

The State of Texas
House of Representatives



TERRY KEEL
HOUSE PARLIAMENTARIAN

August 3, 2007

The Honorable Greg Abbott
Attorney General of Texas
209 W 14th Street
Austin, TX 78701

Re: RQ-0589-GA (Keffer and Cook Opinion Request on Authority of the Speaker)

Dear General Abbott:

Thank you again for requesting my input on RQ-0589-GA. Please accept this supplement to my original July 20, 2007 response, per your extension for additional submissions.

The opinion request asks you to opine that the Speaker of the House is subject to removal by members for any reason at any time and that a motion made for that purpose must be recognized. In light of the additional arguments that have been made to you since July 20th, I would like to present the following information about the House's rules and practices.

I

A TEXAS HOUSE SPEAKER'S AUTHORITY TO DECLINE RECOGNITION OF A MEMBER, EVEN ON MATTERS SPECIFICALLY CONTEMPLATED BY THE HOUSE RULES, IS A WELL-ESTABLISHED PRACTICE.

Others have suggested that you are being asked about a novel situation in which a Speaker declined recognition on an issue mandating recognition.¹ That is incorrect.

¹ "The Speaker, for the first time that has been ascertained, interpreted these rules to mean that he can deny recognition for privileged motions. . . even though the rules give such motions precedence over all other House business except motions to adjourn." (Geren *et al* brief, page 26).



Speakers have often declined to recognize members, including for purposes for which the rules specifically contemplate recognition, as well as for matters falling within the category of "privileged."²

The Attorney General should review archived floor actions that exist since the advent of electronically-recorded proceedings. In doing so, you will find a wide-range of examples where recognitions were declined.

In the archives of May 30, 1999, a typical example can be found of a parliamentary exchange, in this instance between Representative Sylvester Turner and Speaker Laney (Robert Kelly, Parliamentarian):

Rep. Turner: Mr. Speaker, point of information.

Speaker Laney: State your point.

Rep. Turner: Mr. Speaker, at what time will this session, will this day end, tonight?

Speaker Laney: Twelve o'clock.

Rep. Turner: And Mr. Speaker, point of information. To the extent that we had a filibuster rule on the House side, one could wear his tennis shoes and talk for the next... hour and 20 minutes and what would be the effect on [SB]441?

Speaker Laney: We don't have a filibuster rule, Mr. Turner. And you, uh, probably wouldn't have to put your shoes on.

Rep. Turner: But each... Point of information, Mr. Speaker.

Speaker Laney: State your point.

Rep. Turner: As it relates to SB 441, if I wanted to speak on [SB]441, I could speak for 10 minutes on [SB]441, is that correct?

Speaker Laney: *If recognized.*

Rep. Turner: Point of information, Mr. Speaker. *Certainly in this democratic democracy, would the Speaker entertain and recognize any of these highly intelligent, well-meaning members to speak on SB 441 for as long as time would prevent?*

² Rule 5 (Floor Procedure), Section 35 (Questions of Privilege Defined) broadly defines privileged matters: "Questions of privilege shall be: (1) those affecting the rights of the house collectively, its safety and dignity, and the integrity of its proceedings; and (2) those affecting the rights, reputation, and conduct of members individually in their representative capacity only."

Speaker Laney: *I will make that judgment one at a time.*

Rep. Turner: *Which means, Mr. Speaker... Point of information. That...six... seven...eight...if ten of your most illustrious members chose to speak on the merits or demerits, depending on which way you want to look at it, on SB 441, do we simply need to turn in our names and let you know that we choose to speak on SB 441? Would the Speaker in his infinite wisdom certainly grant that honorable request?*

Speaker Laney: *We'll look at them one at a time.*

Rep. Turner: Thank you Mr. Speaker.

Speaker Laney: You are welcome Mr. Turner.

Rep. Gallego: Mr. Speaker.

Speaker Laney: Mr. Gallego?

Rep. Gallego: *Would I be recognized for a motion to place the letter from Comptroller Rylander into the journal as a statement of her intent as well?*

Speaker Laney: *The chair would rather recognize Mr. McCall for further explanation of the committee report and do it at that time.*

Rep. Gallego: Thank you Mr. Speaker.

Speaker Laney: Chair recognizes Mr. McCall. . . .

Rep. Turner: *Will the Speaker recognize me to come back at a later moment?*

Speaker Laney: *Probably not.*

Rep. Turner: Well then, Mr. Speaker, I shall be like Bruno and go back to my seat... to live to fight another day.

* * *

The assertion in the opinion request that Rule 5, Section 24 "allows the Speaker to govern the *order* in which members are to be recognized, but not *whether* they will be recognized" (June 20, 2007 letter from Rep. Keffer, page 2, emphasis in original), conflicts not only with the wording of the rules, including Rule 1, Section 9, but also ignores the practice and traditions of the House, as the exchange above illustrates. Even

where members seek recognition for motions specifically contemplated and authorized to be made under the rules, the practice in the Texas House is well-settled.³

II

NO COMPETING CONSTITUTIONAL PROVISION EXISTS TO HOUSE RULE 5, SECTION 24, AND THUS A VALID QUESTION AS TO ITS CONSTITUTIONALITY HAS NOT BEEN POSED TO YOU.

The Geren *et al* brief asserts that an unwritten “constitutional” right exists for Texas House members to remove and replace the Speaker at any time for any reason. (Geren *et al* brief, page 28). Conceding that the language of Rule 5, Section 24 could indeed mean what it says, the brief proposes that you should therefore declare Rule 5, Section 24 unconstitutional. (*Id.*, pp. 25-29).

That proposition is untenable because there is no competing constitutional provision to the House rule in question. Furthermore, because no competing constitutional provision exists, the autonomy of the House to promulgate the rules of its proceedings in this regard is unconditional and affirmatively authorized by Texas Constitution Article 3, Section 11 (“Each House may determine the rules of its own proceedings....”).

It is particularly important to note that House members have the opportunity to change any rule, including those pertaining to recognition, and changes could also be made to provide for a procedure for removing a sitting speaker.⁴ The House Rules themselves are designed to facilitate such proposals. Rule 14 (General Provisions), Section 2 (Amendments to the Rules) addresses this point:

Amendments to the Rules --- (a) Amendments to the rules of the house shall be proposed by house resolutions which shall be referred at once, without debate, to the Committee on Rules and Resolutions for study and recommendation.

(b) A resolution proposing an amendment to the rules shall not be considered by the house until a printed copy of the resolution has been provided to each member of the house at least 48 hours before consideration.

(c) Amendments to the rules shall require a majority vote of the house for adoption.

Indeed, this was the course initially pursued by the members advocating a mid-session Speaker election and resolutions to accomplish this were filed on May 24, 2007, by Rep. Todd Smith, one of the signatories of the Geren brief.

³ The recognition authority has even been frequently exercised in regard to motions to adjourn, which have precedence over privileged matters (see Rule 5, Section 36). As the proceedings recounted above illustrate, the Speaker’s discretion on recognition also has been exercised as to a member’s privilege to speak on a bill before the House – one of the most fundamental of rights otherwise envisioned by mandatory language contained in the House Rules. (See Rule 5, Sec. 27).

⁴ This assumes, for the sake of argument, requestor’s position that the House can remove Speakers by methods different from that set out in Article 3, Section 9(b) of the Texas Constitution.

After filing the resolutions with the Chief Clerk of the House, Rep. Smith attempted to withdraw the filings but was informed by the Clerk that once filed, resolutions could not be withdrawn. (See file-stamped House Resolutions 2669 and 2671 by Rep. Todd Smith, attached.)

The request you have received was borne out of a decision to forego a procedurally valid approach (an amendment to the House Rules to facilitate the ends sought) in favor of asserting from the floor a motion that does not exist under House Rules. That was a valid strategy if the proponents' objective was to raise the motion solely for its value as political commentary. It was an invalid strategy if the purpose was to raise a legitimate motion that preserves a valid objection as to the fairness or constitutionality of the House Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Keel". The signature is fluid and cursive, with a large initial "T" and "K".

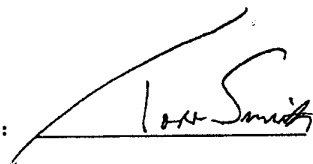
Terry Keel
House Parliamentarian

Attachments [HR 2669, HR 2671 80th(R)]

Cc: Opinion Committee, Office of the Attorney General

FILED MAY 24 2007

By:



H.R. No. 2669

RESOLUTION

1 BE IT RESOLVED by the House of Representatives of the State of
2 Texas, That, in accordance with Section 11, Article III, Texas
3 Constitution, the House of Representatives of the 80th Legislature
4 shall elect a speaker of the house from its own membership as
5 follows:

6 SECTION 1. NOMINATIONS. (a) The presiding officer shall
7 call for nominations from the floor for the election of speaker of
8 the house of representatives and shall recognize every member who
9 desires to make a nomination.

10 (b) Each member recognized for this purpose shall
11 immediately advance to the front microphone and make the nomination
12 in a nominating speech not to exceed 10 minutes in length.

13 (c) After all nominations have been made, the presiding
14 officer shall declare nominations to be closed.

15 SECTION 2. VOTING PROCEDURES. (a) If there is only one
16 nominee for speaker, the members shall record their votes from
17 their desks on the voting machine.

18 (b) If there is more than one nominee for speaker, the chief
19 clerk shall prepare paper ballots containing the name of each
20 nominee and a space for indicating that the member casting the
21 ballot is present, not voting. One ballot shall be prepared for
22 each member and must contain the member's name and district number
23 and a space for the member's signature. The house sergeant shall
24 distribute each ballot to the appropriate member at the member's

1 desk.

2 (c) The chief clerk shall designate a voting area and shall
3 provide a voting box for the marked ballots. A member may mark and
4 sign the member's ballot either at the member's desk or at the
5 voting area.

6 (d) Each member shall be called individually by the reading
7 clerk in order of the member's district number and the member shall
8 proceed to the voting area when called. After arriving at the
9 voting area, the member shall fold the member's marked and signed
10 ballot and deposit it in the voting box.

11 (e) After all members have voted, the chief clerk, the
12 journal clerk, and the voting clerk shall publicly count the
13 ballots on the house floor. A ballot may not be counted unless it
14 bears the signature of the member for whom it was prepared. The
15 chief clerk shall prepare a tally sheet indicating how each member
16 voted, the total votes received by each nominee, and the total
17 number of members who are present, not voting.

18 (f) All votes taken shall be record votes with the vote of
19 each member entered in the House Journal.

20 SECTION 3. RESULTS; ADDITIONAL VOTING ROUNDS. (a) The
21 presiding officer shall announce the results of the election. The
22 chief clerk shall release a copy of the tally indicating how each
23 member voted as soon as possible after the presiding officer
24 announces the results.

25 (b) If a nominee receives a majority of the votes cast, the
26 presiding officer shall declare that nominee to be elected to the
27 office of speaker of the house of representatives. For purposes of

1 determining a majority of the votes cast for speaker under this
2 resolution, only a ballot marked for a single nominee is considered
3 a vote cast.

4 (c) If no nominee receives a majority of the votes cast, an
5 additional round of voting shall be conducted in accordance with
6 the procedures for the initial vote except that the ballots shall be
7 prepared to contain:

8 (1) the name of each nominee who received votes in the
9 preceding round of voting, other than the nominee who received the
10 fewest number of votes and each nominee who has withdrawn; and

11 (2) a space for indicating that the member casting the
12 vote is present, not voting.

13 (d) Following an additional round of voting under
14 Subsection (c) of this section, the presiding officer shall
15 announce the results and:

16 (1) if a nominee receives a majority of the votes cast,
17 the presiding officer shall declare that nominee to be elected to
18 the office of speaker of the house of representatives; or

19 (2) if no nominee receives a majority of the votes
20 cast, additional rounds of voting shall occur in the manner
21 provided by Subsection (c) of this section until a nominee receives
22 a majority of the votes cast.

23 SECTION 4. TIE VOTES. If in a round of voting under this
24 resolution no nominee receives a majority of the votes cast and it
25 is not possible to determine which nominee received the fewest
26 number of votes because of a tie vote, all nominees who received
27 votes in that round of voting, other than a nominee who withdraws,

1 shall be listed on the ballot in the subsequent round of voting.

2 SECTION 5. OATH. After the election, the presiding officer
3 shall direct the administration of the oath of office to the
4 speaker-elect. The speaker shall take the chair immediately after
5 taking the oath of office.

H.R. No. 21809

By

Law Smith

Providing for the election of the speaker.

MAY 24 2007

Filed with the Chief Clerk

411.ES AND RESOLUTIONS

MAY 24 2007

Read first time and referred to Committee on _____

Reported _____ favorably (as amended)

Sent to Committee on (Calendars)

(Local & Consent Calendars)

Rules suspended to permit consideration

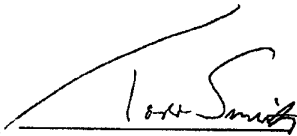
Read (amended) and adopted (failed of adoption) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Motion made to add all members' names

CHIEF CLERK OF THE HOUSE

FILED MAY 24 2007

By:



H.R. No. 2671

RESOLUTION

1 BE IT RESOLVED by the House of Representatives of the State of
2 Texas, That, in accordance with Section 11, Article III, Texas
3 Constitution, the House of Representatives of the 80th Legislature
4 shall elect a speaker of the house from its own membership as
5 follows:

6 SECTION 1. NOMINATIONS. (a) The presiding officer shall
7 call for nominations from the floor for the election of speaker of
8 the house of representatives and shall recognize every member who
9 desires to make a nomination.

10 (b) Each member recognized for this purpose shall
11 immediately advance to the front microphone and make the nomination
12 in a nominating speech not to exceed 10 minutes in length.

13 (c) After all nominations have been made, the presiding
14 officer shall declare nominations to be closed.

15 SECTION 2. VOTING PROCEDURES. (a) If there is only one
16 nominee for speaker, the members shall record their votes from
17 their desks on the voting machine.

18 (b) If there is more than one nominee for speaker, the chief
19 clerk shall prepare paper ballots containing the name of each
20 nominee and a space for indicating that the member is present, not
21 voting. The ballot shall be prepared to allow a member to mark the
22 ballot in a manner that does not disclose the member's identity.

23 (c) The chief clerk shall designate a voting area for the
24 members to mark their ballots and shall provide a voting box for the

1 marked ballots. Each member shall be called individually by the
2 reading clerk and shall proceed to the voting area when called. As
3 a member arrives at the voting area, the chief clerk shall hand the
4 member the member's ballot and allow the member to privately mark
5 the ballot. After marking the ballot, the member shall fold the
6 ballot and return it to the chief clerk. The chief clerk shall
7 initial each marked ballot and deposit it in the voting box.

8 (d) After all members have voted, the chief clerk, journal
9 clerk, and voting clerk shall publicly count the ballots on the
10 house floor. A ballot may not be counted unless it bears the chief
11 clerk's initials. The chief clerk shall prepare a tally sheet
12 indicating the total votes received by each nominee and the total
13 number of ballots counted as present, not voting.

14 (e) All votes taken shall be by secret ballot and only the
15 results of the election, including the total number of votes cast
16 for each nominee and the number of members present, not voting,
17 shall be entered in the House Journal.

18 SECTION 3. RESULTS; ADDITIONAL VOTING ROUNDS. (a) The
19 presiding officer shall announce the results of the election. If a
20 nominee receives a majority of the votes cast, the presiding
21 officer shall declare that nominee to be elected to the office of
22 speaker of the house of representatives. For purposes of
23 determining a majority of the votes cast for speaker under this
24 resolution, only a ballot marked for a single nominee is considered
25 a vote cast.

26 (b) If no nominee receives a majority of the votes cast, an
27 additional round of voting shall be conducted in accordance with

1 the procedures for the initial vote except that the ballots shall be
2 prepared to contain:

3 (1) the name of each nominee who received votes in the
4 preceding round of voting, other than the nominee who received the
5 fewest number of votes and each nominee who has withdrawn; and

6 (2) a space for indicating that the member is present,
7 not voting.

8 (c) Following an additional round of voting under
9 Subsection (b) of this section, the presiding officer shall
10 announce the results and:

11 (1) if a nominee receives a majority of the votes cast,
12 the presiding officer shall declare that nominee to be elected to
13 the office of speaker of the house of representatives; or

14 (2) if no nominee receives a majority of the votes
15 cast, additional rounds of voting shall occur in the manner
16 provided by Subsection (b) of this section until a nominee receives
17 a majority of the votes cast.

18 SECTION 4. TIE VOTES. If in a round of voting under this
19 resolution no nominee receives a majority of the votes cast and it
20 is not possible to determine which nominee received the fewest
21 number of votes because of a tie vote, all nominees who received
22 votes in that round of voting, other than a nominee who withdraws,
23 shall be listed on the ballot in the subsequent round of voting.

24 SECTION 5. OATH. After the election, the presiding officer
25 shall direct the administration of the oath of office to the
26 speaker-elect. The speaker shall take the chair immediately after
27 taking the oath of office.

H.R. No.

2671

By

John Smith

Providing for the election of the speaker.

MAY 3 4 2007

Filed with the Chief Clerk

MAY 3 4 2007

Read first time and referred to Committee on

RULES AND RESOLUTIONS

Reported _____ favorably (as amended)

Sent to Committee on (Calendar)

(Local & Consent Calendar)

Rules suspended to permit consideration

(rising vote)

Read (amended) and adopted (failed of adoption) by a (non-record vote)

(record vote of _____ yeas, _____ nays, _____ present, not voting)

Motion made to add all members' names

CHIEF CLERK OF THE HOUSE