



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

*Curt T. Schneider*  
*Attorney General*

February 6, 1978

ATTORNEY GENERAL OPINION NO. 78- 54

The Honorable Ronald R. Hein  
State Senator  
3rd Floor - State Capitol  
Topeka, Kansas 66612

Re: Constitution--Amendments--Rescission

Synopsis: 1978 Senate Concurrent Resolution No. 1640, which purports to rescind, effective March 22, 1979, 1972 House Concurrent Resolution No. 1155, contingent upon the failure of three fourths of the states to ratify the proposed equal rights amendment, is not invalid because it becomes effective at a date certain in the future upon the happening of a contingent event, nor does it represent an act which operates impermissibly to bind subsequent legislatures.

\* \* \*

Dear Senator Hein:

You inquire concerning 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 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

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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 enclose to you a copy of Opinion No. 78-27, issued to Senator Reilly under date of January 23, 1978, concerning this resolution.

You inquire more specifically whether the resolution may lawfully be made effective upon a contingency, *i.e.*, the failure of the legislatures of three fourths of the states to have ratified the proposed so-called equal rights amendment by March 22, 1979.

At 2 *Sutherland, Statutory Construction*, § 33.07, the writer states that "[a] statute may take effect upon the happening of a contingency, such as the passage of a law in another jurisdiction, or a vote of the people." In *Druggan v. Anderson*, 269 U.S. 36, 46 S. Ct. 14, 70 L. Ed. 151 (1925), Mr. Justice Holmes observed that "it would be going far to say that while the fate of the Amendment was uncertain Congress could not have passed a law in aid of it, conditioned upon the ratification taking place." 269 U.S. at 39. See also *People ex rel. Ogilvie v. Lewis*, 274 N.E.2d 87 (1971). The fixing of a contingency to occur in the future, upon which a present expression of legislative will is stated to come effective, entails no delegation of legislative power, and I see no other constitutional objection to such a provision.

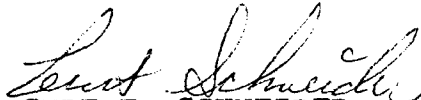
Secondly, you ask whether the proposed resolution impermissibly purports to bind future legislatures, *i.e.*, that it "would be an action by this legislature which would be binding upon a legislature which has [not] yet been elected." Nothing in the resolution prevents the 1979 legislature from rescinding it if it were passed, just as nothing in the 1972 resolution ratifying the proposed constitutional amendment operates to bind subsequent legislatures so as to prevent consideration of rescinding resolutions.

In sum, I find no basis upon which to conclude that this resolution exceeds the constitutional power of the Kansas legislature. As I have pointed out innumerable times before, the validity of any rescinding resolution, whatever its contents, can ultimately be determined only by the United States Congress, if and when

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the legislatures of three fourths of the states have ratified  
the proposed constitutional amendment.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj