



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 23, 1978

ATTORNEY GENERAL OPINION NO. 78- 27

The Honorable Edward F. Reilly, Jr.
Chairman, Federal and State
Affairs Committee
3rd Floor - State Capitol
Topeka, Kansas 66612

The Honorable Donald L. Allegrucci
State Senator
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Constitution--Amendments--Rescission of Ratification

Synopsis: The validity of 1978 Senate Concurrent Resolution No. 1640, which purports to rescind, effective March 22, 1979, 1972 House Concurrent Resolution No. 1155, conditional upon the failure of three fourths of the states to ratify the proposed equal rights amendment, may be determined only by the United States Congress, when and if three fourths of the states have passed resolutions ratifying said amendment.

* * *

Gentlemen:

You inquire concerning the constitutionality of 1978 Senate Concurrent Resolution No. 1640, which provides in pertinent part thus:

"That if three-fourths of the states have not affirmatively acted to ratify the proposed amendment to the Constitution of the United States relating to equal rights


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for men and women by March 22, 1979, the Legislature hereby rescinds its action of March 28, 1972, by which it adopted House Concurrent Resolution No. 1155, which resolution related to and ratified the proposed amendment, and that this rescission shall be effective on March 22, 1979, regardless of whether Congress extends the time period for ratification beyond said date"

I have written seemingly innumerable opinions regarding rescission of 1972 House Concurrent Resolution No. 1155, ratifying a proposed constitutional amendment prohibiting the abridgement of rights under the law on the basis of sex. It would serve no purpose whatever to repeat once again what I have stated so many times before. I enclose a copy of Opinion No. 75-89, which recapitulates fully my previous statements regarding rescission generally.

The instant resolution differs from previous such proposed resolutions only in two respects, it provides for conditional rescission, effective only prospectively. If adopted, it would provide for rescission effective March 22, 1979, conditioned upon the failure of three fourths of the states to ratify the proposed constitutional amendment by that date. In the past, the United States Congress has refused to recognize an attempted rescission by a state of a previous ratification of a proposed constitutional amendment. Whether the Congress will recognize rescissions of previous ratifications of the equal rights amendment is, of course, a political question, which only the Congress itself can answer. The added embellishments in this resolution, *i.e.*, the prospective operation of the resolution, and the conditional nature of the proposed rescission, do not alter my previous statements on the question of rescission generally, that the validity of this, as well as every other rescinding resolution, whatever its content, will be determined by the Congress, and only by the Congress, if and when the question is presented through the ratification of the proposed amendment by three fourths of the states.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure