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Opinion No. 01-086

Authority of Legislative Committee to Review Agency Rules

QUESTIONS

1. Does a legislative committee have the authority to disapprove rules promulgated by a state agency?

2. Assuming that the legislative committee has such authority, does the rule stay in effect until the expiration date contained in the rule or does it become null and void or suspended as a result of the committee's action?

OPINIONS

1. No. Under the Separation of Powers doctrine as set forth in Article II of the Tennessee Constitution, a legislative committee lacks authority to disallow and/or suspend rules promulgated by a state agency.

2. In light of the response to Question No. 1, no response to this question is necessary.

ANALYSIS

Under the provisions of Tenn. Code Ann. § 4-5-226, legislative committees have the authority to hold public hearings for the purpose of reviewing newly filed rules promulgated by state agencies. To the extent practicable, such hearings are to be held prior to the effective date of such rules. Tenn. Code Ann. § 4-5-226(d). The committee may express its disapproval of a rule by voting to request the agency to repeal, amend or withdraw the rule. Tenn. Code Ann. § 4-5-226(j). If an agency fails to comply with the committee's request, the committee may vote to request the General Assembly to suspend any or all of such agency's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment. *Id*.

The provisions of Tenn. Code Ann. § 4-5-226, however, also give a legislative committee the authority to express disapproval of a rule by voting to suspend the effectiveness of such rule or to allow the rule to expire upon its published expiration date. To the extent that Tenn. Code Ann. § 4-5-226 grants

"veto" authority to a legislative committee reviewing rules, it is our opinion that it violates the Separation of Powers doctrine as set forth in Article II of the Tennessee Constitution.

As this office has previously opined, under the Separation of Powers doctrine, a legislative committee may not effectively veto regulations promulgated by a state agency. Op. Tenn. Atty. Gen. 82-115 (March 11, 1982). Once the General Assembly delegates rulemaking authority to an agency of the executive branch, it may not interfere with the rulemaking process except through legislation enacted in compliance with Article II, § 18 of the Tennessee Constitution. *Id*. *See also Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983) (statute allowing one House of Congress to veto action of executive branch taken pursuant to legislative authority held violative of Separation of Powers doctrine).

Thus, while a legislative committee has the authority to review rules promulgated by a state agency, it lacks authority to disallow and/or suspend such rules. Under the Separation of Powers doctrine, the authority of a legislative committee is limited to requesting an agency to repeal, amend or withdraw the rule or recommending action by the General Assembly.

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