1977 WL 46014 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 20, 1977

***1** The Honorable W. Brantley Harvey, Jr.
Lieutenant Governor of South Carolina
P. O. Box 142
Columbia, South Carolina 29202

Dear Lieutenant Governor Harvey:
Your recent inquiry concerns the applicability of the Senate rules to a ratification of federal constitutional amendments.

The Supreme Court has held that a state may not inhibit its legislature's federal power to ratify a proposed amendment to the United States Constitution by requiring approval at a popular referendum; it seems equally clear that a state constitution may not require that a new legislature be elected before the proposal may be considered. The Court has also held that ratification of federal amendments is not an act of legislation within the proper sense of the word, but are substantive acts, unconnected with the ordinary business of legislation.

A state Court decision, which was affirmed by the United States Supreme Court has held that a legislature is not bound by its rules or by its laws relating to legislation in view of the special nature of the ratification process. In my opinion, however, the holding in that case is at most obiter dieta in that the issue involved concerns the action of a sister state in its ratification procedures pursuant to its constitution.

A recent decision by Justice Stevens, then a United States Circuit Court of Appeals judge, dealt with a more precise presentation of the issue; and, in that case, the present Justice stated:
... It is clearly not our province to inquire into the individual motives of the legislators who voted in favor of the procedural rules adopted by each branch of the General Assembly to govern its own deliberations including those relating to ratification of a proposed amendment to the federal constitution... the ultimate decision of the controversy between the parties is controlled by the legislature's procedural rules. Dyer v. Blair, 390 F.Supp. 1291, 1308, 1309 (N.D. Ill. 1975)

The most appropriate and correct approach would be for a rule to be adopted dealing specifically with federal constitutional amendments. However, if the present rules are followed in the ratification process, it is my opinion that the decision of Judge Stevens in the Dyer case can be safely followed. I do not believe that the courts will establish themselves as parliamentarians for the legislative bodies of the states.

I therefore advise that, in my opinion, the most correct approach would be to decide upon a rule for consideration of federal constitutional amendments but that the procedures followed in the legislature will not be inquired into by the courts.

A Memorandum fully setting forth the basis of this opinion is herewith enclosed.
Cordially,

Daniel R. McLeod
Attorney General

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