2d. No formal reference to the next General Assembly is necessary. The approval of the proposition by a majority of both Houses, its entry on the journal with the yeas and nays, &c., is in and of itself a reference to the next General Assembly, both in form and substance. Any further action of the General Assembly in respect to such reference is a mere work of supererogation.

3d. It shall be published as provided by law, &c., for three months previous, &c. After the approval and entry on the journals, above mentioned, it becomes the manifest duty of the Secretary of State to make the publication without any further direction — to make it *as provided by law.*

The publication was in fact made, and the requirements of the Constitution with respect to this proposition have been complied with both in form and substance.

4th. Even if it should be deemed essential to the validity of such action, that special and formal direction should be given by the General Assembly, for the reference and publication of such proposition, certainly such direction can, in no sense, be said to be a *law*, to require an enacting clause and all the formalities of an Act of the General Assembly. A joint resolution is not only sufficient, but would be the more proper form to give it. In this view, Chap. 101, of the Acts of the last General Assembly, contains all the essentials of such a direction — it is passed by both houses and approved by the Governor.

The people, not the legislature, make and amend the Constitution. They desire, as early and speedily as the law will permit, to vote on these amendments, and I respectfully submit that no mere technical objections should be interposed to prevent or retard the action of the people in the premises. I think it will be found that not even a technical objection exists in the present case; on the contrary, the requirements of Article 10 of the Constitution, have been faithfully complied with in its letter and spirit.

With great respect, &c.,

HENRY O'CONNER,
Attorney General.

OPINION OF THE ATTORNEY GENERAL

ON THE

TAXATION OF NATIONAL BANKS.

STATE OF IOWA, OFFICE OF ATTORNEY GENERAL,
DES MOINES, Jan. 30, 1868.

To the President of the Senate:

SIR: — I have the honor to acknowledge the receipt of the following resolution, viz.:

"*Resolved*, That the Attorney General of this State be and he is hereby requested to give in writing to the Senate at as early a day as practicable, his opinion as to whether the General Assembly has the power to tax the shares of stockholders in banks organized in the State of Iowa under the national banking law."

In reply I beg to say: The question is one of great interest to the people of the State, and of no small importance in connection with the question of general revenue.

Fortunately for the purpose of the present inquiry, the question has been so thoroughly discussed and so fully settled by recent decisions of the Supreme Court of the United States, and by the courts of last resort in the States of New York, Ohio, Indiana, Pennsylvania and our own State, that little remains for me but to collect and bring before the Senate the principles and questions which have been settled by these recent decisions.

1. It is clearly settled that the shares of stockholders in national banks, may be taxed by the several States, for State and municipal purposes. This is the principle distinctly and uniformly held in all of the following cases, all of them arising out of and since the passage of the National Bank Act:

SUPREME COURT OF THE UNITED STATES, — *Van Allen* vs. *The Assessors, N. Y.*, 3 Wallace, 573–581.

Bradly vs. *The People of Illinois; People of N. Y. ex re Deminy* vs. *Duer; People of N. Y., Mead* vs. *Commissioner of taxes.—American Law Register, June*, 1867.

INDIANA, — *Auditor and Treasurer of Marion county* vs. *Stiltz.— American Law Register, June*, 1867.

OHIO, — *Frazier* vs. *Subern.— American Law Register, June*, 1867.

PENNSYLVANIA, — *Markoe et al* vs. *Hartrauft et al.— American Law Register, June*, 1867.

The above decisions, published in the Law Register for June, 1867, are accompanied by a learned and exhaustive note by the Hon. John F. Dillon, a Judge of our own Supreme Court and one of the editors of that journal, in which the question is fully discussed, and the same result arrived at, viz: that the shares are taxable.

IOWA, — *Hubbard et al* vs. *Supervisors Johnson Co.; Davenport National Bank* vs. *Scott Co.; National State Bank Oskaloosa* vs. *Young.*

The above three cases, decided by the Supreme Court of this State at the June term, 1867, lay down the same general principle. These cases are not yet reported.

Why, then, it may be asked, are these shares not taxed in accordance with the provisions of chapter 108, of the laws of the Eleventh General Assembly?

I answer, the difficulty arises from a failure in our laws to conform to the limitations of the 41st section, of the Act of Congress, establishing national banks. The provisions of that section, touching the matter under consideration, are as follows, viz:

Provided, That nothing in this Act shall be construed to prevent all the shares in any of the said associations, held by any person or

body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by, or under State authority, at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed *upon other monied capital in the hands of individual citizens* of *such State.*

Provided, further, That the tax so imposed under the laws of any State, upon the shares of any of the associations authorized by this Act, shall not exceed the rate upon the *shares* in any of the banks organized under the authority of the State where such association is located.

By our laws we tax the capital of our banks, not the shares.

"Taxes shall be levied on and paid by the corporation and not upon the individual stockholder, the value of the property to be ascertained annually by the bank commissioners herein provided for, and the rate of taxation shall be the same as required to be levied on other taxable property by the revenue laws of the State." (Rev. sec. 1598.)

By the National Banking Act we can not tax the capital but may tax the shares.

In pronouncing the opinion of the Court in the Iowa cases above cited Judge Wright remarks: "We therefore conclude that as our legislation now stands the shares in national banks in the State can not be taxed. The remedy is with the Legislature. Other States misapprehending the full purport and bearing of the national banking law and in advance of its full exposition by the federal judiciary have made the same mistake. In many of them their laws have been so amended as to meet the difficulty. If the Act of Congress shall remain unchanged it will be for the legislative department to take such action as may be deemed advisable to subject this property to its due proportion of the public burdens."

The remedy sought, is, in my opinion, clearly within the power of the Legislature, and the surest, safest and best way to effect it, is by a repeal of our general and State banking acts. These acts are now, so to say, dead letters on the statute book; we have no banking under their provisions carried on in the State. If, at any time in the

future, a State banking system shall be needed, these laws, or similar ones, may be enacted, with such changes as will obviate the difficulties which are now encountered. Section 1684, Rev. provides that the State bank laws may be at any time repealed by the General Assembly, and the general banking law, known as the free bank act, may be repealed now without impairing any obligation, as no bank, so far as I am advised, has ever been organized under its provisions.

These acts repealed, the shares in national banks may be taxed at the same rate as other moneyed capital conformable to the limitation contained in section 41 of the Act of Congress establishing national banks. Chapter 108 of the Acts of the 11th General Assembly, will then become operative, and indeed regardless of the provisions of that act, this species of property like all other property would be taxable under the general revenue laws of the State. No good reason can be assigned why this species of property conceded to be at present very profitable and productive to its fortunate owners, should not be compelled to bear its fair and equal share of the public burdens of the State.

The burdens of taxation at present in our State are heavy and severely felt by tax-payers, and the complaint is loud and general that while the merchant, the manufacturer and the farmer is obliged to pay annually from two to four per cent on the value of his property, as State, county, school, and municipal taxes, the man who is fortunate or shrewd enough to get all his property into national bank stock, gets a better and surer return from it, escapes all the burdens of taxation, and at the same time receives equal benefit and protection from the laws and institutions which his less fortunate neighbor pays taxes to maintain, but which costs him nothing.

HENRY O'CONNOR,
Attorney General.

OPINION

OF

THE ATTORNEY GENERAL

ON THE

POWERS OF THE LEGISLATURE

TO

REGULATE TARIFFS ON RAILROADS

IN THE

STATE OF IOWA.

DES MOINES:
F. W. PALMER, STATE PRINTER.
1868.