

The State of South Carolina

05-5569



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211-1549
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

March 10, 1995

The Honorable Michael L. Fair
Member, House of Representatives
326-C Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Fair:

By your letter of March 3, 1995, to Attorney General Condon, you have asked whether, in the absence of committee rules, a duly elected chair, either interim or permanent, would have ruling authority. You are referring specifically to a joint Senate and House Committee with gubernatorial appointees.

I have examined the statutes as presently codified relating to joint Senate and House committees with gubernatorial appointees, as well as joint resolutions dating back to 1969 as to the Joint Legislative Committee on Children. I have not found any statute or other legislative indication that would provide a mechanism to appeal from the ruling of a chair of such a committee.

In 59 Am.Jur.2d Parliamentary Law §3 it is stated that "[i]n the absence of the adoption of rules of procedure and in the absence of statutory regulation, the generally accepted rules of parliamentary procedure control. . . . If there is no specific, unambiguous statute or charter provision, resort may be had to Robert's Rules of Order for light on relevant parliamentary usages of deliberative assemblies."

I have examined Robert's Rules of Order Newly Revised and have found a procedure whereby the ruling of a presiding officer may be appealed by any two members of a deliberative body. Enclosed is a copy of §24 of that treatise, which section describes the characteristics of an appeal and further explains how to make the appeal. I have also

The Honorable Michael L. Fair
Page 2
March 10, 1995

examined Mason's Manual of Legislative Procedure and am enclosing a copy of sections 230 through 235 of that treatise for your information. Finally, I am enclosing copies of several sections of Jefferson's Manual and Rules of the House of Representatives as to appeals from various measures within the United States House of Representatives.

Another possible means of appeal might be through judicial review of the ruling of the presiding officer. As stated in 59 Am.Jur.2d Parliamentary Law §4, however,

[t]he courts generally do not concern themselves with violations of parliamentary rules in deliberative proceedings, whether such rules are codified in the form of a manual and formally adopted, or whether they consist of a body of unwritten customs or usages, preserved in memory and by tradition. Since parliamentary rules are merely procedural and not substantive, the courts have no concern with their observance. Hence, they may be waived or disregarded by the legislative body.

If the issue for which a judicial appeal would be considered is merely procedural, it is thus unlikely that a court would become involved.

There may be matters of custom or tradition which are inherent in the conduct of business by such legislative committees as you have described. This informal opinion does not take any such matters of custom or tradition into account, as I have examined only legal and parliamentary issues.

I would further advise that the issue you have raised is one of parliamentary procedure, the determination of which is basically within the purview of the legislative body. Due to the doctrine of separation of powers, it would be inappropriate for this Office to opine on rulings which should be made by the presiding officer of such committee. The foregoing is offered for guidance without the intention of usurping the privilege of the presiding officer to rule thereon.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

I trust that the foregoing and the enclosures will be of assistance. Please advise if additional assistance or clarification should be needed.

The Honorable Michael L. Fair
Page 3
March 10, 1995

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures