

There is no indication that the amendment to New Hampshire Constitution, Part I, Article 20th was intended to be retroactive in its application. N. H. Const., Pt. I, Art. 23d. See *Opinion of the Justices*, 101 N. H. 515. At the time the defendant requested trial by jury, as well as when the plaintiff moved to have this case tried by the court on November 28, 1960, the amendment had not taken effect and the defendant was entitled to trial by jury as it formerly existed in cases where the value in controversy exceeds one hundred dollars. Consequently it follows that the answer to the issue transferred is no, and the defendant is entitled to a jury trial in this action.

*Remanded.*

All concurred.

Request of House of Representatives,  
No. 4958.

OPINION OF THE JUSTICES.

Submitted June 21, 1961.

Answer returned June 21, 1961.

The following resolution adopted by the House of Representatives on June 15, 1961, was filed in this court on the same day:

"WHEREAS, the House of Representatives has pending before it a concurrent resolution fixing the time when an amendment to the Constitution of the State of New Hampshire shall become effective, and

"WHEREAS, the Constitutional Convention provided that said amendment and others should become effective upon proclamation of the Governor following the requisite vote of the qualified voters of the state, and

"WHEREAS, his Excellency the Governor on November 30, 1960 proclaimed said amendment to be effective, and

"WHEREAS, questions have arisen in connection with the power of the General Court to fix the time when alterations and amendments to the constitution shall take effect, now, therefore, be it

"RESOLVED, That the Justices of the Supreme Court be respectfully requested to give their opinion upon the following questions of law:

"1. Is said amendment referred to in said concurrent resolution presently in effect?

"2. If said concurrent resolution is adopted will said amendment take effect upon the date fixed by said concurrent resolution?

"3. What action is required of the General Court by the provisions of Article 98, Part Second of the Constitution of the State of New Hampshire?

"FURTHER RESOLVED, That the Speaker transmit seven copies of this resolution and of said Concurrent Resolution to the Clerk of the Supreme Court for consideration by said court."

The following answer was returned:

*To the House of Representatives:*

The Justices of the Supreme Court submit the following reply to the inquiries contained in your resolution of June 15 relating to the effective date of the amendment to the New Hampshire Constitution, Part II, Art. 15th, adopted by the Constitutional Convention December 2, 1959 and proclaimed to be effective by the Governor on November 30, 1960.

The power of the Legislature to fix and determine the effective date of amendments to the State Constitution is established by Article 98 of Part II of the Constitution, which reads as follows: "[Constitution, When to Take Effect.] To the end that there may

be no failure of justice, or danger to the state, by the alterations and amendments made in the constitution, the general court is hereby fully authorized and directed to fix the time when the alterations and amendments shall take effect, and make the necessary arrangements accordingly." See also, Article 99. The concurrent resolution which is pending before the Legislature seeks to postpone the effective date of the amendment to Article 15th, Part II of the Constitution until January 1, 1963, although the effective date of the amendment has already been proclaimed by the Governor as being November 30, 1960. The concurrent resolution reads as follows: "That the General Court of the State of New Hampshire does hereby fix January 1, 1963 as the effective date of the amendment to Article 15, Part Second of the Constitution approved by the qualified voters of the state at the meetings held on the Tuesday next following the first Monday in November, 1960." Journal of the House for Thursday, June 15, 1961 at p. 10.

Questions 1 and 2 may be considered together. Question 1 is whether the amendment is presently in effect and question 2 is whether the amendment may take effect on January 1, 1963 if the concurrent resolution is adopted. Both of these inquiries were substantially answered on July 22, 1889 in *Opinion of the Justices*, 76 N. H. 612. That advisory ruling stated that the Legislature has the power and authority to fix the time when constitutional amendments approved by the people shall take effect, but such authority may be delegated to the Constitutional Convention and when so delegated and exercised by the Convention the time fixed by the Convention is valid and cannot be changed by a later Legislature. That advisory opinion controls the present situation. See *Rix v. Asadoorian*, 103 N. H. 330, (decided this day).

The Constitutional Convention of 1959, originally authorized by Laws 1955, c. 42, on December 2, 1959 adopted the following resolution: "IX. *Resolved*, That such of the proposed amendments as shall have been approved by the requisite number of votes shall take effect and be in force when their adoption is proclaimed by the Governor." Certificate of the President of the Constitutional Convention (1959) p. 4, in manuscript form in the office of the Secretary of State. Pursuant to resolution VIII of the same convention the amendment to Part II, Article 15th, relating to mileage of the legislators was proclaimed by the Governor on November 30, 1960. New Hampshire Manual for the General Court (No. 37, 1961) p. 622 (popularly known as the Red Book).

Since the authority to fix the effective date of this amendment was delegated to the Constitutional Convention and the delegated authority has been exercised, the Legislature has no power to change it thereafter. Consequently, the answer to your first question is yes and the answer to the second question is no.

The third question submitted reads as follows: "What action is required of the General Court by the provisions of Article 98, Part Second of the Constitution of the State of New Hampshire?" In view of the answers given to questions 1 and 2, it logically follows that no action is required by the General Court in connection with the constitutional amendment to Part II, Article 15th. See White, *Amendment and Revision of State Constitutions*, 100 U. of Pa. L. Rev. 1132, 1142 (1952); *Opinion of the Justices*, 102 N. H. 565, 568.

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AMOS N. BLANDIN, JR.  
EDWARD J. LAMPRON.  
STEPHEN M. WHEELER.

June 21, 1961.

*J. Walker Wiggin*, President of the Constitutional Convention, furnished a memorandum.