

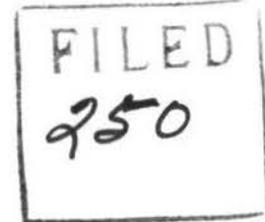
LEGISLATURE:
GENERAL ASSEMBLY:
CONSTITUTIONAL LAW:
INITIATIVE & REFERENDUM:
CONSTITUTIONAL AMENDMENT:

The General Assembly may not constitutionally condition ratification of an amendment to the United States Constitution on approval by the voters of Missouri at a referendum

OPINION NO. 250

April 29, 1971

Honorable John J. Johnson
Senator, District 15
Room 412, Capitol Building
Jefferson City, Missouri 65101



Dear Senator Johnson:

This opinion is in response to your request for an answer as to whether a resolution of the Missouri General Assembly ratifying an amendment to the United States Constitution, which has been proposed by the Congress of the United States and submitted to the legislatures of the several states, may provide as a condition of ratification that the resolution shall not become effective unless and until approved by a majority of the qualified Missouri voters voting upon it at a general election or special election called for that purpose.

We are of the opinion that the Missouri General Assembly cannot constitutionally condition its ratification of an amendment to the Federal Constitution on the approval of that ratification by the voters of this state. We base this opinion on two decisions of the United States Supreme Court, *Hawke v. Smith*, 253 U.S. 221, 40 S.Ct. 495, 64 L.Ed. 871 (1920) and *National Prohibition Cases*, 253 U.S. 350, 40 S.Ct. 486, 64 L.Ed. 946 (1920). In the *National Prohibition cases* the court held "The referendum provisions of state constitutions and statutes cannot be applied, consistently with the Constitution of the United States, in the ratification or rejection of amendments to it. . . ." *Id.* at 978.

In *Carson v. Sullivan*, 223 S.W. 571 (Mo. banc 1920), the Missouri Supreme Court reached a similar conclusion in a proceeding where an injunction was sought to prohibit preparation and certification of a ballot title to a proposed referendum on Senate Joint and Concurrent Resolution No. 1 adopted by the Fiftieth General Assembly, ratifying the Eighteenth Amendment to the Constitution of the United States. In reversing the decision of the lower court denying the injunction, the Missouri Supreme Court stated:

Honorable John J. Johnson

"A recent decision of the Supreme Court of the United States (State of Rhode Island v. Palmer, [National Prohibition Cases] 252 [sic] U. S. ____, 40 Sup. Ct. 486, 64 L. Ed. ____), has foreclosed all discussion of this question in holding that the referendum provisions of state Constitutions and statutes cannot be applied consistently with the Constitution of the United States in the ratification or rejection of amendments to that Constitution, and that the Eighteenth Amendment, prohibiting the manufacture, etc., of intoxicating liquors for beverages, is within the power to amend reserved by article 5 of the United States Constitution; in other words, that the 'Legislatures of three-fourths of the * * * states,' as the words are employed in that article (5), has reference to legislative bodies as they were known at the time of the adoption of the Constitution, and not by any other body or the people generally. The action of the respondents, therefore, in attempting to refer the legislative ratification of the Eighteenth Amendment to the people, was without authority, and the trial court was in error in so ruling. From this it follows that the appellant is entitled to the relief sought.

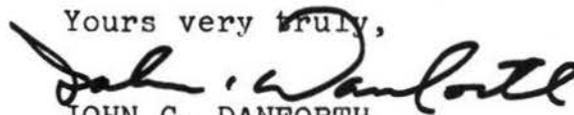
"We therefore reverse and remand this cause, with directions to the circuit court to set aside its judgment and enter a decree herein in favor of the appellant, perpetually enjoining the respondents from attempting to refer the legislative ratification of said Eighteenth Amendment to the Constitution of the United States to the voters of the state for approval or rejection. . . ." Id. at 572

CONCLUSION

It is the opinion of this office that the General Assembly may not constitutionally condition ratification of an amendment to the United States Constitution on approval by the voters of Missouri at a referendum.

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

Yours very truly,


JOHN C. DANFORTH
Attorney General