

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 06-041

Meetings of Joint Legislative Committees

QUESTIONS

1. The Sunset Law, Tenn. Code Ann. §§ 4-29-101, *et seq.*, describes a process by which governmental entities may be terminated. Tenn. Code Ann. § 4-29-103 creates a joint evaluation committee to conduct hearings and make decisions about termination of governmental entities.

a. May the House and Senate membership of this committee meet separately?

b. Could the House and Senate membership of the committee meet together and vote separately?

c. Could House or Senate Rules require separate votes?

2. a. May the Joint Government Operations Committee meet separately and/or vote separately at rulemaking hearings?

b. Could House or Senate rules require separate votes?

OPINIONS

1. a. No.

b. No.

c. The House or the Senate could adopt a rule requiring a separate vote of either the House or Senate membership of the Joint Committee. Neither House could adopt a rule requiring a separate vote of the membership of the other House.

2. a. Statutes governing review of rulemaking do not refer to a Joint Government Operations Committee. Under the applicable statutes, the Speaker of each House determines which committee in each House should review particular rules. A committee authorized to review rules may meet and vote separately from the corresponding committee in the other House if it wishes to vote to allow a rule to expire or request the promulgating agency to withdraw or amend the rule. But where the authorized committees in question wish to suspend the effectiveness of a rule, the

House and Senate committees must hold a single meeting to review the rule. A majority of the members of each committee must approve suspension of the rule. These rules would apply to the Senate Government Operations Committee and the House Government Operations Committee when they are exercising these functions.

- b. Because of our answer to Question 2.a, Question 2.b is moot.

ANALYSIS

1. Joint Evaluation Committee under the Sunset Law

The first question concerns meetings of the Joint Evaluation Committee under Tenn. Code Ann. §§ 4-29-101, *et seq.*, the “Sunset Law.” Under the Sunset Law, a joint legislative committee reviews the operations and makes decisions regarding the continued existence of governmental entities created under statutes. Tenn. Code Ann. § 4-29-103 establishes the Joint Evaluation Committee. This statute provides:

- (a) The speakers of the senate and the house of representatives shall designate appropriate committees in their respective houses to conduct the review of governmental entities as provided in this chapter.

- (b) The chairs of such committees shall appoint a subcommittee to conduct the review of each governmental entity.

- (c) The appropriate subcommittees appointed in the senate and in the house of representatives shall meet as a joint committee as the evaluation committee to review each governmental entity assigned to such committee. There shall be an equal number of senators and representatives on the two (2) subcommittees and committees when meeting as a joint evaluation committee for the review of any specific governmental entity.

- (d) Members of the evaluation committee shall serve until their successors are appointed in accordance with this section so long as such members remain members of the general assembly. Any member of the evaluation committee who ceases to be a member of the general assembly shall cease to be a member of the evaluation committee on the same date such member’s membership in the general assembly ceases, as provided in the Constitution of Tennessee. In the event a majority of the membership of any subcommittee comprising an evaluation committee shall cease to be members of the general assembly, the speaker of the house in which

such vacancies occur shall designate members of that house to interim appointments until such time as the evaluation committee is reconstituted as provided in this section.

Tenn. Code Ann. § 4-29-103. The Joint Evaluation Committee on Government Operations (the “Joint Committee”) was created and operates under this statute. The Joint Committee is required to hold hearings regarding termination, continuation, reestablishment, or restructuring of any governmental entity. Tenn. Code Ann. § 4-29-104. Under Tenn. Code Ann. §§ 4-29-107 and -108, if the Joint Committee, “by a majority vote,” determines that a governmental entity should be terminated, restructured, or continued, it will introduce legislation necessary to implement its decision. Tenn. Code Ann. § 4-29-110 provides:

(a) If, by a tie vote of the evaluation committee, no determination of status of a government entity can be decided, the evaluation committee shall refer the final decision to the appropriate committees of the respective houses that shall meet jointly to hear the recommendations of each member of the evaluation committee

(b) The vote of the majority of the members, present and voting, of such appropriate committees meeting jointly shall decide the final recommendation on the abolition, transfer, or continuation or restructure of the governmental entity, and the evaluation committee shall cause the introduction of legislation required by this vote.

Under Senate Rule 80, the rules of procedure on joint committees in *Mason’s Manual of Legislative Procedure* govern joint committees. Section 655 of *Mason’s* provides:

There being no rule to the contrary, a quorum of a joint committee is a majority of its combined membership and when a quorum is present, a majority of that quorum is capable of transacting business. The quorum of a committee on conference is a quorum of the committees of each house.

Mason’s Manual of Legislative Procedure § 655 (2000). Section 658 of *Mason’s* provides:

Historically, the committee members vote individually — and not by houses — when voting in a joint committee, except in conference committees. In a more modern practice for voting in a joint committee, the members vote by houses, a quorum being present, and such vote carries only upon favorable vote of the committee members of each house. Conference committees are, in fact, joint meetings of separate committees; consequently, in conference committees, the committees from each house vote separately, and a majority vote of

each committee is required to take any action.

Mason's Manual of Legislative Procedure § 658 (2000). Committee Rules of the House do not directly address joint committees. Rule 21 of the Committee Rules provides: "Except as stated in the foregoing rules, the Rules of Order of the House of Representatives shall apply. Other special rules shall not be adopted by committees." House Rule 79 provides: "If any question shall arise which is not provided for in these rules, the same shall be governed by *Mason's Manual of Legislative Procedure* (latest edition existing on date of adoption of these rules), which is hereby adopted." Under both the Senate and House rules, therefore, *Mason's*'s rules on joint committees govern the Joint Committee.

The statutes governing the Joint Committee, together with the relevant rules of each House, are rules of the House and Senate that provide for legislation regarding the continuation or restructuring of governmental entities. This Office must be mindful that each House is the sole judge of its own rules. See Tenn. Const., art. II, § 12; *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001), *p.t.a. denied* (2001); *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. *Id.* In Op. Tenn. Att'y 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)). Thus, nothing would prevent individual legislators from introducing legislation on the same issues as the Joint Committee, or from informally discussing these issues as they wish.

a. The first question is whether the House and Senate membership of the Joint Committee may meet separately. Under *Mason's Manual of Legislative Procedure*, § 655, incorporated into the House and Senate rules, a majority of the total membership of the Joint Committee is required for a quorum. Since the House and Senate have an equal number of members on the Joint Committee, the members of one House could never equal a quorum. Under the rules, therefore, the House and Senate membership of the Joint Committee may not meet separately.

b. The next question is whether the House and Senate membership of the Joint Committee may meet together and vote separately. Under *Mason's Manual of Legislative Procedure*, § 658, incorporated into the House and Senate rules, members of joint committees "historically" voted individually and not by houses. But Section 658 of *Mason's* also provides that, "in a more modern practice," joint committee members vote by house. In this case, the statutes governing the Joint Committee do not provide for separate voting. But under Tenn. Code Ann. § 4-29-110(a): "If, by a tie vote of the [Joint Committee], no determination of status of a government entity can be decided," then the Joint Committee must refer a final decision to the appropriate legislative committees. The rules, therefore, clearly contemplate that the Joint Committee members will vote together, not by House membership. The rules, therefore, do not permit separate votes by House and Senate membership.

c. The next question is whether the House or Senate may adopt its own rule providing

for separate votes of the House and Senate membership of the Joint Committee. Since the statutes and rules governing the Joint Committee are rules of proceeding, each House is free to disregard them or adopt different rules. Thus, we think the House, by rule, could require a separate vote of the House membership of the Joint Committee, and the Senate, by rule, could require a separate vote of the Senate membership of the Joint Committee. Neither House, however, could adopt rules requiring a separate vote of the membership of the other House.

2. Evaluating Rules

The last two questions concern the Joint Committee and “rulemaking hearings.” The relevant statutes do not explicitly give the authority to stay or review rules to the Joint Committee. Under Tenn. Code Ann. § 4-5-215(b), “the house *or* senate government operations committee” may stay the running of the time before which a new rule is to become effective. (Emphasis added). Legislative committees also are authorized to review rules under Tenn. Code Ann. § 4-5-226. That statute does not expressly designate the Joint Government Operations Committee to carry out this function. Instead, it authorizes the speakers of each House to determine the appropriate standing committee, or subcommittee of a standing committee, to review the rule. The statute provides in relevant part:

(c) Prior to expiration of any rule pursuant to the provisions of this chapter, *such rule shall be reviewed by the appropriate standing committee of the senate and by the appropriate standing committee of the house of representatives, as determined by the respective speakers; or, alternatively, at the discretion of the chair of either of such committees, such rule shall be reviewed by a subcommittee of such standing committee. . . . In the event a majority of the membership of either standing committee shall cease to be members of the general assembly, the speaker of the senate or the speaker of the house of representatives, as the case may be, shall designate an appropriate number of members to serve interim appointments until the standing committee is reconstituted.*

(Emphasis added).¹ Under subsection (d), “the committees or subcommittees shall hold at least one (1) public hearing” regarding the rule. Subsection (e) provides that, “in conducting the review of agency rules, the committees or subcommittees” must consider certain factors. The “committee or subcommittee” is authorized to hold hearings, subpoena records, and “to exercise all powers otherwise vested upon committees of the general assembly by the provisions of title 3, chapter 3, *and by the rules of the appropriate house.*” Tenn. Code Ann. § 4-5-226(h) (emphasis added). Under Tenn. Code Ann. § 4-5-226(j)(1), the “committee” may vote to allow a rule to expire on its established expiration date or vote to request the agency to withdraw or amend the rule. It appears,

¹ Subsection (l) and (m) refer to the “government operations committee” and the “government operations committees,” respectively. It appears, therefore, that these committees frequently carry out these functions.

therefore, that a committee authorized to review may meet and vote separately from the corresponding committee in the other House if it wishes to vote to allow a rule to expire or request the promulgating agency to withdraw or amend the rule.

By contrast, Tenn. Code Ann. § 4-5-226(k) sets forth the process by which the committees may jointly disapprove a rule. The subsection provides:

(k)(1) In addition to the procedures set forth in subsection (j), the *committees* may *jointly* express their disapproval of a rule that fails to satisfy any or all of the factors enumerated in subsection (e) by voting to suspend the effectiveness of such rule pending the established expiration date, provided:

(A) When the standing *committees* contemplate suspending any such rule, the chairs of the *committees* must *jointly* transmit written notice to the agency affected of the committees' intent to meet at a stated date, time and place to consider such action. Written notice shall be send at least fifteen (15) days prior to the date of such meeting in order to allow the agency sufficient time to prepare data to show cause why the *committees* should not suspend such rule;

(B) A majority of members of the appropriate standing committee of the house and a majority of members of the appropriate standing committee of the senate must approve suspension of the rule; and

(C) Such suspension shall take effect upon the date that written notice of such action is jointly filed by the *chairs of the committees* with the secretary of state on forms provided by the secretary of state.

(2) Any action by the appropriate standing *committees* to suspend the effectiveness of any agency's rule shall be subject to being rescinded by joint resolution of the general assembly.

(3) Notice of the *committees'* disapproval of a rule shall be published in the Tennessee Administrative Register as soon as possible after the committee meeting in which such action was taken.

(Emphasis added). Thus, where the authorized committees wish to suspend the effectiveness of a rule, the House and Senate committees must hold a single meeting to review the rule. A majority of the members of each committee must approve suspension of the rule. This result is consistent with the Temporary Rules of Order of the Senate adopted January 11, 2005, Rule 80, which provides: "If House and Senate committees or subcommittees meet jointly the members shall vote

by houses.” These rules would apply to the Senate Government Operations Committee and the House Government Operations Committee when they are exercising these functions.²

Finally, the request asks whether either House could amend its rules to require separate voting where committees review rules. Because we have concluded that the rules already require separate voting, this question is moot.

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² This Office has concluded that, 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. Op. Tenn. Att’y Gen. 01-086 (May 23, 2001).