

Washington—January 26th, 1911

On August 21st, 1909, the Governor of Washington sent a letter to Philander Knox, Secretary of State of the United States, acknowledging receipt of the certified copy of United States Senate Joint Resolution No. 40 and stating that it was transmitted to the legislature which was then in session.

On January 11th, 1911, the proposed Sixteenth Amendment had still not been ratified by the Washington State Legislature. The following resolution was introduced into that session—

SENATE JOINT RESOLUTION NO. 1

By Senator Bryan:

Be it resolved, By the Senate and the House of Representatives of the legislature of the State of Washington, That the following amendment to the constitution of the United States, submitted to the several states by congress, pursuant to article five (5) of said constitution be and the same is hereby ratified as follows, to-wit: "Article XVI. The 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 any census or enumeration." (SJ at 52)

S. J. R. No. 1 was taken up immediately with the following result—

Senator Bryan moved that the rules be suspended, the resolution read the second time, ordered printed and made a special order for 2 o'clock p. m., Wednesday, January 18, 1911.

Senator Falconer moved as a substitute that the resolution be read the second time, ordered printed and referred to the committee on revenue and taxation, when appointed. The substitute motion carried. (SJ at 52)

Apparently Senator Bryan wished to have the rules suspended in order to bypass committee consideration; however, under Senator Falconer's substitute motion, the rules were not suspended, and S. J. R. No. 1 went to committee.

On the 18th, S. J. R. No. 1 was reported for consideration on general file—

We, your committee on public revenues and taxation, to whom was referred Senate joint resolution No. 1, "relating to an amendment to the constitution of the United States," have had the same under consideration, and we respectfully report the same back to the Senate with the recommendation that it be placed on general file. (SJ at 126)

The report was adopted.

On the 23rd of January, S. J. R. No. 1 was taken up and amended—

The secretary read Senate joint resolution No. 1, relative to the levying of a tax

on incomes by the United States.

On motion of Senator Bryan the resolution was amended by striking the comma after the word "States" in line 4 of the resolution and by striking the letter "s" from the word "incomes" in line 8.

On motion of Senator Falconer, the further consideration of Senate joint resolution No. 1 was made a special order for 2 o'clock in the afternoon of Wednesday, January 25th. (SJ at 155)

Further action on S. J. R. No. 1 did not take place until the 26th, at which time Senator Bryan's amendments were voted upon and the vote on final passage of the resolution taken—

Senate joint resolution No. 1, by Senator Bryan, "Relating to the ratification of amendment giving congress power to levy an income tax," was read third time.

The previous question on final passage of the bill was moved by Senators Falconer, Brown, Landon and Ruth.

The motion for the previous question carried.

The secretary called the roll and Senate joint resolution No. 1 passed the Senate by the following vote:

Those voting aye were: . . . -32.

Those voting nay were: . . . -5.

Absent or not voting were: . . . -5.

On motion of Senator Bryan, the rules were suspended and Senate joint resolution No. 1 was ordered immediately transmitted to the House. (SJ at 229)

Thus, the Washington Senate voted, first, to amend the wording of the proposed amendment, and, second, to pass the resolution as amended. Later that same day, the following message was transmitted to the House

The Senate has passed . . .

. . . Senate joint resolution No. 1, relating to the ratification of the proposed amendment to the constitution of the United States, providing for an income tax;

* * *

And the same are herewith transmitted. (HJ at 154)

S. J. R. No. 1 was, shortly thereafter, read the first time in the House—

Senate joint resolution No. 1, by Senator Bryan, relating to the ratification of federal amendments to the constitution relative to income tax.

Referred to committee on revenue and taxation. (HJ at 158)

That same day, the following occurred—

On motion of Mr. Todd, the rules were suspended, Senate joint resolution No. 1 was taken from the committee on revenue and taxation, was substituted for House concurrent resolution No. 3, and considered under second reading.

Senate joint resolution No. 1 was read the second time in full by sections.

On motion of Mr. Todd, the rules were suspended, the second reading considered the third, the resolution placed on final passage, and passed the House by the following vote: Yeas, 80; nays, 1; absent or not voting, 15.

Those voting yea were: . . . -80.

Those voting nay were: . . . -1.

Those absent or not voting were: . . . -15.

On motion of Mr. Todd, House concurrent resolution No. 3 was indefinitely postponed. (HJ at 160)

S. J. R. No. 1 was then transmitted back to the Senate—

. . . Senate joint resolution No. 1, "Relating to the ratification of amendment to constitution of the United States providing for an income tax."
And the same are herewith transmitted. (SJ at 252)

On February 1st, the following took place in the Senate—

Your committee on enrolled bills, to whom was referred . . .
. . . Senate joint resolution No. 1, "Relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income;"
—have compared same with the original or engrossed bills and joint resolution, respectively, and find them correctly enrolled. (SJ at 278)

Since S. J. R. No. 1 was compared for purposes of enrollment along with several other bills, it is somewhat difficult to tell whether S. J. R. No. 1 was compared to the original draft of S. J. R. No. 1 or with the final draft of S. J. R. No. 1. In any event, Senator Bryan compared that draft with the resolution as enrolled and found that it had been properly enrolled. Shortly thereafter, S. J. R. No. 1 was signed—

The president signed Senate joint resolution No. 1. (SJ at 278)

That same day, a message was sent to the House with the following information—

The president has signed . . .

* * *

. . . enrolled Senate joint resolution No. 1, "relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income."
(HJ at 221)

The Speaker of the House then signed S. J. R. No. 1, also. (HJ at 221)

The next day, the Senate received a message informing them that the Speaker had signed S. J. R. No. 1—

The speaker has signed . . .

* * *

. . . Senate joint resolution No. 1, "Relating to the amendment to the constitution of the United States, submitted to the several states by congress, etc. (SJ at 289)

There is no record of presentation of S. J. R. No. 1 to the Governor. Under Article III, Section 12 of the Washington State Constitution which required such legislation to be presented to the Governor, this was a violation.

The first letter of transmittal of S. J. R. No. 1 on the Governor's stationery was dated February 25th, 1911, but was unsigned by the Governor. It was accompanied by a certificate from the Secretary of State of the State of Washington, signed and dated February 24th, 1911 and by a copy of S. J. R. No. 1 signed by the Speaker of the House and by the President of the Senate but not by the Governor.

The second letter of transmittal of S. J. R. No. 1 on the Governor's stationery was dated March 7th, 1911, and signed, but with a different signature than the original

acknowledgment. That letter was accompanied by another certificate, dated March 1st, from the Secretary of State, signed with a different signature than that on the previous certificate and with the signature of the Assistant Secretary of State. The copy of S. J. R. No. 1 in this transmittal was unsigned.

The signed copy of S. J. R. No. 1 read as follows—

SENATE JOINT RESOLUTION NO. 1.

BE IT RESOLVED by the Senate and the House of Representatives of the Legislature of the State of Washington:

That the following amendment to the constitution of the United States, submitted to the several states by congress, pursuant to article five (5) of said constitution be and the same is hereby ratified, as follows towit (sic): "Article XVI. The 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 any census or enumeration."

The unsigned copy contained one discrepancy from the signed copy—the word "article" was changed to "articles." The signed copy contained the following changes from the official Congressional Joint Resolution—

1. the preamble was replaced by a preamble composed entirely by the Washington Legislature;
2. the word "Congress" was changed to "congress";
3. the word "incomes" was changed to "income";
4. the word "States" was changed to "states";
5. the comma following the word "states." was deleted.

All such changes were a violation of the duty of the Washington State 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 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.

S. J. R. No. 1 is recorded in full in the journals only once and that prior to its having been amended on February 1st. Every other apparent reading is by title only. The following represent all the different titles which were read for S. J. R. No. 1—

1. "relating to an amendment to the constitution of the United States";
2. "relative to the levying of a tax on incomes by the United States";
3. "Relating to the ratification of amendment giving congress power to levy an income tax";
4. "relating to the ratification of the proposed amendment to the constitution of the United States, providing for an income tax";
5. "relating to the ratification of federal amendments to the constitution relative to income tax";
6. "Relating to ratification of amendment to constitution of United States providing for an income tax";
7. "Relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income";
8. "relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income";
9. "Relating to the amendment to the constitution of the United States, submitted to the several states by congress, etc."

By virtue of the fact that 7. and 8. represent the only title that was ever repeated, along with the purposeful amendment by motion to the wording of the amendment, this attests to the desire of the Washington State Legislature to amend the proposed Sixteenth Amendment, not to ratify it in its original state.

Finally, S. J. R. No. 1 was passed in violation of Article VII, Section 2 of the Washington State Constitution, which states that—

The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property: . . .

The Legislature of the State of Washington could not "prescribe such regulations by general law" for any tax which would issue as a result of their ratification of the proposed Sixteenth Amendment.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Washington 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. J. R. No. 1 contained the following changes from the official Congressional Joint Resolution:

a. the preamble was replaced by a preamble composed entirely by the Washington Legislature;

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

c. the word "incomes" was changed to "income";

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

e. the comma following the word "states" was deleted;

2. Violation of Article III, Section 12 of the Washington State Constitution requiring the presentation of S. J. R. No. 1 to the Governor for approval;

3. Violation of Article VII, Section 2 of the Washington State Constitution in that passing on S. J. R. No. 1 would make it impossible for the State Legislature to carry out the particular provisions of that section.

In addition, there are some apparent discrepancies in the transmission of the certified documents to Washington, D. C. in that the documents do not bear signatures, for both the Governor and the Secretary of State, which match previous signatures. (See Appendix)