

The State of Texas  
House of Representatives



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OPINION COMMITTEE

TERRY KEEL  
HOUSE PARLIAMENTARIAN

July 20, 2007

FILE # RQ-0589-GA  
I.D. # 45279

The Honorable Greg Abbott  
Attorney General of Texas  
209 W. 14th St., 7th Floor  
Austin, Texas 78701

RE: Attorney General Opinion request no. RQ-0589-GA

Dear General Abbott:

The requestor states that he does not seek an interpretation of the rules of the Texas House of Representatives, yet at the same time contradicts that assertion, asking whether "its current interpretation" is in violation of the Texas State Constitution, and proceeds in the same question to offer his own interpretation of the House Rules.

Finally, I want to note that in submission of Question #4, I am not seeking an Attorney General "Advisory Opinion" of interpretation of House rules (specifically, Rule 5, Section 24). Instead I am requesting an "Advisory Opinion" as to whether its current interpretation is in violation of the Texas State Constitution and if so, to expose that most properly, Rule 5, Section 24 should be interpreted for what it is--a rule that allows the Speaker to govern the *order* in which members are to be recognized, but not *whether* they will be recognized which seems to be in direct violation of the State Constitution. (Requestor's June 18, 2007 letter, page two) (emphasis in original).

Obviously that question, like every question requestor asks, necessarily involves interpreting House Rules in order to be answered.



The Attorney General should take note that Rule 1 (Duties and Rights of the Speaker) Section 9 (Questions of Order) -- not Rule 5, Section 24 as cited by the requestor -- addresses the Speaker's authority on questions of order. It states:

**Section 9. Questions of Order** --- (a) The speaker shall decide on all questions of order; however, such decisions are subject to an appeal to the house made by any 10 members. Pending an appeal, the speaker shall call a member to the chair, who shall not have the authority to entertain or decide any other matter or proposition until the appeal has first been determined by the house. The question on appeal is, "Shall the chair be sustained?"

(b) No member shall speak more than once on an appeal unless given leave by a majority of the house. No motion shall be in order, pending an appeal, except a motion to adjourn, a motion to lay on the table, a motion for the previous question, or a motion for a call of the house. *Responses to parliamentary inquiries and decisions of recognition made by the chair may not be appealed.* (emphasis added).

Rule 5 (Floor Procedure), Section 24 (Recognition) addresses speaking and debate. The Attorney General should take particular note that the language of that rule, just as in Rule 1, Section 9, is explicit:

**Section 24. Recognition** --- There shall be no appeal from the speaker's recognition, but the speaker shall be governed by rules and usage in priority of entertaining motions from the floor. When a member seeks recognition, the speaker may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" *and may then decide if recognition is to be granted.* (emphasis added).

The discretion whether or not to grant recognition to a member in the first place rests with the Speaker, and only at the point that he decides to grant recognition for a particular motion do the rules and usage in priority (including those relating to privilege) come into play. These rules are unique to the Texas House of Representatives and there is no parallel statement of this recognition authority for the presiding officer of the Texas Senate.

Article 3, Section 11 of the Texas Constitution specifically authorizes the House of Representatives and the Senate to determine the rules of their own proceedings:

Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense.

Thus, contrary to what requestor struggles to suggest, a legitimate question about the constitutionality of the House Rules he addresses cannot be posed to you.<sup>1</sup> There are simply no competing constitutional provisions to the rules in question and thus the constitutionality of the House rules are not in question. In adopting its rules for the 80th legislative session, as in previous sessions, the House invoked Article 3, Section 11 of the Texas Constitution in the Statement of Authorization and Precedence in the preamble to the House rules:

**Statement of Authorization and Precedence**

Pursuant to and under the authority of Section 11, Article III, Texas Constitution, and notwithstanding any provision of statute, the House of Representatives adopts the following rules to govern its operations and procedures. The provisions of these rules shall be deemed the only requirements binding on the House of Representatives under Section 11, Article III, Texas Constitution, notwithstanding any other requirements expressed in statute.

Rule 1 (Duties and Rights of the Speaker), Section 1 (Enforcement of the Rules) of the House Rules expressly provides that interpretation of the Rules of the House is the exclusive province of the Speaker:

**Section 1. Enforcement of the Rules** --- The speaker shall enforce, apply, and interpret the rules of the house in all deliberations of the house and shall enforce the legislative rules prescribed by the statutes and the Constitution of Texas.

The House Rules pertinent to the questions being presented are clearly worded. The requestor's legal arguments require one to depart from reading the rules as they are written and ignore historical precedent of how they have

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<sup>1</sup> To try and phrase the questions so that they appear appropriate for submission to your office, requestor attempts to camouflage the real inquiry he is making: Can House rules be interpreted to facilitate removing a Speaker any time on the wishes of a majority? The relevant text of Question 1 actually asks just that: "[...Is] the Speaker...[an officer] who serves at the pleasure of the membership...?". It is answered by the unambiguous language of Texas Constitution Art. 3, Sec. 9(b) (the speaker is elected when the house *first assembles*). That constitutional provision is why no contradictory House rule exists to circumvent it. Question 2 is simply argumentative. If an impeachment proceeding is undertaken, it would affect the office at which it is directed. Question 3 is really just an attempt to disguise a question about House Rule 1, Section 10. And of course, Question 4 is all about Rule 5, Sec. 24.

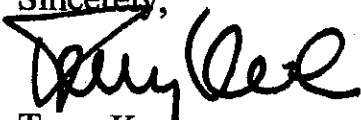
been applied in the Texas House chamber. Tortured departures from the straightforward language of the rules invariably lead to pitfalls. This is particularly true if one utilizes ordinary parliamentary practice, Mason's Manual, or United States Congressional precedent where the Texas House rules are *not* silent. [See Rules of the Texas House, Rule 14 (General Provisions), Section 1 (When Rules Are Silent) --- only "if the [Texas House] rules are silent or inexplicit on any question of order or parliamentary practice" is outside authority considered.]

By way of example, if the plain language of Rule 1, Section 9 and Rule 5, Section 24 is ignored in favor of the requestor's theory that the Speaker's discretion as to recognition is limited to non-privileged matters, filibuster is effectively introduced into the House, where it has never before existed. Privileged matters would merit mandatory recognition by the presiding chair. Members could therefore ask to rise on such a matter and, if necessary, belabor the issue with sufficient allies lining up to speak, effectively displacing the daily calendar. It is noteworthy that requestor's interpretation of the rules and the resultant tool of filibuster have been entirely overlooked by House members since the first state legislature convened in 1845. If such a rule change were ever implemented, it would have profound consequences.

At the beginning of each session the members of the House adopt their own rules and shoulder the responsibility for deciding any changes. The public policy considerations, legal arguments and practical consequences will be debated and the members voting thereon will be held responsible by each other and by their constituents for how they voted. This opinion request is an attempt to take that debate from the House floor and absolve House members from responsibility for the outcome, placing it instead onto an executive branch office and on the shoulders of the attorney general.

Thank you for soliciting my input on the opinion request you received.

Sincerely,

A handwritten signature in dark ink, appearing to read "Terry Keel", written over a horizontal line.

Terry Keel  
House Parliamentarian

Cc: Opinion Committee  
Office of the Attorney General