

OPINION
49-107

February 26, 1949 (OPINION)

LEGISLATURE

RE: Senate Bill 30

Your letter of February 25 addressed to the Attorney General has been received in which you request an opinion from this office regarding the legal status of Senate Bill 30 in the light of the action by the House of Representatives on Thursday, February 24, printed in the House Journal beginning on page 923 through page 925.

You state that the request for the opinion is made because of the question as to the proper use of the expunging motion made by Representative Fitch. According to the House Journal this motion carried by a vote of 64 ayes and 49 nays.

The question raised is relative to a somewhat unusual parliamentary situation and the solution thereof is entirely within the power and jurisdiction of the members of the House.

Section 48 of our State Constitution provides that each house shall have the power to determine the rules of proceedings. I have examined your rules adopted for the 1949 Session and I find nothing bearing upon the question of expunging of records.

Rule No. 80 of your 1949 Rules provides--as follows: "Rule 80. United States House of Representatives Rules. The rules of parliamentary practice adopted by the House of Representatives of the United States shall govern the house in all cases to which they are applicable, and in which they are not inconsistent with the standing rules of the house, and the joint rules and orders of the Senate and House of Representatives."

It is well established that observance of the rules of a legislative body which regulates the passage of statutes is a matter entirely within the legislative control and discretion and not subject to review by the courts, nor to the interference by any other department of government.

With reference to the expunging of records, we find the following on page 24, section 71 in Rules and Manual of the United States House of Representatives of 1947: "And only in rare instances the House has nullified proceedings by restricting the records of them in the journals, the house and senate usually insisting on the accuracy of the journal. In rare instances, the house and senate have rescinded or expunged entries in journals of preceding Congresses."

In Roberts Rules of Order, page 69, section 67, we find among other things the following: "Any vote less than a majority of the total membership of an organization is certainly incompetent to expunge from the records of a correct statement of what was done and recorded and the record of which was officially approved even though a quorum is present and the vote to expunge is unanimous."

The Attorney General is required to give opinions to the Legislature on strictly legal questions and since your problem is one resulting from a parliamentary situation, the solution of same is entirely within the power and jurisdiction of the members of the House and it would be presumptuous on the part of this office to advise either house of the Legislature on parliamentary procedure.

So far as a bill is concerned, if it has been read the number of times required by the Constitution and received the constitutional majority required, and thereafter signed by the presiding officers of the two houses and signed by the governor, it becomes a law.

WALLACE E. WARNER

Attorney General