



STATE OF KANSAS

Office of the Attorney General

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

CURT T. SCHNEIDER
Attorney General

January 17, 1975

Opinion No. 75-16

The Honorable Richard C. Loux
House Minority Leader
3rd Floor - State Capitol
Topeka, Kansas 66612

Dear Representative Loux:

You have asked that I review the opinion issued by Attorney General Vern Miller under date of February 13, 1973, to Representative Ruth Luzatti, concerning the validity of a proposed rescission by the 1973 Legislature of 1972 House Concurrent Resolution No. 1155, whereby the Kansas Legislature ratified a proposed amendment to the United States Constitution, section one of which provides that "[e]quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

I have reviewed this opinion, and additional materials furnished us by your staff, which were supplied to you in May, 1974, by the Kansas Legislative Research Department, concerning this question. I write to advise you that the 1973 opinion issued by Attorney General Miller represents my own opinion on the question discussed therein and, in my view, correctly states the applicable law. In addition, that opinion correctly, in my view, anticipates continued adherence to the precedent upon which it relied.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj



STATE OF KANSAS

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

February 13, 1973

Honorable Ruth Luzzati
Representative Eighty-Fourth District
House of Representatives
State House
Topeka, Kansas

Dear Representative Luzzati:

By the adoption of 1972 House Concurrent Resolution No. 1155, adopted March, 1972, the Kansas Legislature ratified a proposed amendment to the United States Constitution, section one of which provides that "[e]quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." A Concurrent House Resolution No. 1016, before the 1973 Legislature, resolves that

" . . . the legislature rescind its action of March 28, 1972, by which it adopted 1972 House Concurrent Resolution No. 1155, which resolution related to and ratified the proposed amendment to the constitution of the United States relative to equal rights for men and women . . . "

You inquire whether the 1972 ratification is indeed subject to rescission.

In *Coleman v. Miller*, 146 Kan. 390, 71 P.2d 518, aff'd, 307 U.S. 433, 83 L.ed. 1385 (1939), the Kansas Supreme Court stated thus:

"[W]here a state has once ratified an amendment it has no power thereafter to withdraw such ratification. To hold otherwise would make article 5 of the federal constitution read that the amendment should be valid 'when ratified by three fourths of the states, each adhering to its vote until three fourths of all the legislatures shall have voted to ratify.'

"It is clear, then, both on principle and authority, that a proposed amendment once rejected by the legislature of a state may by later action of the same legislature be ratified; and that when a proposed amendment has once been ratified the

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power to act on the proposed amendment ceases to exist." (146 Kan. at 403.)

In its affirming opinion, the United States Supreme Court recites instances of ratification and attempted rescission thereof in relation to the adoption of the Fourteenth Amendment to the United States Constitution. Notwithstanding prior ratification, the States of Ohio and New Jersey passed resolutions withdrawing their consent. Pursuant to a directive from Congress, the Secretary of State certified to it the list of states whose legislatures had ratified the Amendment. The certification included Ohio and New Jersey, reciting that "it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual." Congress thereafter adopted a resolution reciting ratification by three-fourths of the states, including Ohio and New Jersey, and declared the Fourteenth Amendment to be a part of the Constitution. The Court stated thus:

"Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification . . . This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted.

"We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."

Thus, the Court held that the effect to be given an attempted rescission of a previous ratification was a question to be resolved by the political departments of the government, noting that the question had in effect been resolved by those departments in the historical precedent recited in its opinion.

There is no ground upon which to anticipate other than continued adherence to this precedent.

Yours very truly,

VERN MILLER
Attorney General

VM:JPM:q