

MEMO

TO: Select Committee on State Contract Practices

FROM: Edward Hussie

SUBJECT: Invalidity of a Motion to Recess without the Presence of a Majority of Committee Members

A review of the committee rules, the rules of the House of Representatives, and Mason's Manual, makes clear that any motion to recess a committee without a majority of its members present is totally void and of no force and effect whatsoever insofar as such motion purports to cancel lawfully scheduled committee meetings.

By previous action the committee established Thursday, October 24, 1974 as a date for a scheduled hearing. On Wednesday, with only three members of a seven man committee in attendance, two members attempted to adopt a motion to recess the committee until November 7, 1974. To the extent that such motion attempts to adjourn the Wednesday meeting it would be valid. To the extent that the motion attempted to schedule a meeting for November 7 it might also be valid. Insofar as the motion purports to cancel meetings previously scheduled by the committee for any date other than that for which the quorum could not be obtained, such motion is a meaningless and empty gesture.

The only committee rule directly bearing on this question is Rule 4 which provides that the presence of two members shall constitute a quorum for the purposes: a) of administering oaths; and b) of hearing testimony. Recessing for the purpose of cancelling hearings previously established by the committee is clearly outside the scope of either the administration of oaths or the hearing of testimony.

It is evident that the authors of this rule intended to restrict its application to these narrowly defined circumstances set forth above. If the framers of the rule intended a more sweeping application, they need only have provided that a quorum of two shall apply to all activities of the committee. If, indeed, the rules of the committee had been completely silent on the question of a quorum, the presence of a majority of all committee members would be required to transact any and all committee business.

In the absence of a committee rule directly bearing on the question of what constitutes a quorum for the purpose of overruling previous committee business, recourse to the rules of the House of Representatives is necessary. Rule 16 of the House provides that a quorum to transact House business requires a majority. The rule excludes from its coverage adjournments from day to day. While concededly this rule does not explicitly apply to committee proceedings, it evinces a specific House intent that a quorum requires the presence of a majority unless there is a committee rule stating otherwise.

Furthermore, Rule 75 of the House of Representatives provides that Jefferson's Manual as supplemented by Mason's Manual shall govern parliamentary procedure when the rules of the House on Quorum of Committees provides:

1. The presence of a quorum is required in order for a committee to act legally and officially. A committee cannot legally transact business, and it is irregular to proceed to the consideration of

business, in the absence of a quorum. The quorum of a committee must meet formally to transact business, and opinions of members of a committee cannot be taken separately, nor can a report be circulated securing signatures of a majority of the members of a committee and this report be submitted as a report of the committee, unless authorized by the rules.

2. The quorum of a committee is a majority of the ~~members of the committee~~ unless the rules of the body otherwise provide. A quorum of a committee may transact business and, unless provided by the rules, a majority of the quorum, even though it is a minority of the committee, may authorize a report.

Section 506 of Mason's Manual sets forth circumstances under which less than a quorum can recess or adjourn:

1. It is a general rule applicable to legislative and administrative bodies that less than a quorum may adjourn from day to day, though no other business can be transacted. The body, from the very nature of the situation, has the power to take an adjournment or a recess without the presence of a quorum.
2. Where a quorum of a city council is not present, the members present may adjourn to a date specifically set and need not adjourn to the next regular meeting in accordance with the ordinance fixing time of meeting.

It is obvious that when a minority adjourns a meeting or recesses a meeting by setting a date for a future meeting, that it is not acting inconsistently with the instructions of its principal, the fully constituted committee. Under such circumstances it can be reasonably presumed that the minority is furthering rather than frustrating the wishes of the committee. Mason's rule concerning non-quorum actions by a committee minority is, therefore, nothing more than a logical application of common rules of agencies. When, however, a minority (non-quorum) attempts to reverse a prior decision of the committee, it is acting directly contrary to any rule of agency. Furthermore, it appears self-evident that an attempt to reverse an official and lawful decision of the committee (i.e. cancelling a hearing by such committee) at the very minimum constitutes the substantial transaction of business which is clearly prohibited by Mason's Manual.