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OFFICE OF THE
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January 19, 2000

Opinion No. 00-010

House Rule 63: Status of House Bill 954

QUESTIONS

1. Did the House or Representatives err under Rule 63 in its proceedings regarding House Bill 954 when, on January 11, 2000, after the bill had been defeated by a constitutional majority on third and final consideration and after a motion to reject had been properly made, the sponsor of the motion to reject moved to roll the bill without first resolving the motion to reject?

2. What are the options of the sponsor of the legislation?

3. What is the posture of the House Bill 954 after the January 11, 2000, House proceeding?

4. What does the word "substance" mean as used in the Tennessee Constitution, Article II, Section 19?

OPINIONS

1. The House is the sole interpreter of its own rules. Thus, while it appears that the procedures related in the opinion request do not conform with the language of Rule 63, it is not for this office to determine whether the House erred. We note, however, that acquiescence in the rulings of the Speaker may be considered to be an ad hoc suspension or amendment of the Rules.

2. If the sponsor believes that House procedure has not been in accordance with the House Rules of Order, it would seem appropriate to first bring these concerns to the attention of the Speaker. Again, however, because the House is the sole interpreter of its own rules, this office cannot speculate on further possible options available to the sponsor of the legislation.

3. The bill was rejected for purposes of Article II, Section 19 when it received a constitutional majority in the negative, thus precluding the passage of any other legislation containing the same substance during the 101st General Assembly. The lack of a vote on the motion to reject does not affect this posture.

4. As used in Article II, Section 19 of the Tennessee Constitution, the term "substance," refers to the essence of the bill. The essence of a bill may be understood as "an intelligible abstract or synopsis of its material and substantial elements." *State v. Brooks*, 241 Ala. 55, 1 So.2d 370, 371 (1941).

ANALYSIS

Introduction: This opinion concerns the interpretation of House Rule 63 with regard to proceedings of the House on Senate Bill 469, House Bill 954. The opinion request indicates that House Bill 954 was last heard on May 28, 1999, at which time a motion to pass on third and final consideration failed, receiving a constitutional majority in the negative. The floor was then opened for a motion to reject under Rule 63. A motion to reject was made, and the bill was laid over until the heel of the first Regular Calendar of 2000. Accordingly, the bill was next before the House on January 11, 2000. At that time, the Speaker of the House recognized the sponsor of the motion to reject, who then made a motion to roll the bill to January 20, 2000.

1. Initially, this office must be mindful that the House of Representatives is the sole judge of its own rules. *See* Tenn. Const., art. II, § 12; *State v. Cumberland Club*, 136 Tenn. 84, 188 S.W.2d 583 (1916). Because such rules are not enforceable by the courts, a court will not inquire whether the House has complied with its Rules when passing a bill. *Cumberland Club*, 188 S.W.2d at 586. Thus, this office interprets the Rules of the House only reluctantly, and has sometimes declined to do so. When we do offer our opinion as to the interpretation of House Rules, we primarily seek to examine and are guided by House precedent, whether such precedent be express or implied. In that regard, this office has previously indicated that we would consider the rulings of the Speaker, if not appealed pursuant to Rule 32, to be an implied interpretation or de facto amendment of the Rules, which will be considered by this office as binding precedent. *See* Op. Tenn. Atty. Gen. 86-55 (March 10, 1986). Similarly, in Op. Tenn. Atty. Gen. 99-101 (May 5, 1999), we observed, "'the failure to follow [the procedural rules of the House] amounts to an implied ad hoc repeal of such rules.'" *Id.* (*quoting State ex rel. LaFollette v. Stitt*, 114 Wis. 2d 358, 338 N.W.2d 684, 687 (1983)).

With these considerations in mind, we can only opine that, as related to this office in the opinion request, the procedures of the House with regard to House Bill 954 do not appear to have been consistent with the language of House Rule 63. Rule 63 states, in pertinent part:

> When a bill receives a constitutional majority in the negative on a motion to pass on third and final consideration . . . the Speaker, after the announcement of the vote by the Clerk, shall say "(document type and number), having received a constitutional majority in the negative on a motion to pass on third and final consideration . . . , I hereby declare the floor now open for a motion to reject." If a member makes the motion to reject, that motion and the bill or resolution in question will lie over the remainder of that legislative day and the Speaker will direct the

> Chief Clerk to place the bill or resolution in question at the heel of the regular calendar set for the next legislative day.
>
> When a bill or resolution is considered on the next legislative day, no other motion shall be in order until the motion to reject has been disposed of and the Speaker has declared the final status of the bill or resolution in question.

A motion to roll the bill, therefore, does not comport with the language of Rule 63's prohibition of other motions prior to disposition of the motion to reject. Again, however, the House of Representatives is the sole judge of its own Rules, and this office will consider the rulings of the Speaker, when not appealed, to be an implied ad hoc amendment to, or repeal of, the Rules.

2. Given the answer to Question 1, it would be inappropriate for this office to speculate as to the options available to the sponsor, except to advise that the matter be brought to the attention of the Speaker. Other options will depend upon the procedural rulings of the House.

3. This office has repeatedly opined that when a bill is defeated by a constitutional majority on third and final consideration, it is thereby rejected for the purpose of Article II, Section 19 of the Tennessee Constitution. *See, e.g.*, Op. Tenn. Atty. Gen. 85-282 (November 18, 1985). Article II, Section 19 provides, "After a bill has been rejected, no bill containing the same substance shall be passed into a law during the same session." Thus, no bill containing the same substance as House Bill 954 may constitutionally be passed during the regular session of the 101st General Assembly.

4. "Substance," in the context of Article II, Section 19, refers to the essence of the bill. *See* Black's Law Dictionary 1280 (5th ed. 1979). It is "the material or essential part of a thing." *State v. Burgdoerfer*, 107 Mo. 1, 17 S.W. 646 (1891). The caption of a bill serves as an indicator of its substance, *see* Op. Tenn. Att. Gen. 81-225 (April 7, 1981); however, "substance" is not merely the subject of the bill, "but an intelligible abstract or synopsis of its material and substantial elements, though the 'substance' may be stated without recital of any details." *State v. Brooks*, 241 Ala. 55, 1 So.2d 370, 371 (1941).

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