

SECRETARY OF STATE: No duty to convene Prohibition Convention

8/28

August 25, 1933.



Honorable Dwight H. Brown,
Secretary of State,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of August 24, 1933 in which you request an opinion as to the following state of facts:

"Inasmuch as some delegates to the Prohibition Convention, convening here on Tuesday, Aug. 29, and some interested citizens, have urged that it is the duty of the Secretary of State to call this meeting to order, I am respectfully requesting your office for an official opinion in this matter. Is it the duty of the Secretary of State to call the above meeting to order?"

Article V of the Constitution of the United States provides for the method of amending the Constitution. This Article provides as follows:

"The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided,

that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

It must be remembered that the Prohibition Convention, to which you refer, derives its power and authority, not from the Constitution or any law of the State of Missouri, but directly from the Federal Constitution. In the case of *Hawke v. Smith*, 253 U.S. 221, 64 L. Ed. 871, Mr. Justice Day said:

"It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the Federal Constitution has its source in the Federal Constitution. The act of ratification by the state derives its authority from the Federal Constitution to which the state and its people have alike assented."

We respectfully submit that we are unable to find any provision of the Federal or State Constitution, or any law of the State of Missouri wherein it is made your duty to call the Prohibition Convention to order. The Week's Bill, which sets up the machinery for this election, is silent on the matter.

However, neither do we find any reason, statutory or otherwise, why you cannot act in this capacity if you desire to do so.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

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