

1981 WL 157788 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1981

*1 Honorable Isadore E. Lourie
Member
South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Lourie:

You have requested an opinion from my Office regarding the constitutionality of House Rule 5.12(b) and Senate Rule 50. These Rules provide that Statewide legislation originating in one house must be received by the other house prior to the first of May in order to be considered during that session.

In my opinion, the Rules are constitutional under [Article III, Section 12 of the South Carolina Constitution](#), which provides in part:

Each house shall . . . , determine its rules of procedure, . . .

Senate Rule 50 is a rule of procedure for the Senate in that it prescribes a mandatory date after which Statewide legislation originating in the House of Representatives (except appropriations measures) cannot be acted upon by the Senate unless it receives that legislation prior to the deadline. House Rule 5.12(b) is a rule of procedure for the House in that it prescribes the same mandatory date after which the House cannot act upon legislation originating in the Senate unless that legislation is received by the House prior to the deadline. Senate Rule 50 does not, in my opinion, seek to impose a rule of procedure upon the House of Representatives and House Rule 5.12(b) does not seek to do likewise with respect to the Senate inasmuch as each house remains free to introduce and otherwise act upon legislation after that date. The only limitation is upon the ability of the house passing the rule to act upon legislation originating in the other house which is received after the prescribed deadline.

In [State, ex rel. Coleman v. Lewis](#), 181 S.C. 10, 186 S.E. 625 (1936), the South Carolina Supreme Court discussed the constitutional authority of each house to determine its own rules of procedure as follows:

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, and it is no impeachment of the rule to say that some other way would be better, more accurate, and even more just.

The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal. [United States v. Ballin](#), 144 U.S. 1, 5, 12 S.Ct. 507, 36 L.Ed. 321.

In the recent case of [United States v. Smith](#), 286 U.S. 6, 52 S.Ct. 475, 76 L.E. 954, the United States Supreme Court had under consideration a constitutional provision (Article 1, § 5, cl., 2) identical with that which we are now considering, which provides that 'each House may determine the Rules of its proceedings,' and incorporated in its opinion the following quotation from [United States v. Ballin](#), *supra*:

*2 'Neither do the advantages of disadvantages, the wisdom or folly, of * * * a rule present any matters for judicial consideration. With the courts the question is only one of power.'

Our own cases are in accord with the Federal decisions referred to. [181 S.C. at 22-23](#).

See also, [Smith, Receiver v. Jennings, Treasurer](#), 67 S.C. 324, 45 S.E. 821 (1903) affirmed 51 L.Ed. 1061 (1907). Applying this judicial guideline to Senate Rule 50 and to House Rule 5.12(b), I am of the opinion that neither one ignores constitutional restraints or violates fundamental rights. Moreover, there is a reasonable relation between the method of procedure established by the Rules and the result sought to be obtained, to wit: the expeditious adjournment of each legislative session.

For these reasons, my opinion is that Senate Rule 50 and House Rule 5.12(b) constitute valid rules of procedure enacted by each house of the South Carolina General Assembly.

Sincerely,

Daniel R. McLeod
Attorney General

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