



National Archives and Records Administration

Office of the Federal Register

May 24, 2007



Gordon Epperly
P.O. Box 34358
Juneau, AK 99803

Dear Mr. Epperly:

This is in response to your letter concerning ratification of the 14th Amendment to the Constitution of the United States. Your request was received by the National Archives and Records Administration (NARA). It has since been forwarded to NARA's Office of the Federal Register (OFR).

The Archivist of the United States, who heads NARA, is charged with responsibility for administering the ratification process under the provisions of 1 U.S.C. 106b. The Archivist has delegated many of the ministerial duties associated with this function to the Director of the Federal Register. The Archivist and the Federal Register follow procedures and customs established by the Secretary of State (who performed these duties until 1950), and the Administrator of General Services (who served in this capacity until NARA assumed responsibility as an independent agency in 1985), as well as the applicable case law.

Based on your historical research, you assert that the ratification of the 14th Amendment to the Constitution of the United States was invalid, and therefore the Archivist has a duty to purge records of the ratification from the Archives of the United States, and to publish notice of that action. We find no basis for taking the actions requested. It is well settled that the Archivist, who serves as the Federal custodian and certifying officer of ratification documents, may not make any substantive determinations as to the validity of State ratification actions. See Leser v. Garnett, 258 U.S. 130, 137 (1922) and Coleman v. Miller, 307 U.S. 433, 451 (1939). Any questions as to the legitimacy of State ratifications of the 14th Amendment are moot at this point, because the 14th Amendment was adopted as part of the Constitution in 1868. But in any case, under the applicable legal precedent, questions as to the validity of State ratification actions are entirely within the purview of the Congress at the Federal level.

Under Coleman, the Supreme Court ruled on the question of the attempted withdrawal of a ratification of the proposed Child Labor Amendment by referring to the refusal of the Congress to accept purported withdrawals of ratifications of the 14th Amendment. The Court held that:

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. Coleman, 307 U.S. 433, at 450.

I hope this responds to your concerns as to NARA's ministerial responsibilities for ratification and custody of Amendments to the Constitution.

Sincerely,

A handwritten signature in cursive script that reads "Michael L. White".

MICHAEL L. WHITE
Director of Legal Affairs and Policy
Office of the Federal Register