WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

April 2, 1973

FILE NO. S-571

CONSTITUTION:
Ratification of
Federal Amendments

Honorable W. Robert Blair
Speaker
House of Representatives
State House
Springfield, Illinois 62706

Dear Speaker Blair:

I have your letter wherein you state:

"As you are probably aware, the 78th General Assembly is being asked to ratify a proposed twenty-seventh amendment to the U. S. Constitution, the so-called 'Equal Rights Amendment.' A debate has arisen in regard to the number of votes required to ratify the amendment. Article XIV, Section 4 of the 1970 Illinois Constitution requires 'the affirmative vote of three-fifths of the members elected to each House of the General Assembly' to ratify.

It has been asserted that your opinion of May 11, 1972 (File No. S-456) indicated that this requirement is repugnant to Article V of the

COPY

> U. S. Constitution, as interpreted by the courts. It has also been asserted that the effect of your opinion is to place a resolution to ratify a constitutional amendment in the same position as other resolutions, which require only a majority of those voting on the question for acceptance. The requirement for passage of statutes is a majority of the members elected.
>
> My question to you, therefore, is this: What is the number of votes required to ratify an amendment to the U. S. Constitution?"

Section 4 of article XIV of the Illinois Constitution of 1970 reads as follows:

> "The affirmative vote of three-fifths of the members elected to each house of the General Assembly shall be required to request Congress to call a Federal Constitutional Convention, to ratify a proposed amendment to the Constitution of the United States, or to call a State Convention to ratify a proposed amendment to the Constitution of the United States. The General Assembly shall not take action on any proposed amendment to the Constitution of the United States submitted for ratification by legislatures unless a majority of the members of the General Assembly shall have been elected after the proposed amendment has been submitted for ratification. The requirements of this Section shall govern to the extent that they are not inconsistent with requirements established by the United States."

Article V of the United States Constitution reads as follows:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments 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 it's equal Suffrage in the Senate."

On May 11, 1972, in response to your request, I issued Opinion S-456. Therein, following the principles enunciated by the United States Supreme Court in Hawke v. Smith, 253 U.S. 221 and Leser v. Garnett, 258 U.S. 130, I held that certain provisions of section 4 of article XIV of the Illinois Constitution of 1970 that attempted to restrict the powers of the General Assembly to ratify a proposed amendment to the United States Constitution were in conflict with article V of the United

States Constitution. At pages 21 and 22 of my opinion (S-456), I stated as follows:

> "I am of the opinion that the second sentence of section 4 of Article XIV of the Illinois Constitution of 1970 which requires a delay in consideration of the proposed twenty-seventh amendment to the United States Constitution (the 'Women's rights' Amendment) is contrary to Article V of the United States Constitution.
>
> ' . . . The function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a state.' (Leser v. Garnett, 258 U.S. 130, 137). This principle and the principles of law enunciated in Hawke v. Smith, 253 U.S. 221, necessitate the further conclusion that the requirement of a three-fifths vote of each house of the General Assembly to ratify is also contrary to the federal constitution."

Please note that the requirement of an affirmative vote of three-fifths of the members of each house of the General Assembly to ratify a proposed amendment to the United States Constitution is declared to be unconstitutional and, therefore, is void.

Now, you ask what number of votes by the members of each house of the General Assembly is needed to ratify a proposed amendment to the United States Constitution.

Section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) was enacted by the 73rd General Assembly on April 25, 1963 (S.B. 16) and was approved by the Governor on June 25, 1963. (Laws of 1963, p. 1215). Said section 1 reads as follows:

> "Whenever the Congress of the United States of America has adopted a proposal to amend the Constitution of the United States of America and the mode of ratification thereof prescribed by Congress is by the legislatures of the several states, a joint resolution proposing the ratification of such proposed amendment shall be considered by both houses of the General Assembly of this State. Such joint resolution to ratify the Congressional proposition to amend the Constitution of the United States shall be validly adopted by the General Assembly of this State only if it receives the favorable vote of a constitutional majority of the members of each house of the General Assembly."

Note that section 1 requires a favorable vote of a constitutional majority of the members of each house of the

General Assembly to ratify a proposed amendment to the United States Constitution. A majority of the members elected to each house of the General Assembly constitutes a constitutional majority. See, Ill. Const., art. IV, sec. 12 [1870]; Ill. Const., art. IV, sec. 8(c).

The reasons that led me to declare the aforementioned provisions of section 4, article XIV to be unconstitutional also compel me to declare section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) to be unconstitutional. Said section 1 with its requirement of a constitutional majority under the Illinois Constitution is in conflict with article V of the United States Constitution and therefore is void.

We must once again be reminded that the People of the United States in ratifying the United States Constitution relinquished certain powers; specifically, they relinquished the power to control the process by which the United States Constitution is amended. They delegated to Congress the power to propose amendments to the United States Constitution and

to choose the method of ratification of the proposed amendments, i.e., state legislatures or state conventions. Once the state legislature is chosen by Congress as the method of ratification, said legislatures have the power, delegated by the People of the United States, to ratify or reject said proposed amendments. The People of the United States could have reserved to themselves the power to ratify United States constitutional amendments but they chose instead the method outlined in article V. Thus, the legislature, when ratifying a proposed amendment to the United States Constitution is carrying out a Federal function unrelated to its State legislative function; it is acting in a Federal capacity, deriving its powers from article V of the United States Constitution. The legislature, when ratifying a proposed amendment to the United States Constitution, is not subject to regulation or restriction by the People of the State through State constitutional enactment or by the State legislature itself acting in a purely State capacity.

In considering whether the Illinois legislature in its adoption of section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) was

acting as an instrumentality of the Federal amending process under article V, on the one hand, or acting on behalf of the People of the State of Illinois, on the other, it is necessary to briefly examine the character of the legislature as well as certain attributes of the Act here in question. In its usual and customary functions, the Illinois General Assembly represents the People of the State of Illinois. The legislative power of the People of the State of Illinois is vested in the General Assembly. (Ill. Const., art. IV, sec. 1). Since a State constitution is generally construed as a limitation on the powers of the General Assembly, all the powers not specifically denied the General Assembly in the State constitution reside in the General Assembly. (Gillespie v. Barrett, 368 Ill. 612; 11 I.L.P., Constitutional Law, sec. 33, p. 232 (1955)). Thus, all the residual powers of the People of the State of Illinois may be exercised by the General Assembly.

The 73rd General Assembly by enacting section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) was attempting to exercise

its State legislative powers. The enacting clause of said section 1 read as follows:

> "Be it enacted by the People of the State of Illinois, represented in the General Assembly:"

This enacting clause was, in turn, prescribed by section 11 of article IV of the Illinois Constitution of 1870. Said section 11 read as follows:

> "The style of the laws of this State shall be: 'Be it enacted by the People of the State of Illinois, represented in the General Assembly.'"

See also, Ill. Const., art. IV, sec. 8(a).

Section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) was enacted into law by bill. (S.B. 16; Laws of 1963, p. 1215). It was read on three different days in each house. (Leg. Ref. Bur., Final Legislative Synopsis and Digest, 73rd G.A., State of Illinois, p. 18 (1963); Ill. Const., art. IV, sec. 13 [1870];

Ill. Const., art. IV, sec. 8(d)). It was approved by the Governor. Laws of 1963, p. 1215.

It is clear from all of the foregoing that the 73rd General Assembly was acting in a State legislative capacity when it enacted section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States. (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12). However, as I have stated earlier, the General Assembly, in its State legislative capacity, had no power to regulate the procedures by which the legislature may ratify a proposed amendment to the United States Constitution. To do so would inject into the ratification process an element of State regulation not contemplated under article V of the Federal constitution.

Other factors may be cited to support the conclusion that section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) is a nullity.

First, a State law is enduring and cannot be amended or repealed except by the passage of another law following

procedures prescribed by the constitution. Clearly, the 73rd General Assembly has no power to bind subsequent General Assemblies with regard to the procedures by which a proposed amendment to the United States Constitution can be ratified.

Second, a bill enacted by the legislature does not normally become effective until signed by the Governor. Section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971, ch. 7 1/2, par. 12) was passed by the General Assembly on April 25, 1963 but did not become effective until signed by the Governor on June 25, 1963. Yet, article V of the United States Constitution grants no authority to the Governors or chief executives of the States to participate in the amending process. The General Assembly by attempting to legislate the procedures by which proposed constitutional amendments are to be ratified is, in effect, delegating powers to the Governor; this is an unlawful delegation of power.

Nor can it be said that section 1 of AN ACT in relation to ratification of proposed amendments to the Constitution of the United States of America (Ill. Rev. Stat., 1971,

ch. 7 1/2, par. 12) amounts to rules of procedure which are binding on the 78th General Assembly. Rules of procedure adopted by the 73rd General Assembly are not binding on the 78th General Assembly.

This is not to say that the 78th General Assembly lacks power to make reasonable rules prescribing the kind of majority necessary for ratification, but it must act for itself and solely in its capacity as an instrumentality of the Federal constitution if it is to do so. As was stated by my predecessor, Attorney General Edward J. Brundage:

> " * * * I think it may be strongly argued on the basis of the opinion in the Hawke case, that the Constitution commits to the Legislature itself the power to determine for itself, and free from restriction or limitation imposed by State authority, what consideration, and the time and manner thereof, it shall give to a proposed amendment to the Federal Constitution, or to a resolution of Congress proposing the same." (Emphasis added)
>
> 1919-1920 Ill. Atty. Gen. Op. 972, 973-974.

Article V of the United States Constitution delegates to the "legislature" the power to ratify a proposed

amendment to the United States Constitution. Mr. Justice Day in Hawke v. Smith, 253 U.S. 221, defined a legislature as "the representative body which made the laws of the People."

As to the procedure by which the legislatures are to ratify a proposed amendment, the United States Constitution is silent. Therefore, I am of the opinion that since the legislature has been delegated the power to ratify proposed amendments to the United States Constitution implicit in this delegation of power is the power to establish reasonable standards and procedures for carrying out the ratification process. The concept that a delegation of express powers carries with it all the implied powers necessary to implement and utilize the express powers is not novel or extraordinary. U. S. Const., art. I, sec. 8; Goodwine v. County of Vermilion, 271 Ill. 126; Heidenreich v. Ronske, 26 Ill. 2d 360.

The Illinois General Assembly is the representative body that makes the laws of the People of the State of Illinois. Our General Assembly is bicameral, containing a House of Representatives and a Senate. Accordingly I am of the opinion

that barring the use of extreme standards patently in conflict with article V, each house may, by its own rules, determine how many votes are needed to ratify a proposed amendment to the United States Constitution.

Very truly yours,

ATTORNEY GENERAL