

SJR

8

Alaska State Legislature

Senate Transportation Committee



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Juneau, Alaska 99811

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Mitch Abcock
Sen. Jan Fairs
Sen. Joe Josephson

February 22, 1986

To: Members of the Senate State Affairs Committee
From: Senator Jack Coghill
Re: SJR 8

A large, stylized handwritten signature in dark ink, likely belonging to Senator Jack Coghill, written over a horizontal line.

This letter is in response to the questions your committee posed to my staff member, Blake Call, during the hearing on SJR 8 last week. I apologize for not being at the hearing. I had previous commitments.

To committee had two questions on the wording and the actions of the resolution.

1. Senator DeVries questioned the wording on page one, line 26. Specifically, she asked why there was no reference to the calling of a constitutional convention for specifically dealing with a balanced budget amendment.

The answer to that is this: the fifth whereas of SJR 8 (which line 26 is a part of) deals with the powers that states have in calling constitutional conventions, not with the specific call for a constitutional convention that is mentioned on page 2, lines 2, and lines 11-12. Line 26, page 1, then, deals only with the powers of states and is not in contradiction to the two other mentions of a call for a constitutional convention.

2. Senator Victor Fischer questioned the ability of a present legislature to rescind a legislative resolve from a previous body and requested a legal opinion. The simple answer would be that the legislature is constantly rescinding the actions of previous legislatures each time that it writes new laws and amends existing ones. My staff contacted legal services regarding the legality of rescinding a previous legislative resolve as per your request. Attached is the response from legal services on that question. The most firm answer that we were able to get was that the question is debatable, and that there is nothing to prevent the legislature from rescinding a previous resolve.

I hope that this answers your questions, I look forward to addressing the committee in person as soon as possible on this very important resolution.

STATE OF ALASKA
THE LEGISLATURE

POLCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 20, 1986

SUBJECT: Request by the state for a Constitutional
Convention (SS SJR 8)

TO: Senator Jack Coghill

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether the state may withdraw a request for a constitutional convention to consider an amendment to the United States Constitution. The question arises in the context of Legislative Resolve No. 1, SLA 1982 by which the legislature requested Congress to submit to the states for ratification an amendment which would require a balanced federal budget and, in the alternative, requested that a convention be called for the purpose of proposing the amendment.

Article V of the Constitution of the United States provides for the amendment of the constitution as follows:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendment 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.

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Thirty-two proposed amendments to the constitution have been submitted to the states for ratification upon the vote of Congress and the convention method has never been used. Consequently, many questions remain unresolved regarding the application of the convention method of proposing amendments to the constitution. (The Constitution of the United States of America, Analysis and Interpretation, U. S. Government Printing Office, Washington, D.C., 1973) Among the undecided questions is the one that you ask -- whether a state that has requested a convention may rescind that request.

Although the validity of the withdrawal of a request for a constitutional convention has not been considered, the related question of whether a resolution to ratify an amendment may be rescinded by a state has come up. The Fourteenth Amendment was ratified by Ohio and New Jersey, both of which subsequently passed rescinding resolutions. The legislatures of Georgia, North Carolina, and South Carolina rejected ratification, but new legislatures subsequently ratified the amendment. The Secretary of State issued a proclamation reciting that 29 states had ratified, including the two which had rescinded and the three which had ratified after first rejecting the amendment, and noted that, if all the ratifications were valid, the amendment itself had been ratified. Congress adopted a resolution the next day listing all 29 states which had ratified and concluding that the ratification process was completed, (The Constitution of the United States, supra, 1978 Supplement, pages 572-578).

Based partly upon the Fourteenth Amendment precedent, in a later case six of the eight participating Justices agreed that the power of rejecting states to ratify and the power of ratifying states to rescind presented political questions and that Congress' discretion to decide the issues was final and unreviewable by the courts, (Colman v. Miller, 307 U. S. 433 (1939)). Justice Black with three other Justices would have gone further and held that Congress had the final, unreviewable determination with respect to every step in the process of submission and ratification of a constitutional amendment. The problem was recently presented again during the Equal Rights Amendment ratification process, but left unresolved.

If the United States Supreme Court follows the precedent of the Fourteenth Amendment and the reasoning in Colman v. Miller it would appear that the question of whether a state may withdraw a request for a constitutional convention would

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be a matter left to Congress to decide, rather than the court. The Special Constitutional Convention Study Committee of the American Bar Association has also concluded that Congress has the power to determine procedures for the calling and conduct of a national constitutional convention. (Amendment of the Constitution by the Convention Method under Article V, American Bar Association, 1974). In any case, the function of a state legislature in amending the federal constitution is derived entirely from the United States Constitution and questions regarding that function cannot be resolved at the state level, (Opinion of the Justices of the Senate, 366 N.E.2d 1226 (Mass. 1977)). Consequently, assuming that is the desire of the legislature, it appears that the only course the state has is to rescind its call for a convention and wait for the federal government to determine whether or not that rescission is effective.

Congress has considered legislation that would establish procedures for conducting a constitutional convention, although none has passed yet. (See S. 215, 1967; S 1272, 1973) The proposals have included a provision allowing a state to withdraw a request for a convention if this is done before two-thirds of the states have requested a convention on the same topic. This suggests that Congress is likely to find that Alaska may withdraw its request in this situation.

In passing I note that questions can be raised regarding the legal effect of Legislative Resolve 1, SLA 1982 itself. The request for a constitutional convention is conditioned upon limiting the subjects taken up at the convention. Otherwise, according to the resolution, "...this application and request shall no longer be of any force or effect...". There is considerable debate over whether a constitutional convention once called can be limited in scope but, since the situation has not come up, the debate has been strictly academic. While the Special Constitutional Convention Study Committee of the ABA concluded that a limited convention may be called, other commentators disagree. If a convention cannot be limited or can be, but isn't, will this request for a convention nevertheless be given effect? Even if the convention is limited in scope, does the fact that the state's request is conditional render the request somehow invalid?

TBC:csh
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