1976 S.C. Op. Atty. Gen. 401 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4537, 1976 WL 23154

Office of the Attorney General

State of South Carolina
Opinion No. 4537
December 6, 1976

***1** The Honorable Brantley Harvey
Lieutenant Governor
President of the Senate
State of South Carolina
The State Capitol
Columbia, South Carolina

Dear Mr. President:
You have requested my opinion on the question of whether or not the Senate of South Carolina is a continuing body as that term is used is Rule 1 of the Senate and which provides:
The Senate of South Carolina being a continuing body, these rules shall continue in full force and effect from session to session until the same may be amended, modified or repealed in the manner hereinafter provided.

While the problem is almost exclusively one of parliamentary law and procedure, rarely involving the courts, it is my opinion that the Senate is not a continuing body.

I reach this conclusion in view of the overwhelming weight of authority which establishes the general rule that where terms of the members of a legislative body expire simultaneously, such a body is not continuing in nature. This is reflected in 1 Sutherland on Statutory Construction ¶7:01 which states:
In theory the customs, precedents and standing rules or orders of a legislative assembly have no binding effect except in the session which adopts them.

This authority cites Luce, Legislative Procedure, in which the following is found:
Rules or standing orders as well as constitutional provisions bear the same relation to parliamentary law that statutes bear to the common law. Except those that repeat familiar principles, they have no force beyond the body to which they are specifically made applicable. The standing orders of the House of Commons are by custom assumed to bind each successive House until changed. American practice is to the contrary.

. . ..

The national House of Representatives tried in 1860 to remove the occasion for biennial controversy by making the rules then adopted 'the rules of that and other succeeding Congresses unless otherwise ordered.' The validity of this proceeding was questioned from time to time but the rule was acquiesced in until 1890 when it was dropped from the Code. Since then the old practice of having each House of Representatives adopt its own rules has been followed. (pp. 16, 17.)

Typical of the view which I think is controlling is State v. Atterbury, 300 S.W. 806, 812 (Mo. 1957):
We do not think that the Missouri Senate is a continuing body in the same sense as the Senate of the United States, since the number of hold-over senators is not a quorum and less than a constitutional majority.

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The reference by the Missouri Court to the United States Senate was in consideration of McFrain v. Daughtery, 273 U.S. 135, 50 A.L.R. 1 and Sinclair v. United States, 73 L.Ed. 962, which hold that the Senate of the United States is a continuing body in that one-third of the terms of its members expire every two years, so that there is always a nucleus of two-thirds of its membership. It is very clear that the United States Supreme Court would not have viewed the Senate as a continuing body if the terms of all of its members expired simultaneously, as they do in South Carolina.

***2** The conclusion is apparent that, where the Courts reach the question, they invariably are guided by whether or not staggered terms exist.

In the South Carolina Senate, both before and after reapportionment and consequent simultaneous expiration of terms, Rule 1 has provided that it is a continuing body. The Rule appears to have been adopted in 1957 when terms of Senators followed the 1895 Constitutional provision relating to expiration of terms. At the 1957 Session, in response to a parliamentary inquiry as to the necessity to re-adopt the rules, the then President ruled:
. . . That there was no question in that the Senate is a continuing body, since only one-half of its membership requires election every two years and the rules of the last session would apply to this session (1957 Senate Journal 13.)

This is the only prior ruling of the presiding office of the Senate which has come to my attention. Its importance is chiefly in the fact that it was predicated solely upon the former procedure of staggered terms.

The only decision of the Supreme Court of this State which has been found as to the nature of the House or Senate as continuing bodies is Smith v. Jennings, 67 S.C. 323, which dealt with a contention that the Governor, in returning a vetoed bill, must return it to the body of the General Assembly which passed it even though that body has by adjournment sine die prevented its return within three days. The Court disapproved of this contention in the following language.
As the legislature adjourned sine die on the day the joint resolution passed, the governor had the right to return the resolution not approved within two days after the next meeting of the General Assembly. In the sense of this (Constitutional) provision, the Senate and House of Representatives, as comprising the General Assembly, are continuing bodies, and as such entities are not affected by the changes made in the particular individuals who may be members thereof.

I do not consider this case as strongly persuasive for the reason that the Court was obviously characterizing the House of Representatives as a continuing body only in the sense that it was the branch of the General Assembly in which a particular bill originated and to which it must be returned by the Governor, if unapproved by him. Any other construction would have made meaningless the constitutional provision authorizing the Governor to return a vetoed bill at the next meeting of the General Assembly when adjournment has prevented its return within three days.

I conclude that the appropriate ruling is that the Senate is not a continuing body for the reason that its members serve terms which expire simultaneously. The Senate has the constitutional power to determine its own rules and your decision will not be subject to judicial scrutiny in the absence of any constitutional or other fundamental issues. In effect you, as presiding officer and the Senate as a body, are the final judges of what the Rules of the Senate shall be.
Very truly yours,

***3** Daniel R. McLeod
Attorney General

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