

6 February 1947

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Hon. W. G. Rosenbaum, Chairman  
Hon. Frank L. Christensen, Member  
Hon. Lorna E. Lockwood, Member,  
SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES  
Eighteenth Legislature,  
Capitol Building,  
Phoenix, Arizona.

Dear Miss Lockwood and Sirs:

You have referred the following question to this office for an opinion:

"A special committee has been appointed to secure a ruling as to the constitutionality of Rule 4, Subdivision 5 of the Rules of the House of Representatives of the State of Arizona found on page 7 of the printed rules.

"The question has been raised that this rule is in conflict with Section 16, Article 4, Part 2 of the Constitution as set forth in our Rule 5, Subdivision 3, Page 7."

The questioned rule provides as follows:

"5. The protest of any representatives, not exceeding two hundred words, may be entered on the Journal, but the language thereof shall impute no unworthy motive to any other representative or to other representatives, nor transgress the rules of the House relating to language used in debate."

On the right of a legislator's protest, the Constitution reads as follows at Section 16, Article 4, paragraph 2:

"Any member of the legislature shall have the right to protest and have the reasons of his protest entered on the journal."

The rule in question was adopted on the following constitutional authority:

"Each house, when assembled, shall choose its own officers, judge of the election and qualification of its own members, and determine its own rules of procedure."  
Sec. 8, Art. 4, Part 2, Constitution.

The problem comes down to the issue, whether the right of protest granted above is an unlimited right, or one subject to limitations; and if the latter, whether the rule in question is an unreasonable limitation.

A legislative body's rule-making powers are vast and said to inhere in the body in view of its duties to function in an orderly manner, subject of course to constitutional limitations. 49 Am. Juris., sec. 37. The purpose of the rule-making power is aptly put in the following quotation from Law and Practice of Legislative Assemblies by Cushing, (9th Ed.) p. 305:

"It is highly important to the preservation of order, decency, and regularity in a numerous assembly and not less essential to its power of harmonious and efficient action, that its proceedings should be regulated by established forms and methods; and, with a view to these purposes, it is more material, perhaps, that there should be rules established than that they should be founded upon the firmest basis of reason and argument; the great object being to effect a uniformity of proceeding in the business of the assembly, securing it at once against the caprice of the presiding officer and the captious disputes of members. It is to the observance of regularity and order among the members that the minority look for protection against the power of the majority; and in the adherence to established forms between the different branches, that each finds its security against the encroachments of the other."

That the rule-making function may include the right to place reasonable limitation on such matters to be entered in the journal appear from language in the leading case of A.T.S. F. v. State, (Okla.) 113 Pac. 921:

"It is the duty of each house to keep a record of its proceedings and from time to time to publish the same; but except as just mentioned what proceedings shall be recorded in the journal, the manner of recording the same, and the extent of their fullness, is left by the constitution to the discretion of the legislative bodies, to be controlled by rule respectively of those bodies or by statute."

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Weighing paragraph 5 of Rule 4 in the light of this authority, we are of the opinion that it is a valid exercise of the Legislature's rule-making powers. To regard the right to protest as an unlimited one would place the possibility of imposing an intolerable burden on the legislative journal. On the other hand, this right cannot be abrogated or evaded by an outright denial or an indirect denial through a rule of procedure. 49 Am. Juris., supra. The legislature is the best judge of reasonable bounds on the use of the right to protest, and it appears clear to us that the two hundred word limit in the rule in question is a valid exercise of that judgment.

Very truly yours,

JOHN L. SULLIVAN,  
Attorney General

WILLIAM P. MARONEY, Jr.,  
Assistant Attorney General