



1995 ASSEMBLY JOINT RESOLUTION 16

January 26, 1995 - Introduced by Representatives WOOD, WARD, DOBYNS, SCHNEIDERS, HAHN, HUBER, AINSWORTH, LADWIG, ZIEGELBAUER, ROBSON, GRONEMUS, GOETSCH, HARSDFORF, NOTESTEIN, LA FAVE, OTTE, BRANDEMUEHL, RYBA and UNDERHEIM, cosponsored by Senators WEEDEN, HUELSMAN and MOEN. Referred to Committee on Elections and Constitutional Law.

- 1 **To amend** section 3 of article XIII of the constitution; **relating to:** eligibility to seek
2 or hold office of a person convicted of a misdemeanor involving a violation of
3 public trust or of a felony (2nd consideration).

Analysis by the Legislative Reference Bureau

This constitutional amendment, to be given 2nd consideration by the 1995 legislature for submittal to the voters in April 1995, was considered by the 1993 legislature as 1993 Assembly Joint Resolution 3 (1993 Enrolled Joint Resolution 19).

EXPLANATION OF PROPOSAL

Section 3 of article XIII of the constitution makes a person ineligible for any office of trust, profit or honor in this state if the person has been convicted of an “infamous crime” or if the person is a “defaulter” to the United States, to this state, to any county or town in this state or to any state or territory within the United States. This constitutional amendment eliminates these grounds for disqualification and instead provides that a person is ineligible for any office of trust, profit or honor in this state and is prohibited from appearing on a ballot for state or local office if the person has been convicted, in any state or federal court, of: 1) a felony; or 2) a misdemeanor that, at the time that the person committed it, was designated as a misdemeanor involving a violation of the public trust. Under this constitutional amendment, a person convicted of a felony or of a misdemeanor designated as a misdemeanor involving a violation of the public trust is eligible to hold an office of trust, profit or honor and may appear on a ballot for state or local office if he or she has been pardoned for the conviction.

The state supreme court has interpreted the current “infamous crime” language of section 3 of article XIII to mean a felony. *Becker v. Green County*, 176 Wis. 120, 124 (1922). However, a court of appeals decision holding that *all* felonies are infamous crimes was “disavowed”, though not directly ruled on, by the supreme court in *Law Enforcement Standards Board v. Lyndon Station*, 101 Wis. 2d 472, 497 (1981).

The separate reference to a “person being a defaulter” has a narrow application, and may be redundant when conviction of a felony or a misdemeanor involving a

violation of public trust is a key to disqualification. The “defaulter” disqualification has been discussed in only one case, *State ex rel. Shea v. Evenson*, 159 Wis. 623 (1915), which involved a public officer’s alleged malfeasance. The disqualification was construed narrowly to apply only to a person presently in default of the payment of money received officially, and not to apply to an official (or former official) who had paid off the debt. Thus, the disqualification may not be applicable to debtors other than public officials who are in default to governmental units.

PROCEDURE FOR 2ND CONSIDERATION

When a constitutional amendment is before the current legislature on 2nd consideration, any change in the text approved by the preceding legislature reverts the proposal to first consideration status so that 2nd consideration approval would have to be given by the next legislature before the proposal could be submitted to the people for ratification [see joint rule 57 (2) (b)].

The decision of whether to approve a proposed constitutional amendment on 2nd consideration is up to the legislature. If the legislature approves a proposed constitutional amendment on 2nd consideration, it must also set the date for submitting the constitutional amendment to the people for ratification and must determine the question or questions to be printed on the ballot.

1995 SPRING ELECTION

Because of the time required for publication of election notices and distribution of election supplies, the elections board estimates that this joint resolution would have to pass both houses no later than February 21, 1995, to be placed on the ballot for the April 4, 1995, spring election.

1 Whereas, the 1993 legislature in regular session proposed an amendment to
2 the constitution by 1993 Assembly Joint Resolution 3 (1993 Enrolled Joint
3 Resolution 19) and agreed to it by a majority of the members elected to each of the
4 2 houses, which amendment reads as follows:

SECTION 1. Section 3 of article XIII of the constitution is amended to read:

[Article XIII] Section 3 (1) No member of congress, ~~nor any~~ and no person holding any office of profit or trust under the United States ~~(postmasters excepted) except postmaster,~~ or under any foreign power; ~~no,~~ shall be eligible to any office of trust, profit or honor in this state.

(2) ~~No person convicted of any infamous crime a felony, in any court within the United States; and no person being a defaulter to the United States or to this state, or to any county or town therein, or to any state or territory within the United States, no person convicted in federal court of a crime designated, at the time of commission, under federal law as a misdemeanor involving a violation of public trust and no person convicted, in a court of a state, of a crime designated, at the time of commission, under~~

the law of the state as a misdemeanor involving a violation of public trust shall be eligible to any office of trust, profit or honor in this state unless pardoned of the conviction.

(3) No person may seek to have placed on any ballot for a state or local elective office in this state the name of a person convicted of a felony, in any court within the United States, the name of a person convicted in federal court of a crime designated, at the time of commission, under federal law as a misdemeanor involving a violation of public trust or the name of a person convicted, in a court of a state, of a crime designated, at the time of commission, under the law of the state as a misdemeanor involving a violation of public trust, unless the person named for the ballot has been pardoned of the conviction.

1 ***Now, therefore, be it resolved by the assembly, the Senate concurring,***

2 ***That*** the foregoing amendment to the constitution is agreed to by the 1995
3 legislature; and, be it further

4 ***Resolved, That*** the foregoing amendment be submitted to a vote of the people
5 at the election to be held on the first Tuesday of April, 1995; and, be it further

6 ***Resolved, That*** the question concerning ratification of the foregoing
7 amendment be stated on the ballot as follows:

8 **QUESTION 1: “*Eligibility of convicted persons for office.* Shall section 3 of**
9 **article XIII of the constitution be amended to prohibit a person from holding public**
10 **office or from appearing on a ballot for state or local office if the person has been**
11 **convicted of a misdemeanor involving a violation of public trust or a felony and the**
12 **person has not been pardoned for the conviction?”**

13 (END)