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FILE NO. 93-001

LEGISLATIVE BRANCH:  
Notice Requirements for  
Legislative Committees

Honorable Emil Jones, Jr.  
Senate Minority Leader  
State House, Room 309  
Springfield, Illinois 62706

Dear Senator Jones:

I have your letter wherein you inquire whether Rule 3-5 of the "Rules of the Senate of the State of Illinois" (Sen. Res. No. 2, 88th General Assembly, January 13, 1993) violates article IV, section 7 of the Illinois Constitution. For the reasons hereinafter stated, it is my opinion that, to the extent that Rule 3-5 purports to authorize the Senate Rules Committee to meet without giving reasonable public notice of its meetings or without including in that notice a statement of the subjects to be considered at a meeting, it is contrary to subsection 7(a) of article IV and is, therefore, invalid.

Senate Rule 3-5 establishes the Rules Committee as a "permanent service committee" consisting of five members, three

of whom are appointed by the president of the Senate and two by the minority leader of the Senate, who serve at the pleasure of the appointing officer. All House and Senate Bills, after their initial reading, and all floor amendments, joint action motions for final action and conference committee reports, upon filing with the secretary of the Senate, are automatically referred to the Rules Committee. (Senate Rules 3-8(a) and (b) and 5-1(d).) Except by a vote of three-fifths of those elected to the Senate, no bill may be referred to a standing committee except by the Rules Committee, and no floor amendment, joint action motion or conference committee report may be considered by the body as a whole unless approved for consideration by the Rules Committee. (Senate Rules 3-8(a) and (b), 5-4(e), and 8-4.) The Rules Committee may re-refer a legislative measure from a committee to a committee of the whole or to any other committee (Senate Rule 3-8(c)), may sponsor motions or resolutions that can be considered immediately by the Senate without referral to another committee (Senate Rule 3-7(a)), may exempt bills from deadlines (Senate Rule 3-9), may exempt appropriations bills from the requirement that they be reported from the Appropriations Committee (Senate Rule 3-11(b)), may decide whether to allow substitution of Senate sponsors on House Bills (Senate Rule 5-1(c)) and may consider motions referred to it by the presiding officer (Senate Rule 7-4). No subject matter which is not related to differences between House and Senate

versions of a bill may be included in a conference committee report unless the Rules Committee approves. (Senate Rule 8-3.) The Rules Committee may initiate changes to the Senate Rules, and all resolutions to amend the rules are referred to that Committee. (Senate Rule 7-11(b).) The Rules Committee is the only Senate Committee that may meet while the Senate is in session. (Senate Rule 3-11(f).) Although the foregoing are not the only powers and responsibilities granted to the Rules Committee, this enumeration demonstrates that the Rules Committee is designed to play an extraordinarily influential role in the transaction of the Senate's business.

Recognizing the importance of legislative committees, the delegates to the Sixth Illinois Constitutional Convention recommended the addition of a new provision to the State Constitution regarding committees. Subsection 7(a) of article IV provides:

"(a) Committees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered.

\* \* \*

"

The Convention's Committee on the Legislature explained its proposed revision, which contained elements substantially similar to those adopted by the electorate as article IV, section 7(a), as follows:

" \* \* \*

This proposed revision is entirely new. Its purpose is three-fold: (1) to give symbolic status to the importance of legislative committee work in the Constitution; (2) to encourage thorough committee hearings; and (3) to encourage citizen participation in the committee process.

The proposed addition of a provision specifically on committees undergirds constitutionally the right of the General Assembly to create committees for the purpose of assisting in the conduct of its business. In legislative bodies, committee work increasingly acquires greater importance as our society becomes more complex. The only effective way a legislative body can function is through the proper utilization of committees which examine particular problem areas. \* \* \*

An important requirement is mandated in this provision, namely that committees must give adequate public notice of not only their meetings but also of the subject matters to be considered at the meetings. This requirement hopefully would enhance and encourage public participation in the legislative committee process.

\* \* \* "

(Report of the Legislative Committee, 77-78, 6 Record of Proceedings, Sixth Illinois Constitutional Convention 1376-1377.)

Senate Rule 3-11(e) provides, in general, that Senate committees may not consider a legislative measure without first giving at least six days notice by posting a notice on the Senate bulletin board containing the date, time and place of the meeting and identifying each legislative measure that may be considered. (Senate Rule 3-11(e).) Senate Rule 3-5, however, provides:

" \* \* \*

(d) Notwithstanding any other provision of these Senate Rules, the Rules Committee may meet upon notice. All legislative measures pending before the Rules Committee shall be eligible for consideration at any meeting thereof, and all such legislative measures shall be deemed posted for hearing by the Rules Committee for all of its meetings.

\* \* \* "

Although Rule 3-5(d) provides that the Rules Committee may meet "upon notice", the word "public" is conspicuously absent from that provision and the rule does not specify the manner in which notice is to be given. Moreover, the proviso that all legislative measures pending before the Rules Committee are eligible for consideration at any meeting of the committee and are deemed to be posted for hearing at all of its meetings clearly circumvents the constitutional requirement that public notice of committee meetings include a statement of the subjects to be considered at a meeting.

The Constitution is the supreme law of the State. (Board of Trustees of Junior College District No. 521 v. Webb (1974), 24 Ill. App. 3d 183, 185.) It is regarded not as a grant of powers to the General Assembly but as a limitation on the General Assembly's authority. (People ex rel. Chicago Bar Association v. State Board of Elections (1990), 136 Ill. 2d 513, 525.) Indeed, the General Assembly is without restriction or limit in the exercise of its legislative power except as bounds are set or restrictions imposed by the Constitution.

(Sutter v. People's Gas Light and Coke Co. (1918), 284 Ill. 634, 640.) Even long indulgence by the General Assembly in a custom or procedure cannot create a right for the General Assembly to do that which it has no authority to do. (Fergus v. Russel (1915), 270 Ill. 304, 346; Murphy v. Collins (1974), 20 Ill. App. 3d 181, 203-4.) Each house of the General Assembly has authority to determine the rules of its proceedings (Ill. Const. 1970, art. IV, sec. 6(d)), but those rules cannot prevail over conflicting constitutional provisions. See Opinion of the Justices (Del. 1963), 190 A.2d 519, 520; Opinion of the Justices (Ala. 1965), 179 So.2d 155, 158; Gewertz v. Joint Legislative Committee on Ethical Standards (N.J. Super. Ct. App. Div. 1975), 334 A.2d 64, 65.

Subsection 7(a) of article IV of the Illinois Constitution plainly and unambiguously requires that committees of the General Assembly give reasonable public notice of meetings, including a statement of the subjects to be considered, and nothing in the Constitution or in the Record of Proceedings of the Sixth Illinois Constitutional Convention suggests that any legislative committee is exempt from this requirement. In fact, compliance with the notice requirement would necessarily be required in order to give effect to the requirement that meetings of legislative committees be open to the public unless closed pursuant to a determination by two-thirds of the members elected to the chamber that the public interest requires that

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meetings be closed. (Ill. Const. 1970, art. IV, sec. 5(c).) A meeting is not public if the public is not properly given notice. (Consumers Education and Protective Association v. Nolan (1977), 368 A.2d 675, 681, f.n. 4.) Moreover, with the large number and variety of matters that may be pending before the Rules Committee at any given time, the provision purporting to make all pending measures eligible for consideration at any meeting and "deeming" all of those measures to be posted for all meetings of the committee cannot reasonably be said to comport with the constitutional requirement that a statement of the subjects to be considered be included in the notice. Rule 3-5 does not even require the posting of all matters which are pending, much less those to be considered at a given meeting, and is clearly contrary to the purpose of subsection 7(a), which is to enhance and encourage public participation in the committee process by giving notice of each meeting and the subject matter to be considered.

It is my opinion, therefore, that the Rules Committee of the Senate must give reasonable public notice of its meetings, which notice must include a statement of the subjects to be considered at a given meeting, and that, to the extent that it purports to provide otherwise, Rule 3-5(d) is unconstitutional and invalid.

In the course of preparing my response to your inquiry, I also noted that Senate Rule 1-2 defines the term

"committee" as follows:

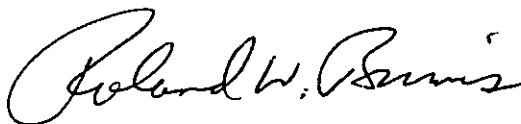
" \* \* \*

'Committee' means a committee of the Senate and includes a standing committee, a special committee, and a special subcommittee of a committee. 'Committee' shall not mean a conference committee, and the procedural and notice requirements applicable to committees shall not apply to conference committees.

\* \* \* "

When there is disagreement between the House and Senate over the terms of a bill or resolution, a conference may be requested, in which case each chamber appoints a committee to confer with a similar committee appointed by the other chamber. The combined committees of the two chambers are commonly referred to as a conference committee. (Senate Rule 8-2(a).) Thus, a conference committee is simply a joint committee of the two houses of the General Assembly. Subsection 7(a) of article IV of the Constitution expressly requires that "\* \* \* joint committees of the two houses \* \* \* give reasonable public notice of meetings, including a statement of subjects to be considered", and subsection 5(a) thereof requires that meetings of joint committees be open to the public. Consequently, to the extent that Senate Rule 1-2 may be intended to relieve conference committees from compliance with the requisite notice provisions, it, too, is invalid.

Respectfully yours,



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ATTORNEY GENERAL