

July 29, 2009

Honorable Joseph J. Roberts, Jr.
Speaker of the General Assembly
Assembly Majority Office
P.O. Box 098
Trenton, New Jersey 08625

Dear Mr. Speaker:

You have asked what the powers and limitations of the Speaker of the General Assembly are with regard to potential disciplinary action against a member of the General Assembly in certain circumstances.¹

The Speaker of the General Assembly is the Presiding Officer of the House. As such, he is invested with the powers and duties delegated to him by the Constitution, statutory law and Rules of the General Assembly.

I. Powers and Duties of the Speaker of the General Assembly

Section four of the Rules of the General Assembly enumerates the duties of the Speaker in presiding over the House. The rules also provide for various other powers and duties including, but not limited to:

- Rule 1:8 - Assigning seats to the members;
- Rule 2:1 - Excusing a member from attending certain sessions;
- Rule 5:1 - Supervising the Clerk of the General Assembly in the performance of administrative duties;

¹ You have related these circumstances as akin to the recent publicly reported official corruption arrests of certain members of the General Assembly as well as a member or members under indictment for same.

- Rule 5:2 - Appointing an acting Clerk;
- Rule 6:1 - Directing the sergeants-at-arms;
- Rule 7:1 - Permitting photography or video in the General Assembly;
- Rule 7:2 - Allowing persons other than members to address the General Assembly;
- Rule 7:4 – Calling a member to order;
- Rule 10:3 - Appointing the chair and vice-chair of all except joint committees;
- Rule 10:4 - Serving as ex-officio member of each standing reference committee;
- Rule 10:9 - Allowing, by special order, more than seven bills on a committee agenda;
- Rule 10:11 - Waiving the five-day notice of a bill’s proposed consideration by a committee; and
- Rule 10:21 - Ordering a committee to undertake a special investigation.

In addition to the powers conferred by Rule, the Speaker may, under certain circumstances, be the approval officer of the General Assembly.

“Approval officer” is not defined per se in the statutory law, but N.J.S.A. 52:27B-37 provides that a person must be designated by a State agency to “approve and sign all encumbrance requests and statements of indebtedness.” The appointing authority is any “department commission, committee, officer, board or body of any institution or organization of the State.” N.J.S.A. 52:11-35, repealed by P.L. 1979, c. 8, previously designated the Secretary of the Senate and the Clerk of the General Assembly as the approval and request officers of the Legislature and of the committees of each House. There is no legislative history as to why that section was repealed.

Assembly Rule 5:1 designates the Clerk of the General Assembly as the chief administrative officer of the General Assembly, subject to the supervision of the Speaker (our emphasis), but the Rules neither place the authority of an approval officer in the Clerk nor the Speaker. Further in 1981, the General Assembly abolished the Ways and Means Committee, both of which suggest that the responsibility of approval officer reposes in the Speaker, as has been the custom.

It appears, then, that absent the statutory designation of an approval officer for the General Assembly, the Speaker, subject to the contrary wishes of the General Assembly, has the authority to appoint any “proper officer” as its approval officer, or alternate thereto, or himself in the proper case. Such officer would have authority to process payment for compensation of the members of the General Assembly.

In addition, powers and duties are afforded to the Speaker of the General Assembly by certain provisions of the State’s Constitution and statutory law. See, e.g., N.J. Const. (1947) Art. V, Sec. I, par. 6; N.J. Const. (1947) Art. V, Sec. I, Par. 7; N.J.S.A. 52:13-2 (issuing

warrants to arrest persons who fail to obey summons of a legislative committee) and N.J.S.A. 52:18A-78.5o. (approving leases of projects of the New Jersey Building Authority by State agencies).

II. Disciplinary Action Versus Members

The New Jersey General Assembly possesses the authority to punish its members for disorderly behavior and to expel a member. Article IV, Section IV, paragraph 3 provides:

3. Each house shall choose its own officers, determine the rules of its proceedings, and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members.

In addition to regulation by the House pursuant to the Constitution, the conduct of members is governed by certain statutes. See N.J.S.A. 2C:51-2 (forfeiture of public office upon conviction of certain crimes); N.J.S.A. 19:3-25 (vacating seat by excessive, unexcused absenteeism). Moreover, members may be subject to disciplinary action from the Joint Legislative Committee on Ethical Standards. N.J.S.A. 52:13D-22 grants the Joint Committee

jurisdiction to initiate, receive, hear and review complaints regarding violations of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act . . . [and] jurisdiction as to enforcement of the rules of either or both Houses of the Legislature governing the conduct of the members . . . as those rules may confer upon the joint committee.

By Joint Rule 19, both Houses of the Legislature have invested the Joint Committee with “continuing authority to receive, investigate and report to the Senate and General Assembly with respect to allegations concerning the conduct or activities of members of the Legislature . . . reflecting upon the good name, integrity and reputation of the Legislature or any member thereof” A member found guilty by the Joint Committee of a violation of the Legislative Code of Ethics or the New Jersey Conflicts of Interest Law “shall be fined not less than \$500.00 nor more than \$10,000 . . . and shall be subject to such further action as may be determined by the House of which the person is a member.” N.J.S.A. 52:13D-22(j).

Such further action may be taken under Rule 7:6 of the Rules of the General Assembly, which provides:

The General Assembly may punish its members for disorderly conduct, or any other conduct which it deems contrary to the integrity and general welfare of the House.

Prior to any punishment, the General Assembly shall, by resolution, establish a six-member special committee, three from the majority party and three from the minority party, appointed by the Speaker. The committee shall serve written charges on the member, and provide an opportunity for the member to be heard, to present witnesses, testimony and other evidence, to cross-examine witnesses, and to be represented by counsel. The record of the committee's proceedings shall be transcribed, and shall be made available to any member upon request. The committee shall, as soon as possible, report its findings to the General Assembly. The General Assembly may expel, sanction or censure a member with the concurrence of at least 54 members.

This, however, may not be the exclusive procedure.

III. Inherent Powers of Presiding Officer

Under ordinary conditions, the authority of the presiding officer is derived wholly from the body itself. Mason's Legislative Manual, Sec. 578.1.

This is incontrovertible in matters of legislative assemblies generally, but equally applicable to the New Jersey General Assembly and reflective primarily in the Rules of the General Assembly in sundry references throughout. See, e.g., Rules 4:4; 4:6.

However, historical underpinnings drawn from our predecessors in parliamentary procedure disclose a more fundamental position for the presiding officer.

He [the speaker] is, in fact, the representative of the house itself, in its powers, its proceedings, and its dignity. Cushing's Law and Practice of Legislative Assemblies, § 290.

When the assembly is engaged in any of its high administrative functions, or in matters of State or ceremony, as for example, when a member is to be reprimanded . . . the presiding officer is the mouth-piece and organ of the body. Id., § 293.

. . . He is selected and appointed to the trust of presiding officer, in the confidence, and upon the supposition, of the conformity of his will to that of the assembly. In all his official acts and proceedings, therefore, he represents and stands for the assembly; and his will is taken for that of the whole body, compendiously expressed through him, and by his mouth, instead of being collected from the individual wills of all the members. *Id.*, § 294.

It should be noted that the inherent power vested in the Presiding Officers has been assumed when purporting to represent the interests of the House as a whole. This is so chiefly in matters of litigation. Resolutions of the House authorizing the House to enter into litigation are appropriate, but seldom, if ever, utilized.

Custom and usage have revealed that cases entitled “General Assembly v. _____” are instituted by the majority party and authorized for payment of expenses incurred by the Speaker.²

IV. Specific Disciplinary Actions

A. Salary suspensions.

The compensation of members of the Legislature is fixed by the Constitution.

Members of the Senate and General Assembly shall receive annually, during the term for which they shall have been selected and while they shall hold their offices, such compensation as shall, from time to time, be fixed by law. . . N.J. Const., Art. IV, & IV, par. 7.

N.J.S.A.52:10A-1 provides that

[m]embers of the Senate and General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, compensation in the sum of

² See, e.g., General Assembly v. Byrne, 90 N.J. 376 (1982); Karcher v. Daggett, 462 U.S. 725 (1983) and its progeny; and Karcher v. May 484 U.S. 72 (1987).

. . . \$49,000. . . the compensation herein provided shall be paid to each member upon his qualifying into office as such member. . . ³

On its face, the constitutional and statutory directives as to a member's annual compensation seem absolute. However, in Errichetti v. Merlino, 188 N.J. Super. 309 (L.1982), the court examined, inter alia, the power of the President of the Senate to suspend the salary of a member who was unremittingly absent. Although primarily implicated in this case, was N.J.S.A.19:3-25, automatically deeming a vacancy in the Legislature under certain circumstances of absences from sessions, the court took a broader look at the unilateral action of the Senate President in ordering "the annual salary and the office and staff allowances payable by law to plaintiff [legislator] be withheld." 188 N.J. Super. at 314.

Plaintiff asserted a property right in his salary, such as would be protected by notions of due process of law, which he claims was denied. The court cited with favor the United States Supreme Court's discussion of this issue in Taylor v. Beckham, 178 U.S. 548 (1900).

. . . The decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such. Nor are the salary and emoluments property, secured by contract, but compensation for services actually rendered . . . In short, generally speaking, the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right. 178 U.S. 548 at 577.

Thus, while the court found no "property right" in plaintiff's expectation of salary, it nevertheless determined that notions of due process—a fair hearing—applied, however, putting the burden on plaintiff to request one.

Our opinion is that the Speaker has the authority to suspend, not terminate, the compensation of a member for good cause (in this case intimating a sense of the General Assembly that it is in the public interest), subject to affording the member a fair hearing and, of course, ultimately upon such further review as the General Assembly deems appropriate.

B. Committee Assignments

It is evident that the Speaker has the authority to appoint and remove a member from a committee. Rule 4:6 of the General Assembly so states, it being the accepted assumption that the power to appoint includes the power to remove, unless otherwise so stated in the Rules. See, Mason's § 602.

³ Compensation, in current practice, is paid to members on a bi-weekly basis.

This power appears to be absolute, lest some contention of protected discriminatory motive, and our opinion is that the Speaker may do so under these circumstances unilaterally.

C. General Assembly Officers

The only officers of the General Assembly elected thereby are the Speaker and the Clerk.

Article IV, § IV, par. 3 of the New Jersey Constitution provides that “[e]ach house shall choose its own officers . . .” and the Rules of the General Assembly provide that “[a]t the organization meeting, the General Assembly shall elect a Speaker, a Speaker pro tempore and a Clerk, each of whom shall continue in office at the pleasure of the General Assembly.” Rule 1:4.

Other “officers” are selected by the respective majority and minority caucuses to serve those caucuses.⁴

Our opinion is that the Speaker may effect the removal of any of these officers subject to the concurrence of the caucus.

D. Benefits and Accoutrements

(1) State Health Benefits

The time for preparation of this opinion did not allow the author to authoritatively examine the multifarious administrative regulations regarding suspension of State Health Benefits under these circumstances. However, a consultation with our benefits administrator indicated that, if a salary is suspended, there could be no deductions from salary for the employee’s [member’s] contributions to fund the benefits, and, therefore, coverage would cease for the period of suspension. Additionally, the employee [member] would have the opportunity to provide the employee’s [member’s] own coverage.

(2) Other Accoutrements

Such other privileges as may be controlled or approved by the Speaker, including the use of office space, reserved parking, etc., are, in our opinion subject to suspension by the Speaker, unilaterally.

⁴ e.g., minority and majority leaders, whips, budget officers.

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We respectfully submit the above for your consideration

Very truly yours,

Albert Porroni
Legislative Counsel

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