

The State of South Carolina



Office of the Attorney General

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June 17, 1991

The Honorable Theo W. Mitchell
Senator, District No. 7
Post Office Box 10091, F.S.
Greenville, South Carolina 29603

Dear Senator Mitchell:

You have advised our Office that the Senate on May 27, 1991, agreed to rescind the ratification of S.935 and, subsequent thereto, took several ancillary actions relative to the bill. As of the time of sine die adjournment, no official action had been taken by the Senate to reverse its action rescinding ratification. You have inquired as to the legal status of S.935 at the present time. 1/

The question you have raised is one of parliamentary procedure, the determination of which is uniquely within the purview of the presiding officer of the appropriate legislative body. Due to the doctrine of separation of powers, it would be inappropriate for this Office to opine on what ruling should be made by such presiding officer. At your request, however, we have researched the issue and offer the following for guidance without usurping the privilege of the presiding officer to rule thereon.

Effectively, by the Senate's vote to rescind the ratification of a bill, it is attempting to recall the bill from the Governor. In such a situation, there is guidance in Sutherland Statutory Construction, Vol. 1, § 16.07:

A few cases have questioned the effect of the return of an act by the governor to the legislature at its request before the time has expired in which the governor may approve the bill. Where the request and return is made with the concurrence of the other house the return is

1/ According to the Legislative Information System, S.935 was signed into law by Governor Campbell on June 12, 1991.

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valid and a new presentment to the executive is necessary before the bill may become law. One house alone, however, has no authority to act without the consent of the other and a return at the request of one house may cause a bill to become law because of the executive's failure either to approve or veto.

A similar provision is found in Mason's Manual of Legislative Procedure (Rev. Ed. 1989), in Section 740, part 4:

When a bill has passed both branches of the legislature and has been signed by the appropriate officers and sent to the governor for approval, it has passed beyond the control of either house and cannot be recalled except by the joint action of both houses.

These authorities agree that joint action by both houses would be required to recall the bill from the governor once the bill has been ratified and sent to the governor for his approval.

The practice of the United States Congress, expressed in Jefferson's Manual (88th Cong., 1963), as to signing enrolled bills, is found in or following § 575 at page 276:

The bills are signed first by the Speaker, then by the President of the Senate (IV, 3429). By unanimous consent where errors are found in enrolled bills that have been signed, the two Houses by concurrent action may authorize the cancellation of the signatures and a reenrollment (IV, 3453-3459), and in the same way the signatures may be cancelled on a bill prematurely enrolled (IV, 3454).

Thus, the practice in the United States Congress is to require concurrent action by both houses to withdraw an enrolled bill once it has been presented to the President for approval.

Based on the foregoing, it would appear that unilateral action on the part of one house would not be sufficient to revoke ratification of a bill once it has been ratified and presented to the Governor for his signature. Thus, the legal status of S.935 following the Senate's unilateral decision to revoke its ratification of the bill, would remain that of a ratified bill or act ready for presentation to the Governor for his approval. In so concluding, as noted,

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we do not hereby intend to preclude the appropriate presiding officer to rule on the parliamentary question or otherwise usurp his authority to rule on the matter.

With kindest regards, I am


Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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cc: The Honorable Carroll A. Campbell
The Honorable Nick Theodore
The Honorable John Martin
The Honorable Ed Saleeby
The Honorable Frank Caggiano