Constitutional Amendments—Ratification — Resolutions —Amendments.

The power of a state legislature to ratify a proposed amendment to the constitution of the United States is derived from the federal constitution.

Under either the constitution of the United States or that of this state a concurring majority vote of both the senate and house is all that is needed to ratify a proposed amendment to the constitution of the United States.

Hon. W. S. McCormack, February 9, 1927.
Lieutenant Governor,
Helena, Montana.

My dear Governor McCormack:

You have requested my opinion whether a majority or a two-thirds vote is necessary to ratify a proposed amendment to the constitution of the United States.

Article V of the constitution of the United States, governing the matter of amendments, reads in part as follows:

> "The Congress * * * shall propose amendments to this constitution * * * which * * * shall be valid when ratified by the legislatures of three-fourths of the several states."

An examination of the decisions of the Supreme Court of the United States construing this article of the constitution fails to disclose any case precisely in point upon this question, but the following cases, in my opinion, indicate the line of reasoning applicable:

Hawke v. Smith, 253 U. S. 221;

Liser vs. Garnett, 258 U. S. 130;

National Prohibition Cases, 253 U. S. 350.

In the case of Hawke v. Smith, supra, it was sought by the state of Ohio to submit to the people of the state a referendum on the ratification theretofore made by the legislature of that state of the Eighteenth Amendment to the federal constitution. The court held that this could not be done, declaring that the "function of a state legislature in ratifying a proposed amendment to the federal constitution, like the function of congress in proposing such an amendment, is a federal function derived not from the people of the state but from the constitution."

In the same case the court said:

> "Ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the state to a proposed amendment."

In the case of Liser v. Garnett, supra, the same rule was again

announced on the authority of the case above cited, and also of the National Prohibition Cases, supra.

Since, therefore, the constitution of the United States contains no limitation or restriction upon the manner in which the approval of the legislature shall be expressed, it logically follows that a ratification of a constitutional amendment in any manner sufficient to indicate the approval of a majority of both houses of the legislature is a sufficient compliance with the requirements of the constitution of the United States. In fact, it may be seriously doubted whether, in the light of the principles above announced by the Supreme Court of the United States, it would be competent for the legislature to require a two-thirds vote for the ratification of an amendment to the federal constitution.

Let us now assume that it is competent for the state, either in its organic law—the constitution—or by an act of the legislative assembly, to specify the manner in which the assent of the legislative assembly to a constitutional amendment shall be expressed. What, then, is the situation? Section 24 of article V of the constitution of Montana provides that no bill shall become a law "except by a vote of a majority of all the members present in each house."

Section 40 of the same article provides that "Every order, resolution or vote, in which the concurrence of both houses may be necessary, * * * shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill."

It will be observed that both directly by section 24, and indirectly by section 40, above quoted, the constitution of this state has made provision that a majority vote of the members present in each house is sufficient to enact a law. The only exception to this rule is that provided by section 9 of article 19 requiring a two-thirds vote for proposal of amendments to the state constitution.

It is therefore my opinion that when tested, either by the requirements of the constitution of the United States or by the requirements of the constitution of the State of Montana, a concurring majority vote of both the senate and house is all that is needed to ratify a proposed amendment to the constitution of the United States.

Very truly yours,

L. A. FOOT,
Attorney General.