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CONSTITUTION OF MICHIGAN: Art 4, § 18.

WORDS AND PHRASES: "Bill," "Law," "Act."

CONSTITUTION OF THE UNITED STATES: Amendment.

Either house of the Michigan legislature may take action by voice vote on the question of ratification of an amendment to the United States Constitution.

Opinion No. 4882

September 30, 1975.

Honorable Josephine D. Hunsinger  
State Representative  
The Capitol  
Lansing, Michigan 48901

You have requested that this office render an opinion on the legality of the passage in the Michigan Senate of Senate Resolution GG, 1972, a resolution to ratify the proposed amendment to the Constitution of the United States relating to equality of persons regardless of sex. Specifically, you have asked whether the fact that the resolution was adopted by voice vote, rather than roll-call vote, vitiates the act of adoption.

US Const, art V, sets forth the manner in which amendments to the United States Constitution shall be made. Under art V two-thirds of both houses of Congress may propose an amendment to the Constitution, and, if at least three-fourths of the legislatures of the several states ratify the proposed amendment, the amendment becomes part of the United States Constitution. Art V does not specify the manner in which state legislatures must ratify a proposed amendment.

The Michigan Constitution of 1963, also, does not specify the manner in which amendments to the United States Constitution must be ratified by the legislature. There is no express constitutional provision requiring the Michigan Legislature to ratify proposed constitutional amendments to the United States Constitution by roll-call, as opposed to voice, vote.

Const 1963, art 4, § 18, provides in relevant part:

"Each house shall keep a journal of its proceedings, and publish the same unless the public security otherwise requires. The record of the vote and name of the members of either house voting on any question shall be entered in the journal at the request of one-fifth of the members present. . . ."

This section clearly indicates that either house may take action by voice vote as opposed to roll-call vote. Const 1963, art 4, § 19 and § 26, are the only two constitutional provisions which expressly require that legislative action may be taken by roll-call as opposed to voice vote. Art 4, § 19, deals with votes on elections and advice and consent and as a result is not relevant to the issue involved in this opinion.

Art 4, § 26, provides in part:

". . . No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house. On the

final passage of bills, the votes and names of the members voting thereon shall be entered in the journal."

This constitutional provision is also not relevant to the issue involved in this opinion because a resolution calling for a ratification of a proposed amendment to the United States Constitution is not a "bill" within the meaning of art 4, § 26. A reading of art 4, § 26, clearly indicates that the provisions of this section apply only to the manner in which laws of the State of Michigan must be enacted.

This interpretation of art 4, § 26, is supported by the decision of the Michigan Supreme Court in the case of *Decher v Secretary of State*, 209 Mich 565; 177 NW 388 (1920), which dealt with the issue of whether ratification by the legislature of a proposed amendment to the United States Constitution is subject to referendum. In reaching the conclusion that the ratification was not subject to referendum, the Court discussed the status of a vote by the legislature to ratify an amendment to the United States Constitution, and concluded that such action does not constitute the making of a "law" or an "act." In so ruling the Court reasoned as follows:

"The action of the legislature in ratifying an amendment is not, strictly speaking, a legislative act. It is but one of several steps required to be taken to change the Federal Constitution. The congress, or the States by petition, must first propose an amendment. In order that it may become operative, it must receive the assent of the States by ratification in the manner provided in article 5. How shall such assent be expressed? By the adoption by the State legislature of a joint resolution ratifying the amendment. The State thus participates in the making of a new law simply by expressing its assent thereto in the manner provided. It has not thereby enacted a law any more than the President or governor does so by approving bills passed by the congress or legislature." p 571

Because there is no express provision in the Michigan Constitution of 1963 which requires that amendments to the United States Constitution be ratified by roll-call as opposed to voice vote, the Senate would have been required to approve Senate Resolution GG, 1972, by roll-call vote only if one-fifth of the members present had requested such a vote. The Journal of May 22, 1974, indicates that the yeas and nays were not ordered because one-fifth of the Senators present did not vote in favor of having the names recorded.

I am therefore of the opinion that the legality of the adoption of Senate Resolution GG, 1972, is unaffected by the fact that the resolution was adopted in the Senate by a voice vote rather than a roll-call vote because neither the State nor Federal Constitutions require roll-call votes for such legislative action.

FRANK J. KELLEY,  
*Attorney General.*

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