Donlan, seconded by Meyer, that House Joint Resolution No. 2 be recalled from the Committee on Federal Relations and be returned to the House.

Motion adopted. (SJ at 132)

The House journals contain no discussion about the specific legislative error committed in the final passage of H. J. R. No. 2 which caused the House to have the Senate return H. J. R. No. 2; however, H. J. R. No. 2 was never put upon the calendar for its third reading and a third reading was never had in the House.

That same day, H. J. R. No. 2 was returned from the Senate with the accompanying message—

I am directed by the Senate to inform your Honorable Body that, a communication from the House asking for return of House Joint Resolution No. 2, for correction of history was this day withdrawn from committee on Federal Relations of the Senate and the Secretary was instructed to return same to the House, and same is herewith returned.

Respectfully,  
NATHAN GODFREY,  
Secretary of the State.  
(HJ at 154)

Once H. J. R. No. 2 was put back into the legislative process in the House, it became obvious that H. J. R. No. 2 had to be returned for no mere "correction of history." An attempt was made to correct one of the House's errors on the 21st—

Your Committee on Engrossment beg leave to report . . . House Joint Resolution No. 2 correctly engrossed.

Report adopted. (HJ at 179)

Having been correctly engrossed at this point, H. J. R. No. 2 apparently was not correctly engrossed prior to its transmission to the Senate. H. J. R. No. 2 was, therefore, never printed in its final draft prior to the vote on its passage in the House. It is difficult to determine what previous drafts of H. J. R. No. 2 may have contained because the journals never record anything related to the actual text of any version of H. J. R. No. 2. On the 24th of January, the House took up the final vote of H. J. R. No. 2—

House Joint Resolution No. 2 having been read three several times was passed by the following vote:

Ayes- . . . -61.

Noes-None.

Absent and not voting- . . . 12.

Title agreed to. (HJ at 200)

Though the above journal entry mentions that H. J. R. No. 2 had "been read three several times," there is no other journal record of an actual reading taking place. A failure to have a third reading, however, was not a Constitutional violation in Montana. A failure to publish the final draft of H. J. R. No. 2 was a violation of Article V, Section 22 of the Montana Constitution which provided that—

No bill shall be considered or become a law unless referred to a committee,

returned therefrom and printed for the use of the members.

The House journal, while it does not record any revisions or amendments to H. J. R. No. 2, also does not record the actual printing of H. J. R. No. 2 before it was prematurely sent to the Senate and then brought back. Having not been correctly engrossed prior to its shortened stay in the Senate, it could not have been correctly printed anyway. The history attached to the archival copy of H. J. R. No. 2 records several acts of the House which were never recorded in the House journal. Among those acts which went unrecorded in the House journal were the following significant acts—

1. Correct printing on January 14th;
2. Placed on file for third reading on the 14th;
3. Referred to calendar for third reading on the 20th.

In addition, that history contains the following discrepancy: The correct engrossment is reported on the 20th of January in the history, but, on the 21st in the journal.

After H. J. R. No. 2 was brought back to the House, its final draft was reported as correctly engrossed, but, in its final draft, H. J. R. No. 2 was never published at length. H. J. R. No. 2, therefore, could not have been correctly printed on the 14th as claimed in the history, it not having been in its correct final draft until, at least, the 20th, but, officially, not until the 21st. Since there is no record, either in the House journal or in the history attached to the archival original of H. J. R. No. 2, of any printing of the final draft of H. J. R. No. 2, that resolution could not have been correctly printed on the 14th. This failure to print the resolution was a Constitutional violation. The history was a fraud.

On the 24th of January, another message was transmitted to the Senate from the House announcing the passage of H. J. R. No. 2—

I am directed by the House to inform your Honorable Body that . . . House Joint Resolution No. 2, (has) this day been read a third time and passed, and is herewith transmitted for your concurrence. (SJ at 187)

H. J. R. No. 2 was then introduced in the Senate, again, and read the first and second times, again, and referred to the Committee on Federal Relations, again. (SJ at 188) This re-execution of the legislative process was proper procedure for the re-enactment of a bill or resolution that had been amended, or that part of it which had been amended.

On the 27th, H. J. R. No. 2 was, again, favorably reported out of committee with the following result—

On motion of Leary, seconded by McCone, report adopted, and House Joint Resolution No. 2 referred to General File. (SJ at 208)

The Committee of the Whole also reported favorably on H. J. R. No. 2. (SJ at 214) H. J. R. No. 2 was then referred to the calendar for its third reading. (SJ at 214) That third reading was set for the same day and was taken up for a vote—

H. J. R. No. 2, having been read three several times at length, was concurred in by the following vote:

Ayes- . . . -25.

Noes: . . . -1.

Absent and not voting- . . . 2.

Title agreed to. (SJ at 214)

Later that day, H. J. R. No. 2 was returned to the House. (HJ at 253) On the last day of

the month, H. J. R. No. 2 was reported properly enrolled. This journal entry is missing from the history attached to the archival history. (HJ at 297)

The following then took place on the 31st—

Mr. Speaker at this time announced that he was about to sign House Joint Resolution No. 2, a Joint Resolution ratifying the Sixteenth Amendment of the Constitution of the United States, and signed same in the presence of the House. (HJ at 300)

Similarly, on the same day in the Senate, the following took place—

The President announced that he was about to sign . . . House Joint Resolution No. 2, and same (was) signed in open session. (SJ at 245)

The signing by the President of the Senate was followed by a message from the House—

I am directed by the House to inform your Honorable Body that Mr. Speaker has this day signed in the presence of the House, House Joint Resolution No. 2 . . . (SJ at 260)

There is no record of the public reading of the title of H. J. R. No. 2 in the Senate prior to its signing by the President. A failure to publicly read the title was a violation of Article V, Section 27 of the Montana State Constitution which provided that—

The presiding officer of each house shall, in the presence of the house over which he presides, sign all the bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

H. J. R. No. 2 was then transmitted to the Governor by the Committee on Enrollment. (HJ at 308) The Governor then sent the following message back to the House—

I have this day approved and deposited with the Secretary of State the following House Bills and Resolution:

\* \* \*

H. J. R. No. 2—A Joint Resolution ratifying the Sixteenth Amendment of the Constitution of the United States.  
(Signed:) EDWIN L. NORRIS,  
Governor.

On February 3rd, 1911, Governor Norris transmitted an unsigned copy of H. J. R. No. 2 to Philander Knox, the Secretary of State of the United States. The text of H. J. R. No. 2 as received by Washington was as follows—

#### House Joint Resolution No. 2

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 senate and house of representatives of the State of Montana, 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 Montana.

And, further be it resolved, that certified copies of this joint resolution be forwarded by the governor of this state to the secretary of state at Washington and to the presiding officers of each house of the national congress.

W. W. McDowell

Speaker of the House.

W. R. Allen

President of the Senate.

Approved January 31, 1911.

Edwin L. Norris

Governor.

Filed January 31, 1911.

A. N. Yoder

Secretary of State.

Accompanying the copy of H. J. R. No. 2 was a certificate from A. N. Yoder which stated the following—

I, A. N. Yoder, Secretary of State of the State of Montana, do hereby certify that the above is a true and correct copy of House Joint Resolution No. 2, ratifying the Sixteenth Amendment to the Constitution of the United States, enacted by the Twelfth Session of the Legislative Assembly of the State of Montana, and approved by Edwin L. Norris, Governor of said State, on the thirty-first day of January, 1911.

The resolution, as transmitted, contained the following changes to the official Congressional Joint Resolution—

1. the preamble was modified:

a. the words "Senate", "House", "Representatives", "That", "States", and both instances of the word "Constitution" were changed to common nouns;

b. the colon after the second instance of the word "Constitution" was changed to a comma;

c. the word "namely" was added to end of the preamble along with an additional comma;

2. the words "Congress" and "States" were changed to common nouns.

Each such change to the official Congressional Joint Resolution represented a violation of the duty of the Montana Legislature 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 purported ratification by the Montana Legislature of the proposed Sixteenth Amendment was defective for the following reasons—

1. Lack of jurisdiction of the certified copy of the Congressional Joint Resolution;
2. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that H. J. R. No. 2 contained the following changes to the official Congressional Joint Resolution:

- a. the preamble was modified:
  - i. the words "Senate", "House", "Representatives", "That", "States", and both instances of the word "Constitution" were changed to common nouns;
  - ii. the colon after the second instance of the word "Constitution" was changed to a comma;
  - iii. the word "namely" was added to end of the preamble along with an additional comma;

- b. the words "Congress" and "States" were changed to common nouns;
3. 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;

4. Violation of Article V, Section 22 of the Montana State Constitution in failing to correctly print the final draft of H. J. R. No. 2;

5. Violation of Article V, Section 27 of the Montana State Constitution in failing to publicly read the title of H. J. R. No. 2 just prior to its signing in the Senate.

This last omission in the record was not corrected, nunc pro tunc, though the opportunity existed to do so in a message from the Senate to the House on February 13th—

I am directed by the Senate to inform your Honorable Body that through an omission to notify the House of the signing of Bills by the President in open Session, are herewith corrected by supplying list of omissions, giving date of signature of President, viz:

\* \* \*

January 31st, 1911, . . . House Joint Resolution No. 2. (HJ at 495)