

CONSTITUTIONAL LAW:
GENERAL ASSEMBLY:

(1) Senate Substitute for House Joint Resolution No. 4 was passed in the form such resolution was signed by the presiding officer of each House and filed with the

Secretary of State; (2) the General Assembly may reconsider and redraft a resolution already passed by the General Assembly and referred to the people before the election is held.

OPINION NO. 85

February 16, 1970

Honorable Robert L. Prange
State Senator, 14th District
Capitol Building
Jefferson City, Missouri 65101



Dear Senator Prange:

This is in response to your request for an opinion on two questions concerning Senate Substitute for House Joint Resolution No. 4 (SSHJR No. 4) passed by the Seventy-Fifth General Assembly, first session, proposing an amendment to Section 11 (c) of Article X, of the Constitution of Missouri. The question which we will answer in part I of the opinion concerns the validity of House Joint Resolution No. 4 as finally adopted in view of a discrepancy between the final version of Joint House Resolution No. 4 signed by the presiding officer of each House and the report in the Senate Journal of an amendment offered in the Senate to Senate Substitute for House Joint Resolution No. 4 (SSHJR No. 4) which became part of the final version of House Joint Resolution No. 4. The second question, which will be answered in part II of this opinion, is "whether or not the General Assembly can reconsider and redraft a resolution already passed by the General Assembly and referred to the people before it has been voted on."

I

The legislative history of Joint Resolution No. 4 reveals that on June 24, 1969, the Senate took up its Substitute for House Joint Resolution No. 4 (Senate Journal, pp. 1225-1227). At that time Senator Prange offered the following amendment:

"SENATE AMENDMENT NO.2.

Amend Senate Substitute for House Joint Resolution No. 4, page 2, section 10 (c), line 22, by adding the following after the word 'voters';

'provided that in any school district where the board of education submits a tax rate lower than the rate approved in the last previous school election and the proposed tax rate is defeated the tax rate shall not revert to the rate voted in the last previous school election but may be resubmitted to a vote of the people'

And further amend said section, line 23, by adding after the word 'Higher' the words 'or lower'

And further amend said section, line 27, by adding after the word 'higher' the words 'or lower' . . . "
[Senate Journal, p. 1226]

Extensive investigation reveals that the Senate Substitute for House Joint Resolution No. 4 (SSHJR No. 4) was not in printed form at the time Senate Amendment No. 2 was adopted by the Senate; but at that time a typed version of the Senate Substitute without amendment existed. In that typed version of the Senate Substitute there is no reference to a "Section 10 (c)." However, on the 22nd line of Section 11 (c) of SSHJR No. 4 there appears the word "voters." From the context of the Senate Substitute for House Joint Resolution No. 4 it appears that the reference in Senate Amendment No. 2 to "Section 10 (c)" was intended to be to "Section 11 (c)" and that only by reading "10 (c)" as "11 (c)" can Amendment No. 2 have any meaning at all. We further note that Senate Amendment No. 2 purports to add after the word "higher" on line 27 of the Senate Substitute for House Joint Resolution No. 4 the words "or lower." The word "higher" does not appear on line 27, but it does appear on line 26 and once again it would appear from the context of the Resolution that the amendment intended to add the words "or lower" after the word "higher" on line 26.

After Amendment No. 2 was adopted by the Senate, SSHJR No. 4, as amended, was read a third time and was passed by the Senate (Senate Journal, p. 1227).

The House passed SSHJR No. 4 (as amended with Senate Amendment Nos. 1 and 2) on June 26, 1969 (House Journal, pp. 1959-1961). We find no record that a typed or printed

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copy of SSHJR No. 4, with Senate Amendments Nos. 1 and 2, had ever been prepared at the time the House passed the House Joint Resolution No. 4 in the form it left the Senate.

On July 7, 1969, the House met and the Chairman of the House Committee on Bills Perfected and Passed reported that he had carefully examined Senate Substitute for House Joint Resolution No. 4 and found it "to be truly and correctly typed as agreed to and finally passed" (House Journal, pp. 2210-2211). Then, ". . . Senate Substitute for House Joint Resolution No. 4 [was] read at length and, there being no objection, [was] signed by the officer to the end that [it] may become law." (House Journal, p. 2212).

On July 15, 1969, the Senate Journal shows the Senate met and the President Pro Tem announced a number of bills and SSHJR No. 4 "having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made the bills would be signed by the President Pro Tem to the end that they may become law." The Senate Journal then shows that SSHJR No. 4 was read by the Secretary and signed by the President Pro Tem. (Senate Journal, p. 1529).

The House Journal for July 15, 1969, has the following entry on page 2222:

"Having been duly signed in open session in the Senate, Senate Substitute for House Joint Resolution No. 4 was delivered to the Secretary of State by the Chief Clerk."

We have examined the copy of SSHJR No. 4 signed by the Speaker of the House and President of the Senate and delivered to and filed with the Secretary of State. We find it incorporates Senate Amendment No. 2 as if the reference in that amendment "Section 10 (c)" was taken to read "Section 11 (c)" and the reference in the amendment to "line 27" was taken to be to "line 26".

We are of the opinion that SSHJR No. 4 was passed by the General Assembly in the form signed by the Officer of the House and the President of the Senate, notwithstanding the discrepancies between the signed version of SSHJR No. 4 and Senate Amendment No. 2, as that amendment was reported in the Senate Journal, June 24, 1969, p. 1226.

In reaching this opinion, we note the Missouri Supreme Court in Edwards v. Lesueur, 132 Mo. 410, 441, 33 S.W. 1130, 1135 (1896), held:

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" . . . The provision for adopting resolutions proposing amendments is distinct from and independent of all provisions which are provided for the government of legislative proceedings. The provisions are in themselves complete, and are not in pari materia with those required in the passage of a bill. The general assembly, in proposing amendments, does not, strictly speaking, exercise ordinary legislative power. It acts in behalf of the people of the state, under an express and independent power. The mode of its exercise is prescribed, and must be observed, but the assembly is not required to look outside its power of attorney to ascertain its duty. It is only required, and it is therefore only necessary, that the vote be taken by yeas and nays, and entered in full on the journals. That this was done is not disputed."

There is no provision in the 1945 Constitution which would require the court to modify the holding in the Edwards case.

From the case of Edwards v. Lesueur, supra, we find that the legislature in passing a resolution proposing an amendment to the Constitution is not required to follow the procedures set out in the Constitution relating to the enactment of bills with respect to the number of readings the resolution must be given before final passage, the printing of the resolution, and the like. Nor does the Constitution require that the journal of each house show any of the proceedings taken regarding such a resolution.

We are of the opinion that insofar as there is a discrepancy between Senate Amendment No. 2 to SSHJR No. 4, as reported in the Senate Journal for June 24, 1969, at page 1226 and the final version of SSHJR No. 4 as signed by the presiding officer of each house, the signed version must be taken to correctly reflect the content of House Joint Resolution No. 4 as that resolution was passed by each House.

In the case of the House of Representatives we find no express rule that would apply to resolutions permitting a representative to make such an objection. However, we believe for the purposes of presenting such an objection, the House treated Joint Resolution No. 4 as if it were a bill since at the session of the House of Representatives on the day it was signed the Resolution was dealt with in all respects in a fashion similar to numerous other

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bills signed on that day. With respect to bills signed at that time, Joint Rule 6 was clearly applicable. That Rule provides in part:

"No bill shall become a law until it is signed by the presiding officer of each house in open session, who shall first suspend all other business, declare that the bill shall now be read and that if no objection be made he will sign the same. If in either house any member shall object in writing to the signing of the bill, the objection shall be noted in the journal and annexed to the bill to be considered by the governor in connection therewith. . . ."

We believe that pursuant to Joint Rule 6 an objection could have been presented with respect to SSHJR No. 4, at the time the resolution was signed by the Speaker of the House, had any member of the House of Representatives been of the opinion that the version of the bill to be signed varied in any manner from the version actually passed by the House of Representatives. We have previously noted that the House Journal, p. 221 states that there was no objection to the signing of SSHJR No. 4.

In the case of the Senate, Senate Rule 66 provides:

"All resolutions proposing amendments to the Constitution shall be treated, in all respects, in the introduction and form of proceedings on them in the Senate, in the same manner as bills; . . ."

Therefore, in the case of House Joint Resolution No. 4 any senator could have objected prior to the signing of that resolution in the Senate that it was not in substance and form the resolution actually passed by the Senate. Here, too, there was no objection to the substance or form of House Joint Resolution No. 4.

Inasmuch as no objection was presented in either House, we are of the opinion SSHJR No. 4 as signed by the presiding officer of each House was actually passed by each House.

II

You have also requested the opinion of this office as to "whether or not the General Assembly can reconsider and redraft a resolution already passed by the General Assembly and referred to the people before it has been voted on."

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We find no provisions in the Missouri Constitution or the statutes answering this question. Nor does it appear that this question has ever been answered by any Missouri court. However, based on decisions in other states, we are of the opinion that the General Assembly has the power to reconsider and redraft a resolution proposing a Constitutional amendment after that resolution has been filed with the Secretary of State, but before the proposed amendment has been voted on by the people.

The Colorado Supreme Court held by way of dictum that the General Assembly had the power at a special session to "change and amend" a resolution proposing a Constitutional amendment already approved by the General Assembly but not yet voted on by the people, In Re Senate Concurrent Resolution No. 10, 137 Colo. 491, 328 P.2d 103, 105 (1958).

In another case, the Alabama Supreme Court held that the legislature could recall for reconsideration a resolution submitting a Constitutional amendment to the people after the resolution had been delivered to the Secretary of State, In Re Opinion Of The Justices, 252 Ala. 89, 39 So.2d 665, 668 (1949).

Similarly, the Georgia Supreme Court has held the General Assembly could modify a Constitutional amendment fixing county boundaries, to change certain boundaries, after the amendment had been approved by the General Assembly and ordered submitted to the electorate, but before the actual election Clements v. Powell, 155 Ga. 278, 116 S.E. 624, 626 (1923).

We find no decisions in any state that prohibit the General Assembly from modifying a proposed Constitutional amendment after it has once been approved by the General Assembly to be submitted to the electorate, but before the election has taken place.

It should be noted that under Article III, Section 39, Constitution of Missouri, which provides:

"The general assembly shall not have power:

* * *

(7) To act, when convened in extra session by the Governor, upon subjects other than those specially designated in the proclamation calling said session or recommended by special message to the general assembly after the convening of an extra session . . ."

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the General Assembly may not act at a special session to reconsider or redraft a resolution already passed by the General Assembly unless the Governor specially designates that subject for consideration in his proclamation calling a special session or recommends that subject for consideration by a special message to the General Assembly after convening the extra session.

CONCLUSION

It is the opinion of this office that (1) Senate Substitute for House Joint Resolution No. 4 was passed in the form such resolution was signed by the presiding officer of each House and filed with the Secretary of State; (2) the General Assembly may reconsider and redraft a resolution already passed by the General Assembly and referred to the people before the election is held.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Very truly yours,



JOHN C. DANFORTH
Attorney General