

## **Can the House Amend Proposals?**

Opinion No. 656-F, February 4, 1971;  
Attorney General James Jeffords

Joint Committee on Rules, Vermont General Assembly,  
Montpelier:

You have asked me to advise you whether the House of Representatives may amend a proposal for amendment to the State Constitution submitted by the Senate under the provisions of Chapter II, Section 68 of the Vermont Constitution.

In my opinion the answer to your inquiry is in the negative.

What is now Chapter II, section 68 of the Constitution was adopted by the Constitutional Convention of 1870 following its proposal by the Council of Censors at their session in 1869. The Journal of the Constitutional Convention of 1870 shows that the proposal submitted by the Council of Censors of 1869 was adopted by the Convention without change. With the exception of a change in the first several words to adjust the time when proposals for amendment to the Constitution might be proposed, section 68 as it now appears in the Constitution contains the same language as that proposed by the Council of Censors of 1869 with respect to the manner in which amendments to the Constitution may be proposed.

The Journal of the Council of Censors of 1869 shows that a minority committee report was considered by the Council in its deliberation upon the proposal for amendment to the Constitution to be submitted to the Convention of 1870. The minority committee report contained language which, if it had been adopted by the Council, would have specifically authorized the House of Representatives to amend or alter a proposal for amendment to the Constitution submitted by the Senate. This language was rejected by the Council in favor of the present language which provides only for concurrence by a majority of the members of the House of Representatives.

It should be noted that the State Constitution in 1869 and 1870 contained language expressly empowering the Senate to amend revenue bills which only the House could originate. This provision had

been in effect since 1836 and we may assume that the Council of Censors was aware of this provision (Chapter II, section 6) during its deliberations in 1869. The presence of this provision in the Constitution in 1869 and 1870 and the rejection of a proposal to give a similar power to the House by the Council of Censors and acceptance of the action of the Council by the Convention of 1870 lend weight to my conclusion that it was intended that the House should not have power to amend proposals for amending the Constitution submitted by the Senate.

In view of the specific rejection by the Council of Censors of 1869 of language authorizing the House of Representatives to alter or amend a proposal for amendment to the Constitution submitted by the Senate, and the adoption by the Constitutional Convention of 1870 of the proposal submitted by the Council of Censors without alteration, I must conclude, and it is my opinion, that there was a deliberate purpose to restrict the action which the House of Representatives might take upon proposals for amendment to the Constitution submitted by the Senate to concurrence or nonconcurrence and that both the Council of Censors and the Constitutional Convention of 1870 intended that the House of Representatives should not be empowered to alter or amend a proposal for constitutional amendment submitted by the Senate.

The word "concur" means to acquiesce in, approve, or assent to or to give consent to and it is my opinion that the use of the term "\* \* \* if concurred in by a majority of the members of the House of Representatives \* \* \*" in Chapter II, section 68 of the Constitution expresses an intention that the House is empowered only to agree or disagree with proposals for constitutional amendment submitted by the Senate.

It may be helpful to bear in mind that, in a strict sense, the Senate and House of Representatives are not exercising an ordinary legislative power or function when considering or acting upon proposals for constitutional amendment, but rather are exercising special powers conferred by the people of the state. It is generally held that constitutional provisions with respect to proposals for amendment to a state constitution are not merely directory but are mandatory and that the provisions should be given a strict construction and be strictly complied with (16 C .J.S., Constitutional Law, §6, §9).

I am aware of the occasion in 1951 when the House of Representatives amended a proposal for constitutional amendment submitted by the

Senate. The Senate later concurred in the amendment proposed by the House and resubmitted the proposal for constitutional amendment, as amended by the House, for concurrence by the House which was given. I do not regard this occasion as a precedent entitled to any weight.

It is my opinion that the House of Representatives is not empowered to amend a proposal for amendment to the State Constitution submitted by the Senate but may only concur or refuse to concur in the proposal as submitted.

JAMES M. JEFFORDS, Attorney General.