

The State of South Carolina



Office of the Attorney General

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August 21, 1991

The Honorable Terry E. Haskins
Member, House of Representatives
1212 Haywood Road
Greenville, South Carolina 29615

Dear Representative Haskins:

This Office has been requested by Anne F. Cushman, Counsel at the Legislative Council, acting on your behalf, for its opinion on whether H.3967, passed by both the House of Representatives and the Senate but not ratified prior to sine die adjournment, may now be signed by the Speaker of the House and President of the Senate and sent to the Governor for his signature.

While the State Constitution specifies the formalities which must be observed in adopting an act by the General Assembly, the question which you have raised involves procedure outside the Constitution and thus is of a parliamentary nature. We understand that the presiding officers of the House and Senate have determined that their signatures could not be affixed after sine die adjournment. Of course, we must respectfully defer to the decisions of the presiding officers; however, we have found authority which supports those decisions.

Formalities of an act are specified in Article III, Section 18 of the State Constitution and include in part:

No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives:

(Emphasis added.) The reasoning of the underlined constitutional

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requirement is expressed in Sutherland Statutory Construction,
Vol. 1, § 14.08:

The signature of a bill has for its purpose the authentication of the passage of the bill by the house adopting it. To assure that the fact of signing be adequately witnessed and to afford opportunity for the event to be challenged if any member of the legislature believes there is anything irregular about it, it is common to require that signature take place in the presence of the house and in open session.

It is our understanding that ratification of acts of the General Assembly is accomplished during a joint session of the House and Senate, whereby the necessary signatures are affixed to the act being ratified. We are aware of no precedent for the necessary signatures to be affixed outside a joint session or after sine die adjournment.

This principle is also expressed in the "enrolled bill rule." As stated in State ex rel. Hoover v. Chester, 39 S.C. 307, 316 (1893):

... the true rule is, that when an act has been duly signed by the presiding officers of the General Assembly, in open session in the senate-house, approved by the governor of the State, and duly deposited in the office of the secretary of state, it is sufficient evidence, nothing to the contrary appearing upon its face, that it passed the General Assembly, and that it is not competent either by the journals of the two houses, or either of them, or by any other evidence, to impeach such an act.

(Emphasis added.) If signatures of the presiding officers were added at this time, these authorities suggest that such could not be done in open session or recorded in the journals of either house after sine die adjournment.

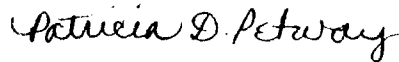
Moreover, it is observed in Mason's Manual of Legislature Procedure, § 739 (Rev. Ed. 1989), in part 4: "The duty of the presiding officer to sign legislation, properly passed by the body over which that person presides, is a legislative act and not a ministerial one"

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The foregoing appears to support the determinations by the presiding officers that their signatures could not be affixed to H.3967 subsequent to sine die adjournment. In providing the benefits of our research to you, we respectfully defer to the presiding officers to make such determinations about parliamentary issues in this or any other instance.

With kindest regards, I am

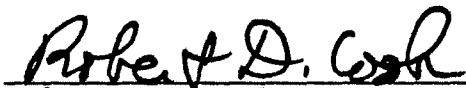
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: The Honorable Robert Sheheen
The Honorable Nick Theodore
Anne F. Cushman, Esquire