

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

February 21, 1933

Honorable Harold H. Murchie
President of the Senate
Augusta, Maine

Dear Brother Murchie:

The case of *Hawke v. Smith*, 253 U.S. 221, provides that,--

"The function of a state legislature in ratifying a proposed amendment to the federal constitution, like the function of Congress in proposing such amendments is a federal function, derived not from the people of that state but from the constitution."

The Court, on Page 230 said,--

"It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the federal constitution has its source in the federal constitution. The act of ratification by the state derives its authority from the federal constitution to which the State and its people have alike assented.

"This view of the provision for amendment is confirmed in the history of its adoption found in 2 *Watson on the Constitution*, 1301 et seq. Any other view might lead to endless confusion in the manner of ratification of federal amendments. The choice of means of ratification was wisely withheld from conflicting action in the several states."

The Court further held, in effect, that the ratification of a proposed amendment to the federal constitution cannot be referred to the electors of the state, in accordance with the provisions of the state constitution requiring such a referendum the same being inconsistent with the constitution of the United States.

It would therefore seem to me that the matter now in question could not properly be referred to the electors of the state in accordance with the provisions of our state constitution.

SANFORD L. FOGG, Deputy Attorney Gen.