SENATOR BANKHEAD VOTES "NO"

Declaring that Issue is not that of "Saloons or No Saloons," Venerable Alabama Member of Upper House Exposes Dangers of Both Sections of the Amendment and Warns Against its Adoption.

Mr. Frank V. Evans, Editor Walker County News, Jasper, Ala.

Dear Sir:—Before making reply to your request for my views upon the proposed constitutional amendment, I beg your indulgence while I make a few preliminary observations. I am now 67 years old. I was born and reared in one of the hill counties of Alabama on a farm. I spent four of the best years of my young manhood in the Confederate Army, where the rank and file where subjected to many temptations. I have spent nearly the whole of my life since the age of 40 in the association of public men of the State and the nation—the last twenty-five at the National Capitol—and during all these years, no man has ever seen me under the influence of strong drink of any kind. During all this time I have advocated and voted for prohibition, and I am now heartily in favor of laws to suppress the evils of intemperance, and will contribute towards their enforcement in every way possible.

I have been a member of the Methodist Church and the Masonic Order for fifty years, and have tried to live up to the teachings and precepts of both. I love the church and her ministers, and have contributed as much as my means will allow toward the support of her institutions. The preachers are as a rule sincere, God loving and God fearing men. I have no criticism to offer because of the fact that many clergymen have exercised their constitutional prerogative of expressing their convictions on this issue. The ministers and members of all the churches, I hold in high esteem.

In matters of state, however, I must be permitted to do my own thinking, and I must follow the admonitions of my own reason and judgment. If after mature deliberation and reflection I conclude that my duty to myself and the State requires me to pursue a certain course, and do a particular thing, I must move in that direction, or else it may be truthfully said of me that I have neither the moral nor political courage to express my honest convictions—a charge that I am unwilling to have established by my further silence upon the matter of the adoption of the proposed constitutional amendment.

I can not agree with the advocates of the adoption of the amendment that this is solely a moral issue. I am led to this conclusion by the fact that there are on both sides of the question men of the very highest type of Christian citizenship and civic virtue in whose conception of morality there could not be such variance, if only a strictly moral question were presented. Neither is the question that of saloons or no saloons—they have departed from Alabama by the action of the people's representatives and I have no apprehension of their return.

TIME OF ELECTION.

The time fixed for the election is to say the least most untimely, and does an irreparable wrong to a very large number of patriotic, honest, but unfortunate citizens of Alabama. It is snap judgment that does not comport with the justice and dignity of our great state, and the cause whose interest it was intended to conserve. I do not intend the use of the words "snap judgment" in any offensive sense, but I know of no other term that clearly expresses the idea. This is what is known as an off year in politics. No election was provided for or expected during the year 1909. Last year, as every one knows, was an exceedingly hard year financially. Many thousands of good men were out of employment owing to the general depres-

sion in business of every kind. It was a hard struggle with thousands of hard working men to keep soul and body together and pay their taxes for the support of the state and county governments.

These unfortunate men naturally decided first of all, that they must have a living for their wives and children. Next they argued that no election will be held this year and that it will not be necessary for me to pay my poll tax, and that I can use this $1.50 to help me tide over a tight place, and next year when times are better I can pay $3. Every one was saying the times are beginning to improve—that prosperity is returning, labor is beginning to find employment and soon everybody will be at work and money plentiful. Under these circumstances it was perfectly natural that the hard pressed head of the family would postpone the payment of the poll tax. In many cases he had no choice—the collector of state and county taxes was knocking at the door, and from him there was no escape. Owing to the fact that no election was scheduled for this year there was not the usual reminding by the press and by candidates, and many of our best citizens overlooked this important duty until it was too late. I do not mean to assume that all men who have not paid their poll tax for this year would vote against the amendment, for that would be an unwarranted assumption; but what I do say is that the calling of the election this year is a violent injustice to all the voters who failed or were unable to pay the last poll tax regardless of how they would have voted in the election. On principle, the wrong done the men on either side of the question is equally harsh and unwarranted. No great moral or political question can be fully and finally settled where a large number of the electorate believe that they have been unfairly deprived of an opportunity to participate in its settlement. There is a spirit of justice and fairness implanted in the breast of every honorable man that will assert itself whenever he believes that an unfair advantage has been taken of him; when he feels that a great wrong has been done him at a time when he was helpless—when he had only temporarily failed to secure his right to vote.

It has been generally estimated that there will be only about 80,000 votes cast in this election on account of the very large number of delinquent polls; whereas the whole State easily contains 150,000 men eligible to vote presuming full payment of poll taxes. Does it accord with fair dealing, and with the spirit of our institutions to have a mere majority of 80,000, to-wit, 40,001, determine for all time a question in which the whole people are so vitally concerned? I clearly think that it does not. From the standpoint of the public welfare, I have not as yet heard of any satisfactory explanation for this precipitate submission of the question.

FIRST SECTION.

I do not believe that the adoption of the first section will add to or take from the power of the Legislature to control the whiskey evil. The distinguished author of the amendment is a great lawyer, and he declares that he will stake his professional reputation that every section of the Carmichael and Fuller bills is constitution. If we have complete prohibition by statutes that are constitutional how can the laws be strengthened by the amendment? It is the penalty imposed that deters men and keeps them from violating the law. There is no penalty in the amendment for its violation. The penalty, the punishment for violating the prohibition laws is found in the present statutes. The statutes are constitutional we are assured and I accept it. We are told the amendment will stop the agitation of the liquor question. Give me a reasonable assurance that it will have that effect and I will work and vote for it; but judging by the experience of the few states in which the experiment has been tried we know that it has not had that effect. We have the unreserved power of the State behind the present prohibition laws; the officers whose duty it is to enforce the laws are diligent. If they fail to do their duty impeachment and removal from office follows. What more can the most ardent prohibitionist expect?

FEAR OF BRIBERY.

It is contended by some of the advocates of the amendment that if it is not adopted the Legislature may sell out to the brewers and distillers and repeal the prohibition laws against the wishes of the people. I can not be impressed with that argument. Since the days of reconstruction there has never been a breath of sus-

picion against the integrity of the Alabama Legislature. To admit that the Legislature can not be trusted against bribery is a confession that representative government is a failure.

Such eminent authority as the present chief executive of Alabama, expressed this sentiment in the use of the following language in his message convening the last special session of the Legislature: "The Legislative Department of the government has always been nearest to the people and most protective of their interests."

We cannot afford to repudiate time honored principles of government, however pressing the exigencies of the occasion may appear to be in the settlement of the issue now submitted.

If there is danger of a Legislature being bought by the whiskey interests and induced to repeal the prohibition laws if the amendment is defeated, why may they not be bought by the same interests and induced to repeal the prohibition laws if the amendment is adopted? And would not the inducement for corruption be much greater when on repeal of the penalties everybody could sell whiskey and thereby increase the amount sold and the consequent profits to the brewers and distillers? It is conceded that the Legislature would have the power, if the amendment is adopted, to amend or repeal the penalty in the prohibition laws. It has been suggested that if the amendment is adopted members of the Legislature would violate their oaths of office if they repealed the penalties in the prohibition laws. But does not the Constitution which the members of the Legislature are required to take an oath to support, prohibit members of the Legislature from receiving bribes? It might as well be argued that if the amendment is defeated the members of the Legislature would not sell out to the whiskey interests because by doing so they would violate their oaths of office. Whether the amendment is adopted or defeated does any one think that members of the Legislature who would accept the bribe would be deterred from repealing the prohibition laws on account of their oaths to support the Constitution?

If the amendment is adopted the penalties in the prohibition laws could be amended so as to carry only nominal punishment, and while this would be a violation of the spirit of the Constitution it would not be a violation of its letter; and therefore not strictly speaking a violation of the oath of office of the legislators. If the amendment is not adopted there could certainly be no bribing of the legislators to betray the wishes of the people without a violation of both the spirit and the letter of the Constitution.

But I do not fear the bribery of the Legislature whether the amendment is adopted or defeated. For many years we have had prohibition in about half the counties of the State. I have heard of no effort to betray the people of those counties by repealing the prohibition laws against their will. Legislatures sometimes make mistakes of judgment, but when they do the people have the power to correct them at the next election. Before the brewers and distillers could secure a repeal of the prohibition laws they would not only have to buy a majority of the Legislature, but also the Governor of the State, or would have to buy two-thirds of the Senate and the House. It may be that I am resting too securely upon the honorable record and high character of our Governors and Legislatures since the days of reconstruction, but I am totally unprepared to believe that any such shame and degredation confronts our State.

CONSTRUCTION OF THE AMENDMENT.

It seems that our best lawyers differ on the proper construction of the amendment. I am not a lawyer and must rely largely upon the opinion of the members of the profession on that subject. Eminent lawyers in whom I have great confidence, both in legal knowledge and personal integrity, have expressed widely divergent opinions of the restrictions of the first section and the powers conferred by the second section. This should cause all thoughtful citizens to hesitate. If it were a statute, when it was construed by the Supreme Court it could be amended by the Legislature if construed contrary to the avowed purpose of its sponsors; but not so with the constitutional amendment. Before it could be amended another constitutional amendment must be proposed and voted on by the people of the State. It seems to me it would be bad judgment to put something in the Constitution over which there is so much difference of opinion as to its true meaning.

SECOND SECTION.

This section confers an unusual and extraordinary power on the Legislature. So far as I am advised, such a provision has never been incorporated in the Constitution of any State in the Union. Whatever may be the purpose of the present framers of the temperance laws with reference to designating the homes as places where whiskey and wines may not be kept, we are confronted with the proposition that the Legislature is vested with absolute authority under the police power without limitations or exception of the home, to designate places where prohibited beverages may not be stored or kept.

The power contained in this section is not limited to its exercise by those now controlling legislation, and whatever their intention or purpose may be is not conclusive of the question. The fact exists that such power is forever conferred on the Legislature. We know the high tides of extreme action to which the whiskey question often leads. When the whiskey interests are in power they often become arrogant and intolerant. On the other hand, when the people become aroused their representatives are liable in their anxiety to suppress the evils of intemperance to take extreme and drastic steps; and who can assure us with the power vested in the Legislature to designate the homes as places where whiskey and wine may not be kept, that as a result of some crusade against the evils this power may not be exercised? The power to violate the sacredness of the home shold never be delegated by our people to the Legislature regardless of whether or not there is any probability of the exercise of such power.

The principal basis for the submission of the amendment is the claim that the Legislature can not be trusted to retain the present prohibition laws and the first section of the amendment expresses that distrust and attempts to provide against such action by the Legislature. While ordering an election of the whole State on account of such distrust it does not appear consistent to add in the same election to the powers of the Legislature and say that it is wise to trust them on the extraordinary power then given and as conferred by Section 2. In discussing the first section the advocates of the amendment say we can not trust the Legislature. In discussing the second seection the same advocates say we must trust the Legislature. The inconsistency of these arguments is so apparent as to cast grave doubts upon the soundness of each.

CONCLUSION.

The only limitation upon the Legislature is the Constitution of the United States and of the State. Matters of public policy which are no longer questioned but settled principles in government and which have been accepted as such, may with propriety be incorporated in the organic law. Matters which are still debatable questions and about which there is wide divergence of opinion and which have not been solved, ought not to go into a Constitution.

When public sentiment favors prohibition there is no need of its being written in the Constitution. When public sentiment opposes prohibition, the Constitution should not inhibit the Legislature from meeting that sentiment and regulating the traffic in accordance with the same, because it is a recognized fact that the successful enforcement of prohibition laws depends upon the support of public sentiment.

In my judgment, the solution of the liquor problem is of evolution, not revolution. Public opinion should force the law and not the law public opinion. In my judgment the adoption of the pending amendment will not only fail to accomplish its assumed purpose, but will greatly retard and hinder that educational evolution which will ultimately bring about permanent and effective prohibition.

I accord to all men honest and sincere motives and with only one purpose in view —the best interests of humanity and the State. The question is a grave one and all men should decide it without bias or prejudice, and vote their convictions in accordance with the purest patriotism and the sincerest motives. Governing myself by this standard and believing that it is best for the people of the State and to the cause of prohibition itself, I shall vote against the amendment.

Yours very truly,

Jasper, Ala., Nov. 9, 1909. JOHN H. BANKHEAD.