

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

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

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The Honorable Ryan C. Shealy
Senator, District No. 24
502 Gressette Building
Columbia, South Carolina 29202

Dear Senator Shealy:

In a letter to this Office you questioned whether a constitutional amendment is needed in order for a member of the legislature to limit another member's voting privileges.

Pursuant to Article III, Section 12 of the State Constitution each legislative house is authorized to "determine its rules of procedure." In State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936) the State Supreme Court determined

The Constitution empowers each House to determine its rules and proceedings. Neither House may by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of procedure established by the rule and the result which is sought to be obtained, but within these limitations all matters of method are open to the determination of the House, ... The power to make rules is not one when once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and, within the limitation suggested, absolute and beyond the challenge of any other body or tribunal.

181 S.C. at 22. See also: United States v. Ballin, 144 U.S. 1 (1892); Therefore, a legislative body is authorized to make its own rules regarding voting privileges as long as such rules are not violative of constitutional privileges or basic fundamental rights. See also: 16 C.J.S. Constitutional Law, Section 201, p. 638 ("... internal procedural aspects of the legislative process, as well as proceedings of the legislature, such as those having reference to its own organization and rules of procedure, are not subject

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to judicial control or revision, at least in the absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutional rights...."); Exxon Corp. v. F.T.C., 589 F.2d 582 at 590 (D. C. Cir. 1978) (there is typically "no warrant for the judiciary to interfere with the internal procedures of Congress"); Christoffel v. U.S., 338 U.S. 84 at 88) (Although judicial intervention is appropriate when the failure of Congress to adhere to its own rules implicates fundamental constitutional rights, "Congressional practice in the transaction of ordinary legislative business is of course none of ... (the Court's) ... concern."); However, as referenced by the United States Supreme Court in Ballin, if a legislative body adopts procedures which "ignore constitutional restraints or violate fundamental rights", corrective action would be appropriate. See: Powell v. McCormack, 395 U.S. 486 (1969) (the U.S. House acted unconstitutionally when it excluded an individual duly elected who was not ineligible to serve in the House under any federal Constitutional provision); Bond v. Floyd, 385 U.S. 116 (1966) (the House of Representatives in Georgia acted contrary to the free expression provision of the First Amendment when Julian Bond was excluded from the Georgia House of Representatives due to statements criticizing U.S. policy in Viet Nam).

As to your specific question, I am unaware of any requirement for a State constitutional amendment in order for a member of the legislature to limit another member's voting privileges as long as such limitation is not in conflict with basic constitutional or fundamental rights. Of course, the General Assembly could not enact legislation or a rule which would prohibit a member from voting under any circumstances. Therefore, any voting prohibition could not be arbitrary. However, valid reasons may exist which would prohibit a vote under certain circumstances. Such a prohibition could be established by statute or rule of the legislative body. I am familiar with two instances of voting restrictions. Section 8-13-460 of the Code, a provision of the State Ethics Act, presently provides:

Any public official or public employee who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest or those of a member of his household, or a business with which he is associated, shall instead take the following actions:

- (a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

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- (b) If he is a legislator, he shall deliver a copy of such statement to the presiding officer of his legislative branch. The presiding officer if requested by the legislator shall cause such statement to be printed in the journal and, upon request, shall excuse a legislator from votes, deliberations, and other action on the matter on which a potential conflict exists; provided, however, any statement delivered within twenty-four hours after the action or decisions shall be deemed to be in compliance with this section.

Also, House Rule 3.1 states

Each member shall be within the House Chamber during its sittings unless excused or necessarily prevented, and may vote on each question put, except that no member shall be permitted to vote on any question immediately concerning his private rights as distinct from the public interest. (emphasis added.)

Referencing the above, a constitutional amendment is not necessary to limit the voting privileges of a member of the legislature assuming, of course, the limitation is not in violation of a constitutional privilege or basic fundamental right.

With kind regards, I am

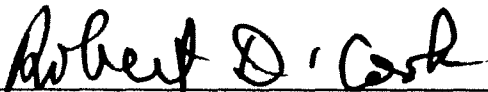
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions