



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 3, 1975

Opinion No. 75- 89

The Honorable Duane S. McGill
Speaker of the House
House of Representatives
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Speaker McGill:

You advise that the Federal and State Affairs Committee of the House of Representatives has voted unfavorably on a measure introduced to repeal a concurrent resolution adopted by the 1972 Legislature ratifying a proposed amendment to the United States Constitution 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."

The chairman of that committee, you advise, has indicated that the committee action was based primarily upon opinions issued by this office, which are alleged to conclude that once a state has ratified an amendment to the United States Constitution, it is powerless to rescind or withdraw that approval.

Contrary to some apparently widespread misconceptions, this office has at no time issued such an opinion or supported that position. The question whether a subsequent legislature may rescind the 1972 ratification was first presented to this office by Representative Ruth Luzatti in a request to Attorney General Vern Miller. In his opinion dated February 13, 1973, he pointed out that this very question had been discussed, but not decided, by the United States Supreme Court in Coleman v. Miller, 307 U.S. 433, 83 L. ed. 1385 (1939), aff'g 146 Kan. 390, 71 P.2d 518. The Court there discussed a similar occurrence in the nineteenth century, when the states of Ohio and New Jersey both rescinded earlier resolutions ratifying the proposed fourteenth amendment to the United States Constitution.

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Thereafter, when the United States Congress adopted a resolution declaring the amendment ratified and to be a part of the Constitution, it recited that three-fourths of the States had ratified, and enumerated Ohio and New Jersey as among them. The Court held that the question of the efficacy of a withdrawal of an earlier ratification was a political question, to be decided by the Congress, and was not subject to adjudication. The Attorney General quoted thus from the opinion of the Court:

"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.

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." 307 U.S. at 449,450.

Thus, over two years ago, the Attorney General pointed out that precedent existed for withdrawal by a state legislature of previous action ratifying a proposed constitutional amendment, that precedent having been established over a century ago. He further pointed out that under the 1939 decision of the United States Supreme Court in Coleman v. Miller, supra, the effectiveness of any such rescission of a prior ratification by a state legislature is to be decided by the Congress.

When and if thirty-eight states have ratified the proposed Equal Rights Amendment, and any of those states have in addition passed resolutions withdrawing their prior ratification, the Congress will then be called upon to decide again the same question which it decided in 1868, whether the act of a state legislature in with-

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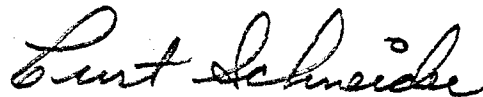
drawing its previous ratification of a proposed constitutional amendment is effective.

As I have previously indicated in a letter to Representative Loux dated January 17, 1975, I believe that this earlier opinion correctly states the applicable law on the question. Certainly, the United States Supreme Court has never decided that a state may not withdraw its prior ratification of a proposed constitutional amendment. Indeed, it has expressly decided that that decision rests with the Congress. The only precedent on this question is that established by the Congress, and of course, the Congress is free either to follow or to abandon that precedent, insofar as it believes the Constitution permits it to do so. At no time have I attempted to anticipate its decision, to conclude that the legislature is powerless to withdraw a ratification previously granted. It is reasonable to believe that the Congress will follow in the future the precedent which it has established in the past. It is impossible to conclude as a matter of law, however, that it is required to do so, or indeed, that it will do so.

In short, it is my opinion that it is within the power of the Kansas Legislature to repeal its prior adoption in 1972 of House Concurrent Resolution No. 1155, and it is further my opinion that the validity of any such legislative action must be determined by the United States Congress when and if thirty-eight states have ratified the proposed amendment.

I welcome the opportunity to dispel the entirely unjustified confusion which has surrounded this question, and appreciate your providing an opportunity to do so.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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