

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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January 29, 2003

Opinion No. 03-012

Passage of the Lottery Amendment

QUESTIONS

1. Does Article XI, Section 3 of the Constitution of the State of Tennessee require a vote of the majority of all members of each House on all three readings of a resolution containing a proposed amendment to the Tennessee Constitution to be placed on a referendum ballot?

2. In 2000, the House and Senate approved House Joint Resolution 2 authorizing amendments to Article XI, Section 5 of the Tennessee Constitution to be placed on a referendum ballot. What is the evidence that this resolution was referred to the next session of the General Assembly? If it was not properly referred, is the amendment to Article XI, Section 5 of the Tennessee Constitution approved by the voters in November, 2002 invalid?

3. House Joint Resolution 2, as initially filed with Clerk of the House of Representatives in 1999, does not contain the same language as Senate Joint Resolution 1, initially filed with the Clerk of the Senate in 2001 and approved by a two-thirds vote of each House in that year. Assuming the two resolutions do not match, is the amendment to Article XI, Section 5 of the Tennessee Constitution approved by the voters in November, 2002 invalid?

OPINIONS

1. No. Under Article XI, Section 3 of the Tennessee Constitution, such a resolution must receive a two-thirds vote of the members of each House only on the third and final reading during the second session during which the General Assembly considers the resolution.

2. The resolutions themselves provide sufficient evidence that the requirement that House Joint Resolution 2 be referred to the next General Assembly was met. The second part of this question, therefore, is moot.

3. House journals reflect that the initial version of House Joint Resolution 2 was rewritten before it was approved by both Houses. The constitutional amendment in the final version of House Joint Resolution 2 approved by the House and Senate in 2000 is identical to the constitutional amendment in Senate Joint Resolution 1, approved by a two-thirds vote of each House in 2001. This question, therefore, is moot.

ANALYSIS

1. Requirement of Two-Thirds Vote

This opinion concerns the manner in which the amendment to Article XI, Section 5 of the Tennessee Constitution was adopted. Article XI, Section 3 of the Tennessee Constitution provides in relevant part:

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the general assembly then next to be chosen; and shall be published six months previous to the time of making such choice; *and if in the general assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house*, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people at the next general election in which a Governor is to be chosen. And if the people shall approve and ratify such amendment or amendments by a majority of all the citizens of the State voting for Governor, voting in their favor, such amendment or amendments shall become a part of this Constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each house.

(Emphasis added). If the validity of an amendment is not challenged until after it is approved by the voters under this process, a strong presumption of constitutionality would apply. *See* Op. Tenn. Atty. Gen. 97-040 (April 7, 1997) and authorities cited therein.

The first question is whether, under this provision, a joint resolution proposing constitutional amendments must receive a two-thirds vote of the members of each House each time it is read. The answer to this question is no. By its terms, Article XI, Section 3 requires the House and Senate to approve a joint resolution after three readings by a majority vote, and then refer the resolution to the next session of the General Assembly. After three readings, the next session of the General Assembly must approve the resolution once by a two-thirds vote of the members of each House. The resolution need not be approved by a two-thirds vote at three separate readings. *Op. Tenn. Atty. Gen. 86-77* (April 2, 1986).

2. Referral to the Next General Assembly

As quoted above, under the process outlined in Article XI, Section 3 of the Tennessee Constitution, the General Assembly must approve a resolution authorizing a constitutional amendment. That resolution must then be “referred to the general assembly then next to be chosen.”

The constitutional provision prescribes no particular method or procedure by which the referral must take place. The courts must indulge every reasonable presumption of law and fact in favor of the validity of a constitutional amendment, after it has been ratified by the people. *Snow v. Memphis*, 527 S.W.2d 55, 64 (Tenn. 1975), *rehearing denied* (1975), *appeal dismissed*, 423 U.S. 1083, 96 S.Ct. 873, 47 L.Ed.2d 95 (1976), *rehearing denied*, 424 U.S. 979, 96 S.Ct. 1487, 47 L.Ed.2d 750 (1976). As finally adopted by the House and Senate in 2000, House Joint Resolution 2 provides in part:

BE IT FURTHER RESOLVED, That the foregoing [proposed amendment] be referred to the One Hundred Second General Assembly and that this resolution proposing such amendment be published by the Secretary of State in accordance with Article XI, Section 3 of the Constitution of Tennessee.

The preamble to Senate Joint Resolution 1, approved by a two-thirds vote of each House of the General Assembly in 2001, provides in part:

WHEREAS, The One Hundred First General Assembly considered and passed House Joint Resolution No. 2 which proposed an amendment to Article XI, Section 5 of the Constitution of Tennessee relative to lotteries; . . .

The resolutions, therefore, provide sufficient evidence that the requirement that House Joint Resolution 2 be referred to the next General Assembly was met. For this reason, the second part of this question is moot.

3. Comparison of House Joint Resolution 2 and Senate Joint Resolution 1

The next question states that House Joint Resolution 2, approved in 2000, contains totally different language from Senate Joint Resolution 1, approved in 2001. Research indicates that House Joint Resolution 2, as initially filed with the Clerk of the House in 1999, did contain a different amendment to the Tennessee Constitution than the amendment in Senate Joint Resolution 1 that was approved by the voters in November, 2002. Review of the legislative journals for 1999 and 2000, however, indicates that House Joint Resolution 2 was extensively amended before both Houses finally approved it. The House adopted an amendment submitted by the House State and Local Government Committee on May 5, 1999. This amendment rewrote the resolution. The House then had the amended resolution read for the first time. *House Journal*, 1009-1011. The resolution, as amended, was read to the House on May 6, 1999 and on May 10, 1999, and the House approved the resolution after the third reading on May 10, 1999. *House Journal*, 1066, 1106. The resolution was transmitted to the Senate on May 17, 1999. *Senate Journal*, 1015.

On May 27, 1999, the Senate Clerk read House Joint Resolution 2, as amended by the House, for the first time in the Senate. *Senate Journal*, 1463. The Senate adopted Senate Amendment 1 to

the resolution, and approved it on first reading.¹ *Senate Journal*, 1463-1465. The Senate read and approved the amended resolution for the second time on May 28, 1999. *Senate Journal*, 1530-1531.

The next year, the Senate amended the resolution again by adopting Senate Amendment 2 on March 27, 2000, and approved it on first reading. *Senate Journal*, 2440-2442. The amended resolution was read and approved by the Senate on March 29, 2000 and on March 30, 2000. *Senate Journal*, 2463, 2486. On March 30, 2000, the Senate sent the resolution, as amended, to the House to concur or nonconcur in the amendments. *House Journal*, 3333. On April 12, 2000, the resolution as amended by the Senate was read to the House. The House then concurred in Senate Amendments 1 and 2. *House Journal*, 3478-3480. During the first legislative session, a house of the General Assembly has the discretion to amend a resolution proposing a constitutional amendment on the third reading, so long as the purpose or subject of the proposed constitutional amendment is not changed. Op. Tenn. Atty. Gen. 01-072 (May 8, 2001); Op. Tenn. Atty. Gen. 96-113 (September 5, 1996). As set forth in the journals, Senate Amendments 1 and 2 did not change the purpose or subject of the proposed constitutional amendment. In fact, the amendments contained language very similar to the language the House had already approved in May, 1999. The constitutional amendment proposed in House Joint Resolution 2, as finally approved by both houses in 2000, is identical to the constitutional amendment proposed in Senate Joint Resolution 1, approved after three readings by a two-thirds vote of each House in 2001. For this reason, Question 3 is moot.

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¹ Under Senate Rule 21 of the Rules of the Senate for the 101st and 102nd General Assembly, amendments to the Tennessee Constitution were required to be read three times and voted on three times. House rules in effect during those sessions did not include this requirement. Article XI, Section 3, which governs amendments to the Constitution, is silent as to whether votes must be taken after the first two readings. See Op. Tenn. Atty. Gen. U93-26 (March 3, 1993). This Office has concluded that Senate Rule 21 does not conflict with Article XI, Section 3. *Id.*

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