

## Wyoming—February 3rd, 1913

On July 30th, 1909, the Governor of Wyoming, Bryant B. Brooks, sent a letter of acknowledgement to Philander Knox, the Secretary of State of the United States, indicating that the copy of Senate Joint Resolution No. 40 received from Knox would be submitted to the next session of the Wyoming Legislature.

On May 24th, 1912, the new Governor of Wyoming, Joseph H. Carey, sent another letter to Knox indicating that the certified copy received by Brooks was no longer on file and that the proposed amendment had not previously been considered by the Wyoming Legislature.

On the 14th of January, 1913, the Governor of Wyoming included the following reference to the proposed Sixteenth Amendment in his address—

### Amendments to the Constitution of the United States.

There are now pending two amendments to the Constitution of the United States under the terms of that instrument, for ratification or rejection by the Wyoming Legislature. These amendments have been certified to the Governor of the state by the Secretary of State of the United States.

One of these amendments is known as the "Income Tax Amendment" and is as follows:

S. J. Res. 40.

Sixty-First Congress of the United States of America. At the First Session.

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

### 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:

"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."

\* \* \*

This amendment has been much discussed by the people of the United States and has been ratified by nearly the number of states necessary to make it a part of the Constitution of the United States, and I ask action by your honorable body on the proposed amendment.

The wisdom of the amendment has been much discussed. Those in favor of it

give as the chief reason that the general government should be given this additional taxing resource for the raising of revenue; while those opposed argue that the revenue that may be derived from this source should belong to the several states where derived; that the states need the revenue, while the United States has more revenue now than it can wisely expend. (SJ at 41) (emphasis added)

The version of the proposed Sixteenth Amendment which the Governor transmitted to the Legislature was essentially correct except for the change of the comma following the word "therein" in the preamble and the change of the word "States" to "states." All other wording and punctuation transmitted by the Governor was the same as in the Congressional Joint Resolution.

On the 23rd of January, Senate Joint Resolution No. 2 was introduced by Senator Kendrick, entitled as—

Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes. (SJ at 66) (emphasis added)

S. J. R. No. 2 was read for the first time "by title only," i.e., the full text of S. J. R. No. 2 was not read on the floor of the Senate. The resolution was then referred to Committee No. 15, Federal Relations, Indian and Military Affairs, and ordered printed. (SJ at 66)

On the 28th, S. J. R. No. 2 was reported as having been correctly printed. (SJ at 87) On the 31st, the Committee on Federal Relations, Indian and Military Affairs recommended passage of S. J. R. No. 2. (SJ at 113)

When S. J. R. No. 2 was taken up for consideration in the Senate on February 3rd, Senator Beck moved that the rules of the Senate be suspended. That motion passed by a margin of 25 to 2 in favor. (SJ at 116) The Committee of the Whole made the recommendation—

That S. J. R. No. 2 . . .

Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes. do pass . . . (SJ at 116) (emphasis added)

The report of the Committee of the Whole was adopted and S. J. R. No. 2 immediately went to its second reading, which was again by title only.

Under suspension of rules.

The following Senate Joint Resolution was read second time by title only, ordered to be considered the engrossed copy and read the third time.

S. J. R. No. 2 . . .

Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes. (SJ at 116) (emphasis added)

Thus, just the title of S. J. R. No. 2 became the engrossed copy, or final draft, of S. J. R. No. 2 for legislative purposes in the Senate and it was in that form that S. J. R. No. 2 was read for the third time. It was also in that form that S. J. R. No. 2 was transmitted to the House for concurrence. S. J. R. No. 2 was taken up for a vote with the following result—

Under suspension of rules.

The following Senate Joint Resolution was read for the third time, placed upon its final passage and passed by the Senate by the vote indicated:

**S. J. R. No. 2 . . .**

**Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes. (SJ at 116) (emphasis added)**

A roll call was then taken for S. J. R. No. 2, as engrossed, and the result was a margin of 24 to 3 in favor. (SJ at 116) Having been given, by the Governor in his address, the exact wording proposed and desired by Congress for the Sixteenth Amendment, including the word "lay," the Wyoming Senate insisted on not only emphasizing the word "levy" in the title of S. J. R. No. 2, but, also, the transformation of that title into the final draft of the resolution, a violation of Article 3, Section 20 of the Wyoming State Constitution—

**No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.**

The title of S. J. R. No. 2, engrossed as the final draft, then went to the House for consideration and concurrence that same day, the 3rd of February. The Senate sent the engrossed S. J. R. No. 2 as follows—

**Senate Joint Resolution No. 2.**

**Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes. (HJ at 144) (emphasis added)**

The House journal never records the receipt of any copy of S. J. R. No. 2 except the title of S. J. R. No. 2 engrossed into the final draft of the Senate, which draft was voted upon by both houses. The Committee of the Whole of the House reported S. J. R. No. 2 back to the House with a favorable recommendation and that report was adopted. (HJ at 144)

Upon request of Mr. Sullivan of Big Horn, unanimous consent of the House was granted, and Senate Joint Resolution No. 2 ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes was read the second and third times under suspension of the rules and placed upon final passage, passing the House by the following vote . . .

**48 in the affirmative to 7 in the negative. (HJ at 144)**

The Speaker then announced that S. J. R. No. 2 had passed the House. (HJ at 144) The Governor, shortly thereafter, hastily sent a telegram to the United States Department of State announcing that the Legislature of Wyoming had ratified the proposed Sixteenth Amendment. The President of the Senate (SJ at 133) and the Speaker of the House (HJ at 165) did not sign S. J. R. No. 2, however, until the next day, the 4th. In both cases, S. J. R. No. 2, as engrossed and enrolled, was read—

**Senate Joint Resolution ratifying an amendment to congress to levy a tax on incomes. (emphasis added)**

All of the documents pertaining to S. J. R. No. 2, as passed, show the date of signing as February 3rd. The journals show the date of signing as February 4th. The documents also show that both the President of the Senate and the Speaker of the House signed a different version of S. J. R. No. 2 than that which was voted upon and passed by the

members of both houses. The version of S. J. R. No. 2 which was transmitted by the Secretary of State of Wyoming, Frank L. Houx, to the Secretary of State of the United States read as follows:

**Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes.**

**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 the 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 by an amendment to the Constitution of the United States, which when ratified by the legislature 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 OF THE STATE OF WYOMING, THE HOUSE OF REPRESENTATIVES CONCURRING**, That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby ratified by the legislature of the State of Wyoming.

That certified copies of this preamble and joint resolution be forwarded by the Secretary of State 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, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative of the United States, and to each Senator and Representative in Congress from the State of Wyoming.

By the President, **BIRNEY H. SAGE.**

By the Speaker, **MARTIN L. PRATT.**

10:52 A. M., February 3, 1913.

**JOSEPH M. CAREY**, Governor.

Note the time and date of signing. The Senate journal shows that S. J. R. No. 2 was signed after 2 P. M. on the 4th of February in the Senate and the House journal shows that it was also signed on the 4th of February in the House. This document is, thus, false on its face, its date of signing not coincident to that recorded on both journals, and, furthermore, S. J. R. No. 2 could not have been signed in the House at precisely the same time as it was being signed in the Senate, unless, Article 3, Section 28 of the Wyoming Constitution had been violated. Article 3, Section 28 of the Wyoming Constitution 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 legislature immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

Had the President of the Senate followed Constitutional procedure by having the title of S. J. R. No. 2 read, immediately signing the document and then having "the fact of

signing . . . at once entered upon the journal," and had the Speaker of the House done likewise, both of them could not possibly have signed that same document at 10:52 A. M. on the same day.

If the time and date on the document are purported to be the date of the Governor's approval, that is an entirely different Constitutional problem in which the Governor signed the document before the President of the Senate and the Speaker of the House signed it.

In reply to Governor Carey's telegram, the Secretary of State of the United States, Philander Knox, sent a telegram back to Carey which said—

Replying to your telegram of 3rd you are requested to furnish certified copy of Wyoming's ratification of Income Tax Amendment so there may be no question as to compliance with Section 205 of Revised Statutes. (emphasis added)

The Governor's response was to have Secretary of State Houx send two copies of S. J. R. No. 2. Appended to the transmitted copies of S. J. R. No. 2 were certificates from Houx, attesting that the two documents were just like the original on file and that they had passed the Wyoming Legislature.

According to the *SESSION LAWS OF THE STATE OF WYOMING PASSED BY THE TWELFTH STATE LEGISLATURE*, for the dates January 14th, 1913 to February 22nd, 1913, the text of S. J. R. No. 2 was as follows—

#### SENATE JOINT RESOLUTION NO. 2

Senate Joint Resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes.

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 the 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 by an amendment to the Constitution of the United States, which when ratified by the legislature 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 of the State of Wyoming the House of Representatives Concurring, That the said proposed amendment to the constitution of the United States of America be, and the same is hereby ratified by the legislature of the state of Wyoming.

That certified copies of this preamble and joint resolution be forwarded by the Secretary of State 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, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative of the United States, and to each Senator and Representative in Congress from the State of Wyoming.

The version of S. J. R. No. 2 transmitted to Washington contains the following changes to the official version—

1. the preamble was amended:
  - a. the word “assembled” was changed to “Assembled”;
  - b. the word “article” was changed to “Article”;
  - c. the word “as” was changed to “by”;
  - d. the word “legislatures” was changed to “legislature”;
  - e. the word “Constitution” was changed to “constitution”;
  - f. the comma after the word “which” was deleted;
  - g. the word “namely” was added at the end;
2. the word “Congress” was changed to a common noun;
3. the word “States” was changed to a common noun.

Changing the word “as” to “by” in the preamble completely changed the intent of the Congressional Joint Resolution. The resolution now suggested that another amendment proposed the amendment.

Thus, this S. J. R. No. 2 was in violation of the duty which the Wyoming 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 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 concur exactly and precisely with Congress in a proposed Constitutional amendment.

Finally, S. J. R. No. 2 violated Article XV, Section 13 of the Wyoming State Constitution which provided that—

No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

S. J. R. No. 2 did not state the object to which the funds collected by the tax to be imposed under that resolution would be applied.

The purported ratification of the proposed Sixteenth Amendment by the Wyoming Legislature was, thus, defective for several reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress—S. J. R. No. 2 contained the following modifications from the original:

- a. the word "Congress" was changed to a common noun;
- b. the word "States" was changed to a common noun;
- c. the original preamble was amended:
  - i. the word "assembled" was changed to "Assembled";
  - ii. the word "article" was changed to "Article";
  - iii. the word "as" was changed to "by";
  - iv. the word "legislatures" was changed to "legislature";
  - v. the word "Constitution" was changed to a common noun;
  - vi. the comma after the word "which" was deleted;
  - vii. the word "namely" was added;

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 required by Section 205 of the Revised Statutes of 1878;

3. The version of S. J. R. No. 2 as engrossed and voted upon was not the resolution transmitted to Washington, in that, only a radically shortened version, the title only, was voted upon;

4. In violation of Article 3, Section 20 of the Wyoming State Constitution, S. J. R. No. 2 was amended into a title only resolution on its passage through the Senate;

5. Unless a violation of the Constitution of the State of Wyoming had occurred, or unless the Wyoming House and Senate journals were fraudulent, the resolution which passed the Wyoming State Legislature could not have been the resolution which was transmitted to Washington no matter what it was called, due to the discrepancy in time shown in the journals;

6. The document sent to Washington as an official notice of Wyoming's ratification was false on its face, having the date of signing incorrect;

7. Violation of Article XV, Section 13 of the Wyoming State Constitution in that S. J. R. No. 2 did not state distinctly the object to which the funds to be collected under any tax imposed as a result of S. J. R. No. 2 would be applied.