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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-916
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of	:	<u>January 25, 1980</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Anthony S. Da Vigo	:	
Deputy Attorney General	:	
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SUBJECT: TIE-BREAKING VOTE—Where the Lieutenant Governor casts a vote to break a tie on a proposed amendment to a bill and announces the vote without allowing an opportunity for a member to change his vote or move a call of the Senate, the State Senate may allow a member to change his vote, or to move a call of the Senate if the Presiding Officer of the Senate rules that the motion is in order and the call is placed.

The Honorable John V. Briggs, State Senator, Thirty-Fifth District, has requested an opinion on the following question:

Where the Lieutenant Governor casts a vote to break a tie on a proposed amendment to a bill and announces the vote without allowing an opportunity for a member to change his vote or move a call of the Senate, may the State Senate allow a member to change his vote, or to move a call of the Senate if the Presiding Officer of the Senate rules that the motion is in order and the call is placed?

CONCLUSION

Where the Lieutenant Governor casts a vote to break a tie on a proposed amendment to a bill and announces the vote without allowing an opportunity for a member to change his vote or move a call of the Senate, the State Senate may allow a member to change his vote, or to move a call of the Senate if the Presiding Officer of the Senate rules that the motion is in order and the call is placed.

ANALYSIS

We are advised that on September 12, 1979, there was a 17–17 vote in the State Senate on a proposed amendment to a bill. The Lieutenant Governor entered the Senate chambers, cast an aye vote, and without allowing an opportunity for members to change their votes or make a motion, immediately announced the amendment adopted. Upon objection, a motion for a call of the Senate was carried. The Chair¹ ruled the motion in order and placed the call. Thereupon, certain members either voted for the first time or changed their vote with the result that the amendment was rejected. The question presented is whether the announcement of the vote by the Lieutenant Governor foreclosed the further proceedings.

California Constitution, article IV, section 7, subdivision (a) provides in part that each house of the California Legislature shall adopt rules for its proceedings. Accordingly, the Standing Rules of the Senate have been duly adopted. Rule 20² provides as follows:

“In all cases not provided for by the Constitution, these Rules, or by the Joint Rules of the Senate and Assembly, or by statute, the authority shall be Mason’s Manual”³

California Constitution, article V. section 9 provides in part that the Lieutenant Governor is President of the Senate but has only a casting vote. A “casting vote is a vote which may be cast only to break a tie and decide the question. (Mason’s Manual, § 513.5 2.)”⁴

¹ The Lieutenant Governor apparently relinquished the Chair after announcing the vote.

² Hereinafter, any reference to a Rule will be to the Standing Rules of the Senate, 1979–1980 session.

³ Mason, *Manual of Legislative Procedure for Legislative and Other Governmental Bodies*, published by the Senate. California Legislature, 1975: “Mason’s Manual,” *post*.

⁴ A majority vote of the members present and voting, a quorum being present, is required to adopt a proposed amendment to a bill. (Rules 47 and 48; Mason’s Manual § 510, ¶¶ 1 and 2.) Hence, in the instant case a 17–17 tie vote was subject to a casting vote.

We turn to the substantive provisions of the Rules which pertain to the present inquiry. Rule 42 provides in part that a call of the Senate may be ordered “after the roll has been called and prior to the announcement of the vote.” Rule 44 provides in part that “into Senator shall be permitted to vote or change his vote after the announcement of the vote by the presiding officer.” The Rules are silent as to whether a vote may be announced in such a manner as to preclude an opportunity of a member to change his vote or to move a call of the Senate.

We are further advised that it is the long established custom and practice of the Senate to delay the announcement of a vote in order to provide an opportunity of a member to change his vote or to move a call of the Senate. In this regard, section 39 of the Mason’s Manual provides as follows:

“1. When in a deliberative body a certain mode of procedure has been adopted in any case it becomes a precedent for its government in every case thereafter of a similar character; thus in time a succession of precedents is adopted, forming together a regular system of procedure, known as parliamentary law, and which, when once established, is binding upon the body.

“2. If precedents were not followed, the course of legislative procedure, instead of being known or capable of being ascertained, would be involved in the greatest uncertainty and lead to endless confusion. In a court of justice, a rule, when once settled in an adjudged case, is binding thereafter upon the same court and upon all inferior tribunals so that the law may be known, instead of being left to the uncertain determination of every judge. Likewise in a deliberative body what has once been decided upon as a proper course of procedure is adhered to thereafter in all similar cases. This is to be understood, however, with some qualification. It has been the usage for legislative bodies to adopt rules for their own government.

“3. Precedents, as distinguished from usages, are the decisions made by the presiding officer, or by the body upon appeal, when a question concerning a practice or point of procedure has been raised, as by a point of order.

“4. A not inconsiderable part of parliamentary law is based upon the established usages of legislative bodies. The knowledge of the usages and customs of a legislative body are drawn from treatises on parliamentary practice, from the records of the body, insofar as the usages can be ascertained from them, and from the personal knowledge of the presiding

officer and members.

“5. When there is an established practice in a deliberative body, or there has been a previous decision on a question, the practice or precedent may be said to govern. When there is no practice or precedent governing a question which has arisen, the presiding officer may consider the usages and precedents of other deliberative bodies. Precedents are not all entitled to equal weight. The value of precedents depends partly upon the character of the proceedings by which they were created, partly upon the character of the body in which they were established, and partly upon the time at which they occurred. The precedents of the other house of the same legislature are usually to be given the most weight. The precedents of other deliberative bodies of the same type and character are in general to be given more weight than the precedents of deliberative bodies of a different character. The precedents of deliberative bodies of a different type and character are to be given weight in the proportion that the conditions of the other deliberative body are similar to the deliberative body where the precedent is to be applied.

“6. In the absence of rules, as immediately upon convening and before the rules are adopted, the houses are governed by usages, custom and precedent, and by the general parliamentary law. The best evidence of what are the established usages and customs are the rules as last in effect.”

In our view, the ruling of the Chair that the motion for a call of the Senate was in order was, in light of the established practice of the Senate, proper, and provides: a precedent for the future. It may be noted in this regard that on the day following the vote in question the Honorable James R. Mills, President pro Tempore of the Senate, requested and received an opinion of the Legislative Counsel, number 16507, which was published on said date in the Senate Journal, page 7602. The opinion concluded that it would be contrary to the established practice of the Senate for the Lieutenant Governor, upon giving a casting vote on an equally divided question, to announce the vote before an opportunity is provided for the changing of a Senator's vote or a call of the house.

Finally, even if the ruling of the Chair were deemed inconsistent with the express terms of the Senate Rules, it would not be improper. Under the provisions of California Constitution, article IV, section 7, subdivision (a), declaring that each house of the Legislature shall determine the rules of its own proceedings, the fact that a house acts in violation of its own rules or practices or in violation of parliamentary law in a procedural matter within its prerogative will not impair the validity of the action taken. Thus, any such rule not required by the constitution is virtually repealed for the occasion when it is disregarded by those having power to control it, and the act of breaking it is at least a

suspension of it. (Mason's Manual, § 24.) It is well settled therefore that the courts will not disturb a ruling on a parliamentary question made by a legislative body having authority to make rules for its government and acting within the scope of its powers (Mason's Manual, § 71, ¶ 1) nor examine the validity of an enactment by inquiring whether proceedings were conducted according to prescribed forms. (*Spaulding v. Desmond* (1922) 188 Cal. 783, 790; *County of Yolo v. Colgate* (1901) 132 Cal. 265, 275.)

It is concluded that where the Lieutenant Governor casts a vote to break a tie on a proposed amendment to a bill and announces the vote without allowing an opportunity for a member to change his vote or move a call of the Senate, the State Senate may allow a member to change his vote, or to move a call of the Senate if the Presiding Officer of the Senate rules that the motion is in order and the call is placed.
