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April 14, 1980

FILE NO. S-1486

CONSTITUTION:
Requirement of Section 2(a) of
Article XIV of the Illinois
Constitution of 1970 With Respect
to Reading a Constitutional Amendment.

Honorable David C. Shapiro
Illinois State Senator
Minority Leader
State House
Springfield, Illinois 62706

Dear Senator Shapiro:

I have your letter wherein you inquire whether section 2(a) of article XIV of the Illinois Constitution of 1970 requires that a proposed amendment to the State Constitution be read in full in its final form on three different days in each house. You also inquire whether, if section 2(a) requires reading in the aforementioned manner, approval by the second house in a form different from that approved in the originating house, would necessitate the return of the amendment for reading in full on three different days in the originating house.

Section 2(a) of article XIV of the Illinois Constitution of 1970 provides as follows:

> "(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house."

In response to your first question, it is my opinion that section 2(a) of article XIV of the Illinois Constitution of 1970 requires that a proposed amendment to the State Constitution be read in full on three different days in each house. If an amendment to the resolution proposing a constitutional amendment creates a proposed constitutional amendment that is substantially or materially different or does not preserve and maintain the identity, intent, and purpose of the original proposed amendment, the resolution, as amended, must be read in full on three different days in each house. If the change made by an amendment is one of language or phraseology and not of substance, additional readings would not be required. Whether additional readings are required, however, will have to be determined in each instance.

There are no Illinois court decisions construing section 2(a), and no similar provision was contained in the Illinois Constitution of 1870. The provision, however, is similar to section 13 of article IV of the Illinois Constitution of 1870, which provided a reading requirement for bills. Section 13 served as a model for section 2(a). See, 2 Record of Proceedings, Sixth Illinois Constitutional Convention 557; 4 Proceedings 3612; 7 Proceedings 2273.

Section 13 of article IV of the Illinois Constitution of 1870 required every bill to be read at large on three different days in each house. Section 8(d) of article IV of the Illinois Constitution of 1970 requires every bill to be read by title on three different days in each house. In construing these provisions the Illinois Supreme Court has held that amendments germane to the subject matter of a bill may be made without reading the amended bill in full three times in each house. (Giebelhausen v. Daley (1950), 407 Ill. 25, 46-47; People v. Avery (1977), 67 Ill. 2d 182, 192; (Dooley, J., specially concurring).) These cases, however, relate to the reading of bills, not proposed constitutional amendments.

Courts of other jurisdictions have construed constitutional provisions similar to section 2(a). When provisions have been adopted into the Constitution of a State, which are

identical with, or similar to, those of other States, or of the Federal Constitution, or those of statutes of other jurisdictions, it will be presumed that the framers of such Constitution were conversant with, and intended to adopt also, any construction previously placed on such provisions in such other jurisdictions. Barrows v. Garney (1948), 67 Ariz. 202, 209, 193 P. 2d 913, 917; Wimberly v. Deacon (1944), 195 Okla. 561, 563, 144 P. 2d 447, 450; Becker County Sand and Gravel Co. v. Wosick et al. (1932), 62 N.D. 740, 766, 245 N.W. 454, 463.

The general rule with respect to amendments to resolutions proposing a constitutional amendment is that:

> " * * * [I]f the proposed amendments are of such nature as to create so radical a difference from the original resolution as to make of it a new Act, the failure to read the amendment three times and to spread them on the minutes would be a fatal defect. But if the proposed amendments preserve the identity of the submitting resolution, if it preserves and maintains its intent and purpose, and the change is one of language, or phraseology and not of substance, the failure so to read and so to enter is not fatal." (Weeks v. Ruff (1931), 164 S.C. 398, 403, 162 S.E. 450, 452.)

A situation where an amended resolution did not preserve the identity, intent and purpose of the original resolution and, in effect, created a new proposed amendment, is discussed in In re Opinions of the Justices (1931), 223 Ala. 365, 368, 136 So. 585, 588. The original proposed amendment

dealt with in the aforementioned case, authorized the issuance of interest-bearing warrants to pay past due indebtedness of the State. The resolution, as amended, further authorized the making of temporary loans, the elimination of the State ad valorem tax and the institution of a State income tax. The court held that in effect, a new proposed amendment was created when the resolution was amended and the amendments should have been read in each house on three days.

Courts have held, however, that an amendment to a State Constitution does not have to be read in full in its final form on three different days in each house in every instance. In Jones v. McDade (Ala. S.Ct. 1917) 75 So. 988, the Alabama Supreme Court construed a provision of the Alabama Constitution which required that proposed amendments to the Constitution be read in each house on three several days. The court said at page 992:

" * * *

> The requirement of three readings in each house of proposed amendments to the Constitution (section 284) was not intended to exact these six readings of a proposed amendment in haec verba in both houses. To so affirm would exclude the right of the houses to amend, and thereby to perfect proposals for the submission to the electorate of amendments to the Constitution. The very purpose of the requirement of several readings in the houses of subjects of legislative action - whether with the view to the enactment of laws or to the submission of amendments to the Consti-

> tution to the electorate - is to assure the cautious, conservative deliberation of the bodies thereupon, a process that always implies, within constitutional limitations, the possession of the parliamentary means whereby the subject of consideration may be made to harmonize with the judgment of the requisite majority in the respective bodies, and thus perfect the product of their deliberation. Any other interpretation would result in the necessity of commencing anew a whole series of readings every time an amendment was desired by either of the houses. The act of either house in dissenting from even the phraseology of the proposed amendment to the Constitution would only operate as a quasi veto, the effect of which would be to relegate the proposal to the stage of an original proposition. It is entirely unreasonable to suppose that the makers of the Constitution intended any such limitation upon the process by which amendments to the Constitution could be proposed. There is no such limitation written in the organic law; nor is there anything in it upon which to found an implication to that end.
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See, also, Opinion of the Justices (Ala. S.Ct. 1976), 335 So. 2d 373, 375; Storrs v. Heck (1939), 238 Ala. 196, 200, 190 So. 78, 81; Doody v. State ex rel. Mobile County (1936), 233 Ala. 287, 290, 171 So. 504, 506.

Your second question is whether section 2(a) requires the return of an amendment for three readings in the originating house, if the second house approves the amendment in a form different from that approved in the originating house. The discussion with regard to your first question is equally applicable here, and the answer is the same.

In conclusion, the answer to both questions is that if a resolution proposing a constitutional amendment is amended in either house or in conference, so that the proposed constitutional amendment is substantially or materially different or does not preserve the identity, intent and purpose of the original proposed amendment, the resolution, as amended, must be read in full on three different days in each house. If the change made by an amendment is merely one of language or phraseology and not of substance, additional readings would not be required. The nature of the amendment would have to be considered in each case to determine whether additional readings are required. If in doubt, the safer course is to proceed with additional readings.

Very truly yours,

A T T O R N E Y G E N E R A L