

ADMITTING THE STATE OF OHIO INTO THE UNION

JULY 29 (legislative day, JULY 27), 1953.—Ordered to be printed

Mr. BUTLER of Nebraska, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. J. Res. 121]

The Committee on Interior and Insular Affairs, to whom was referred the joint resolution (H. J. Res. 121) for admitting the State of Ohio into the Union, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

PURPOSE OF THE MEASURE

The purpose of House Joint Resolution 121 is to make formal, legal declaration of the de facto situation with respect to the admission of Ohio as a State of the United States. The facts and confusion surrounding Ohio's admission are set forth in the comprehensive historical and legal study prepared by the Legislative Reference Service of the Library of Congress set forth in full below.

The committee is of the opinion that House Joint Resolution 121 will give the desired and needed clarification to the situation. The only controversy or question concerning the measure is the narrow, technical one of the date as of which it should be operative. The report of the Department of State suggests that February 19, 1803, the date of approval of the act of the Seventh Congress (2 Stat. L. 201) by which the laws of the United States were made applicable in Ohio. The preamble to the act recited that "* * * the said State has become one of the United States of America * * *"

The Library of Congress study points out that the Senate Manual (S. Doc. 5, 82d Cong., p. 570) gives the date of Ohio's admission as March 3, 1803, while the Congressional Biographical Directory (H. Doc. 607, 81st Cong., p. 76, note 9) gives November 29, 1802.

The committee, however, decided to concur with the date selected by the sponsor of House Joint Resolution 121, the Honorable George H. Bender, veteran Ohio legislator now representing his State's 23d District in the House of Representatives, who provided for the date

of March 1, 1803, in his bill. This was the date upon which the first Ohio State Legislature was seated, when the first Governor took office, and upon which Ohio might be said to have begun functioning as a State. The House approved Congressman Bender's date of March 1, 1803.

REPORTS OF EXECUTIVE AGENCIES AND LIBRARY

DEPARTMENT OF STATE,
Washington, June 23, 1953.

Hon. HUGH BUTLER,
Chairman, Committee on Interior and Insular Affairs,
United States Senate.

MY DEAR SENATOR BUTLER: Reference is made to your request of May 21, 1953, for a report by the Department of State on House Joint Resolution 121, entitled "For admitting the State of Ohio into the Union."

It appears from the proposed joint resolution and from the report of the House of Representatives Committee on Interior and Insular Affairs that the purpose of the legislation is declaratory in relation to the admission of Ohio into the Union and, more particularly, concerns the date of Ohio's admission. The act of February 19, 1803 (2 Stat. 201), applied the laws of the United States to Ohio. The preamble of that act recited that "the said State has become one of the United States of America."

In view of this, your committee might wish to consider altering the title of the joint resolution and its first section to reflect the declaratory purpose of the legislation, and might wish to reexamine the date of March 1, 1803, given in section 2.

I am informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., June 18, 1953.

Hon. HUGH BUTLER,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, 224A Senate Office Building,
Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your letter requesting the views of this Bureau on House Joint Resolution 121, for admitting the State of Ohio into the Union.

It is understood that the Department of State will present a report to your committee which suggests that you may wish to consider altering the title of the joint resolution and its first section and to reexamine the date of March 1, 1803, given in section 2.

These suggestions are recommended to your attention. This Bureau would have no objection to the enactment of legislation to accomplish the purpose of House Joint Resolution 121.

Sincerely yours,

ROWLAND HUGHES,
Assistant Director.

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SOME NOTES ON THE ADMISSION OF OHIO TO THE UNION

(By W. C. Gilbert, Assistant Director)

Question has been raised from time to time concerning the procedure upon admission of Ohio; some even going so far as to assert that Ohio was never "admitted" to the Union at all. The following facts appear to be pertinent in this connection:

The Northwest Territory Ordinance of 1787 provided in article V that "there should be formed in the said territory not less than three nor more than five States," describing boundaries. Further, "whenever any of the said States shall have sixty thousands free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever, and shall be at liberty to form a permanent Constitution and State Government: *Provided*, The Constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand."

Congress by an act of April 30, 1802 (2 Stat. 173), provided (sec. 1):

"That the inhabitants of the eastern division of the territory northwest of the river Ohio, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper, and the said state, when formed, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever."

In section 5, the act authorized a convention to meet at "Chillicothe" on the first Monday in November, with specific power to determine whether to form a constitution and State government at that time, or to provide for election of representatives for that purpose. Any constitution so formed "shall be republican, and not repugnant to the ordinance of the 13th of July 1787 * * *"

The convention of 35 members met, accordingly, at Chillicothe on November 1, 1802, and on November 29, 1802, adopted a constitution.

On January 7, 1803 (Annals of Congress, 7th Cong., 2d sess., p. 21), the Senate adopted a resolution as follows: "That a committee be appointed to inquire whether any, and if any, what, Legislative measures may be necessary for admitting the State of Ohio into the Union or for extending the laws of the United States." Senators Breckenridge, Morris, and Anderson were appointed a committee; and on January 19 they reported briefly as follows: "That the people of the Eastern Division of the Territory Northwest of the river Ohio in pursuance of an act of Congress passed on the 30th day of April 1802 entitled * * * did on the 29th day on November 1802 form for themselves a constitution and state government. That the said Constitution and government so formed is republican, and in conformity to the principles contained in the articles of the ordinance made on the 13th day of July 1787, for the Government of the said Territory: and that it is now necessary to establish a district court within the said State, to carry into complete effect the laws of the United States within the same." The committee was ordered to bring in a bill (same, p. 28); the bill so ordered was reported and became the act of February 19, 1803 (2 Stat. 201). The preamble and section 1 read as follows:

"Whereas, the people of the Eastern division of the territory northwest of the river Ohio, did, on the twenty-ninth day of November, one thousand eight hundred and two, form for themselves a constitution and state government, and did give to the said state the name of the 'State of Ohio,' in pursuance of an act of Congress, intituled "An act to enable the people of the Easter division of the territory northwest of the river Ohio, to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and for other purposes", whereby the said state has become one of the United States of America; in order therefore to provide for the due execution of the laws of the United States within the said state of Ohio. [Italics supplied.]

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said state of Ohio, as elsewhere within the United States."

It then made provision for establishment of a district court with necessary officers, etc., but no further mention of "admission."

This procedure may profitably be compared with that in other cases of admission to the Union.

In the case of Indiana and Illinois, which like Ohio were carved out of the Northwest Territory, the enabling acts (Indiana, 3 Stat. 289; Illinois, 3 Stat. 428) were very similar to that for Ohio: both provided that the new "State when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever"; and both required that a constitution whether formed by a convention or by representatives elected for the purpose, "shall be republican, and not repugnant to the ordinance" of 1787.

In both these cases, Congress subsequently "admitted" the new State: Indiana in December 1806 (3 Stat. 399) and Illinois in December 1818 (3 Stat. 536). In each instance the resolution of admission recited the fact that the constitution of the new State was "republican, and in conformity to (or with) the principles" of the North West Ordinance.

For further illustration, Congress in 1819 (3 Stat. 489) authorized the people of the territory of Alabama to form a constitution and State government, and in language similar to the Ohio act authorized a convention, to act immediately or through elected representatives. However, this act contained a section 9, requiring that if the convention did form a State government, it should as soon as convenient send a copy to Congress "for its approbation." On December 14, 1819 (3 Stat. 608), Congress after reciting that the constitution and State government formed in pursuance of the enabling act was republican, etc., declared the State "one of the United States of America and admitted into the Union."

In the enabling act for Missouri in 1820 (3 Stat. 545) Congress required that a copy of the new State constitution be sent to Congress; but without specifying "for approval." However, in this case the slavery-free-soil controversy led Congress to qualify its admittance of the new State (3 Stat. 645) by requiring a prior assent of the State to the "fundamental condition" that its constitution as submitted should never be construed to authorize any State law excluding a citizen from the privileges and immunities of citizens of the United States. Accordingly, not until this condition was met was there a final declaration of membership in the Union (Proclamation of the President, August 10, 1821, 3 Stat. 797).

OTHER INSTANCES OF STATES ADMITTED BY A SINGLE ENABLING ACT

It may be noted that there have been a dozen States besides Ohio whose admission to the Union was accomplished by a single enabling act. Examination discloses that eight of these had already formed their State constitutions and asked for admission; the enabling acts recite that the said constitution is found to be republican and the State is declared a member of the Union.

In the case of Vermont and Kentucky Congress declared that the State "shall be received and admitted" as of a specific date, and Maine similarly was "declared to be one of the United States of America and admitted into the Union." The admission of Tennessee was in fulfillment of the condition of cession of territory by North America.

Thus it appears that the case of Ohio is somewhat in a class by itself, in that Congress by an enabling act authorized the formation of a new State, and did not follow it up with another declaring the State a member of the Union. This is matter of fact. Whether such a declaration was expected or intended, is another matter. It might be argued that there is little difference between declaring that a new State shall be a member of the Union as of a fixed date in the future (as in the case of Vermont) and declaring it shall be admitted when formed (as in the case of Ohio); that in either case Congress is giving consent to admission in the future conditioned in the one case upon performance by the State, and in the other upon lapse of time.

Though the matter of a formal declaration of admission may be considered unessential, there actually is some confusion as to the exact date when Ohio should be considered to have become a member of the Union. For example, the Senate Manual (S. Doc. 5, 82d Cong., p. 570) gives the date as March 3, 1803; while the Congressional Biographical Directory (H. Doc. 607, 81st Cong., p. 76, note 9) gives November 29, 1802.

MARCH 5, 1953.