PROHI. AMENDMENT IS SAID TO BE NO EFFECT

Cannot Possibly Be State-Wide Prohibition Before 1913 Even If Amendment Is Adopted.

(Col. G. B. Wells in Tampa Tribune.)

PLANT CITY, June 22.—Editor Tampa Morning Tribune: I desire to submit through the columns of your paper for the consideration of the public some observations on the joint resolution proposing an amendment to article XIX of the constitution of the State of Florida, relating to the manufacture and sale or other disposal of intoxicating liquors or beverages proposed by the recent Legislature, commonly known as the prohibition amendment, and to show such irregularities in such amendment as will render it inoperative.

The said joint resolution, from a copy furnished me by the Secretary of State, is as follows:

"Senate joint resolution proposing an amendment to article XIX of the constitution of the State of Florida, relating to the manufacture and sale or other disposal of intoxicating liquors or beverages.

"Be it Resolved by the Legislature of the State of Florida:

"That article XIX of the constitution of the State of Florida be and the same is hereby amended so as to read as follows:

"Article XIX. Section 1. The manufacture and sale, barter or exchange of all intoxicating liquors and beverages, whether spiritous, vinous or malt, are hereby prohibited in the State of Florida, except alcoholic, for medical, scientific or mechanical purposes and wine for sacramental purposes; the sale of which alcohol and wine for the purposes aforesaid shall be regulated by law.

"Section 2. The Legislature shall enact suitable laws for the enforcement of the provisions of this article.

"Section 3. This article shall go into effect on the first day of July, A. D. 1911.

"Passed by the Senate April 22, 1909.

"F. M. Hudson, President of the Senate.

"C. A. Finley, Secretary of the Senate.

"Passed by the House of Representatives April 23, 1909.

"I. L. Farris, Speaker of the House of Representatives.

"J. G. Kellum, Chief Clerk of the House of Representatives."

The constitution of the State of Florida, which was adopted by the electors of said State at the general election held in November, 1886, and which by an ordinance of said constitution became effective on January 1, 1887, is the organic law of the State of Florida and is the direct expression of the electors of said State, as to limitations to be placed upon legislative authority and the powers and duties of the executive and judicial branches of the State government.

The framers of the constitution, realizing that the demands of the future would necessitate changes in the organic law, provided in said instrument for amendments to be made, and the manner and form in which said amendments are to be made a part of the organic law.

The courts of the State are called upon to interpret phrases and portions of the constitution, as well as the statutes of the State. It is uniformly held by the courts of all American States that interpretations of the constitution should be strict and in accordance with the expressed intent of the provisions of the constitution being interpreted, and that the words thereof are to be given their usual and ordinary meaning.

In the first place the said proposed amendment is not an amendment of article XIX of the constitution in that article XIX of the constitution provides for the sale of intoxicating liquors and beverages and prescribes their manner and sale. Whereas, the proposed amendment to article XIX seeks to prohibit the manufacture and sale of such intoxicating liquors and beverages, being thereby an entirely different subject and foreign to the subject matter as expressed in article XIX of the constitution. It could just as well have been an amendment of any other article of the constitution, as that of article XIX.

Section 1 of article XVII of the constitution of the State of Florida provides the manner of proposing amendments and how the same may become parts of the constitution.

Section 1 of said article provides as follows: "Either branch of the Legislature, in regular session thereof, may propose amendments to this constitution, and if the same be agreed to by three-fifths of all the members elected to each house, such proposed amendment shall be entered upon their respective journals with the yeas and nays, and published in one newspaper of each county where a newspaper is published for three months immediately preceding the next general election of representatives, at which election the same shall be submitted to the electors of the State for approval or rejection. If a majority of the electors voting upon such an amendment at such election shall adopt the amendment, the same shall become a part of the constitution.

In an advisory opinion to the Governor, 34th Florida report, page 500, the supreme court of Florida holds that amendments to the constitution become operative and of full force and effect and part of the constitution eo instanti, upon its approval and adoption by a majority vote of the electors of the State. This same rule is in effect in other American States. "Provisions of the constitution regulating its own amendment otherwise than by convention are generally to be considered mandatory rather than permissive or directory and a strict observance of every substantial requirement is essential to the validity of the proposed amendment. These provisions are as binding on the people as on the Legislature and the former are powerless by their vote of acceptance to give legal sanction to an amendment, the submission of which was made in disregard of limitations contained in the constitution. (See American and English Encyclopedia of Law, Second edition, Volume 6, Page 904), and cases therein cited, so it is clear according to the rule of construction of constitutional provisions, that amendments must be submitted and adopted strictly in accordance with the provisions of the construction itself.

In the words heretofore quoted from section 1, article XVII of the constitution of the State of Florida, says, "If a majority of electors voting upon an amendment at such election shall adopt amendment, the same shall become a part of the constitution."

Now the word "shall" is used in this connection and in order to arrive at the intent and meaning of this provision, it is proper to notice the meaning of that word.

In American and English Encyclopedia of Law, second edition, volume 25, page 623, the word is construed as follows: The presumption is that the word "shall" is used in an imperative and not in a directory sense, and in its meaning given in dictionaries, the word "shall" is used primarily in the present tense, so that the provisions of the constitution respecting amendments show clearly that the intention was that amendments should take effect immediately upon their approval by the electors as provided therein, and that the Legislature in proposing amendments, or the electors, in adopting amendments, could not extend or enlarge this meaning.

Section 3 of the proposed amendment under discussion provides as follows:

Sec. 3. This article shall go into effect on the first day of July, A. D. 1911.

Now I submit that this proposed amendment is in direct conflict with the constitution respecting amendments, and therefore, as such, is void, as the Legislature proposing and the electors adopting amendments are not authorized to set the time ahead, other than provided by the constitution when amendments shall become effective. Now then, this being the case, the question would be what effect would this have upon the amendment, should the electors at the general election of 1910 adopt the amendment? It is certainly clear that section 3 of said amendment is in pari materi of the other portions of the amendment. It is made part and parcel of the amendment and if one part of the amendment is submitted unconstitutionally, it would render the entire amendment inoperative and void.

Now upon the other hand, should it be held that the proposed amendment is constitutionally submitted and that the electors at the general election in 1910 shall by a majority vote adopt the same, and that the amendment shall become part of the constitution legally on the first day of July, 1911, then there will occur this irregularity. Then said amendment does not provide any penalty for a violation of the provisions of said amendment, but section 2 thereof provides that the Legislature shall enact suitable laws for the enforcement of the provisions of this article, thereby rendering the said amendment inoperative until the Legislature shall have prescribed laws for the enforcement of its provisions.

The amendment, according to its own terms, will not become a part of the constitution until July 1, 1911, therefore the Legislature which convenes in the biennial session in 1911 will have adjourned prior to the time the amendment becomes operative, and therefore the Legislature of 1911 in its regular session will have no power to enact laws for the enforcement of this article, for when a legislative body acts under a special granted power, it certainly cannot act until such time when such grant of power becomes operative.

Under the provisions of the constitution of the State of Florida it is provided that acts of Legislature shall become operative sixty days after the final adjournment of said body, unless they shall name a different time, under which provision the Legislature can provide that its acts shall take effect immediately upon their passage and approval; it could not be held that the Legislature could enact suitable laws to enforce the provisions of this article to become effective sixty days after its final adjournment and thereby be within the time when this amendment shall become effective, for the Legislature must have power at the time it acts, and cannot anticipate a future event, and it cannot act in this instance until it becomes a part of the constitution, which will not be the case until after the final adjournment of the Legislature of 1911.

The result of this State of affairs should the amendment be adopted, is that after the first day of July, 1911, the constitution will prohibit the manufacture and sale, barter or exchange of intoxicating liquors or beverages, but there will be no penalty for a violation of this provision, consequently no prosecution could be made for a violation thereof. The amendment, however, would have superseded the original article XIX, so that there will be no law to control the liquor traffic and every person who desired to engage in it could do so without the payment of any license tax or without prosecution until the convening of the Legislature in 1913, or when the Legislature shall have prescribed suitable laws to enforce this article. And there will necessarily be an hiatus in the laws governing the liquor traffic from July 1, 1911, until the convening of the Legislature in 1913, a period of twenty-one months.

I respectfully submit the foregoing views upon this matter, for the consideration of the electors of the State, believing that they should be fully advised of the legal effect of such amendment, should it be adopted.

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