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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

June 25, 1984

FILE NO. 84-010

LEGISLATIVE BRANCH:  
Rules of Procedure

Honorable Edward A. Nedza  
Illinois State Senator  
605A State House  
Springfield, Illinois 62706

Dear Senator Nedza:

I have your letter wherein you inquire as to the validity of your election as chairperson of the Illinois Transportation Study Commission [Commission]. You state that this question has been precipitated by the following events: The Illinois Transportation Study Commission, which was created pursuant to "AN ACT creating the Illinois Transportation Study Commission and defining its powers and duties" (Ill. Rev. Stat. 1983, ch. 121, par. 402 et seq.), met on March 6, 1984, to conduct an election of its officers and to conduct other

Honorable Edward A. Nedza - 2.

business. When the meeting convened, the member who served as chairperson in the preceding session assumed the chair and called the meeting to order. A roll call of the membership was taken, and, it being found that a quorum was present, the Commission proceeded to approve the minutes from the previous meeting and address the agenda. According to your letter, at this point the House members of the Commission stopped the proceedings and gathered around the member acting as presiding officer for a discussion, after which the member acting as presiding officer announced that the meeting was adjourned. You have advised that the announcement of adjournment was made by the member acting as presiding officer without the benefit of a motion to adjourn and a vote on the question by the membership and also without the presiding officer otherwise obtaining the general consent of the membership. You have stated that, as a Senate member of the Commission, you immediately requested a roll call on the adjournment, but your request was neither recognized nor honored. After the announcement of the adjournment by the member acting as chairperson, several members of the Commission departed. Since the meeting had not been formally adjourned in the view of the remaining members, Senator Chew, another Senate member of the Commission and the person who served as vice-chairperson in the preceding session of the Commission, assumed the chair and

Honorable Edward A. Nedza - 3.

conducted the election of officers, whereat you were unanimously elected chairperson, Senator Chew was unanimously elected vice-chairperson, and Senator Rupp was unanimously elected secretary.

You have further advised that the executive director of the Commission, who served as minutes clerk for the Commission's meetings, was instructed to prepare and submit a verbatim transcript of the entire proceedings of the March 6, 1984, meeting to the entire membership. Instead, the minutes were prepared in summary form, and they did not include your request for a roll call on the adjournment and the election of you and Senators Chew and Rupp as officers of the Commission. Subsequently, the executive director resigned, and the minutes book of the Commission cannot be located.

You ask whether, based on the events which you have described, your election as chairperson is binding. For the reasons hereinafter stated, it is my opinion that your election as chairperson of the Illinois Transportation Study Commission is valid, legal, and binding.

The first issue to be resolved is whether the March 6, 1984, meeting was lawfully adjourned before the election of officers was held. Section 1 of "AN ACT creating the Illinois Transportation Study Commission etc." (Ill. Rev. Stat. 1983, ch. 121, par. 402) provides as follows:

"There is created the Illinois Transportation Study Commission hereinafter in this Act called the Commission. The Commission shall consist of 5 members of the House of Representatives, 3 of whom shall be appointed by the Speaker thereof and 2 by the House Minority Leader; 5 members of the Senate, 3 of whom shall be appointed by the President thereof and 2 by the Senate Minority Leader; 6 public members, 2 each of whom shall be appointed by the Speaker of the House and the President of the Senate and one each of whom shall be appointed by the House Minority Leader and the Senate Minority Leader. All public members should have extensive knowledge of Illinois' highways, roads and streets or experience in the fields of public transportation including mass transit. A vacancy does not occur on the Commission because a legislative member is not reelected to serve in the house from which he was appointed. Vacancies in the membership of the Commission shall be filled in the same manner as the original appointments. Members of the Commission shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

The Commission shall select from its membership a chairman and any other officers it considers necessary."

The aforesaid Act, however, does not prescribe the rules of procedure for the Commission. In the absence of specifically adopted rules of procedure, it appears that the Rules of the Senate and of the House of Representatives of the Eighty-third General Assembly will govern the proceedings of the Commission, and where they are not directly applicable, the generally accepted rules of parliamentary procedure, which flow from general principles of common law, will control. (See Anderson v. Krupsak (N.Y. Ct. App. 1976), 353 N.E.2d 822, 827; 67A

Honorable Edward A. Nedza - 5.

C.J.S. Parliamentary Law § 4 (1978); see also Senate Rule 51 and House Rules 21 and 82 of the Eighty-third General Assembly, which provide in part that the rules of parliamentary practice contained in Robert's Rules of Order shall govern in each House of the General Assembly in all cases in which they are applicable as long as they are not inconsistent with the standing rules and orders of a particular Chamber.) Accordingly, Robert's Rules of Order and the common law must be examined to ascertain the propriety of the announced adjournment.

It is a general rule of law that a deliberative assembly may act only as a group. (Local Union No. 6068 of United Mine Workers of America v. Bizzell (Ky. 1953), 257 S.W.2d 527, 528.) Furthermore, the presiding officer of the deliberative assembly is a mere representative of the group. The presiding officer does not have absolute power but is bound by the accepted rules of procedure. (Rudd v. Sarallo (1969), 111 Ill. App. 2d 153, 157.) In Attorney General v. Remick (N.H. S. Ct. 1904), 58 A. 871, the court stated:

" \* \* \*

\* \* \* The presiding officer represents the assembly in determining and declaring its will upon matters properly before it. If it has adopted rules of procedure which are legally unobjectionable, it is his duty to apply and enforce them. If it has not enacted a code of rules, he is still bound by the legally expressed will of the assembly, ascertained from competent evidence. His power is not ordinarily absolute and original, but qualified and derivative. It is his duty to declare the will of the body over

which he presides, ascertained by rules previously adopted, or, in the absence of such rules, by other methods not repugnant to the due and orderly procedure of a deliberative body. In the latter case it may happen that general parliamentary usage affords in the particular instance the only practical method of ascertaining and declaring the legislative purpose. \* \* \*

\* \* \*

Attorney General v. Remick (N.H. S. Ct. 1904), 58 A. 871, 872.

In Aberdeen-Angus Breeders' Association v. Fullerton (1927), 325 Ill. 323, the Illinois Supreme Court made the following comments on the role of a presiding officer:

"

\* \* \*

\* \* \* A presiding officer cannot arbitrarily defeat the will of the majority by refusing to entertain or put motions, by wrongfully declaring the result of a vote, or by refusing to permit the expression by the majority of its will. He is the representative of the body over which he presides. His will is not binding on it, but its will, legally expressed \* \* \* is binding. \* \* \*

\* \* \*

American Aberdeen-Angus Breeders' Association v. Fullerton (1927), 325 Ill. 323, 327.

In the absence of previously adopted procedural rules to the contrary, the generally accepted rules of parliamentary procedure establish the methods for a presiding officer to ascertain the will of the assembly as a whole on the question of adjournment.

Robert's Rules of Order clearly provide that the proper method for a deliberative assembly to adjourn a meeting

is by an affirmative vote of the assembly to adjourn, secondary to the making of a proper motion to adjourn. (Robert's Rules of Order Newly Revised § 8, at 74, and § 21, at 199-207 (1981).) After the vote on a motion to adjourn has been taken, the chair should pause before declaring the meeting adjourned to afford the members an opportunity to demand a division on the vote to adjourn. (Robert's Rules of Order Newly Revised § 21, at 205 (1981).) If there seems to be no opposition to adjournment, however, the chair may employ the procedure of general consent, a method by which the stating of the question and putting the motion to a formal vote are avoided. (Robert's Rules of Order Newly Revised § 4, at 44 (1981).) Under this practice, the members have a right to object to the adjournment and require that a motion be set forth and have the question put to a vote in the regular manner. (Robert's Rules of Order Newly Revised § 4, at 45 (1981).)

In Attorney General v. Remick (N.H. S. Ct. 1904), 58 A. 871, the court considered whether a mayor had lawfully adjourned a meeting of the city council where the mayor declared the adjournment without putting the question to a vote. After the mayor's announcement, the mayor and several other members of the council withdrew, but the remaining members proceeded with the transaction of the business of the assembly. Holding that the mayor, as presiding officer, could

Honorable Edward A. Nedza - 8.

not lawfully adjourn a meeting by his own declaration without the benefit of an affirmative vote of the assembly, the court stated as follows:

" \* \* \*

\* \* \* That a presiding officer, who is merely the agency through which the assembly declares its will, does not ordinarily have the power of arbitrarily adjourning the meeting of his own motion, is a proposition which demands little, if any, discussion. While there is no statutory provision defining his duties in this respect, common parliamentary custom or law necessarily forbids such action on the part of a presiding officer of a legislative assembly. To uphold such procedure would be to sanction his usurpation of the undoubted rights and privileges of the assembly. Unless the assembly acquiesces in an arbitrary announcement of an adjournment by the chairman, it would seem to be difficult to sustain such action \* \* \*.

\* \* \*

(Attorney General v. Remick (N.H. S. Ct. 1904),  
58 A. 871, 873.)

The court further held that the actions of the remaining members in continuing the meeting, after the declared adjournment and withdrawal of several members, were valid, legal, and binding.

The facts and holding in Attorney General v. Remick are apposite to the situation you have related regarding the March 6, 1984, meeting of the Illinois Transportation Study Commission. As stated above, the member acting as presiding officer announced an adjournment without first obtaining a



Honorable Edward A. Nedza - 9.

motion to adjourn and putting such a motion to a vote. Upon an analysis of the aforementioned rules of parliamentary procedure and the case law cited herein, it is clear that a presiding officer cannot legally declare a meeting of a deliberative assembly adjourned without first ascertaining the will of the assembly on the adjournment pursuant to the practices I have outlined above.

Furthermore, Robert's Rules of Order clearly provide that any member of an assembly may require a division of the assembly if the announced results of a vote on a particular motion are inconclusive or questionable (Robert's Rules of Order Newly Revised § 4, at 42, and § 6, at 60 (1981)), and a member may appeal from any ruling or decision of the presiding officer by taking the question from the chair and vesting it in the assembly as a whole for final decision. (Robert's Rules of Order Newly Revised § 24, at 218-22 (1981).)

In Roti v. Washington (1983), 114 Ill. App. 3d 958, appeal denied, June 22, 1983, the court considered whether a meeting of a city council had been lawfully adjourned. In this case the mayor recognized an alderman who moved for adjournment. After a voice vote, the mayor announced that the motion for adjournment carried. Immediately thereafter, various aldermen requested a roll call vote on the motion. Not conducting the roll call, the mayor and a significant portion

Honorable Edward A. Nedza - 10.

of the aldermen departed the meeting. The remaining aldermen, however, continued the meeting, contending that the meeting had not been lawfully adjourned. The court held that, since a roll call was requested, the meeting was not lawfully adjourned by the mayor, stating as follows:

" \* \* \*

\* \* \* [T]he council members, not the mayor, have the authority in the first instance to decide who won a disputed vote on a motion to adjourn. \* \* \* [T]he correct method of clarifying the result of a vote by the council is to request a roll call vote. The record reflects that this was done by a number of aldermen. We do not believe that the mayor's position as presiding officer entitles him to ignore the repeated requests for a roll call vote. \* \* \*

\* \* \*

(Roti v. Washington (1983), 114 Ill. App. 3d 958, 967.) "

The court alternatively held that the request for a roll call was a proper method to appeal from the ruling of the chair on the adjournment.

Based upon the foregoing, it is my opinion that the initial presiding member of the Illinois Transportation Study Commission lacked power to unilaterally declare the meeting adjourned, and, therefore, the March 6, 1984, meeting of the Commission was not lawfully adjourned by the initial presiding member. Absent acquiescence of the assembly, the chair did not have authority to adjourn a meeting without first obtaining a

Honorable Edward A. Nedza - 11.

motion to adjourn, putting such a motion to a vote, and obtaining an affirmative vote on the question. It is clear that the remaining members of the Illinois Transportation Study Commission did not acquiesce in the chair's ruling since the request for a roll call served as an appeal from the ruling on the adjournment by the presiding officer.

Furthermore, where it is found that a quorum was present at the beginning of a meeting, it is presumed that a quorum continued to be present absent a challenge or until a vote discloses the absence of a quorum. (Rock v. Thompson (1981), 85 Ill. 2d 410, 424; Robert's Rules of Order Newly Revised § 39, at 296 (1981); 67A C.J.S. Parliamentary Law § 6 (1978).) As stated above, you have advised that a quorum was present at the beginning of the March 6, 1984, meeting. Moreover, the record does not indicate that a challenge to the presence of a quorum was ever made during the meeting and a vote manifesting the absence of a quorum was never taken. Accordingly, it is my opinion that the law presumes a quorum was present after the legally ineffective, announced adjournment by the member who initially acted as the presiding officer, and during the subsequent election of officers.

Since the meeting was not lawfully adjourned, and since the law presumes a quorum was present as explained above, the members of the Commission were legally entitled to continue the meeting and conduct the business of the Commission. (Roti

Honorable Edward A. Nedza - 12.

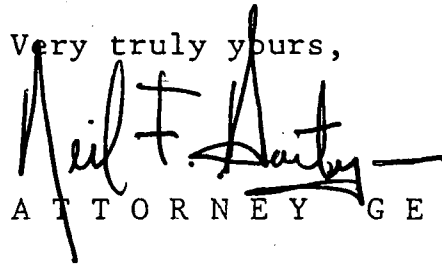
v. Washington (1983), 114 Ill. App. 3d 958, appeal denied, June 22, 1983; Attorney General v. Remick (N.H. S. Ct. 1904), 58 A. 871.) Consequently, it is my opinion that you were lawfully and validly elected as chairperson of the Illinois Transportation Study Commission at the Commission's meeting of March 6, 1984.

Consideration must also be given to the legal effect of the failure of the minutes clerk to include your request for a roll call on the adjournment as well as the subsequent election of officers in the minutes for the March 6, 1984, meeting. It is a fundamental principle of parliamentary procedure that the record of the proceedings of a deliberative assembly, which is referred to as the minutes or the journal, is subject to approval or correction by the assembly. (See Robert's Rules of Order Newly Revised § 40, at 301; § 47, at 393; and § 53, at 467 (1981).) In Robbins v. City of Herrin (1920), 293 Ill. 133, at 138, the court held that a deliberative assembly has the right to amend its journal at any time to make the record show the facts as they actually occurred at the meeting and to supply an omitted entry or correct an erroneous entry. (See also Village of Belknap v. Miller (1893), 52 Ill. App. 617, 620.) Since the members of the Illinois Transportation Study Commission may correct the minutes by providing omitted matters or modify erroneous entries, it is my opinion

Honorable Edward A. Nedza - 13.

that the failure of the minutes clerk to include your request for a roll call on the adjournment and the election of the officers is of no legal significance to the validity of the adjournment or to the election of the officers. Any defect in the minutes for the March 6, 1984, meeting should be cured, however, so that the minutes reflect your request for a roll call and the election of officers at the March 6, 1984, meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "Neil T. Hart", written over the typed name.

A T T O R N E Y   G E N E R A L