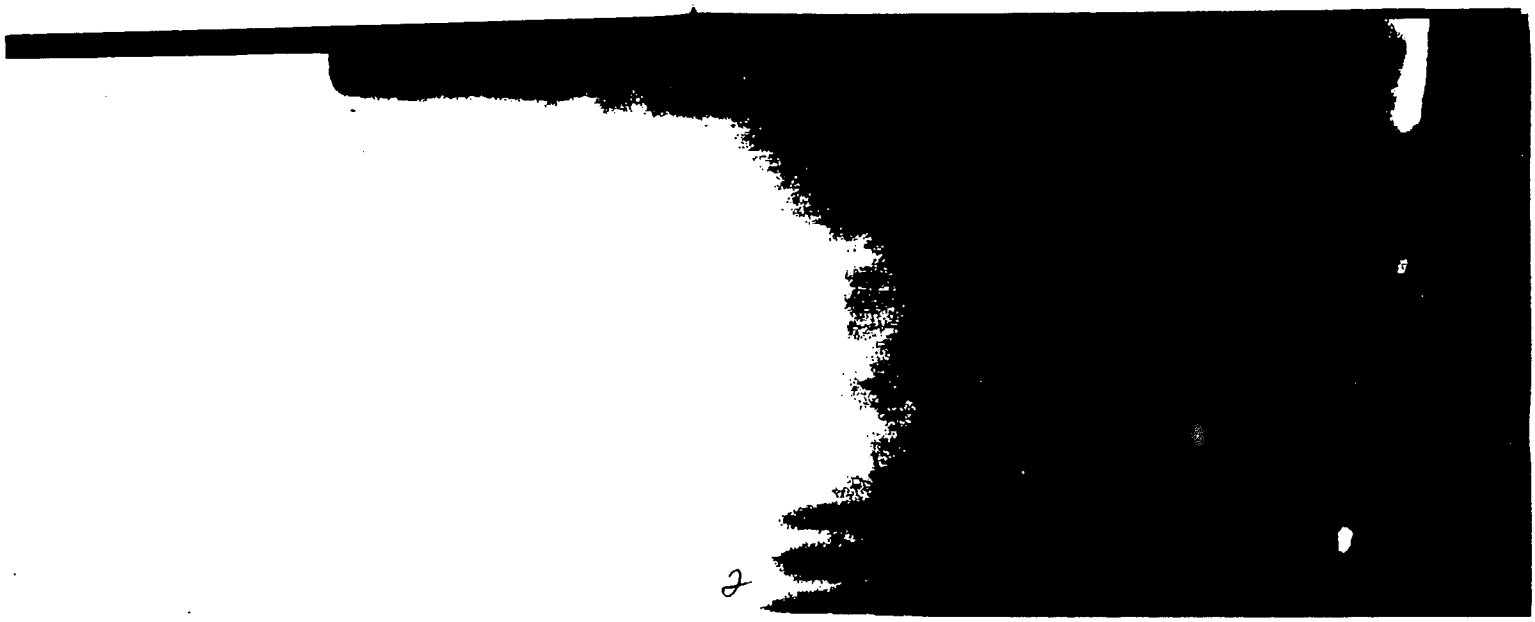
MASON'S MANUAL OF LEGISLATIVE PROCEDURE

Mason's Manual of Legislative Procedure

for Legislative and Other Governmental Bodies

by Paul Mason

McGraw-Hill Book Company, Inc.
NEW YORK TORONTO LONDON
1953



MASON'S MANUAL OF
LEGISLATIVE PROCEDURE

Library of Congress Catalog Card Number: 53-8376

FOREWORD

This manual has been compiled to meet the particular needs of legislative and administrative bodies. It began as a project of the American Legislators' Association, but covers the procedural problems which may arise in official public bodies of all kinds.

This work has evolved from an exhaustive study of judicial decisions and legislative precedents guided by the knowledge gained from many years experience with legislative procedure and from specialization in constitutional law.

The rules here set forth are the rules applied by the courts and not the rules as some writer has supposed they should be. As will be demonstrated in this volume, some popular conceptions of parliamentary law are not accepted by the courts.

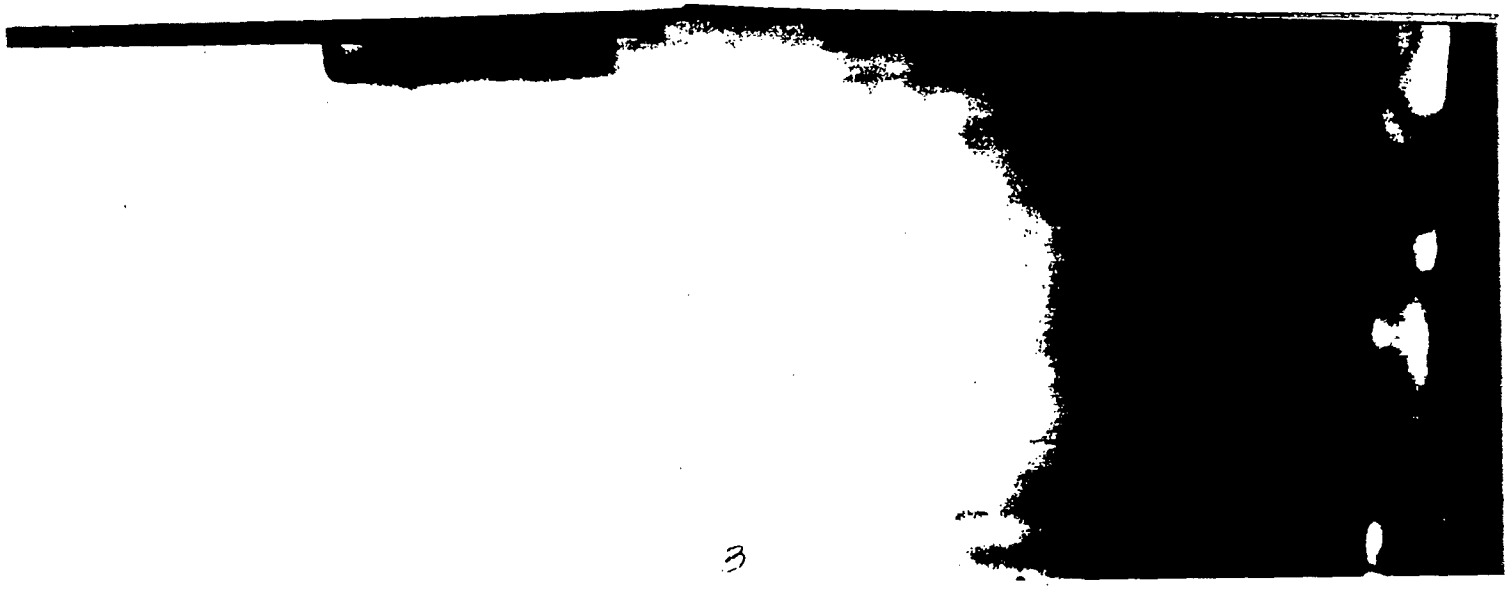
The book has been arranged to facilitate the citation of authority. In many instances the facts upon which court decisions are based, are given to aid in applying the common law rule.

Judicial decisions are cited freely and authors are cited on questions where reference to their works will verify, explain, or throw further light on the questions.

A proper application of the rules of procedure stated in this book will eliminate confusion, controversy and litigation and make public bodies more pleasant to take part in and more efficient in their work.

A modern, authoritative reference book which covers in compact form the fundamentals of parliamentary procedure as they relate to private voluntary associations is the "Sturgis Standard Code of Parliamentary Procedure" by Alice Sturgis. This book makes a useful companion volume for the "Manual of Legislative Procedure."

PAUL MASON



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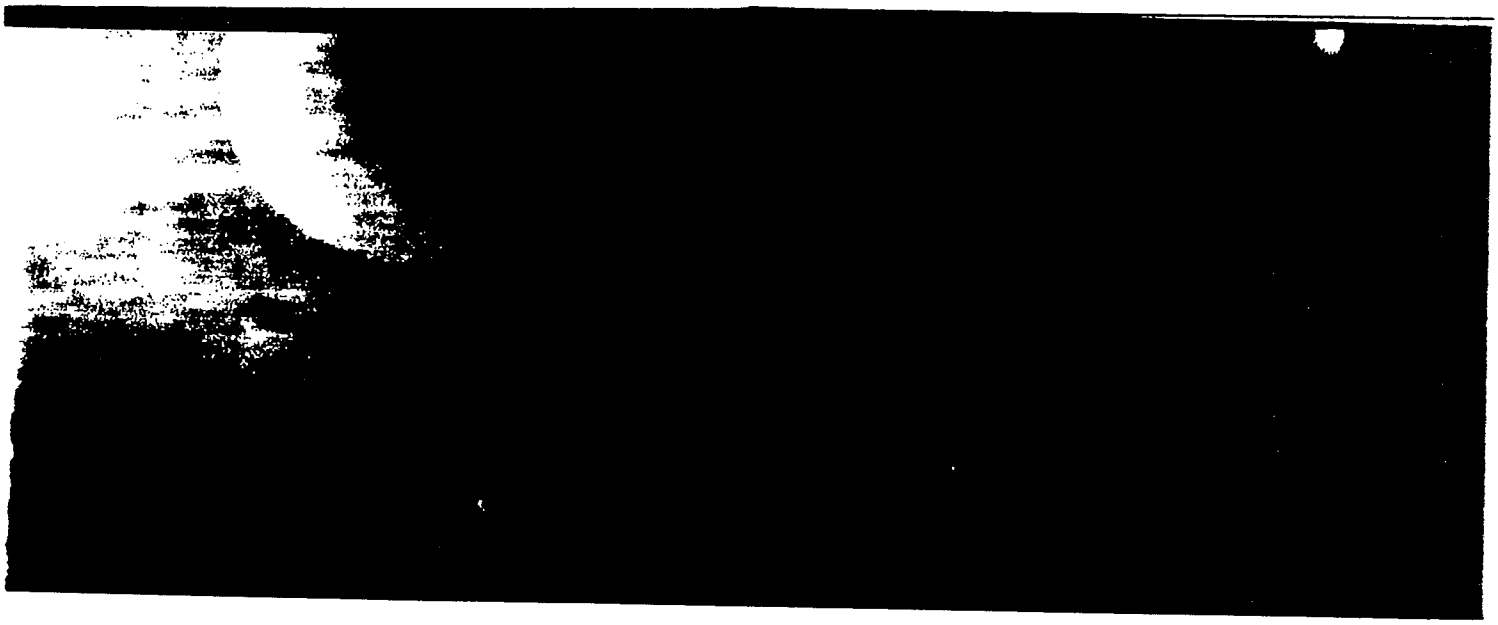

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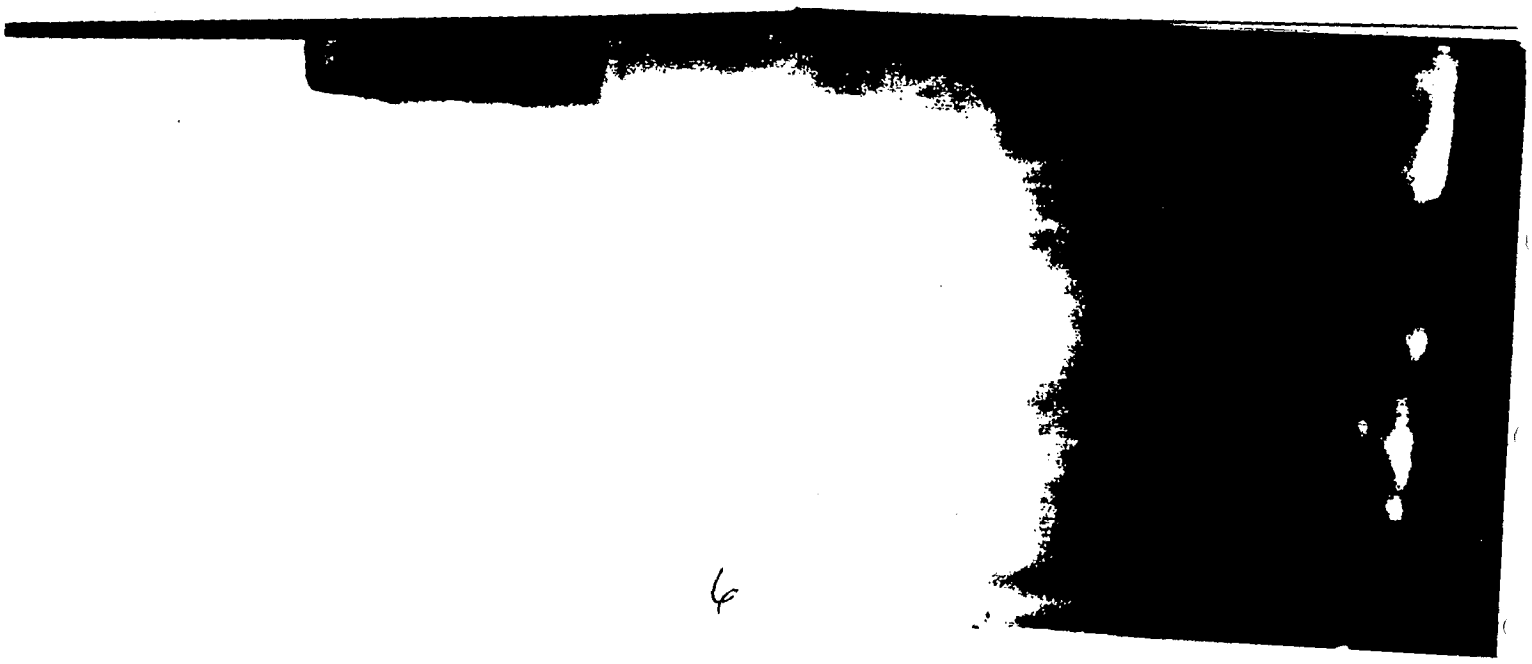

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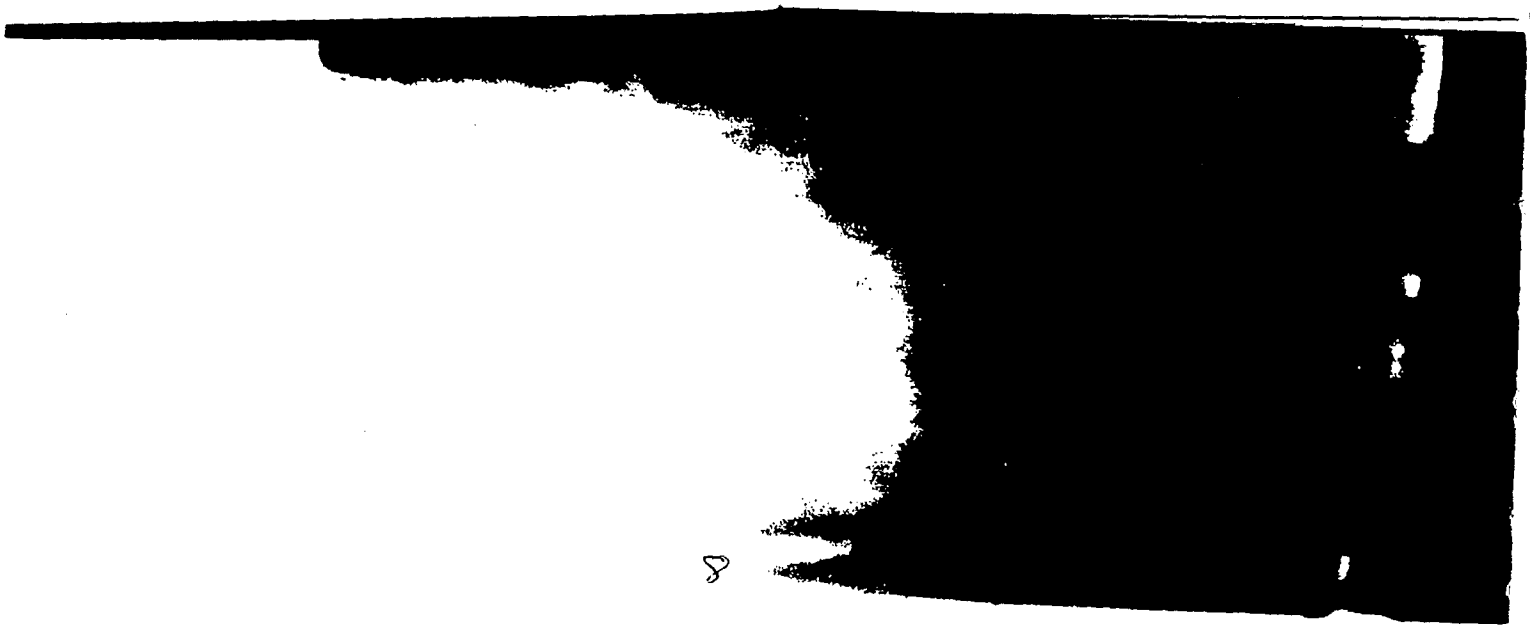

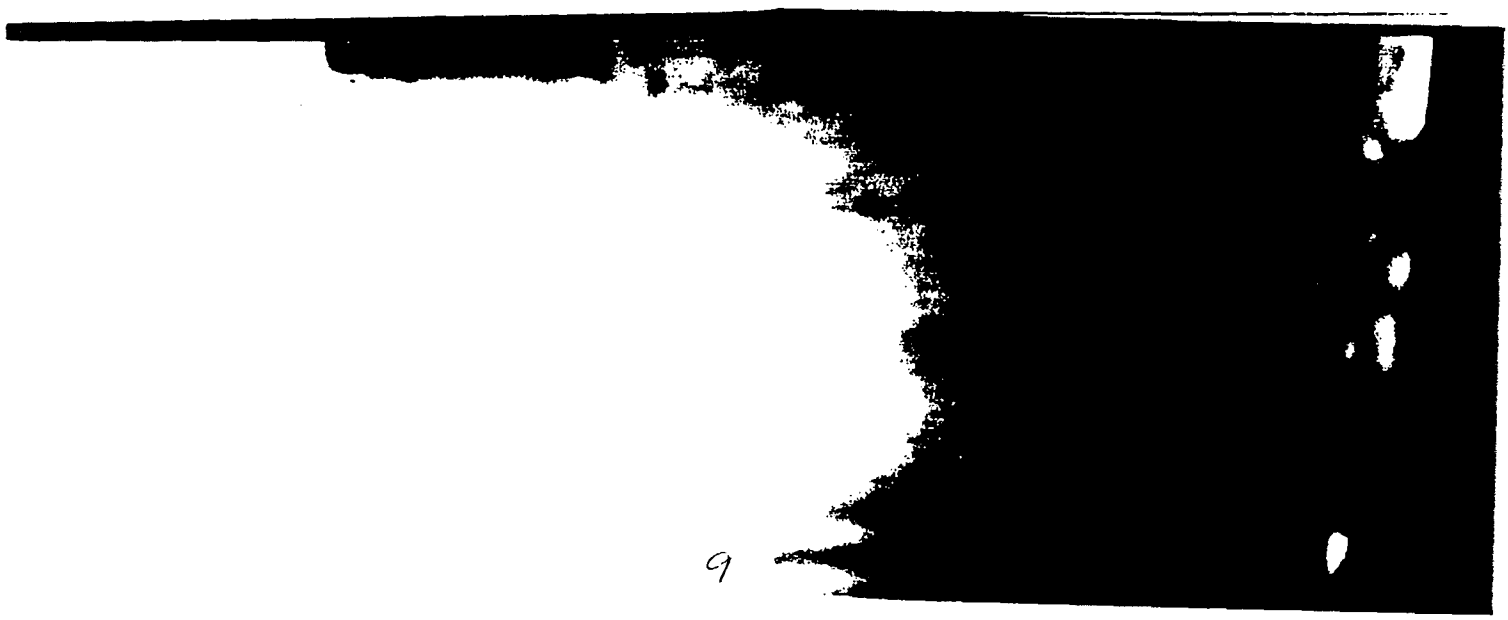

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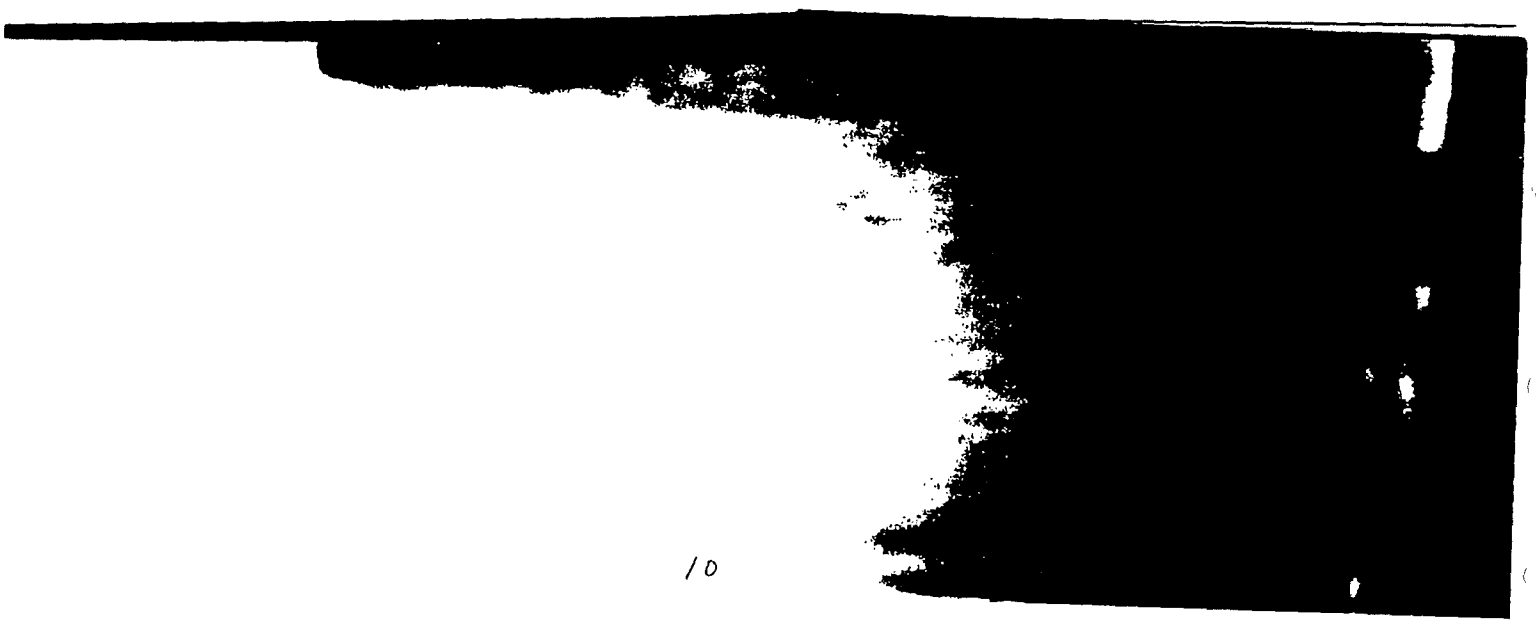

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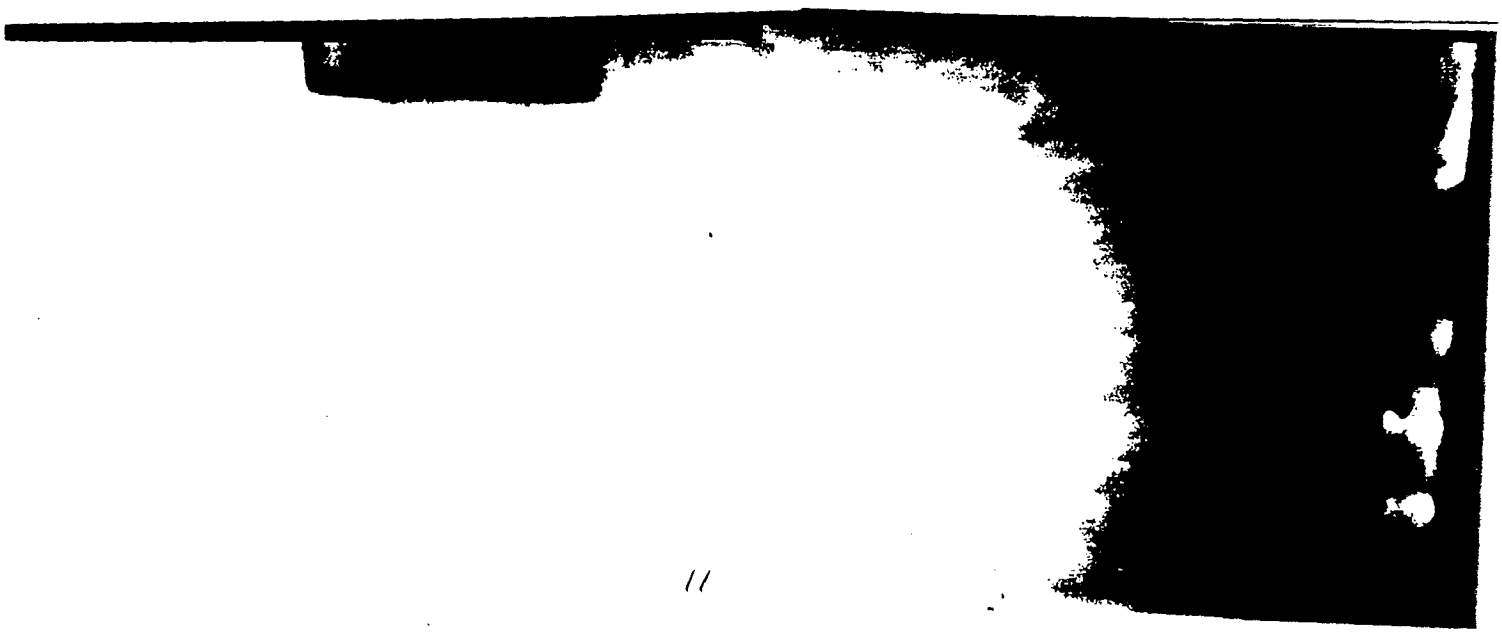


CITATIONS

For convenience, citations occurring frequently in this volume have been reduced to the briefest form. These citations and the volumes to which they refer are as follows:

Jefferson—Jefferson's Manual, 1781. (Printed with the rules of the Houses of Congress.)

Cushing's. Legislative Assemblies—Law and Practice of Legislative Assemblies by L. S. Cushing, 1856 (usually available in printing of 1874).

Sturgis—Sturgis Standard Code of Parliamentary Procedure, McGraw-Hill Book Co., 1951.

Hatsell—Precedents of Proceedings in the House of Commons, 1746.

Hughes—Hughes' American Parliamentary Guide, revised, 1926.

Cushing—Cushing's Manual of Parliamentary Practice. (Text unchanged in editions from 1907 to 1947 inclusive.)

Reed—Reed's Parliamentary Rules, 1894.

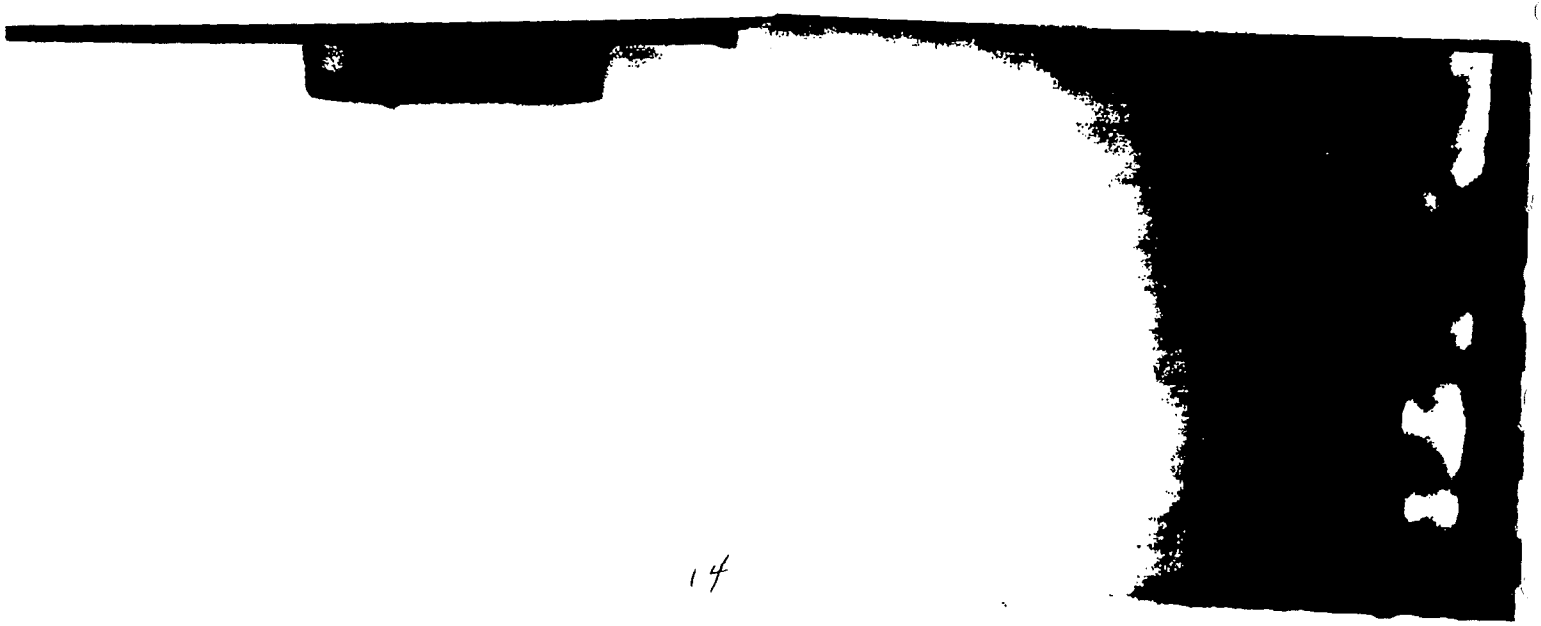
Waples—Waples Handbook on Parliamentary Practice, 1883.

N. Y. Manual—Clerk's Manual, State of New York, 1936 unless a later date is stated.

Mass. Manual—Manual of the General Court of Massachusetts, 1947-48.

Tilson—Parliamentary Law and Procedure, 1935, by John Q. Tilson.

U. S. House Rule—Rules of the United States House of Representatives as printed in the House Manual.



PART I

PARLIAMENTARY LAW AND RULES

CHAPTER 1

RULES GOVERNING PROCEDURE*

Sec. 1. Necessity for Rules of Procedure

1. It is necessary that every deliberative body be governed by rules of procedure in order that the will of a majority of its members may be determined and revealed in an orderly manner.

2. Any legislative body or administrative board must have rules to promote the orderly and businesslike con-

* NOTE CONCERNING CITATIONS: A brief statement by Jefferson in the introduction to his manual describes the use of citations so accurately that it is repeated here as better stating the use of citations in this volume than could be stated by the author.

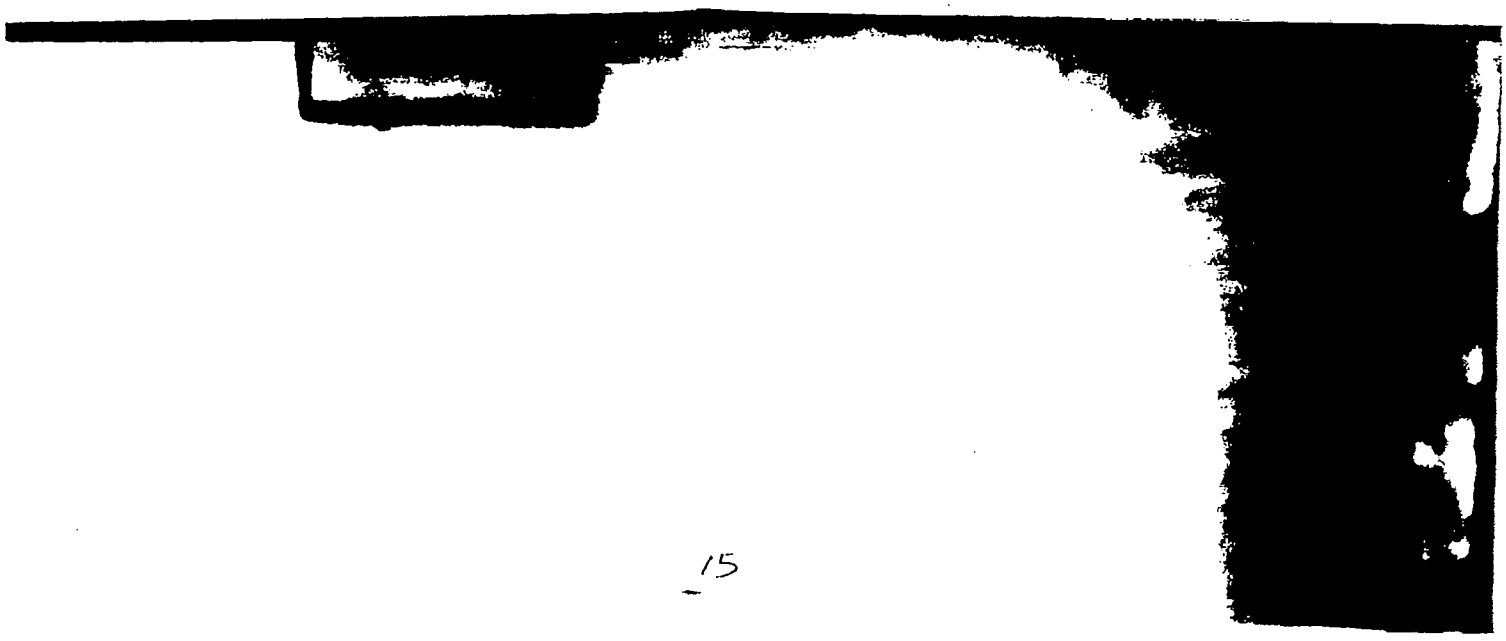
"I could not doubt the necessity of quoting the sources of my information *.* *sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of text, the residue being inferred from known rules and principles. For some of the more familiar forms no written authority is or can be cited, no writer having presumed it necessary to repeat what all are presumed to know. The statement of these must rest on their own notoriety."

As far as feasible the text has been organized to facilitate the citation of authority. In order to leave the text unbroken the citations are carried as footnotes with references to sections and paragraphs.

Section 1—

Paragraph 1—

Cushing's Legislative Assemblies, Sec. 498; French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031; People v. Strohm (1918), 285 Ill. 580, 121 N.E. 223; Landes v. State (1903), 160 Ind. 479, 67 N.E. 189; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Nevins v. Springfield (1917), 227 Mass. 538, 116 N.E. 881; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134; Sedalia v. Gilsonite Const. Co. (1904), 109 Mo. App. 197, 88 S.W. 1014; State v. Dunn (1906), 76 Neb. 155, 107 N.W. 236; Wise v. Bigger (1884), 79 Va. 269; Taylor City Ct. v. Grafton (1915), 77 W. Va. 84, 86 S.E. 924.



sideration of the questions which come before it for determination. These rules determine the priority and manner of consideration of questions and provide an orderly and methodical plan so that all business may receive proper consideration. Thus confusion and waste of time and effort are eliminated.

3. Rules of procedure fulfill another purpose in protecting the rights of members. Individual members, for example, are entitled to receive notices of meetings and to the opportunity to attend and to participate in the deliberations of the group. Minorities often require protection from unfair treatment on the part of the majority, and even the majority is entitled to protection from obstructive tactics on the part of minorities.

4. Many rules of procedure are based upon fundamental rights such as the decision by the majority, but some rules are necessary only to avoid confusion by designating one course of procedure when more than one course might otherwise be followed. In some instances, as pointed out by Jefferson quoting earlier authority, it may be as important that there be a rule as what the rule is.

5. The great purpose of all rules and forms, says Cushing, is to subserve the will of the assembly rather than to restrain it; to facilitate and not to obstruct the expression of its deliberate sense.

Sec. 2. Right to Regulate Procedure

1. Every governmental body has an inherent right to regulate its own procedure subject to provisions of the

Section 1—Continued
Paragraph 4—
Jefferson, Sec. I.
Paragraph 5—
Cushing's Legislative Assemblies, p. 990.

constitution, statutes, charters or other controlling authority.

2. A house of a state legislature has complete authority concerning its procedure so far as it is not limited by constitutional provisions. In addition to this inherent power most state constitutions contain substantially the provision that "each house shall determine the rule of its proceeding."

3. The constitutional right of a state legislature to control its own procedure cannot be withdrawn or restricted by statute, but statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution.

4. State legislatures and other bodies created by constitutional provision are controlled in their procedure by any provision of the constitution which directly, or by

Section 2—
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 792 and the following provisions of state constitutions: Ala. IV, 53; Ariz. IV, 8; Ark. V, 12; Cal. IV, 9; Colo. V, 12; Conn. III, 8; Del. II, 9; Fla. III, 6; Ga. III, Sec. VII, 1; Idaho III, 9; Ill. IV, 9; Ind. IV, 10; Iowa III, 9; Kan. II, 8; Ky. 39; La. III, 10; Me. IV, Pt. III, 4; Md. III, 19; Mass. Pt. II, Ch. 1, Sec. II, 7, Sec. III, 10; Mich. V, 15; Minn. IV, 4; Miss. IV, 55; Mo. IV, 17; Mont. V, 11; Neb. III, 10; Nev. IV, 6; N. H. II, 21, 36; N. J. IV, Sec. IV, 3; N. M. IV, 11; N. Y. III, 10; N. D. II, 48; Ohio II, 8; Okla. V, 30; Ore. IV, 11; Pa. II, 10; R. I. IV, 7; S. C. III, 12; S. D. III, 9; Tenn. II, 12; Tex. III, 11; Utah VI, 12; Vt. II, 19; Va. IV, 47; Wash. II, 9; W. Va. VI, 24; Wis. IV, 8; Wyo. III, 12.
Paragraph 3—
Goodwin v. State Board of Administration (1925), 210 Ala. 453, 102 So. 716.
Paragraph 4—
Cushing's Legislative Assemblies, Sec. 793; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134; Atkins v. Philips (1890), 28 Fla. 281, 8 So. 429; Wheeler v. Commission (1895), 89 Ky. 59, 32 S.W. 259; Boyd v. Chicago etc. R. R. Co. (1902), 103 Ill. App. 199.

necessary implication, governs their procedure. The procedure of local legislative and administrative bodies created by statutes may be controlled by statutory provisions. Constitutions, statutes or charters often authorize the bodies whose procedure they regulate to establish their own rules of procedure.

5. In general, state legislatures are governed in accordance with the recognized principles of parliamentary law subject to any special provisions of the state constitutions, and any rules adopted by the body. Local legislative bodies are governed by parliamentary law subject to any applicable constitutional, statutory or charter provisions and their own adopted rules.

Sec. 3. Sources of Rules of Procedure

1. Rules of legislative procedure are derived from several sources. The principal sources are as follows:

a. Constitutional rules.
b. Statutory rules or charter provisions.
c. Adopted rules.
d. Judicial decisions.
e. Adopted parliamentary authority.
f. Parliamentary law.
g. Customs and usages.

2. The rules from the different sources take precedence in the order listed above except that judicial decisions, since they are interpretations of rules from one of the other sources, take the same precedence as the source interpreted. Thus, for example, an interpretation of a constitutional provision takes precedence over a statute.

Section 2—Continued
Paragraph 5—
Werts v. Rogers (1894), 56 N. J. L. 480, 28 Atl. 726; Hodges v. Keel (1913), 108 Ark. 84, 159 S.W. 21.

3. Whenever there is conflict between rules from these sources the rule from the source listed earlier prevails over the rule from the source listed later. Thus, where the constitution requires three readings of bills, this provision controls over any provision of statute, adopted rules, adopted manual, or of parliamentary law, and a rule of parliamentary law controls over a local usage but must give way to any rule from a higher source of authority.

CHAPTER 2

CONSTITUTIONAL RULES GOVERNING PROCEDURE

Sec. 6. Legislative Procedure Is Controlled by Constitutional Provisions

1. The constitutional rules are those contained in the state constitutions. These rules usually provide that each house of the legislature shall determine the rules of its proceedings; that each house shall judge the qualifications, election and returns of members; that each house may choose its officers; that a majority of the house shall constitute a quorum; that each house may discipline or expel members, and shall keep a journal.

2. Occasionally some rule of procedure will be found in a state constitution governing a constitutional board or commission, but usually procedure of such bodies is regulated by statute as its highest authority.

3. In the case of local legislative and administrative bodies, the charters, statutes creating or regulating them, or even the state constitution, may contain provisions which restrict or regulate their procedure in certain particulars, such as quorum, vote required, time and place of meeting, and like provisions.

4. Rarely is the procedure of state or local boards and commissions regulated at all by constitutions except as to the general rights of persons which are guaranteed by the constitution.

5. A constitutional provision regulating procedure controls over all other rules of procedure.

Sec. 7. Constitutional Requirements Concerning Procedure Must Be Complied With

See also Chapter 65, Secs. 694-702, Journal and Records.

1. Being organic in character, constitutional provisions stand on a higher plane than statutes and, as a rule, are mandatory. Constitutional provisions prescribing exact or exclusive time or methods for certain acts are mandatory and must be complied with. Constitutional provisions which are general in nature and not exclusive may be directory. Example of mandatory and directory provisions are given below.

2. If Congress or a state legislature violates a constitutional requirement the courts will declare its enactment void.

3. Where the constitution requires that the ballots for senators and representatives shall be counted by the moderator, such provision is mandatory.

4. Where there is no constitutional provision requiring that a legislature read a bill on three several days, a law to that effect is directory only, and an act passed without complying with the statute is not invalidated thereby.

5. A provision for recording the ayes and nays on the passage of a bill may be directory only and not mandatory.

Section 7—
Paragraph 1—
Capito v. Topping (1909), 65 W. Va. 587, 64 S.E. 845.
Paragraph 2—
State v. Alt (1887), 26 Mo. App. 673.
Paragraph 3—
Petition of Knowles (1897), 25 R. I. 522, 57 Atl. 303.
Paragraph 4—
Capito v. Topping (1909), 65 W. Va. 587, 64 S.E. 845; Schweitzer v. Territory (1897), 5 Okla. 297, 47 Pac. 1094.
Paragraph 5—
People v. Chenango (1853), 8 N. Y. 317.

CHAPTER 3

STATUTORY RULES GOVERNING PROCEDURE

Sec. 10. Statutory Rules

1. It is usual for the form, organization and some of the more fundamental rules of procedure of municipal corporations and local bodies to be controlled by statutes.

2. When these statutes contain mandatory provisions they must be complied with to give validity to the actions of the bodies. These statutes define jurisdiction and may prescribe rules governing meetings, notices, readings of ordinances, quorum and votes required for certain actions and other similar matters.

3. These statutory rules are often interpreted and applied by the courts.

4. When a city council or other local legislative body violates or disregards its charter or a law regulating its procedure the courts will declare its enactments void.

Sec. 11. Failure to Conform to Statutory Rules Invalidates Acts

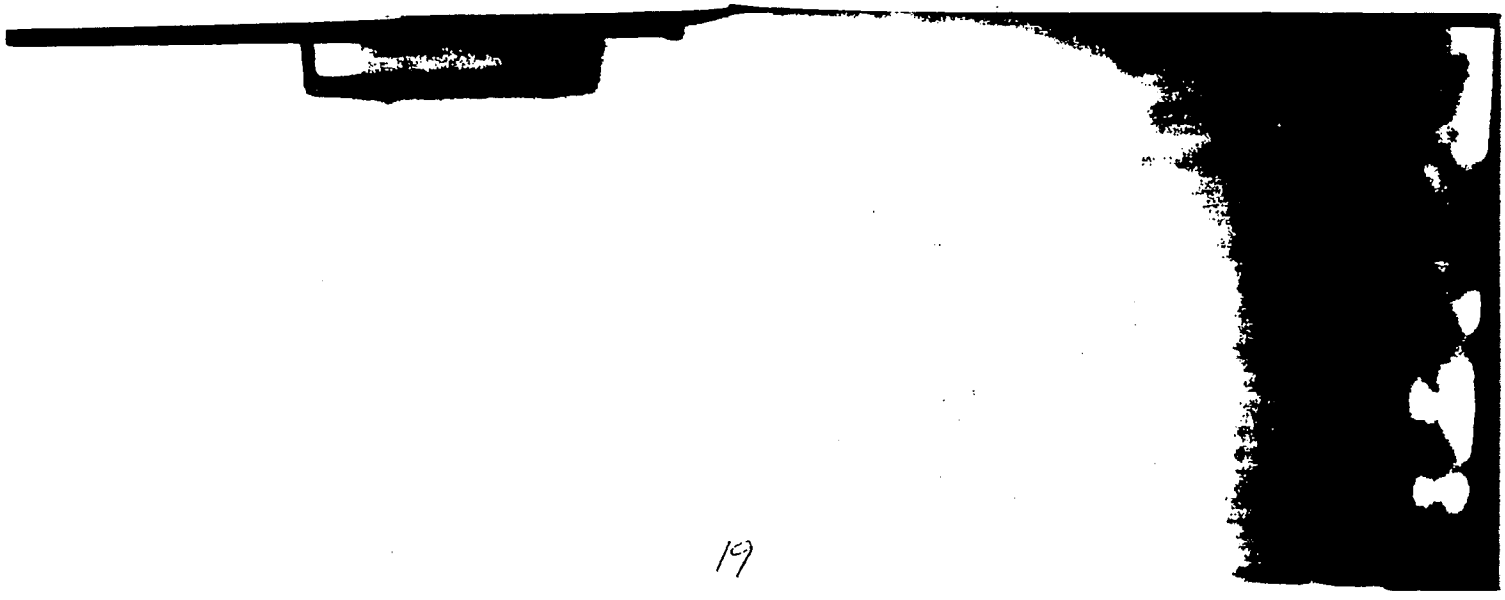
1. When there is a limit imposed on the powers of a local body it must conform to those limits. For example, a county is a political subdivision of the state and a quasi corporation performing in part the duties of the state as an auxiliary to the government and as a trustee for the

Section 10—
Paragraph 4—
State v. Alt (1887), 26 Mo. App. 673.
Section 11—
Paragraph 1—
Hannibal v. Marion Co. (1865), 36 Mo. 294. (This case has also been cited as Marion R. R. Co. v. Marion Co.)

people. It must act strictly within the limits of the powers conferred upon it by the authority creating it.

2. The courts will not invalidate an order enacted by a local legislative body in disregard of a parliamentary usage if the procedure complied with mandatory requirements of applicable statutes.

Section 11—Continued
Paragraph 2—
Georgia Power Company v. Baumann (1930), 169 Ga. 649, 151 S.E. 513.



CHAPTER 4

CHARTER PROVISIONS GOVERNING PROCEDURE

Sec. 15. Charter Requirements Must Be Complied With

1. Charter requirements prescribing the method to be pursued by a municipal body are mandatory, and, unless complied with, any attempted exercise of power is void.

2. If a charter points out a particular way any act is to be done, or in which an officer is to be elected, then, unless those forms are pursued in the doing of any act or in the electing of an officer, the act or the election is not lawful.

3. Where, for example, a charter directs that persons interested in a matter shall be heard before the council, the council cannot require that any objections be submitted in writing.

Section 15—
Paragraph 2—
Memphis Street Ry. Co. v. Rapid Transit Co. (1917), 138 Tenn. 594, 198 S.W. 890; State v. City of Nashville (1933), 166 Tenn. 191, 60 S.W. 2d 161; Rutherford v. City of Nashville (1935), 168 Tenn. 499, 79 S.W. 2d 581; Farrell v. City of Bridgeport (1877), 45 Conn. 191; Johnson v. Allis (1898), 71 Conn. 217, 41 Atl. 816; City of New Haven v. Whitney (1870), 36 Conn. 373; District of Columbia v. Bailey (1898), 18 Sup. Ct. 868; State v. Lasher (1899), 71 Conn. 540, 42 Atl. 636.
Paragraph 3—
State v. Jersey City (1855), 25 N. J. (1 Dutcher) 309.

CHAPTER 5

ADOPTED RULES GOVERNING PROCEDURE

See also Chapter 29, Secs. 279-287, Suspension of Rules.

Sec. 19. Right to Adopt Rules

1. A legislative or other governmental body has the right to adopt rules of procedure.

2. It is customary for every legislative body to adopt rules which provide for its organization, for its officers and committees, and special rules of procedure. In practice, most of the rules relating to procedure are based upon general parliamentary law, but they may also contain special rules of procedure applicable to the body which deviate from parliamentary law.

3. The power of each house of a state legislature to make its own rules is subordinate to the rules contained in the constitution.

4. A board of county commissioners has the power to make reasonable rules and regulations for the government of its proceedings.

Section 19—
Paragraph 1—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 306-313; Hughes, Sec. 5; Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433.
Paragraph 3—
Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433.
Paragraph 4—
Higgins v. Curtis (1888), 39 Kan. 283, 18 Pac. 207.

5. A city council, village board of trustees or other local body may determine its own rules of procedure in the adoption of ordinances, subject to the statutory requirements.

6. When a statute provides that ordinances of a local legislative body require a two-thirds vote, this requirement does not apply to the adoption of rules of procedure.

Sec. 20. Joint Rules

1. With few exceptions, state legislatures adopt joint rules which govern relations between the houses and other matters in which the houses have joint interests. The adoption of joint rules by a legislature is not incompatible with the constitutional provision providing that each house shall determine the rules of its procedure, nor does this rule preclude either house from adopting the same rules as the other.

Sec. 21. Rules Must Conform to Constitutional, Statutory and Charter Provisions

1. The right of any public body to determine its own rules of procedure must be exercised in conformity with existing laws.

Section 19—Continued
Paragraph 5—
People v. Strohm (1918), 285 Ill. 580, 121 N.E. 223; State v. Dunn (1906), 76 Neb. 155, 107 N.W. 236.
Paragraph 6—
Armitage v. Fisher (1893), 74 Hun. (N. Y.) 167, 26 N. Y. Supp. 364.
Section 20—
Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433, 40 A. L. R. 1052.
Section 21—
Paragraph 1—
Heiskell v. City Council of Baltimore (1886), 65 Md. 125, 4 Atl. 116.

2. A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution or statutes governing it, and it cannot do by indirection what it cannot do directly.

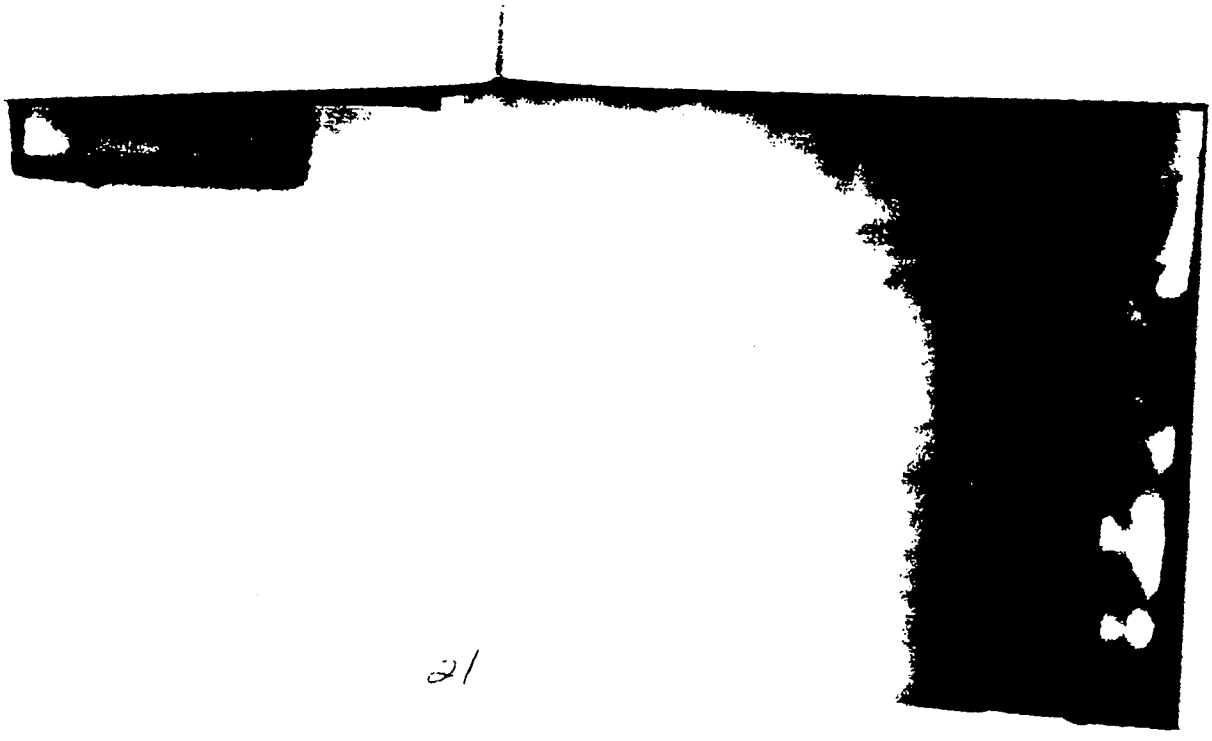
3. A provision in a city charter authorizing a board of education to enact rules for the conduct of its proceedings does not empower it to change the rule in the charter that a majority of its members shall constitute a quorum and that a majority of those present at a meeting may transact business.

4. When standing rules are adopted by ordinance under the express authority of the charter the rules are as binding upon the council as a statute.

5. A third party cannot object to a breach of parliamentary rules. The members of the body alone have that right.

6. When a city council resolves that the rules of the prior council be adopted until a committee reports rules,

Section 21—Continued
Paragraph 2—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963; Canfield v. Gresham (1891), 82 Tex. 10, 17 S.W. 390; Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433; Brennan v. Connolly (1919), 207 Mich. 35, 173 N.W. 511.
Paragraph 3—
Malloy v. Board of Education (1894), 102 Cal. 642, 36 Pac. 948.
Paragraph 4—
Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 250.
Paragraph 5—
People v. Common Council, City of Rochester (1871), 5 N. Y. (Lans.) 11; Corre v. State (1881), 8 Ohio Dec. (Reprint) 715.
Paragraph 6—
Armitage v. Fisher (1893), 74 Hun. (N. Y.) 167, 26 N. Y. Supp. 364.



the prior rules cease to be in force on the report of the committee.

7. Rules adopted by a state legislature expire at the end of the session at which they were adopted.

Sec. 22. Right to Change Rules

See also Secs. 24 and 25.

1. All legislative or governmental bodies have power to abolish, modify or waive their own rules of procedure.

2. A majority does not have power to make a rule which cannot be modified or repealed by a majority. If a majority of an official public body has authority in the first instance to pass a rule, it has authority to annul or repeal the same rule. Rules which can be adopted by a majority vote can be repealed or annulled by the same vote, even a rule which provides that no rule can be repealed or amended without a vote greater than a majority.

3. The power of a house of a legislature to determine its rules of proceedings is a continuous power. It can always be exercised by the house and is absolute and beyond the challenge of any other body or tribunal if the rule does not ignore constitutional restraints or violate fundamental rights.

Section 21—Continued
Paragraph 7—
Cushing's Legislative Assemblies, Sec. 792.

Section 22—
Paragraph 1—
Chandler v. Lawrence (1880), 128 Mass. 213; Rutherford v. City of Nashville (1935), 168 Tenn. 499, 79 S.W. 2d 581; Holt v. Somerville (1879), 127 Mass. 408.

Paragraph 2—
State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304; Richardson v. Union Congressional Society (1877), 58 N. H. 187.

Paragraph 3—
State v. Lewis (1936), 181 S. C. 10, 186 S.E. 625.

4. A legislative house cannot tie its own hands by establishing unchangeable rules. It may adopt and change procedure at any time and with no other notice than the rules may require.

5. Rules of procedure passed by one legislature are not binding on a subsequent legislature operating within the same jurisdiction.

6. No meeting of a legislative body can bind a subsequent one by irrepealable acts or rules of procedure. The power to enact is the power to repeal. A by-law or rule requiring a two-thirds vote to alter or amend the acts of the body, may itself be altered, amended, or repealed by the same power that enacted it.

7. Though the temporary rules of a prior council provided that an amendment could not be made except by a two-thirds vote, new rules could be adopted by a majority vote.

Sec. 23. Rules Can Be Suspended

See also Chapter 29, Secs. 279-287, Suspension of Rules.

1. The rules of the individual houses of the legislature are under their own control and may be suspended when-

Section 22—Continued
Paragraph 4—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031, 69 L. R. A. 556.

Paragraph 5—
Georgia Power Company v. Baumann (1930), 169 Ga. 649, 151 S.E. 513.

Paragraph 6—
Commonwealth v. Mayor of Lancaster (1836), 5 Watts (Pa.) 152; Wardens of Christ Church v. Pope (1857), 8 Gray (Mass.) 140; Richardson v. Union Congregational Society (1877), 58 N. H. 187.

Paragraph 7—
Armitage v. Fisher (1893), 74 Hun. (N. Y.) 167, 26 N. Y. Supp. 364.

ever, in the judgment of that body, suspension is required. This does not apply to rules of procedure imposed by the constitution.

2. The rules of a city council, adopted by it under authority to make rules to govern its own proceedings, and which were not imposed upon it by superior authority can be suspended by the council.

3. A legislative or administrative body, during the same sitting, may treat proceedings already taken as irregular or may, unless some rights of a third person intervene, reconsider the action taken.

4. The purpose of rules is to aid a body to perform its duties more efficiently and with fairness to its members. Whenever the rules fail to serve this purpose and are not required by the constitution or other controlling authority the rules may be suspended. Rules often require more than a majority vote for their suspension.

Sec. 24. Failure of a House of the Legislature to Conform to Its Rules Does Not Invalidate Its Acts

See also Sec. 73, Powers of Courts Over Legislative Bodies.

1. Violation of rules of procedure adopted by a house of the legislature for its own convenience and not required by the constitution will not impair the validity of a statute.

Section 23—
Paragraph 1—
State v. Brown (1890), 35 S. C. 151, 11 S.E. 641.
Paragraph 2—
Greeley v. Hamman (1891), 17 Colo. 30, 28 Pac. 460.
Paragraph 3—
Mansfield v. O'Brien (1930), 271 Mass. 515, 171 N.E. 487.
Section 24—
Paragraph 1—
Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433; Goodwin v. State Board of Administration (1925), 210 Ala. 453, 102 So. 718; State v. Alt (1887), 26 Mo. App. 673.

2. A legislative body having the right to do an a must be allowed to select the means of accomplishing suc act within reasonable bounds.

3. A rule is virtually repealed for the occasion whe it is disregarded by those who have power to control i and the act of breaking it is at least a suspension of i The body at its preceding meetings does not have th power to bind its successors or to put shackles on it tha might be cast off only in a particular way.

4. Under a constitutional provision declaring that eac house of the legislature shall determine the rules of i own proceedings, the fact that a house acted in violatio of its own rules or in violation of parliamentary law in matter clearly within its power does not make its actio subject to review by the courts.

Sec. 25. Failure of a Local Body to Conform to I Rules Does Not Invalidate Its Acts

See also Sec. 73, Powers of Courts Over Legislative Bodies.

1. Where a city council adopts rules for its parli mentary government, the fact that it violates one of th

Section 24—Continued
Paragraph 2—
Attorney General v. Brissenden (1930), 271 Mass. 172, 1 N.E. 82.
Paragraph 3—
Commonwealth v. Lancaster (1836), 5 Watts (Pa.) 152.
Paragraph 4—
State v. New London Savings Bank (1906), 79 Conn. 141, Atl. 5.
Section 25—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 790, 793, 794; I parte Mayor of Albany (1840), 23 Wend. (N. Y.) 27 McGraw v. Whitson (1886), 69 Iowa 348, 28 N.W. 63 Madden v. Smeltz (1887), 2 Ohio Cir. 168; Georgia Pow Co. v. Baumann (1930), 169 Ga. 649, 151 S.E. 513; Ma v. Le Mars (1899), 109 Iowa 244, 80 N.W. 327; Sedalia

rules does not invalidate an ordinance passed in compliance with the statute. A city council can waive its own rules by failure to comply with them.

2. When a city council or local legislative body disregards or violates its own rules of procedure the courts will not declare its enactments void.

3. When a city council has taken an action, such as electing a city officer, and there were irregularities, the courts will sustain the action of the majority unless the irregularity made doubtful the expression of the will of the body.

4. An action of an administrative board taken in violation of its own rules of procedure is not invalidated thereby.

5. When a body may make its own rules it may, during an election where there are more than two candidates, order the name of the candidate receiving the fewest votes to be dropped from the list of candidates following each ballot, until one receives a majority vote and is elected.

Section 25—Continued
Paragraph 1—Continued
Scott (1904), 104 Mo. App. 595, 78 S.W. 276; Sedalia v. Gilsonite Const. Co. (also cited as Sedalia v. Montgomery) (1904), 109 Mo. App. 197, 88 S.W. 1014; State v. Dunn (1906), 76 Neb. 155, 107 N.W. 236.

But see State v. Board of Education of Cleveland (1887), 2 Ohio Cir. 510, and Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 250.

Paragraph 2—
State v. Alt (1887), 26 Mo. App. 673.

Paragraph 3—
Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315.

Paragraph 4—
Maryland Casualty Co. v. Industrial Accident Commission (1918), 178 Cal. 49, 173 Pac. 993.

Paragraph 5—
Wheeler v. Commonwealth (1895), 89 Ky. 59, 32 S.W. 259.

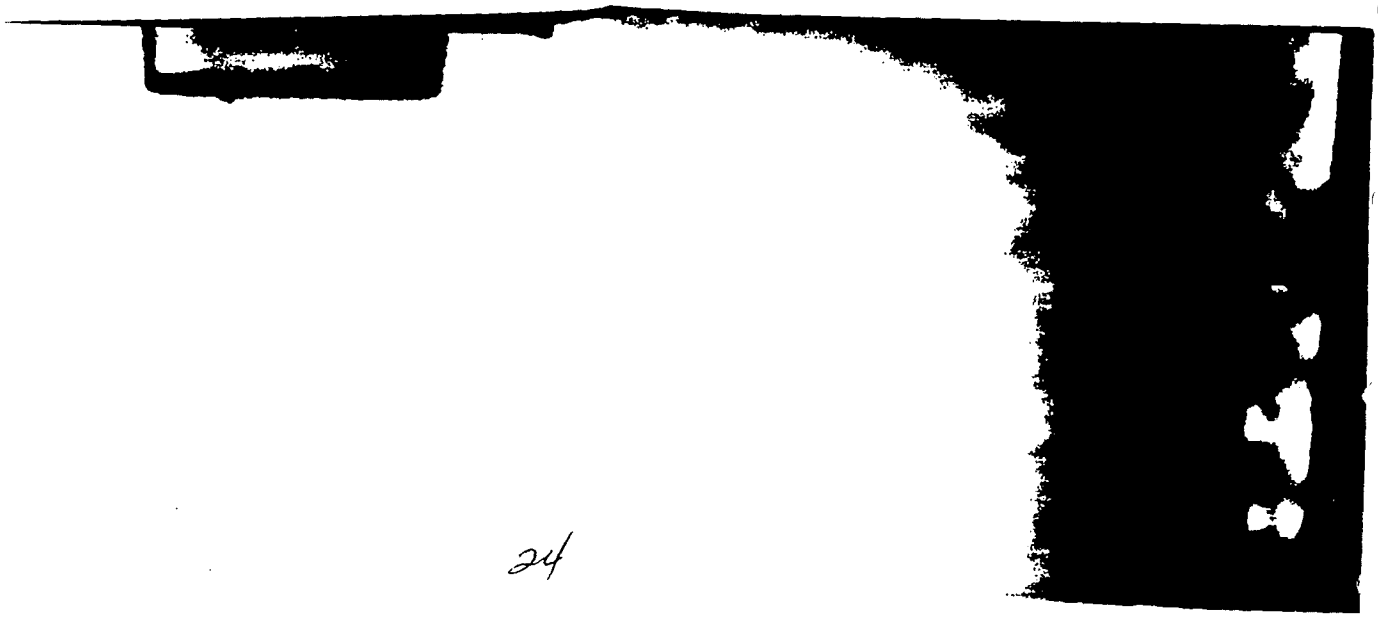
6. A rule of a city council requiring two readings of ordinances on separate days is waived by failure to comply with it.

Sec. 26. Fraud Will Invalidate Acts

1. Where there is more than a mere technical violation of the rules of procedure the violation may invalidate the act, and an act will be invalidated where there is fraud or bad faith.

Section 25—Continued
Paragraph 6—
Bennett v. New Bedford (1872), 110 Mass. 433.

Section 26—
Robinson v. Nick (1940), 235 Mo. App. 461, 136 S.W. 2d 374.



CHAPTER 6

ADOPTED PARLIAMENTARY AUTHORITY

Sec. 30. Parliamentary Authority Is Usually Adopted

1. Most legislative and administrative bodies adopt a manual of legislative procedure as the authority to apply in all cases not governed by constitutional provisions, statutes or charters or legislative rules.

Sec. 31. What Parliamentary Authority Contains

1. Such a manual is a compilation of the usages and precedents of legislative bodies, usually stated in the form of rules, and arranged for convenient reference. The principal advantage of adopting a manual is to make available to the presiding officer and members a statement, in concise form, of the rules of legislative procedure, including rules based upon established customs and usages which could be found only on the most exhaustive research, except in a manual. A further advantage is that the manual, when adopted by the body, eliminates uncertainties resulting from conflicting precedents.

2. A manual manifestly can state only general rules. Any special rules desired by the body should be stated in the rules adopted by the body. These special rules supersede the rules stated in the manual where conflict may exist, leaving the manual to govern only when no special rules have been adopted.

Section 30—
Cushing's Legislative Assemblies, Sec. 798; Sturgis, pp. 90, 146; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.

Sec. 32. Effect of Adoption of Parliamentary Authority

1. When an organization, in its by-laws, adopts a speci fied manual for the government of its procedure and nc other provision is made on that subject in the by-laws, the manual specified controls the procedure of the organiza tion.

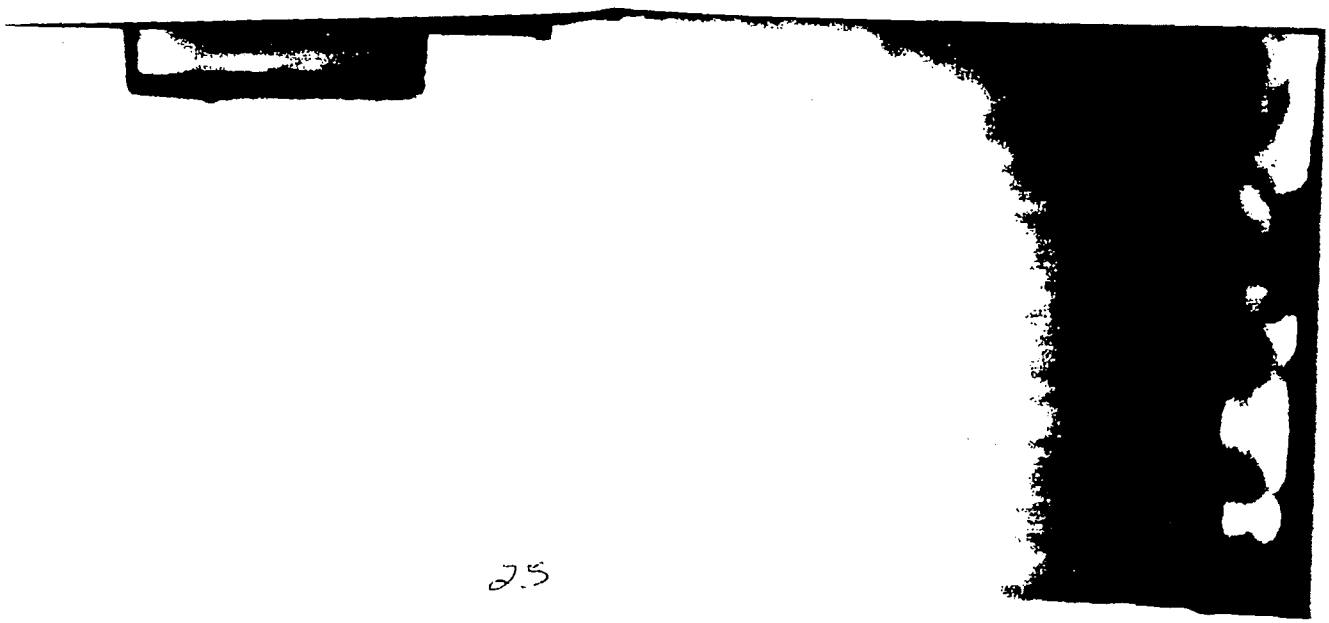
2. A legislative or administrative body which ha adopted a manual or parliamentary authority may abolish modify or waive the rules therein contained the same a its own adopted rules.

3. The rules of an adopted authority can be suspende the same as the rules of the body. A motion to "suspen the rules" for a certain purpose includes the rules in th adopted authority.

See cases holding that rules can be suspended or waived, cite under Secs. 23, 24 and 25 above.

4. An early case has held that when an authority ha once been adopted the rules stated in the authority can b suspended only as authorized therein. And where ther is no provision for suspension the unanimous vote of a members present would be required. This statement, a least insofar as it relates to official public bodies, is clearl not the law.

Section 32—
Paragraph 1—
People v. American Institute (1873), 44 How. Prac. 468 First Buckingham Community v. Malcolm (1941), 177 V 710, 15 S.E. 2d 54.
Paragraph 2—
Wheelock v. Lowell (1907), 196 Mass. 220, 81 N.E. 977.
Paragraph 3—
Sturgis, p. 219.
Paragraph 4—
State v. Board of Education of Cleveland (1887), 2 Ohio Ci 510.



CHAPTER 7

PARLIAMENTARY LAW

Sec. 35. Parliamentary Law Defined

1. Parliamentary law consists of the recognized rules, precedents and usages of legislative and administrative bodies by which their procedure is regulated. It is that system of rules and precedents which originated in the British Parliament and which has been developed by legislative or deliberative bodies in this and other countries.

2. Parliamentary law, like the common law, is an organized system of rules. It is built on precedents created by decisions on points of order or appeals, and by decisions of courts. It has been guided in its development by the authority to make rules inherent in every deliberative body.

Sec. 36. Parliamentary Law Not Determined by Any One Legislative Body

1. Parliamentary law is not determined by the procedure or rules of any single legislative body.

2. Parliamentary law as it is applied in this country today differs greatly from the practice of Parliament at the time deliberative bodies were established in America and also from the present practices of Parliament and of Congress.

3. Parliamentary law as it applies to deliberative bodies in America is not determined by the rules or practices of Congress or of the United States House of Representatives. The courts construe the acts of legislative bodies in accordance with general parliamentary law and not in accordance with the exceptional usages of the United States House of Representatives.

4. The procedure of the two houses of Congress differ greatly. The procedure of each house is largely determined by its own rules designed to meet its own peculiar needs. The rules are suited to very large bodies of professional legislators, meeting practically full time, dealing with large volumes of legislation and acting largely through committees. The procedure in Congress is ill-adapted to other legislative or administrative bodies.

5. The rules of parliamentary procedure applicable within a state are not controlled by the procedure in the state legislature. Even rules in the constitution governing the legislature do not apply to local bodies. For example, a requirement for three readings of bills in the legislature does not require three readings of municipal ordinances in that state.

Sec. 37. Parliamentary Law Governs When Other Rules Are Not in Effect

1. All matters of procedure not governed by constitutional provisions, adopted rules, including joint rules, or an adopted manual, are governed by the rules of the general parliamentary law. The rules constituting parlia-

Section 35—
Paragraph 1—
Bouvier's Law Dictionary; Landes v. State (1903), 160 Ind. 479, 67 N.E. 189.

Section 36—
Paragraph 3—
People v. Davis (1918), 284 Ill. 439, 120 N.E. 326.

Section 36—Continued
Paragraph 4—
Cannon, Clarence, Parliamentary Law—Encyclopaedia Britannica.

Paragraph 5—
Landes v. State (1903), 160 Ind. 479, 67 N.E. 189.

Section 37—
Paragraph 1—
Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.

mentary law having their foundation in convenience and necessity have been uniformly received and acted upon in this country as the governing authority. Parliamentary law has been universally acknowledged as controlling the procedure of legislative and other governmental bodies.

2. Under parliamentary law a legislative or administrative body, when established, becomes vested with all the powers and privileges necessary to a free and unrestricted exercise of its appropriate functions, except so far as it may be restrained by express constitutional provisions or laws made pursuant thereto.

3. When special rules of procedure have been adopted by a deliberative body, its procedure is controlled by such rules only insofar as they apply and otherwise it is governed by general parliamentary law.

4. The common parliamentary principles and rules may be resorted to in the absence of rules made by the organization itself in regulating its proceedings.

5. Where matters of procedure are not covered by by-laws or rules, the procedure should follow parliamentary principles. Gaps in the rules of procedure should be filled

Section 37—Continued
Paragraph 2—
Ex parte McCarthy (1866), 29 Cal. 395.
Paragraph 3—
Witherspoon v. State (1925), 138 Miss. 310, 103 So. 184.
Paragraph 4—
Ostrom v. Greene (1897), 45 N. Y. Supp. 852; Mixed Local Union etc. v. Hotel and Restaurant Employees (1942), 212 Minn. 587, 4 N.W. 2d 771; Marvin v. Manash (1944), 175 Ore. 311, 153 Pac. 2d 251.
Paragraph 5—
Mixed Local etc. v. Hotel and Restaurant Employees (1942), 212 Minn. 587, 4 N.W. 2d 771; Murdock v. Phillips Academy (1831), 12 Pick. (Mass.) 244; Ostrom v. Greene (1897), 45 N. Y. Supp. 852.

by the adoption of fair methods according to accepted parliamentary principles.

Sec. 38. Sources of Parliamentary Law

1. The parliamentary law is drawn mainly from five sources:

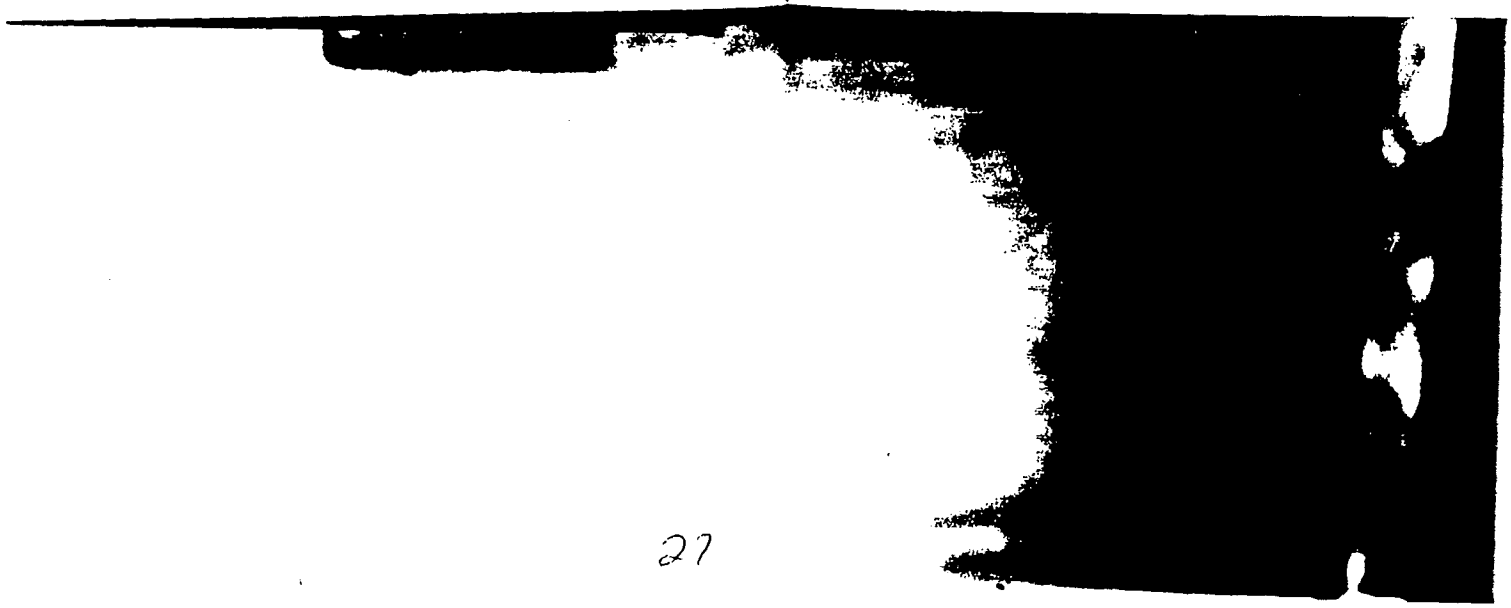
(a) Decisions of bodies on appeal.
(b) Decisions of presiding officers on points of order.
(c) Decisions of courts.
(d) Writings of authorities on parliamentary law.
(e) Customs and usages.

Sec. 39. Precedents and Usages

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

Section 39—
Paragraph 1—
Regina v. Paty, 2 Falk. (Canada) 503.
Paragraph 2—
Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.



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

Section 39—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 780.
Paragraph 4—
Cushing's Legislative Assemblies, Sec. 778.
Paragraph 5—
Cushing's Legislative Assemblies, Sec. 783; Wood v. Milton (1908), 197 Mass. 531, 84 N.E. 332.

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.

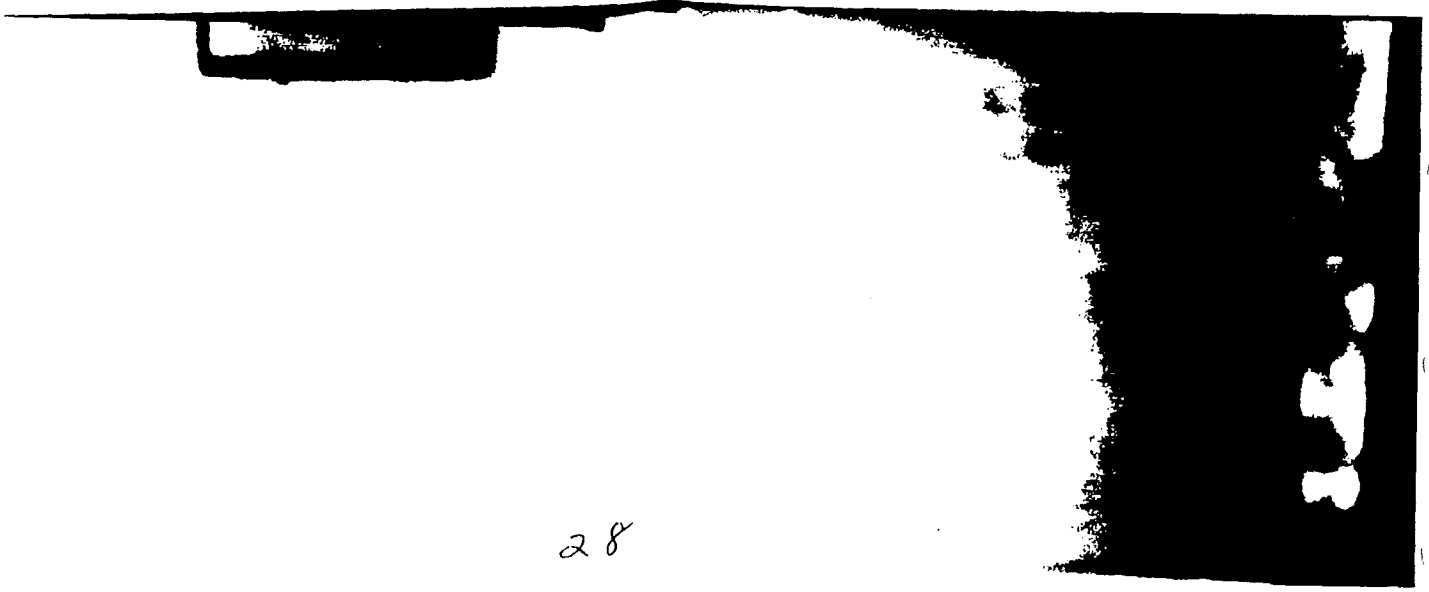
6. In the absence of rules, as immediately upon convening and before rules are adopted, the houses are governed by usages, custom and precedent, and by the general parliamentary law. The best evidence of what are the established usages and customs are the rules as last in effect.

Sec. 40. Local Bodies Not Held Strictly to Technical Rules

1. Technical rules should not be too rigorously applied to the action of administrative boards and commissions, but a proper regard for established rules of procedure will avoid trouble.

2. Strict parliamentary rules should not be applied to municipal bodies exercising legislative functions so as to overthrow its official actions on technical rules or strict construction of parliamentary law, even though the procedure has not been entirely regular.

Section 39—Continued
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 792; Hughes, Sec. 6.
Section 40—
Paragraph 1—
Strain v. Mims (1937), 123 Conn. 275, 193 Atl. 754.
Paragraph 2—
Whitney v. Village of Hudson (1888), 69 Mich. 189, 37 N.W. 184.



3. Town meetings, for example, are not held to the strict rules of legislative practice.

Section 40—Continued
Paragraph 3—
Wood v. Milton (1908), 197 Mass. 531, 84 N.E. 332.

CHAPTER 8

PRINCIPLES OF PARLIAMENTARY LAW

Sec. 44. Parliamentary Law Is a Branch of the Common Law

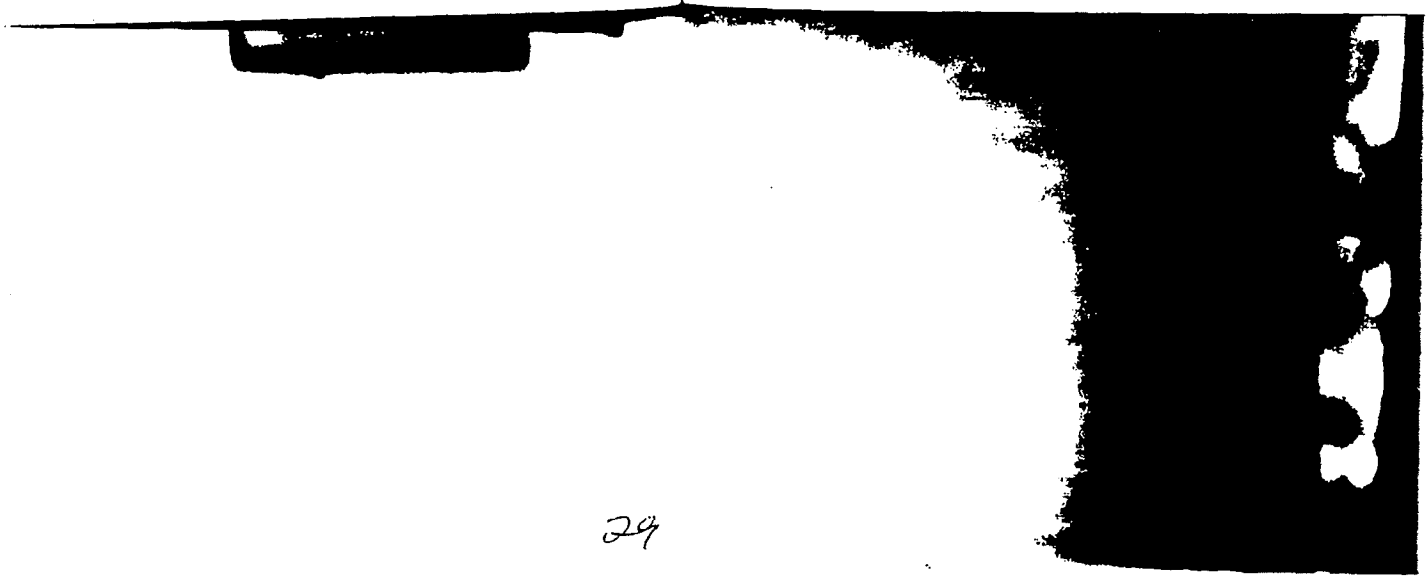
See Chapter 7, Secs. 35-40, Parliamentary Law.

1. Parliamentary law is a part of the common law. It developed in the same manner and is subject generally to the same rules. Parliamentary law developed precedent by precedent as decisions were made in legislative bodies and in courts in the same manner as common law developed through judicial precedents. Both have been guided in their development by the power of legislative bodies to make rules and to enact laws.

2. Parliamentary law differs somewhat from the other branches of common law in that it is based in an important measure upon precedents of legislative and administrative bodies. But particularly in America, where the courts have the power to make final decisions on all constitutional questions, the law has been evolving upon the basis of court decisions, and a considerable volume of judicial precedents has accumulated. The application of parliamentary rules to new situations is subject to the same rules of reasoning as the application of established common law rules to new legal situations.

Sec. 45. Parliamentary Law Is Based on Principles

1. Parliamentary law is a system of principles not a group of haphazard rules. It is based upon reason and was developed over a long period of time as individual questions were determined upon the best reasoning of the legislative bodies, of their presiding officers, and of the courts.



2. Individual rules should be interpreted in the light of basic principles. It is only as a part of a field of law that the true meaning of individual rules becomes clear.

3. With the principles in mind, the detailed rules will be easy to remember and easy to apply.

4. Ordinarily from a knowledge of the principles, the rules become evident. In any event the correctness of any rule should be checked against the principles, and if there is no conflict the rule cannot be far wrong.

Sec. 46. Differences Between Public Bodies and Private Organizations

1. Parliamentary law, while developed primarily in legislative bodies, applies to all groups of persons meeting as equals to study questions or make decisions.

2. There is a basic difference, however, in some phases of parliamentary law in its application to official public bodies and to private voluntary associations. In a public body the powers do not reside in the members themselves. Our state legislatures exercise the powers which are delegated to them by the people. County, city and township governments exercise, in general, powers delegated to them by the legislatures or by the people through their constitutions. In some instances powers may be granted to cities directly by the people of the cities through a system of home rule charters.

3. A public body, its organization or powers, cannot be changed by its members. Any change must be made either by or in the manner prescribed by the authority.

4. The powers of voluntary associations arise solely from the agreement of the members. They are governed by contract. The principal elements of the contract are embodied in the constitution or by-laws.

5. The members of a private association speak for themselves. They represent no one. They are controlled by no outside power. Members can join and leave according to the plan agreed to by the group, and generally as each individual pleases.

Sec. 47. Parliamentary Law Is Applied Differently to Public Bodies and to Private Associations

1. It follows that while private associations are governed by parliamentary law, there are extensive differences in parliamentary law as applied to them, and parliamentary law as applied to official public bodies. Many of those differences will be pointed out under the various rules.

2. While the basic rules of parliamentary law are the same, the situations under which they are applied are substantially different. The more technical functions of public bodies require more technical rules and a more technical application of those rules.

3. The principal difference in the parliamentary rules which must be applied to official public bodies arises from the following facts:

(a) In public bodies the executive has important functions relating closely to the legislative body and rules must be available to enable the executive and the body to function together without conflict or confusion.

(b) All of the state legislatures, except one, and some of the local legislative bodies are bi-cameral, and the relations of the two houses in the enactment of legislation must be closely coordinated. This is particularly important with reference to conference procedure to enable the

houses to reconcile their differences concerning legislation.

(c) Public bodies are governed to a considerable measure by constitutional and statutory rules over which they have no direct control.

(d) Public bodies, due to their greater volume of work and more technical functions, require many rules to meet the particular situations of their own bodies which are entirely unknown to private associations. In the larger legislative bodies, a large measure of their procedure is regulated by their own rules.

(e) Public bodies perform their functions to a considerable measure through committees, and committees become a more essential part of the body and are governed by a body of rules particularly applicable to them.

(f) Legislative sessions are restricted in time and impose special burdens and special problems in procedure.

(g) A legislature is largely made up of experienced members who devote a considerable part of their time to their legislative functions, and consequently are more skilled in procedure.

(h) Particularly in the enactment of legislation, a technical accuracy is required which is entirely beyond that which is necessary or even appropriate to private voluntary associations.

4. The rules of parliamentary law as applied to ordinary private voluntary associations are inadequate to fully meet the needs of any official public body. Consequently manuals or rules of order compiled for the use of private associations are inadequate to meet the needs of an official public body.

Sec. 48. Jurisdictional Requirements

1. There are certain essential fundamental requirements which are so basic that they must be present in all cases before any legal or valid action can be taken, and they cannot be suspended or revoked. These rules are:

(a) The body must be duly constituted and organized in order to have the power to act as such.

(b) There must be a sufficient number of members present at a meeting to deliberate and make decisions for the body. This number is called a quorum and in public bodies will consist of one-half or more of the membership.

(c) Any action must be taken by a number sufficient to act for the group. This is always more than half of the persons voting, and in public bodies is often a majority of a quorum and sometimes a majority of the entire membership.

Sec. 49. Right to Act for a Body—Quorum

See Chapter 45, Secs. 500-507, Quorum.

1. It is a common experience that all members of a large group cannot meet together and make decisions. There must be some rule to determine when a group is sufficiently represented that its representatives can speak for its entire membership. From the very earliest times it has been recognized as a general rule that a majority of a group is necessary to act for the entire group.

2. The power or authority which establishes a public body may also determine what number constitutes a quorum. In a public body with a definite membership that number is never less than a majority but a larger number may be required for the body to have authority to act for any purpose or only for certain purposes.

Sec. 50. Majority Control

See Chapter 46, Secs. 510-519, Vote Required.

1. A fundamental and seemingly universal principle is that at least a majority vote is required to make decisions for a group. It would seem in fact that no other rule would be capable of application, for to require more than a majority to reach any decision confers on less than a majority the power to block or prevent a decision. If powers are given to a minority the question would immediately rise—to what minority is the authority given? In any group there can be but one majority, but there may be many different minorities. The requirement of a majority to take an action is not in any sense an arbitrary rule but is a fundamental principle. The only deviation from this rule is that sometimes a plurality, under a special rule, is permitted to elect.

2. The power which establishes a public body can require the vote of more than a majority to take certain actions, but unless more is clearly required a majority can take any action which the body has the power to take.

3. In public bodies without a definite membership, like town meetings, if notice of a meeting has been properly given then the members who attend the meeting can act for the entire group.

Sec. 51. Delegation of Powers

See also Sec. 519, A Legislative Body Cannot Delegate Its Powers, and Sec. 512, paragraph 6.

1. A public body cannot delegate its powers, duties, or responsibilities to any other persons or groups, including a committee of its own members.

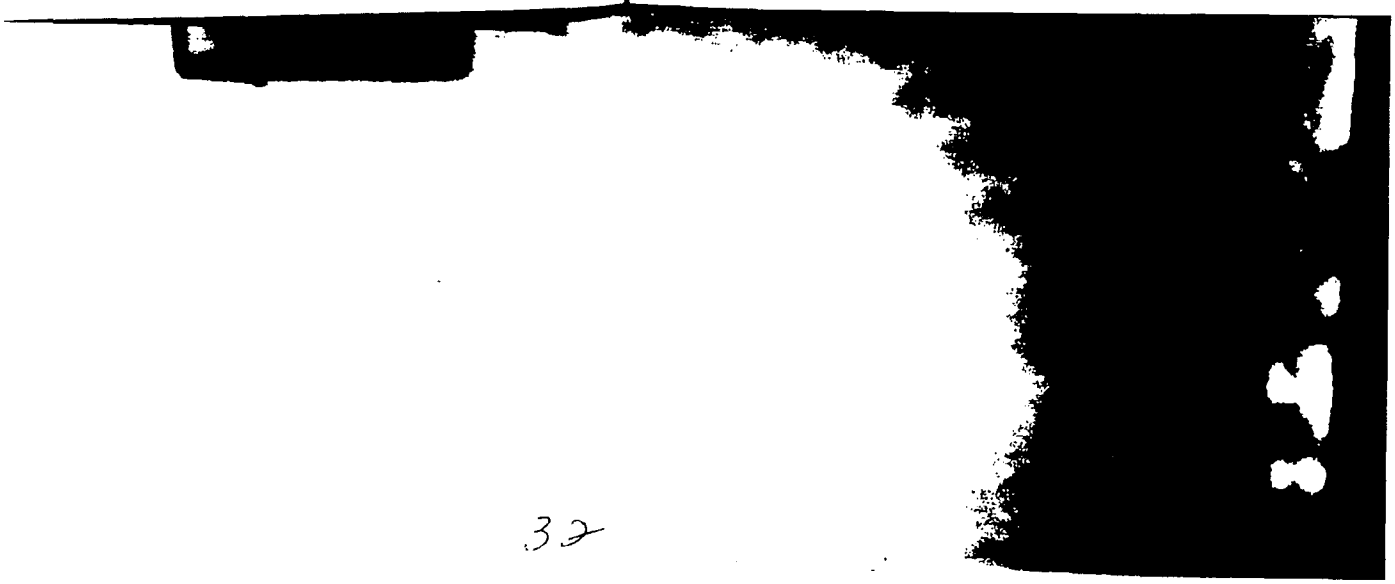
2. Where duties or responsibilities are imposed on a public body as on a state legislature, a city council or an administrative board, that body is bound to exercise those duties and responsibilities and cannot divest itself of them by delegation to others.

3. Those duties and responsibilities are of necessity to be exercised by the majority unless granted subject to other conditions. Such a body cannot delegate its essential powers to a minority of its own members. A provision in the rules, for example, that a two-thirds vote is necessary to take a particular action would delegate to any minority of more than one-third of the members the power to prevent the action being taken and grant to that minority the power to control the determinations of the body. The powers of the body to that extent would be delegated to a minority.

4. When bodies are given authority to make rules to govern their own procedure, they may make procedural rules which require more than a majority vote to suspend or repeal, but they cannot restrict their essential powers by requiring more than a majority vote for other than procedural purposes, and even such procedural rules may be directory only.

Sec. 52. Equality of Members

1. In public bodies the equality of members is presumed. It would seem that for any democratic group to be able to operate, acceptance of the principle of equality of members is essential. Unless that equality is recognized there is no basis upon which it can be determined who or what number has authority to speak for the group and to make its decisions. Equality seems essential also to secure the acceptance in good faith of decisions of the group.



Sec. 53. There Should Be a Definite Rule

1. In order for a group to work efficiently together there must be an accepted manner of doing things. Even where the same thing might reasonably be done a number of different ways, it is necessary as a matter of convenience that everyone do the same thing in the same way. Just as it is necessary that people all turn the same way when meeting on the highway to avoid collisions, so it is necessary that people undertaking to do the same thing undertake the action in the same way in order to prevent confusion and disagreement.

Sec. 54. Use of Technical Rules

1. The purpose of parliamentary law is to secure an orderly procedure in conducting the business of an organization and to eliminate confusion.

2. Purely technical rules are to be applied only when they will aid in the deliberations of the body. They are not to be applied merely because they are available for use in case of need. For example, in small bodies a member may be permitted to speak several times on the same subject if he is not infringing on the time of others and his discussion is contributing to the solution of the problem under debate.

Sec. 55. Most Direct and Simple Procedure Should Be Followed

1. In the interest of saving the time and effort of the members and avoiding confusion, the most direct and simplest means of accomplishing a purpose should be followed. Simple procedural motions like the motion to recess or to lay on the table or postpone are acted upon when they arise. They cannot, for example, be postponed

or referred to committee or laid on the table, which would only add complications and consequent confusion, but if these motions are not needed at the time they are voted down, they may be made again when needed.

Sec. 56. One Proposition at a Time

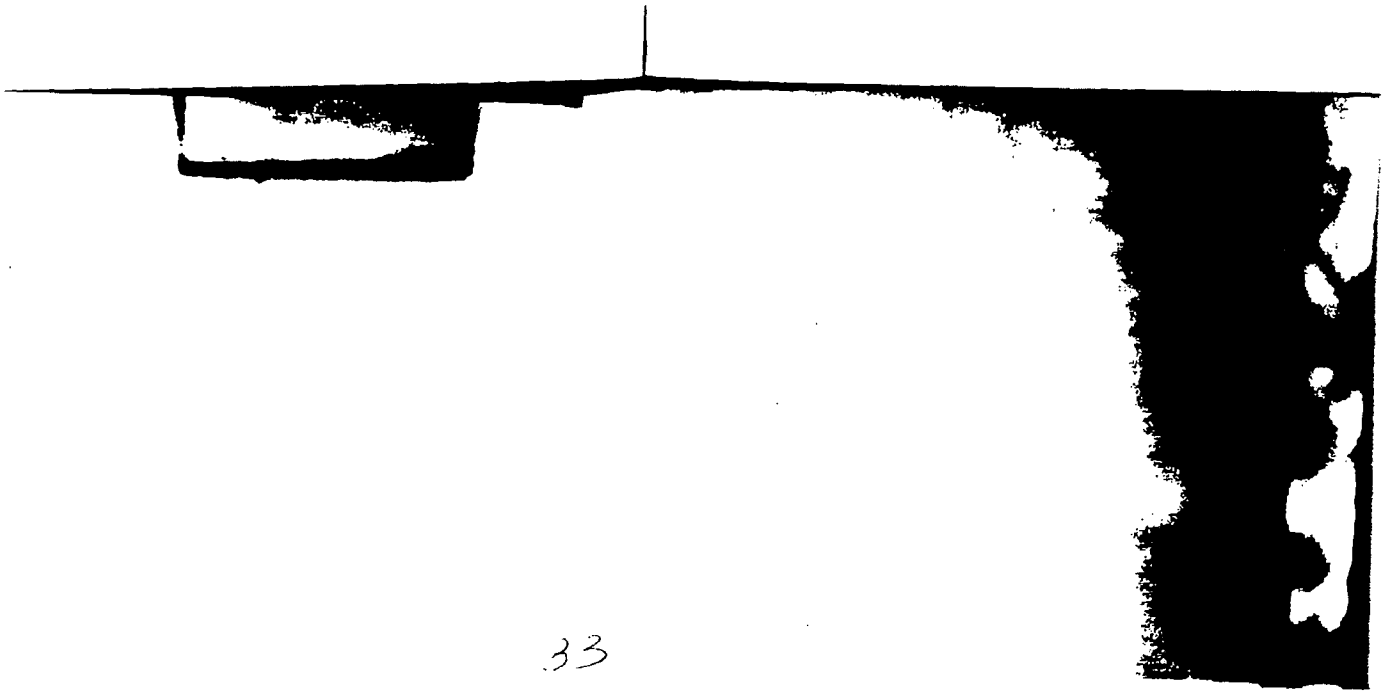
1. An important practical principle is that only one proposition can be considered at a time. This should appear too logical and fundamental even to require statement, but confusion frequently results from members attempting to discuss different questions at the same time.

2. A presiding officer can promote efficient consideration of business by permitting only one proposition to be under discussion at a time, and holding the discussion to that one proposition.

Sec. 57. The Immediately Pending Question

1. While a general subject remains before the group for discussion, a particular phase of that subject should have the complete attention at one time. Thus, if a motion is under discussion, and someone proposes an amendment to the motion, discussion shifts from the original question to the amendment because the original question cannot be intelligently discussed until the proposed change in the question has been disposed of. When the amendment is voted upon, whether adopted or lost, discussion shifts back to the original proposition.

2. There are many incidental or subsidiary questions which may arise during the discussion of a question which require decision before the main question. When a resolution is under discussion it is possible that some member may propose an amendment, another may move to refer



the resolution to committee, another member may move to cut off debate by the previous question, or a motion may be made to lay the whole matter on the table. While these are pending a motion may be made to adjourn. In this case, discussion would shift successively to each new question as proposed. As each question is decided, consideration shifts back to the question pending immediately prior, until discussion reverts to the original question. Discussion, however, should be limited strictly to the immediately pending question, that point which must first be decided before consideration can be given to other questions.

Sec. 58. Precedence of Motions

See Chapter 19, Sec. 181, List of Motions.

1. The order in which various questions claim the attention of a body cannot be left to any haphazard method nor can mere priority in the making of a motion give priority in its consideration. To follow this latter procedure would lead to endless confusion and a waste of time and effort because of members attempting by various devices to secure prior consideration for their proposals. This can be eliminated only by recognizing a definite precedence of motions and fitting every motion into that order of precedence. This is not difficult because motions fit logically into a natural order of priority and rarely is it difficult to determine, which proposal is logically entitled to the prior consideration.

Sec. 59. Application of One Motion to Another

See Chapter 18, Secs. 175-180, Classification of Motions, and particularly Sec. 178, Subsidiary Motions.

1. Motions are frequently applied to each other. Many motions, for example, are subject to amendment. Likewise, the motion to refer a proposition to committee, to

postpone further consideration to a later date, to cut off debate on the question, or to lay it on the table may be applied to a main motion.

2. There is nothing haphazard about this application of motions to other motions. The procedural motions serve an essential function in directing the consideration of main motions.

Sec. 60. Right to Debate

1. Before the members of any group can reach intelligent decisions it is necessary that they understand the subject upon which they are making a decision and the effect of any decisions they are making. To accomplish these purposes an opportunity is given for debate on all questions of business to be decided.

2. As an essential part of this free discussion every person must have a right to present his own views for the consideration of other members of the group, to have the opportunity to persuade them to his way of thinking, and to be able to listen to the arguments of others.

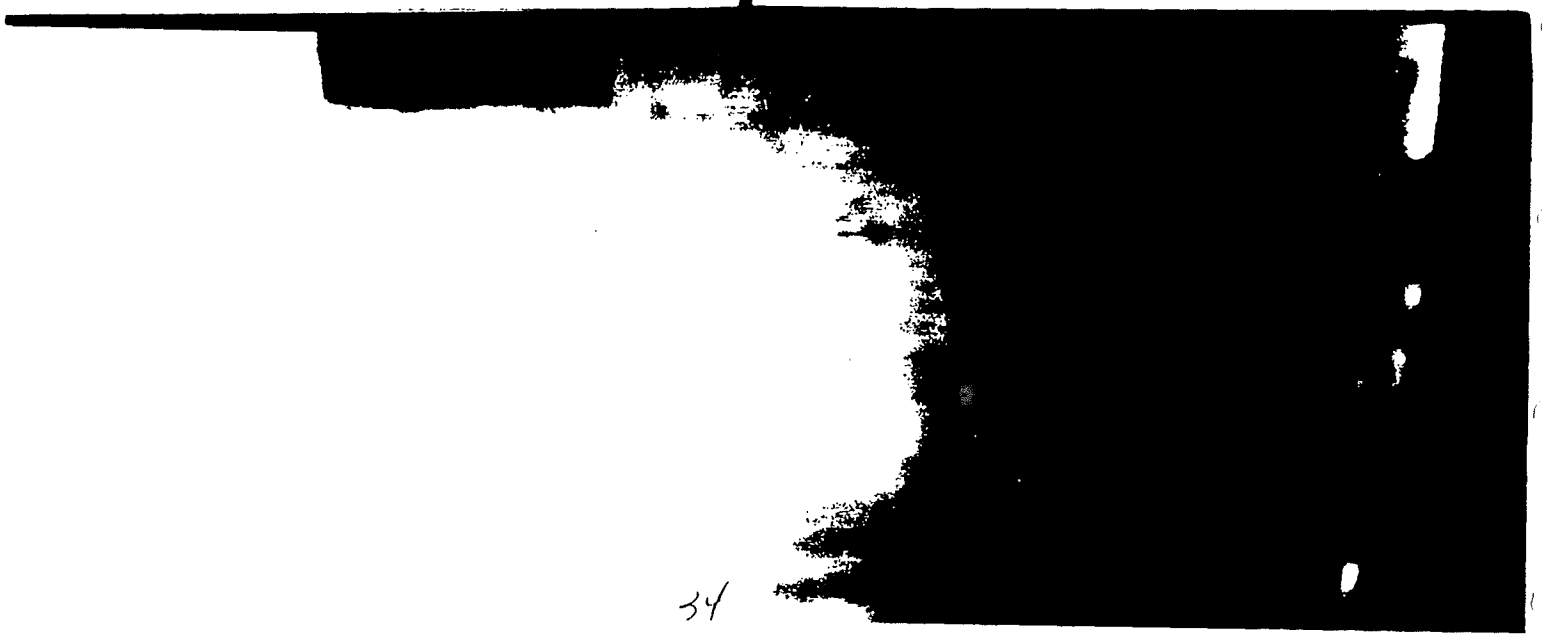
3. As a necessary part of this free discussion, the rule is well-established that when authority is given to a group to make decisions those decisions must be made at a meeting at which the matter can be discussed and any decision of the members individually is not binding on the body.

4. This right of debate does not take from a body the right to control its own procedure and it can restrict or cut off debate.

Sec. 61. Interruption of Members Speaking

See also Sec. 92, Interruption of Speaker.

1. A member once recognized and having the floor is entitled to freedom from interruptions unless something



arises which requires immediate consideration. A member cannot be interrupted merely to make motions having a higher precedence than the one under discussion. For example, the motion to adjourn cannot interrupt the speaker discussing a main motion. However, questions of privilege requiring immediate consideration must justify an interruption. A member can be interrupted and called to order if he digresses from the subject or if he uses improper language, or if he has exceeded a time limit on speeches.

2. It is also a common practice to permit a member to be interrupted to ask questions concerning points he is making in his speech, if the interruption appears to be made in good faith and not for the purpose of heckling or harassing the speaker. Often much time is saved by settling a point at the instant it arises and the presiding officer is justified in exercising discretion as to when a member can be interrupted by questions in the interest of expediting the work of the body.

Sec. 62. Seconds to Motions

See also Sec. 157, Seconds to Motion.

1. The origin of the requirement of seconds to motions is obscure, and while there were certain requirements for seconds in Parliament for a period of time, this requirement was discontinued centuries ago.

2. The effect of requiring a second to a motion is to require that no business can be presented except by two persons, one who makes the motion and the other who seconds it. Seconds to motions are not required either by law or in practice in public deliberative bodies, although seconds are often required by the adopted rules of private associations. A member representing a constituency in a state legislature or a city council or a member

of an administrative body is entitled to present a matter for consideration of the body without having the support of a second, unless by law or by rule a second is required.

Sec. 63. Debatability of Motions

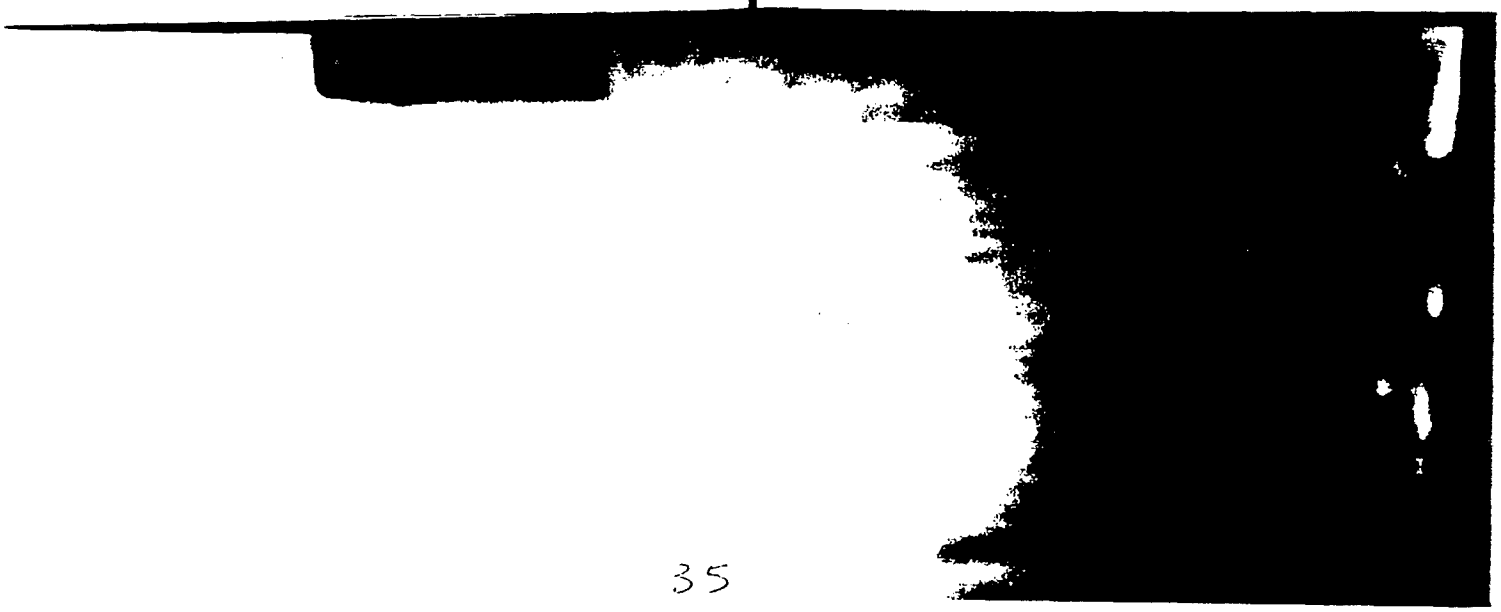
See Chapter 10, Secs. 80-85, What Is Debatable.

1. As pointed out above, members have the right to engage in debate, to express their opinions, and hear the opinions of others before being required to vote upon the determination of any general item of business. The right to debate in the interest of practical procedure is, however, subject to certain limitations. A member does not have the right to debate a procedural motion. This rule is in the interest of economy of time and effort. A member is not entitled, for example, to debate a motion to adjourn or to lay a question on the table, nor is he entitled to debate a motion to limit debate. These questions are questions only of temporary concern and the decision upon them is not final, as they can be revived and discussed later. Members have a right to debate all main questions subject to the right of the body itself to limit or restrict debate.

Sec. 64. Amendability of Motions

See Chapter 39, Secs. 395-423, Motion to Amend.

1. Propositions are sometimes introduced in a form not acceptable to the body. It is essential therefore that it be possible to amend propositions in order that they state the common will of the group. There are limitations, however, on the right to amend, particularly with reference to certain procedural motions. There is a convenient rule by which it is possible to determine whether a proposal is subject to amendment. If the proposal could have been



submitted in any two or more different forms, then it is in order to propose an amendment to place that proposal in the most acceptable form. Motions or proposals which can be stated only in one form cannot be amended.

Sec. 65. Finality of Actions

See Secs. 451-457, Relating to Reconsideration, and Sec. 398, Decision on Amendment Is Final, and Sec. 159, Same Question May Be Considered Once at a Session.

1. When a final vote is taken upon any main motion, that vote is binding. It is necessary that it be possible to put an end to debate on controversial questions; otherwise a minority could continue to make motions concerning the matter and keep it under consideration to the exclusion of other matters and to the point that progress of the body would be seriously impeded. To prevent this possibility the rule, since the earliest days in Parliament, has been that when a vote is taken upon adoption of a main motion, that vote is binding subject to certain exceptions. This rule is applicable whether the proposition was approved or whether the proposition was defeated. This rule is applicable to substantive propositions, but it is not applicable to purely procedural motions. Thus if a legislative body passes or refuses to pass a bill, that bill is disposed of for the session unless the vote is reconsidered. But if the bill is referred to committee it can be withdrawn from committee. If the limitation is imposed upon debate, that limitation can be removed. If a question has been laid upon the table it can be taken from the table. If motions of this class fail to pass, they can be again made after other business has intervened.

2. There is a class of motions where the action when taken is final and beyond the control of the body. Thus, if a motion results in a contract, that contract is binding and the body cannot reconsider or reverse the action taken. When any question has passed beyond control of the body, no motion is permitted which would purport to change the action on it.

Sec. 66. Changing Actions Already Taken

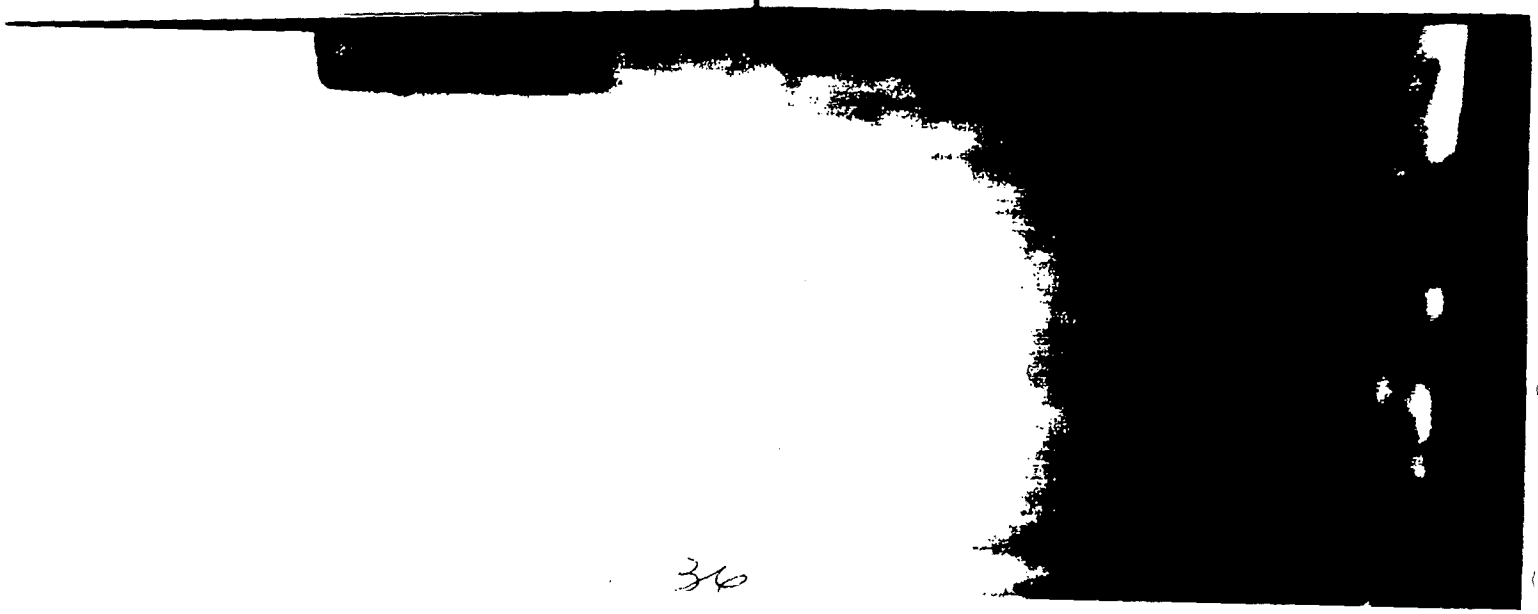
See Chapter 42, Secs. 450-473, Motion to Reconsider, and Chapter 43, Secs. 480-488, Motion to Rescind.

1. In spite of the desirability of finally disposing of questions when they are voted upon, it has been found necessary on occasion to reverse or alter the action previously taken and the motion to reconsider became established. The American courts hold generally that at least an official deliberative body has the same right to undo, change and to reverse its actions as to take them originally. However, it is common practice to restrict the right to reconsider and, in many organizations, it may be essential to the progress of the business of the organization to restrict this right by rule.

Sec. 67. Renewal of Motions

See Sec. 160, Procedural Motions May Be Renewed, and Sec. 161, Main Motions May Not Be Renewed.

1. Purely procedural motions may be renewed whenever the parliamentary situation has so changed that the motion might be reasonably adopted. The rule is usually stated that no motion of this type can be renewed until other business has intervened and a decision has been made upon it.



CHAPTER 9

POWERS OF COURTS WITH REFERENCE TO LEGISLATIVE PROCEDURE

Sec. 71. Courts Cannot Interfere With Rule-making Powers of Legislative Bodies

1. The courts will not disturb a ruling on a parliamentary question made by a legislative or governmental body having authority necessary to make rules for its government and acting within the scope of its powers.

2. A rule of procedure adopted by a legislative house pursuant to the constitutional provision authorizing each house to determine its rules of procedure cannot be impeached on the grounds that some other rule would be better or more accurate or more just, if the rule as adopted does not ignore constitutional restraints or violates fundamental rights and there is a reasonable relation between the mode or method of procedure and the result that is sought.

3. An interpretation by a house of a state legislature as to the extent of the power conferred upon it by the constitution to determine the rules of its own proceedings is not binding on the courts, but should be accepted by them unless manifestly wrong.

4. Where no precise forms are prescribed, a procedure may be adopted which incorporates the fundamentals of due process, as in the removal of an official.

5. When a city council has the power by ordinance to establish and adopt suitable rules for its own government in matters of procedure, such rules, when adopted, will not be set aside by the courts unless they are directly, or by necessary implication, in conflict with some provision of the statutes.

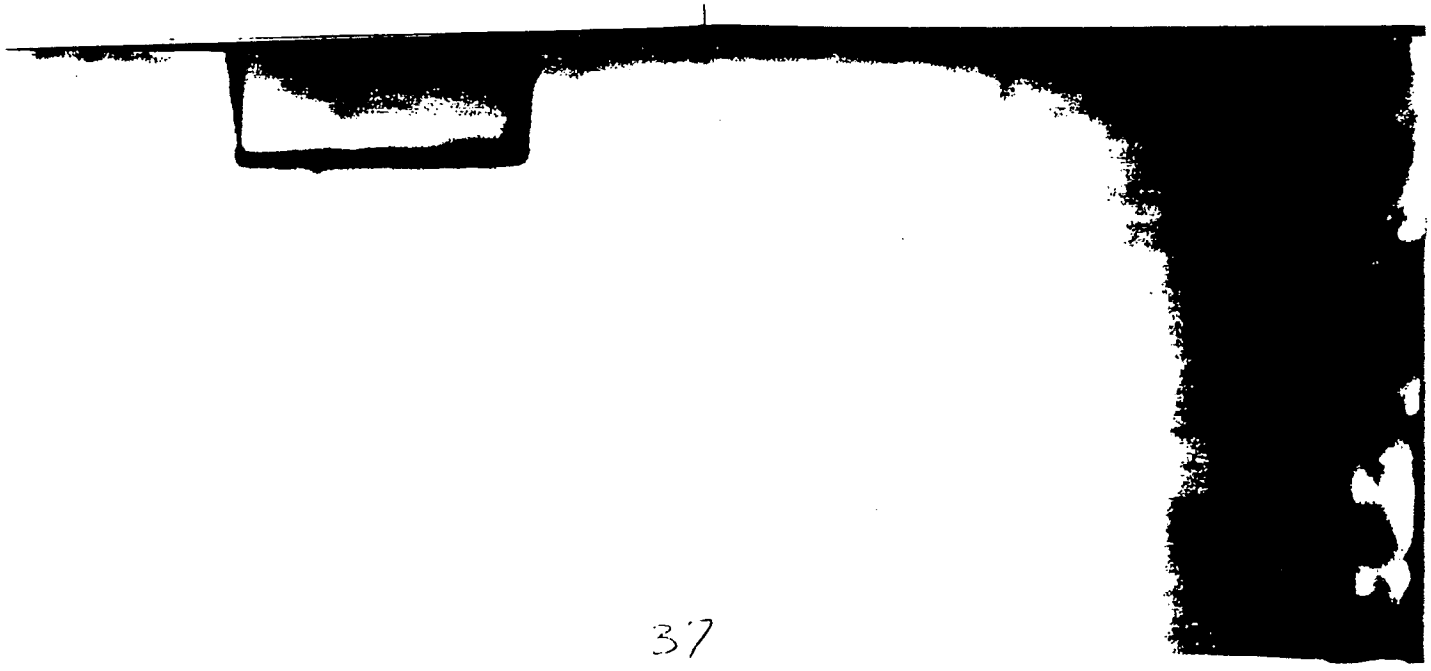
Section 71—
Paragraph 1—
Davis v. City of Saginaw (1891), 87 Mich. 439, 49 N.W. 667; State v. Alt (1887), 26 Mo. App. 673; Wells v. Baine (1874), 75 Pa. 39, 15 Am. Rep. 563.
Paragraph 2—
State v. Lewis (1936), 181 S. C. 10, 186 S.E. 625.
Paragraph 3—
Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.

Sec. 72. Legislative Policy Is Not Within Control of the Courts

1. The propriety and wisdom of a statute are questions exclusively for the legislature. The wisdom, justice and expediency of an act of the legislature is not subject to review by the courts.

2. Before a statute can be declared unconstitutional, it must clearly and unavoidably appear to be beyond the power of the legislature. The power and duty to decide whether or not there has been compliance with constitutional provisions, and whether a bill of the legislature has become a law, is a matter for the courts.

Section 71—Continued
Paragraph 4—
Murdock v. Phillips Academy (1831) 12 Pick. (Mass.) 244.
Paragraph 5—
State v. Dunn (1906), 76 Neb. 155, 107 N.W. 236.
Section 72—
Paragraph 1—
City of Ensley v. Simpson (1909), 166 Ala. 366, 52 So. 61; In re Likins (1909), 223 Pa. 456, 72 Atl. 858.
Paragraph 2—
City of Ensley v. Simpson (1909), 166 Ala. 366, 52 So. 61; Neiberger v. McCullough (1912), 253 Ill. 312, 97 N.E. 660.



3. Where the constitution declares certain forms indispensable to the passage of the laws, the courts will declare acts invalid unless passed according to those provisions.

See also Sec. 693, Par. 1, Mandatory Requirements Must Be Complied With.

4. A court will go behind a statute to the legislative record, to ascertain whether it has legal existence, only when the attention of the court is called to a particular error.

See also Sec. 693, Journal as Showing Passage and Legality of Bills.

Sec. 73. Powers of Courts Over Legislative Bodies Generally

See also Secs. 24 and 25.

1. Insofar as the judgment and discretion of a legislative body is uncontrolled by the law of the land, it is free from the control of the courts. But insofar as its acts are directed by law it is subject to judicial authority.

2. While the people of a state have vested in them sovereign authority, their representatives in the legislature have only such authority as is delegated to them by the constitution.

3. The legislature cannot do by indirection that which it cannot do directly.

Section 72—Continued
Paragraph 3—
Wells v. Missouri Pacific Railway Co. (1892), 110 Mo. 286, 19 S.W. 530.
Paragraph 4—
State v. Martin (1909), 160 Ala. 181, 48 So. 846.
Section 73—
Paragraph 1—
Kerr v. Trego (1864), 47 Pa. 292.
Paragraph 2—
Sherrill v. Pendleton (1907), 188 N. Y. 185, 81 N.E. 124.
Paragraph 3—
Brennan v. Connolly (1919), 207 Mich. 35, 173 N.W. 511.

4. Where an alleged illegal ministerial official act has relation to legislative action such action may be considered by the court in determining the validity or invalidity of the ministerial act. This is not an interference by the courts with the legislative department of the government.

5. An amendment to a state constitution otherwise validly proposed and adopted by the people is valid notwithstanding the fact the legislature may have failed to have the proposed amendment entered at length upon its journals as required by the constitution.

6. The courts have jurisdiction to decide whether the organization of a house of a legislature has been made in violation of the constitution. No warrant will lie to determine the title of the presiding officer to his office.

7. Illegality will not be presumed, but on the contrary legality will be presumed until illegality is established.

8. The courts cannot declare an act of a legislature void on account of noncompliance with rules of procedure

Section 73—Continued
Paragraph 4—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963.
Paragraph 5—
West v. State (1905), 50 Fla. 154, 39 So. 412.
Paragraph 6—
Werts v. Rogers (1894), 56 N. Y. L. 480, 28 Atl. 726.
Paragraph 7—
State v. Smith, 22 Minn. 218; Bank v. Dandridge (1827), 12 Wheat. (U. S.) 64; State v. Vail (1880), 53 Iowa 550, 5 N.W. 741; McCarmack v. Berg City (1871), 23 Mich. 457; Greeley v. Hamman (1891), 17 Colo. 30, 28 Pac. 460.
Paragraph 8—
McDonald v. State (1891), 80 Wis. 407, 50 N.W. 185; In re Ryan (1891), 80 Wis. 414, 50 N.W. 187; State v. Brown (1890), 35 S. C. 151, 11 S.E. 641; St. Louis and S. F. Ry. Co. v. Gill (1891), 54 Ark. 101, 15 S.W. 18; Sweitzer v. Territory (1897), 5 Okla. 297, 47 Pac. 1094.

made by itself to govern its own deliberations and not involving any constitutional provision.

See Secs. 24 and 25 above.

Sec. 74. Powers of Courts Over Local Legislative Bodies

1. The exercise of legislative or discretionary powers conferred upon a municipal corporation by charter are beyond the control of the court, but after these powers have been exercised and the authorities are dealing with contracts, as for street improvements, they are not acting in a legislative capacity but in a capacity of agents amenable to the court.

2. The courts will not ordinarily restrain a city council or other legislative body from considering or acting upon proposed legislation, but do have the right to declare acts unconstitutional.

3. When a city council is acting on matters within its jurisdiction the courts will interfere only to correct a clear abuse of discretion.

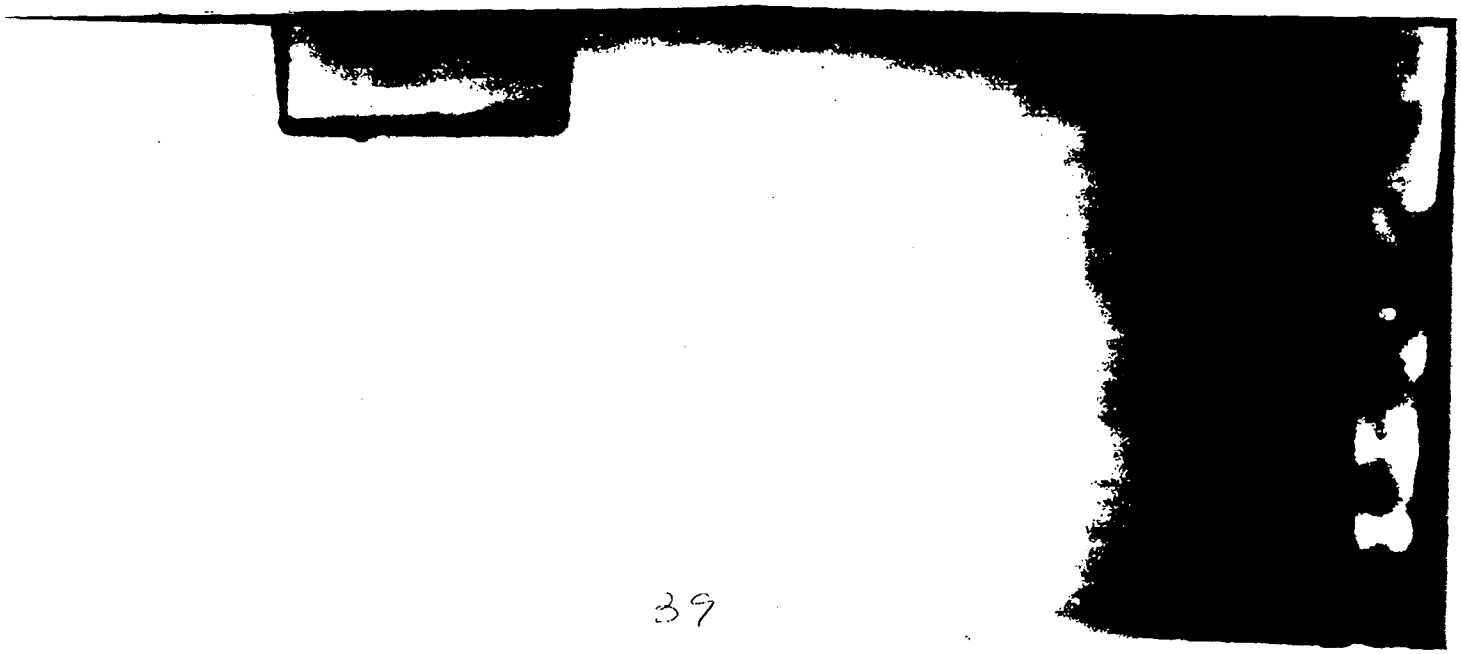
4. If a city council refuses to levy a tax to complete an improvement as required by law it can be compelled to do so by the court, and courts have the power to compel local authorities to levy taxes to pay debts.

Section 74—
Paragraph 1—
Schumm v. Seymour (1873), 24 N. J. E. 143.
Paragraph 2—
Albright v. Fisher (1901), 164 Mo. 56, 64 S.W. 106.
Paragraph 3—
Frazier v. City of Rockport (1918), 199 Mo. App. 80, 202 S.W. 266; Church v. People (1899), 179 Ill. 105, 53 N.E. 554; Bass v. Casper (1922), 28 Wyo. 387, 205 Pac. 1008.
Paragraph 4—
Little Rock v. Bd. of Improvement (1888), 42 Ark. 152; Pegram v. Cleveland County Commissioners (1870), 64 N. C. 557.

5. The courts have the right to restrain a local legislative body in order to prevent a manifest violation of the constitution of the state.

6. Corporations of all kinds are intellectual beings distinct from the persons who compose them and are creatures of the law. They can act only according to their organization in the form and manner pointed out by their charters and the laws of the land.

Section 74—Continued
Paragraph 5—
Blood v. Beal (1905), 100 Me. 39, 60 Atl. 427.
Paragraph 6—
Peirce v. New Orleans Building Company (1836), 9 La. 39[illegible]



PART II
DEBATE

CHAPTER 10
WHAT IS DEBATABLE

Sec. 80. Purpose of Debate

1. The purpose of legislative bodies is to reach their best joint judgment on the questions presented to them for decision. The decision is the decision of the group, not of the individual members. To reach the joint judgment of the body the exchange of thought and the reasons of the members are essential. That exchange of thought is through debate. Every member has the right to present his thoughts and opinions and to argue and attempt to convince the other members of the group. Debate is one of the most fundamental characteristics of a legislative body.

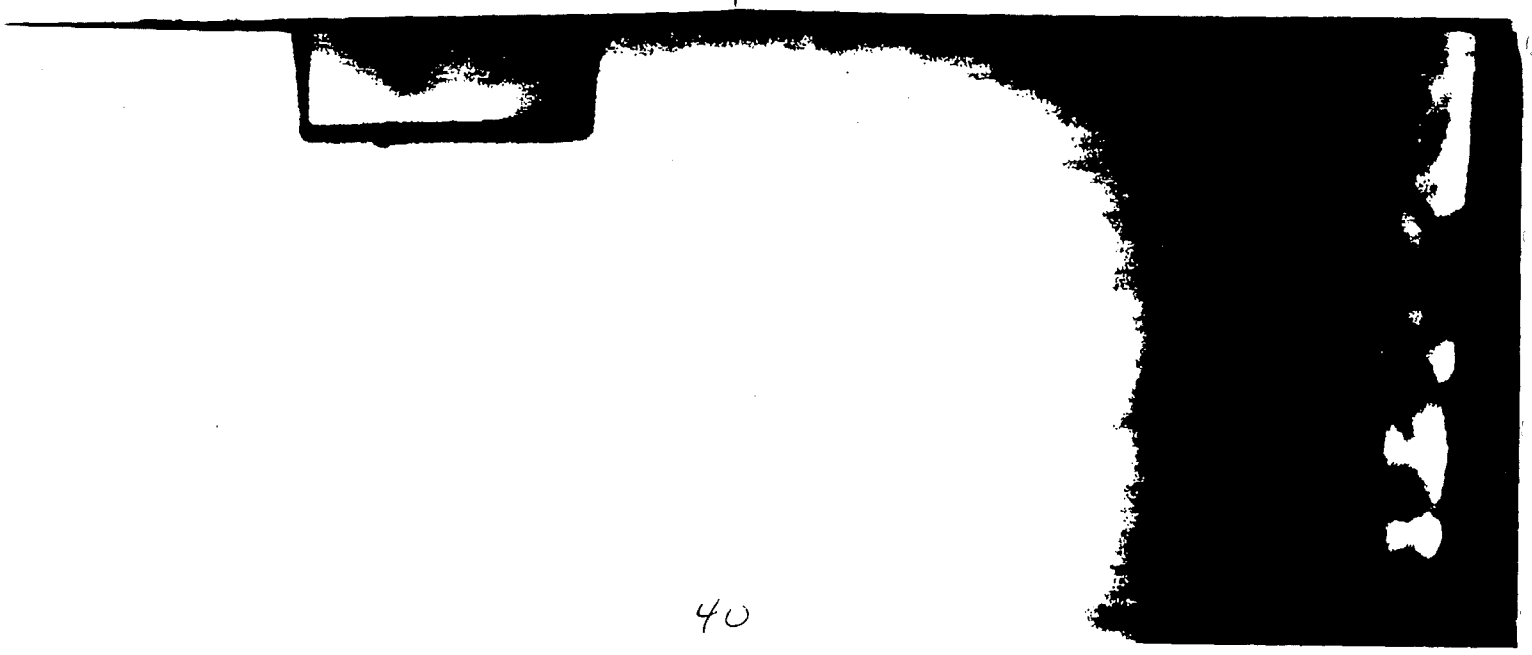
2. As a general rule the members of a deliberative body have the right to debate every substantive question presented to the body for determination, but debate upon purely procedural questions is not a right of the members.

3. A deliberate body having the right to make its own rules can by those rules restrict or cut off debate as it may choose.

Sec. 81. What Motions Are Debatable

1. All main motions are debatable because they present substantive questions for determination.

Section 80—
Paragraph 1—
People v. American Institute (1873), 44 How. Pr. (N. Y.) 468; Sturgis, p. 43.
Paragraph 2—
Sturgis, p. 44.
Section 81—
Paragraph 1—
People v. American Institute (1873), 44 How. Pr. (N. Y.) 468; Sturgis, p. 43.



2. Amendments to main motions and other substantive propositions are debatable because amendments modify such substantive propositions. Amendments to procedural motions are not debatable. This is, in effect, the rule that amendments to undebatable motions are not debatable.

3. Motions which present substantive propositions in any form are debatable. The most usual motions of this class are, in addition to the main motion in its usual form:

(a) *Appeals,* because they determine questions which are equivalent to making rules governing future procedure.

(b) *Motion to reconsider,* because it presents a main question for review.

(c) *Motion to rescind,* because it reopens the consideration of a main question.

(d) *Motion to postpone indefinitely,* because it finally disposes of a main question.

(e) *Questions of privilege which present main questions.* Many questions of privilege present main questions. They are privileged as to consideration only because they involve a question requiring immediate decision.

(f) *Motions to approve, to concur, to confirm, to appoint,* and similar motions because they are main motions in fact.

Sec. 82. What Motions Are Not Debatable

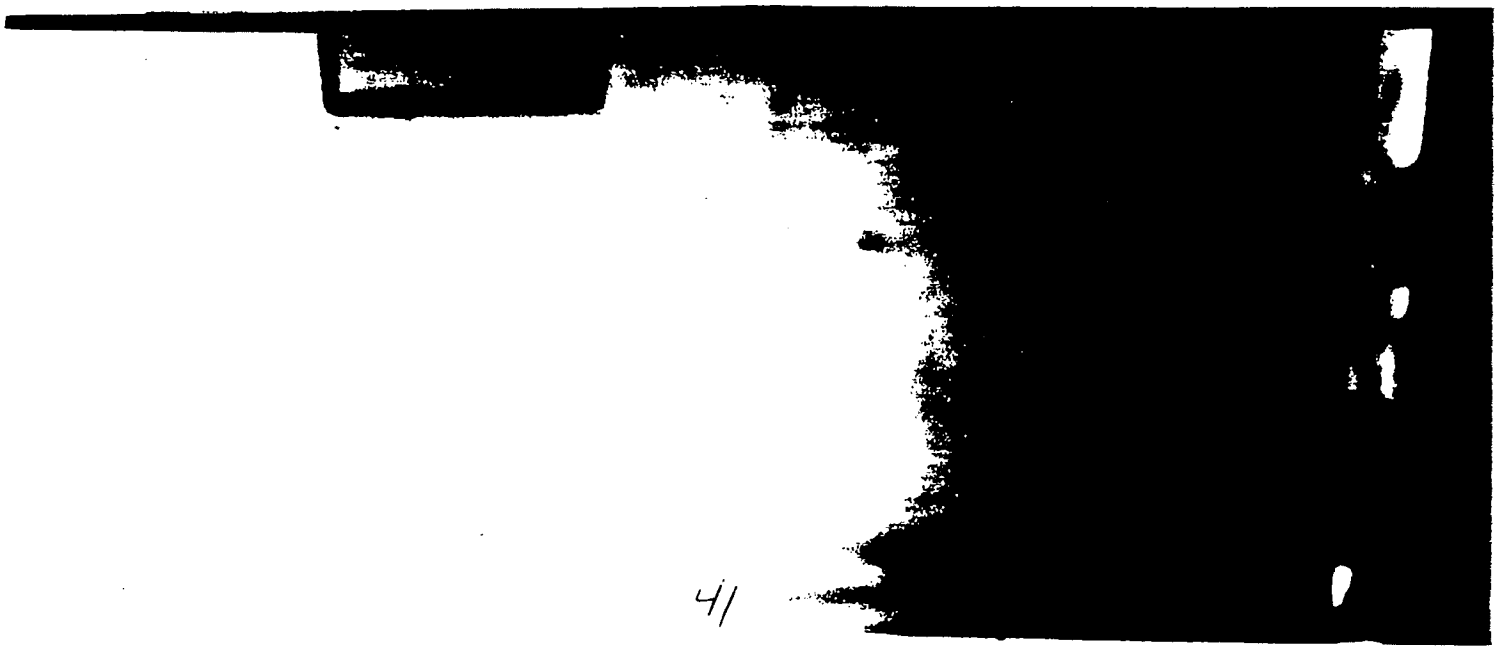
1. Motions of all kinds which relate to immediate procedure are not debatable. These usually are questions relating to how something is to be done. There is nothing so profound about these motions as to justify debate, and debate would only waste the time of the members. Even if the body later changes its mind, it can change its procedure. Recognition of the general application of this rule will eliminate much confusion.

Section 81—Continued
Paragraph 2—
Sturgis, p. 36.
Paragraph 3—
Sturgis, p. 36.
Section 82—
Sturgis, pp. 35-37; Hughes, Sec. 715.

2. The following motions are *not* debatable:

(a) Adjourn. (Unqualified)
(b) Call of the house.
(c) Recess, when other business is pending.
(d) Parliamentary inquiry.
(e) Call for the orders of the day.
(f) Questions relating to priority of business.
(g) Suspension of the rules.
(h) Objection to the consideration of a question.
(i) Other incidental motions.
(j) Lay on the table.
(k) Previous question.
(l) Motions to close, limit or extend the limits of debate.
(m) Amend an undebatable motion.
(n) Amend titles of bills.
(o) Divide a question, when right is given by rule.
(p) Motion to lay aside or pass on calendar or file.
(q) Take from the table.
(r) Requests of any kind.
(s) A decision of the presiding officer, unless an appeal is taken from the decision.

3. Motions which adopt rules of procedure or amend such rules and rules which determine some future rule of procedure are main motions since they present substantive questions for determination by the body.



4. It is commonly provided by rule that an appeal is not debatable when it relates to indecorum, transgression of the rules of speaking, or priority of business, or when made while an undebatable question is pending or after the previous question has been ordered. Such a rule follows congressional practice but it is not a rule of parliamentary law.

Sec. 83. Motions Which Permit Limited Debate

1. On the motion to postpone to a definite time, the question of postponement is open to debate, but the main question is not. In Congress all debate is prohibited on the motion to postpone definitely, and this would seem to be the better practice.

See also Sec. 361.

2. The motion to commit or refer to committee is debatable as to the propriety of the reference, but the main question is not open to debate on this motion.

See also Sec. 388.

3. The motion to discharge a committee or to withdraw a measure from committee is debatable as to the advisability of that action, but the measure is not open to debate.

See also Sec. 491.

Sec. 84. Motions Which Open the Main Question to Debate

1. The following motions open the main question to debate:

(a) Postpone indefinitely.

See Secs. 430-436.

Section 83—
Paragraph 1—
N. Y. Manual, p. 463; Hughes, Sec. 316; Sturgis, p. 36.
Paragraph 2—
Hughes, Sec. 330; Reed, Sec. 120; Sturgis, p. 36.
Paragraph 3—
Hughes, Sec. 733.

(b) Reconsider a debatable question.

See Secs. 456-473.

(c) Rescind, cancel or repeal.

See Secs. 480-483.

(d) Ratify, approve, confirm, adopt or pass.

See Sec. 443.

2. It will be noticed that the above motions finally dispose of the main question. The motion to postpone definitely would prevent further consideration of the question while the purpose of the motion to reconsider is to defeat a question already approved or to revive a question otherwise defeated. The motions to approve and to ratify state the main question itself, the motion to rescind or repeal would reverse an affirmative action previously taken and simply states the main question in a negative form, while the motion to adopt states the main question in its affirmative form. In this way parliamentary law permits any main question to be debated before it is finally defeated.

Sec. 85. Questions or Suggestions Not Considered Debate

1. There is a clear distinction between debate and making suggestions or asking questions. It is permissible to ask questions or make brief suggestions concerning undebatable questions. A member is entitled to inquire as to the meaning or purpose or effect of an undebatable question. The presiding officer may permit the author or sponsor of the proposition to explain briefly, and without argument, the nature of the proposal or what it is expected to accomplish. It is also in order for members to make sug-

Section 85—
Sturgis, pp. 35, 45.

gestions as to the form of the proposition, its purpose, or procedure concerning it. The presiding officer should be careful not to permit debate of an undebatable question and to put the question to vote without unnecessary delay.

CHAPTER 11

RIGHT TO THE FLOOR

Sec. 90. Right to Debate Questions

See Chapter 16, Secs. 140-150, Proposals for Action.

1. Debate is the essential feature of a legislative body. It is the means by which the opinions of members are exchanged, questions deliberated, and conclusions reached on the business before the body.

2. It is a fundamental rule of parliamentary practice governing all deliberative assemblies that the opportunity to deliberate, and if possible convince their fellows, is the right of the minority, which right they cannot be deprived of by the arbitrary will of the majority.

3. To permit of debate, there must be a debatable question before the body, and some one member must have been recognized as entitled to speak. During debate various motions are in order, and if the question be not otherwise disposed of previously, it is brought to a vote at the conclusion of the debate and disposed of permanently or for the time. Then another question can be brought before the body and, if it is debatable, debate follows on it.

4. A member who has just made a report or presented any matter to the house is entitled to be first recognized

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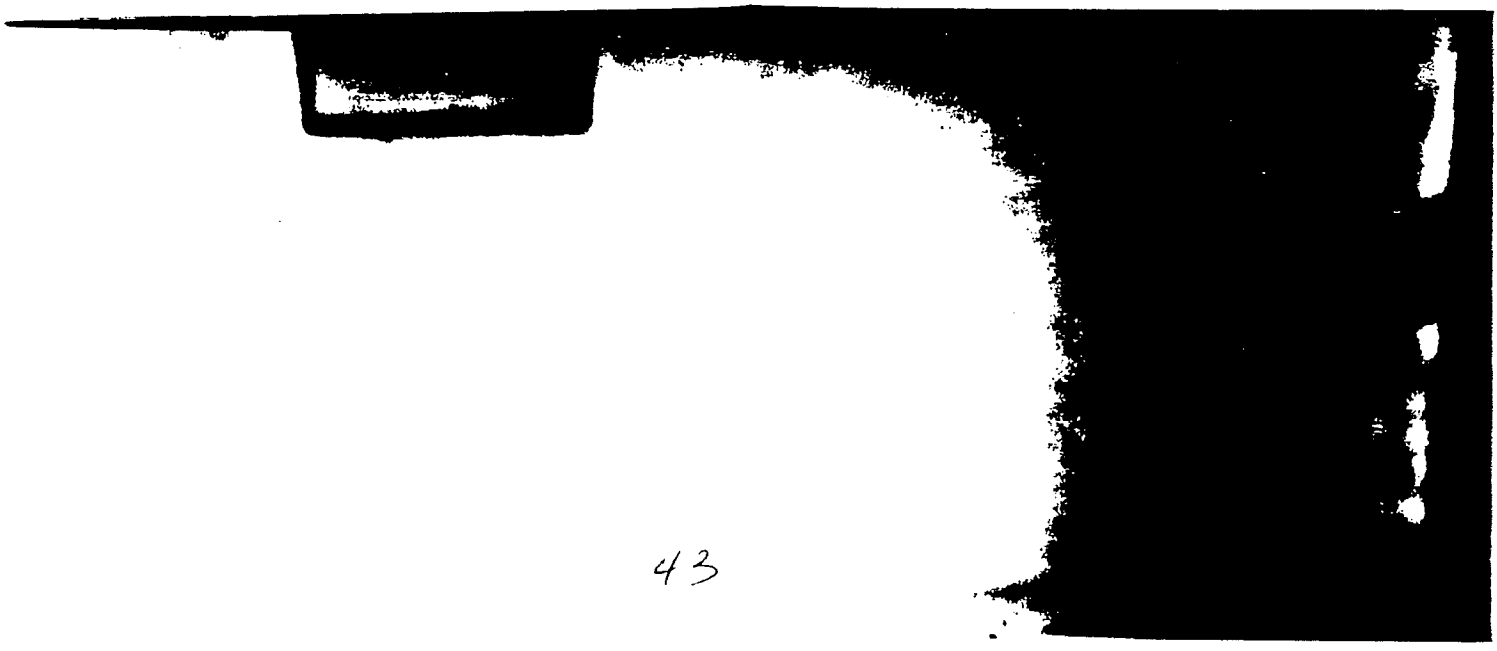
Section 90—
Paragraph 1—
Sturgis, p. 43.
Paragraph 2—
Terre Haute Gas Corporation v. Johnson (1943), 221 Ind. 499, 45 N.E. 2d 484, Modified 48 N.E. 2d 455; Sturgis, p. 43.
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 1177, 1178, 1183; Sturgis, p. 43.



for the purpose of discussing that matter, but he loses that right if he does not claim it within a reasonable time.

Sec. 91. Recognition of Members

1. A member is not entitled to address a body nor to offer a motion or present a question or other business without first obtaining recognition, but may interrupt a speaker for the purposes listed in the following section.

2. When any member desires to speak or deliver any matter to the house, he should rise at his seat and respectfully address the presiding officer. When the presiding officer recognizes the member by calling him by name, or by indicating that he is recognized, he is entitled to the floor and may address the body or present a matter of business.

3. The following rules should guide the presiding officer in determining whom to recognize:

(a) The first member rising and requesting recognition is entitled to the floor over others.

Section 90—Continued
Paragraph 4—
Sturgis, p. 19; Hughes, Sec. 117; Reed, Sec. 214; Cushing, Sec. 204; Cushing's Legislative Assemblies, Secs. 1536-1541; Tilson, p. 46; U. S. House Rule XIV, Par. 3.

Section 91—
Paragraph 1—
Jefferson, Sec. XVII; Sturgis, p. 18-20; Hughes, Sec. 181; Cushing, Sec. 46; Reed, Secs. 48, 213; Cushing's Leglislative Assemblies, Sec. 1532.

Paragraph 2—
Jefferson, Sec. XVII; Sturgis, p. 18; Cushing's Legislative Assemblies, Secs. 374, 1212; Hughes, Sec. 117; U. S. House Rule XIV, Par. 1; Cushing, Secs. 46, 203; Reed, Sec. 102; Tilson, Parliamentary Law, p. 43; Tilson's Manual, Sec. 66.

Paragraph 3—
Jefferson, Sec. XVII, XIX; Cushing's Legislative Assemblies, Secs. 375, 377, 1216, 1217, 1535; Sturgis, p. 19; Hughes, Secs. 117, 119, 120, Parliamentary Law; Cushing, Secs. 67, 204; Reed, Sec. 213; Tilson, p. 45; 2 Hatsell 100.

(b) When two or more members ask recognition at the same time, the one first rising is entitled to prior recognition.

(c) When two or more members arise at the same time, the one first addressing the presiding officer is entitled to be first recognized.

(d) When two members arise and ask for recognition at the same time, or when the determination of the presiding officer as to who first arose or who was first entitled to speak is questioned, the presiding officer may put the question to the assembly, "Who first arose?" or "Who is entitled to the floor?"

(e) The more modern practice is to leave the matter of recognition of members to the presiding officer, and for the presiding officer to designate the member who is first to speak, subject only to points of order and appeals in case of flagrant or persistent unfairness.

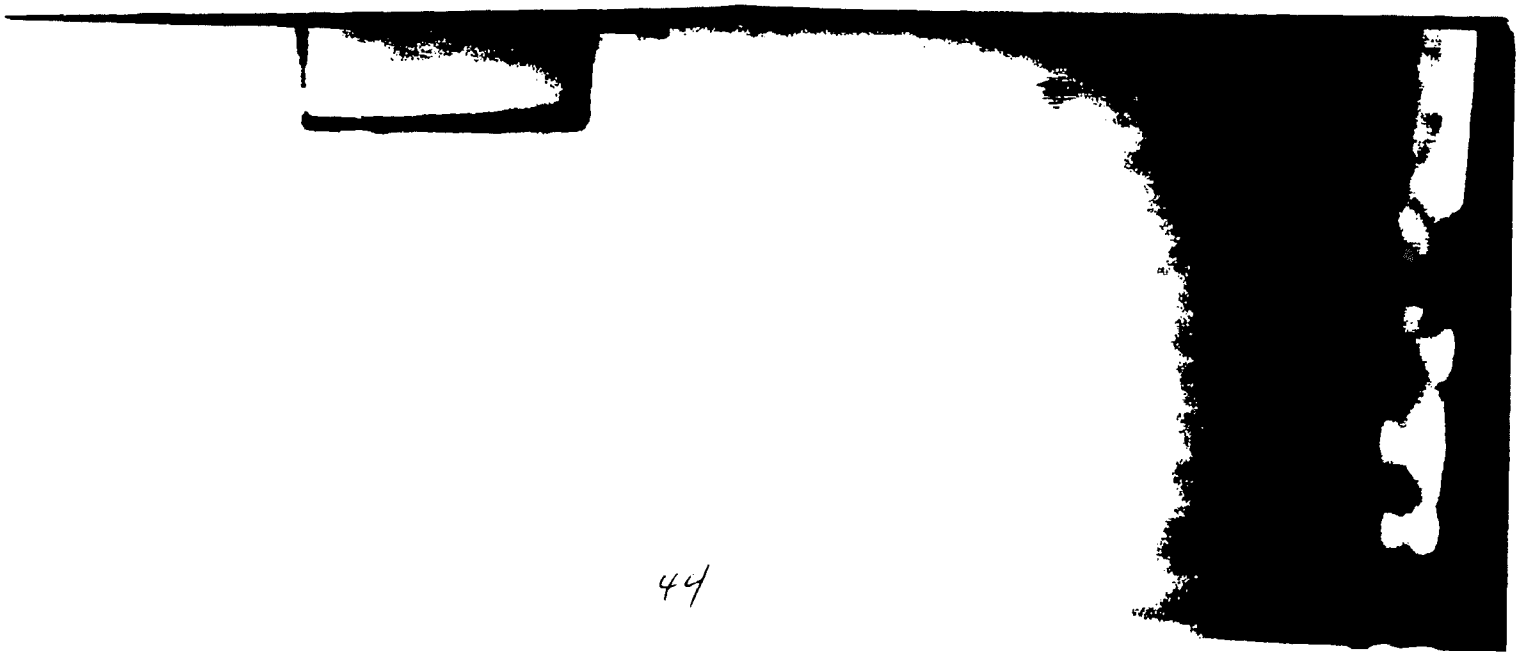
(f) The rules sometimes take away the right to appeal from the decision of the presiding officer as to who is entitled to the floor.

4. In recognizing members, it is the custom for the presiding officer to alternate between those favoring and those opposing the pending question.

5. The presiding officer has the right to inquire for what purpose a member arises in order to ascertain whether the member proposes business which is in order or a motion which has a higher precedence.

Section 91—Continued
Paragraph 4—
Sturgis, p. 19; Hughes, Sec. 117; Reed, Sec. 214; Tilson's Manual, Sec. 50.

Paragraph 5—
Sturgis, p. 19; Hughes, Secs. 28, 124, 735.



6. As a matter of courtesy, a new member is usually called upon in preference to other members arising at the same time.

Sec. 92. Interruption of Speaker

1. There are circumstances under which a member may interrupt a speaker and present a question for action or decision.

2. The speaker may be interrupted for the following purposes:

(a) Raise a question of privilege.

(b) Appeal from the decision of the presiding officer (if the appeal is made immediately following the decision and before progress in debate).

(c) Raise a point of order requiring an immediate ruling.

(d) Make a parliamentary inquiry, requiring immediate reply.

(e) Make or give notice of a motion to reconsider.

(f) Object to consideration (must follow immediately after recognition).

(g) Call for the regular order, for the orders of the day, or call attention to a special order.

Section 91—Continued
Paragraph 6—
Sturgis, p. 19; Hughes, Sec. 678; Cushing's Legislative Assemblies, Sec. 1542.

Section 92—
Paragraph 2—
(a) Sturgis, p. 24; Hughes, Sec. 711.
(b) Sturgis, pp. 33, 206; Hughes, Sec. 123.
(c) Sturgis, p. 34; Hughes, Sec. 123.
(d) Sturgis, p. 34; Hughes, Sec. 711.
(e) Sturgis, p. 33.
(f) Sturgis, p. 33; Hughes, Sec. 123.
(g) Reed, Sec. 257; Hughes, Secs. 123, 711.

(h) Call attention to disorderly conduct or to disorderly words used in debate.

(i) Raise a question of "no quorum."

(j) Call for a division of a question.

(k) Call for a division of the house (must be made immediately following the vote and before progress in debate).

(*l*) Vote when missed on roll call or change a vote when permitted. (It is too late to vote or change a vote after the vote is announced.)

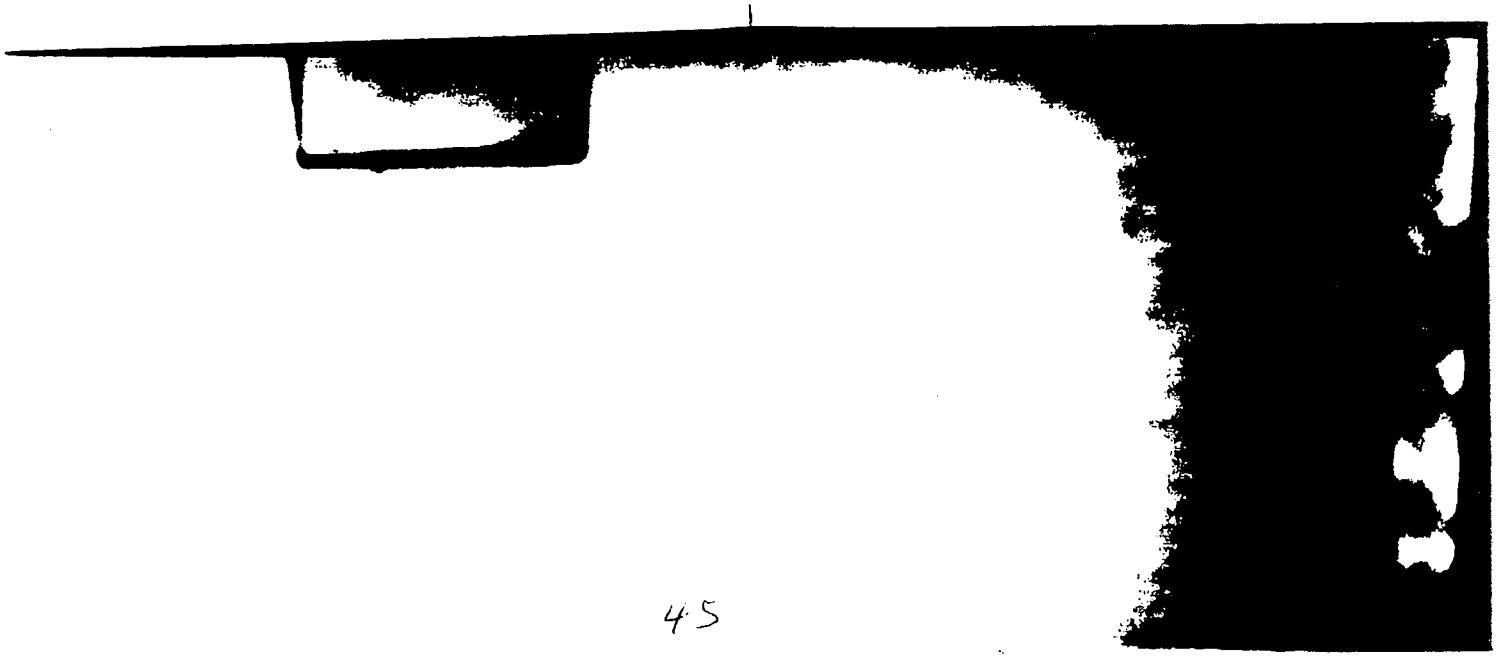
3. When a member is speaking and another member interrupts to request recognition, it is the right of the presiding officer to permit the person rising to state why he desires the floor; and if the question he desires to raise is entitled to precedence, the member originally speaking should relinquish the floor until the question having precedence is disposed of, but he is entitled to resume the floor as soon as the privileged question has been disposed of. This practice is required by rule in some legislative bodies.

4. A member who is speaking may not be interrupted to make a motion, even one with high priority like the motion to adjourn.

Section 92—Continued
Paragraph 2—Continued
(h) Sturgis, p. 45; Hughes, Sec. 709.
(i) Hughes, Sec. 648.
(j) Hughes, Secs. 123, 711.
(k) Hughes, Secs. 123, 711.

Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1214; Hughes, Secs. 124, 176; Reed, Sec. 212; Sturgis, p. 19.

Paragraph 4—
Jefferson, Sec. XX; Reed, Sec. 169; Sturgis, p. 33; Hughes, Sec. 267; N. Y. Manual, p. 444, Cushing, Sec. 137a; Tilson, p. 57.



Sec. 93. Place of Speaking

1. While a member is speaking, he should remain standing at his seat or at the bar of the house, and when he has finished his speech, he should resume his seat. A member who is infirm or ill may be permitted to speak while seated. When a particular place has been set aside for speaking, members should speak from that place.

Sec. 94. Right of Member to Hold the Floor

1. When a member has been recognized, it is a breach of order for another to interrupt him except for the purposes listed under Section 92, Interruption of Speaker, and except to call him to order if he should depart from it. Otherwise it appears to be within the discretion of the member having the floor in debate to determine when and by whom he may be interrupted.

2. A member does not lose his right to the floor by the intervention of a privileged question, and when a member resumes his seat while a paper is being read, he does not thereby lose his right to the floor.

3. A member who had the floor or was entitled to the floor at adjournment is entitled to the floor on the renewal of debate on the original question.

Section 93—
Jefferson, Sec. XVII; Cushing, Sec. 208; Cushing's Legislative Assemblies, Secs. 378, 379, 1550.

Section 94—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1218; Hughes, Sec. 696; Cushing, Sec. 200; Sturgis, p. 47.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1221; Hughes, Secs. 677, 681; Reed, Sec. 212; Sturgis, p. 234.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1543.

4. When there is a question between two members as to which member is entitled to the floor, one may relinquish his claim in favor of another, and courtesy requires that the person relinquishing his claim be next recognized.

5. Where the right to close debate is recognized, a member who is in charge of a measure does not lose his right to close the debate unless the previous question is adopted, and in this case, the right to make a limited closing speech is often permitted by the rules.

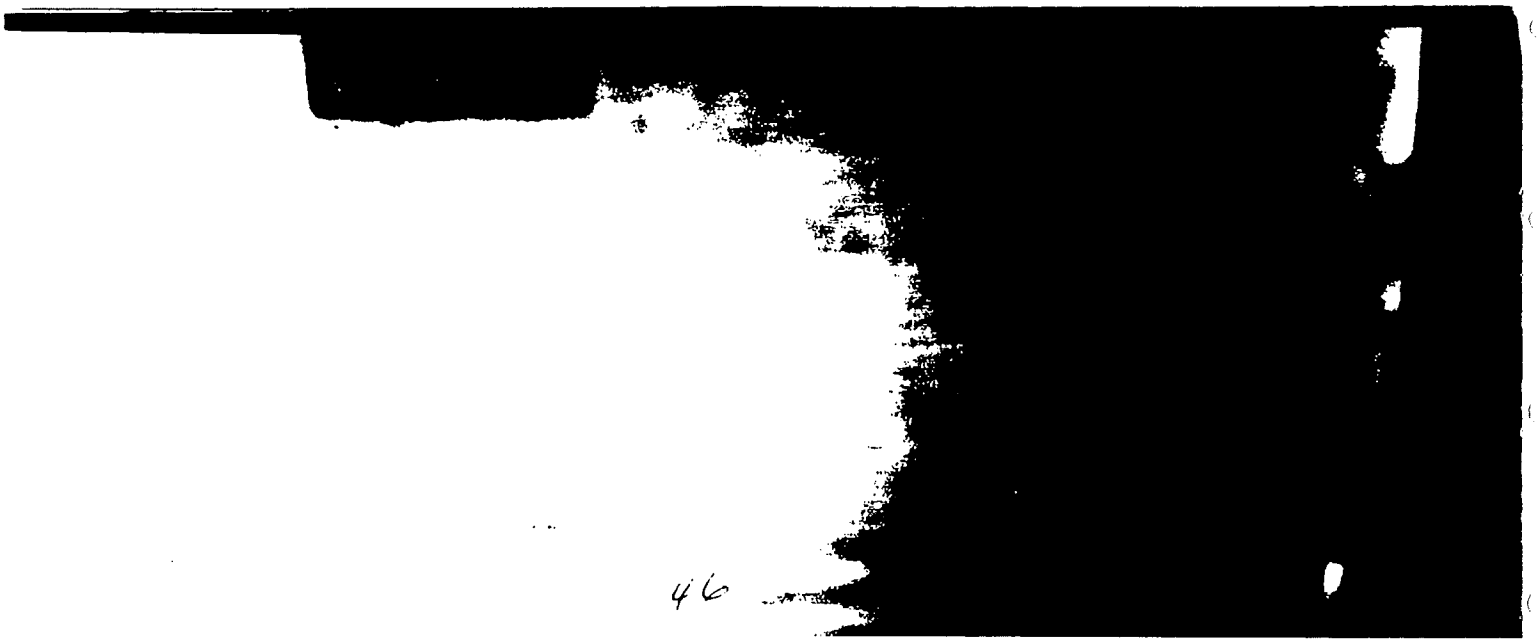
Sec. 95. Yielding the Floor in Debate

1. A member having the floor in debate may, without objection, yield it for questions and explanations connected with the subject before the house. When a member yields the floor temporarily upon request, he may protect his claim to the floor by indicating that he is yielding only temporarily; his claim to the floor is, however, a matter of courtesy and not of right.

2. A member may propose an amendment to the question under discussion without yielding the floor, but loses his right to the floor when he yields it to permit another member to propose an amendment.

Section 94—Continued
Paragraph 4—
Hughes, Sec. 117; Cushing's Legislative Assemblies, Sec. 1547.
Paragraph 5—
Hughes, Sec. 677.

Section 95—
Paragraph 1—
Hughes, Secs. 677, 736; Reed, Sec. 217; Cushing, Sec. 205; Sturgis, p. 213.
Paragraph 2—
Hughes, Secs. 117, 677.



3. A member who yields the floor for a motion to postpone the matter under discussion, lay it on the table, or otherwise put over further debate to a later time, is entitled to be first recognized when the discussion is resumed, but he must promptly claim this privilege and be recognized.

Sec. 96. Right of Presiding Officer to the Floor

1. The presiding officer is not entitled to debate questions from the chair, although when he is a member he may assign the chair to another member and speak from the floor.

2. The presiding officer has the right to speak on points of order in preference to members, or to other members when he is a member, and to state the reasons for his decision on an appeal, but may speak on no other subject from the chair except that he may, with the permission of the body, state facts which are particularly within his own knowledge.

Section 95—Continued
Paragraph 3—
Hughes, Sec. 726.
Section 96—
Paragraph 1—
Reed, Sec. 40; Hughes, Sec. 74; Sturgis, p. 8.
Paragraph 2—
Jefferson, Sec. XVII; Sturgis, p. 8; N. Y. Manual, p. 457.

CHAPTER 12
DEBATE ON QUESTION

Sec. 100. There Must Be a Question Before the House to Permit Debate

1. There can be no debate unless there is a question before the house.

2. Debate must always have relation to some definite question which is under consideration by the body. There must be a motion or question proposed to the body by the presiding officer for the purpose of ascertaining the will of the body.

3. When the subject appears clearly from the circumstances or speech, a member is often permitted to conclude his speech with a motion rather than being required to first make the motion. This is a particularly common procedure in making nominations.

4. In the case of routine reports or other papers being presented to the body, the question is presumed to be pending without a definite motion being made.

5. It has been ruled in Congress that a communication or report being submitted to the House is debatable before any specific motion is made in relation to it. The com-

Section 100—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 1556-1581; Hughes, Secs. 676, 695; N. Y. Manual, p. 440; Sturgis, p. 49.
Paragraph 2—
Sturgis, p. 44; Hughes, Sec. 676; Cushing, Sec. 198.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1558; Sturgis, p. 49.
Paragraph 4—
Hughes, Secs. 134, 676.
Paragraph 5—
Hughes, Sec. 723.

munication itself forms a basis of discussion, being before the House when presented to it.

6. If a pending matter is withdrawn, it precludes further debate on that subject.

See Chapter 28, Secs. 272-276, Withdrawal of Motions.

7. Debate on a point of order is closed when the presiding officer makes his decision thereon.

See Chapter 25, Secs. 240-246, Points of Order.

Sec. 101. Debate Is Limited to the Question Before the House

1. Debate must be confined to the question before the body.

2. A member who resorts to persistent irrelevance or to persistent repetition after the attention of the house has been called to the matter may be directed to discontinue his speech by the presiding officer.

3. When a question has been entertained by the presiding officer and stated to the house, it is open to debate, and the presiding officer may properly put the question: "Is there any discussion?" or, "Are you ready for the question?" in order to serve notice that the matter is open to discussion and may be closed if no one takes the floor.

Section 100—Continued
Paragraph 6—
Hughes, Sec. 719.
Paragraph 7—
Hughes, Sec. 683.
Section 101—
Paragraph 1—
Jefferson, Sec. XVII; Sturgis, p. 45; Hughes, Sec. 728; Cushing, Sec. 209; Reed, Sec. 216; Cushing's Legislative Assemblies, Secs. 1617-1654; U. S. House Rule XIV, Par. 1.
Paragraph 2—
Hughes, Sec. 734; Sturgis, p. 44.
Paragraph 3—
Sturgis, p. 48; Hughes, Sec. 675.

4. Debate on a bill is confined to the bill under consideration and does not extend to criticism of other bills before the house or in committee, even though they relate to the same subject.

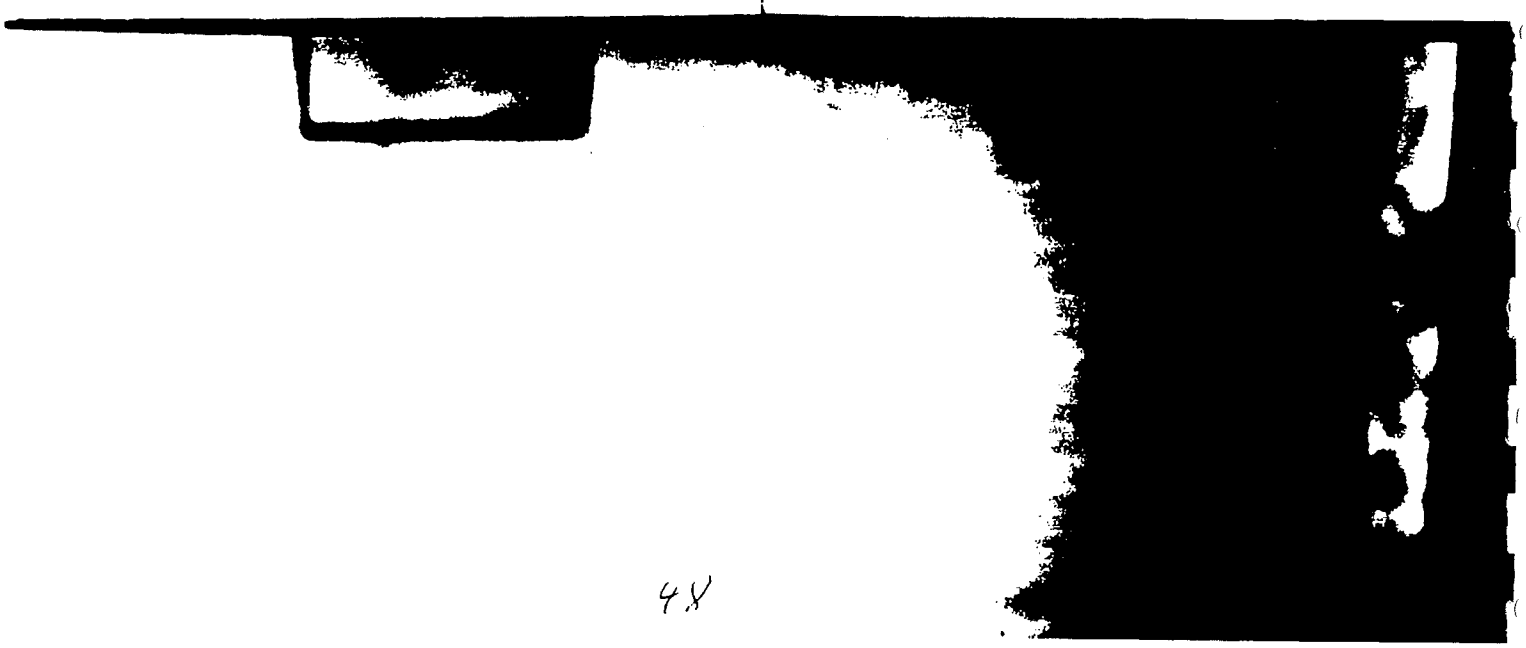
5. It is out of order to refer in debate to a bill or other matter not yet reported by a committee. Neither is it in order to refer to proceedings of a committee unless the committee has formally reported its proceedings to the house. Members may not allude to nor relate in debate what was done or said in committee or by any member of the committee, except such as is contained in the written report made to the house by authority of the committee.

6. When a question is under debate and an amendment is proposed, the amendment then becomes the question under consideration. When an amendment is pending, the debate must be confined to the merits of the amendment, unless it is of such a nature that its decision practically decides the main question.

7. Debate begins with the statement of the question and ends when the question is put to vote and the vote announced.

8. When a question has been divided, general discussion continues on the first division, but brief debate should be permitted on the remaining divisions.

Section 101—Continued
Paragraph 4—
Hughes, Sec. 732; Cannon's Procedure in the House of Representatives, pp. 151-153.
Paragraph 5—
Hughes, Secs. 694, 729.
Paragraph 6—
Sturgis, p. 45; Reed, Sec. 216.
Paragraph 7—
Sturgis, p. 49; Hughes, Secs. 676, 695.
Paragraph 8—
Hughes, Sec. 727; Sturgis, p. 228.



Sec. 102. A Member Has a Right to Speak Only Once on a Question

1. No member has the right to speak more than once on the same question, at the same stage of procedure, on the same day; or even on another day, if the debate be adjourned. But if a bill be read more than once on the same day, he may speak once at each reading.

2. A member may be permitted to speak again to clear up a matter of fact, or merely to explain some material part of his speech, and while he does not have the right to discuss the question itself, he may be permitted to do so. When a member has exhausted his right to speak he may still make any motion having a higher precedence.

3. When an amendment is offered, or any other motion is made, the amendment or other motion then becomes the question under consideration. In regard to the right to debate, such a question is treated as a new question. A member who has spoken once on the main question may speak again on an amendment. But when a question is not debatable an amendment to that question is not debatable.

Section 102—
Paragraph 1—
Jefferson, Sec. XVII; Cushing, Sec. 215; Reed, Sec. 215; Cushing's Legislative Assemblies, Sec. 1582; Tilton, pp. 29, 49; U. S. House Rule I, Par. 4, and Rule XIV, Par. 6; 2 Hatsell 76.
Paragraph 2—
Jefferson, Sec. XVII; Cushing, Sec. 215; Cushing's Legislative Assemblies, Secs. 1585, 1592, 1602, 1603.
Paragraph 3—
Jefferson, Sec. XXXV; Sturgis, p. 45; Cushing's Legislative Assemblies, Secs. 1619-1633; Hughes, Sec. 719; Reed, Secs. 215, 216; Cushing, Secs. 215, 216.

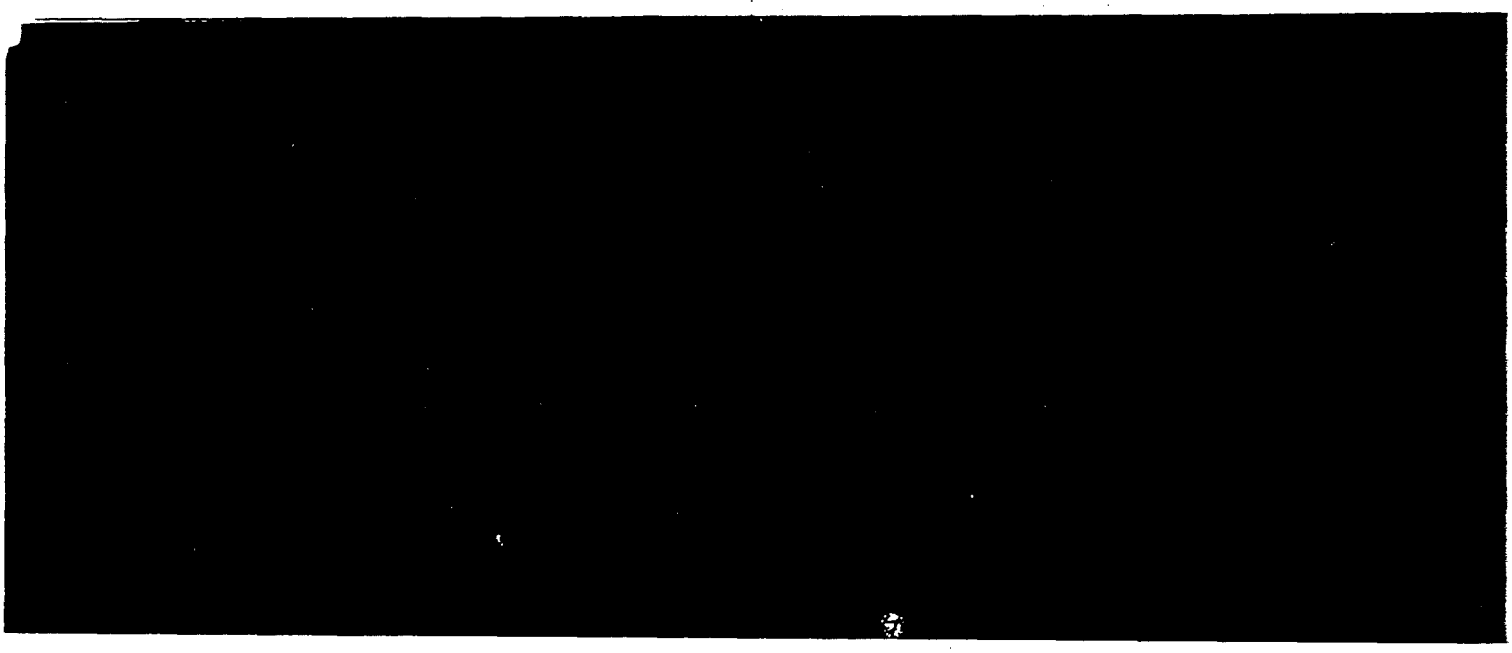
4. The rule providing that members shall not speak more than once on the same measure, at the same stage of procedure, applies to continued debate after adjournment or postponement.

5. In practice, a member is often given the privilege of speaking a second time on a question after others who desired to speak have spoken when he can explain any point misunderstood and present facts to refute arguments by those opposed.

Sec. 103. Member Sponsoring a Question Closing Debate

1. In many deliberative bodies it is provided by rule that the author or sponsor of a measure or a main question is entitled to close the debate after other members wishing to speak have spoken. Where this rule exists, a member may not be deprived of his right to close the debate, except by ordering the previous question, and sometimes the rules permit the author or sponsor a limited time to close debate even after the previous question has been ordered. Where the right of closing is not set out in the rules the privilege is often granted by custom.

Section 102—Continued
Paragraph 4—
Jefferson, Sec. XXXIII; Hughes, Sec. 735; Cushing, Sec. 215.
Paragraph 5—
Cushing, Secs. 217, 218; Cushing's Legislative Assemblies, Secs. 1595, 1601.
Section 103—
Hughes, Secs. 677, 719; Sturgis, p. 49; Tilson, p. 47; U. S. House Rule XIV, Par. 3.



CHAPTER 13

CONDUCT OF DEBATE

Sec. 110. Addressing Members or Presiding Officer

See also Sec. 124, Personalities Not Permitted in Debate.

1. All debate must be addressed to the presiding officer, and not to the members.

2. To guard against the appearance of personalities in debate, it has long been the rule in legislative bodies that no member should refer to another by name in debate. The other member should be described by the district he represents, his seat in the house, as "the member who spoke last," or in any other like manner.

3. In administrative boards and small bodies it is entirely proper to respectfully refer to another member by title or by name as Commissioner A, or Mr. B.

4. The presiding officer of a house of a state legislature is always addressed as "Mr. Speaker" or "Mr. President," or in committee, including Committee of the Whole, as "Mr. Chairman." The presiding officers of local legislative and administrative bodies are referred to by their particular titles, or as "Mr. Mayor," "Mr. Chairman," or "Mr. Moderator."

5. The officers of a deliberative body should always be referred to by their official titles.

Section 110—
Paragraph 1—
Reed, Sec. 212; Sturgis, p. 46; Cushing's Legislative Assemblies, Sec. 380.
Paragraph 2—
Jefferson, Sec. XVII; Sturgis, p. 46; Hughes, Sec. 679; Cushing's Legislative Assemblies, Secs. 381, 1671-1673; Reed, Sec. 212.
Paragraph 4—
Hughes, Sec. 705.
Paragraph 5—
Sturgis, p. 46.

Sec. 111. Reference to Executive, to Other House, or Questions Before the Courts

1. It is unparliamentary and inconsistent with the independence of a legislative body to refer to the name or office of the executive in order to influence the vote. It is in order in debate to refer to the executive or his opinions, with either approval or criticism when such references are relevant to the subject under discussion and otherwise conform to the rules.

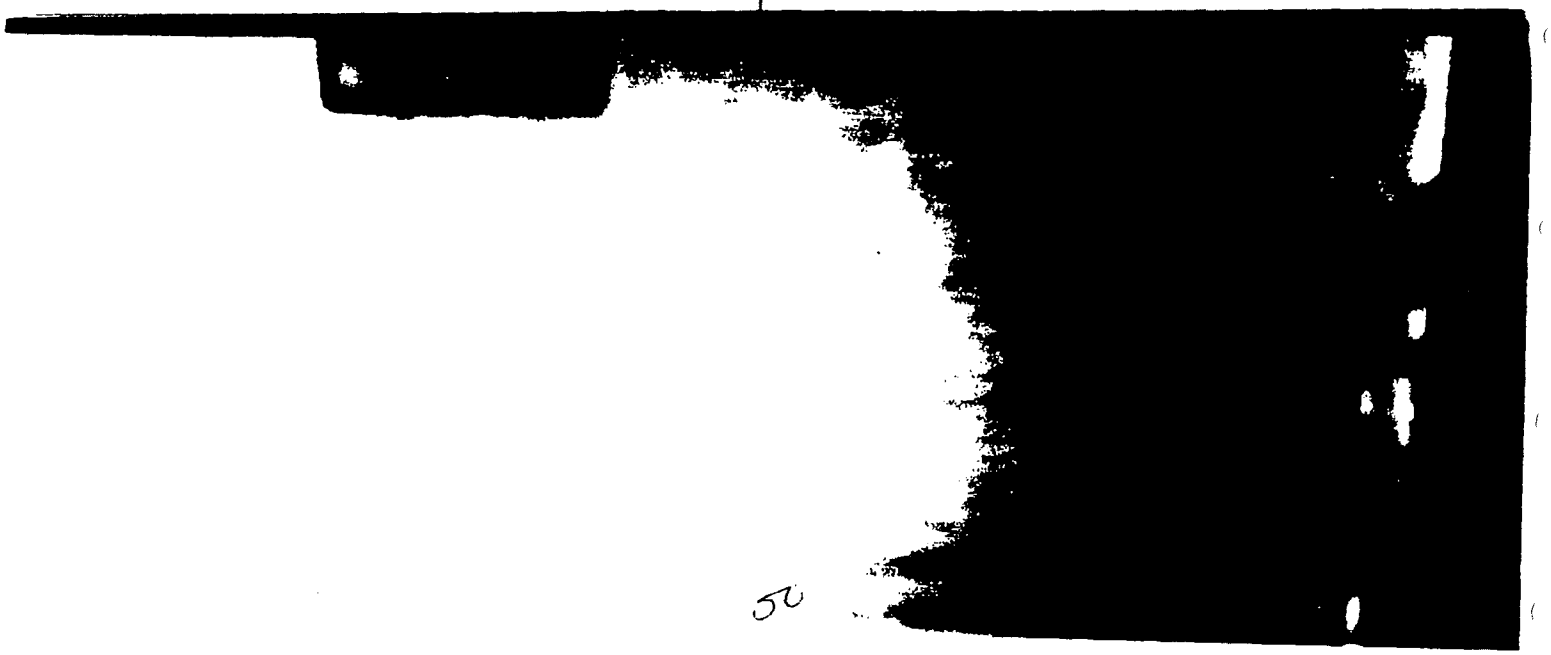
2. It is irregular and unparliamentary for a member in one house of a legislature to quote or refer to the vote by which a measure passed the other house.

3. Any matter waiting adjudication in a court should not be debated or discussed in a legislative body.

Sec. 112. Reading Papers

1. When papers which have not been printed, are presented to the house or to a committee for action, a member has a right to have them read once before he can be compelled to vote on them. If there has been debate or amendment he may request that they be read again before voting upon them, but a motion or request for the reading of a bill or resolution is not in order after the roll call has been ordered.

Section 111—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 738; Hughes, Secs. 694, 737; Jefferson, Sec. XXXV; Reed, Sec. 224.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 739.
Paragraph 3—
Hughes, Sec. 680.
Section 112—
Paragraph 1—
Jefferson, Sec. XXXII; Cushing's Legislative Assemblies, Sec. 1472; N. Y. Manual, p. 448; Cushing, Sec. 155; Reed, Sec. 187.



2. Members do not have the right to have acts, journals, accounts, or papers on the table read independently of the will of the body. The delay and interruption which this might cause demonstrates the impossibility of the existence of such a right.

3. Every member should have as much information as possible on every question on which he is to vote. When a member requests the reading of a paper for information and not for delay, the presiding officer should direct it to be read, but if any member objects, the presiding officer must put the question of reading to a vote.

4. If a member was absent from the chamber when the paper under consideration was read, even though absent on duty, he cannot insist on its being read again, as the convenience of the body is of more importance than that of a single member.

5. A member has not the right, without the permission of the body, to lay a book or paper on the table, and have it read on suggesting that it contains matter infringing on the privileges of the body.

6. A member has no right to read, or have the clerk read, from any paper or book, as a part of his speech, if any member objects, without the permission of the body.

Section 112—Continued
Paragraph 2—
Jefferson, Sec. XXXII; Cushing, Sec. 156; Reed, Sec. 187.
Paragraph 3—
Jefferson, Sec. XXXII.
Paragraph 4—
Jefferson, Sec. XXXII.
Paragraph 5—
Jefferson, Sec. XXXII; Cushing, Sec. 157.
Paragraph 6—
Jefferson, Sec. XXXII; Cushing, Secs. 157-159; Reed, Sec. 187.

But this rule is never rigorously enforced except where there is an intentional or gross abuse of the time and patience of the body. It is customary, however, to allow members to read printed extracts as parts of their speeches, so long as they do not abuse the privilege.

7. A member has not the right to read even his own speech, committed in writing, without leave. This also is to prevent the abuse of time, and therefore should not be refused except where the privilege is abused. A member is entitled to speak from notes.

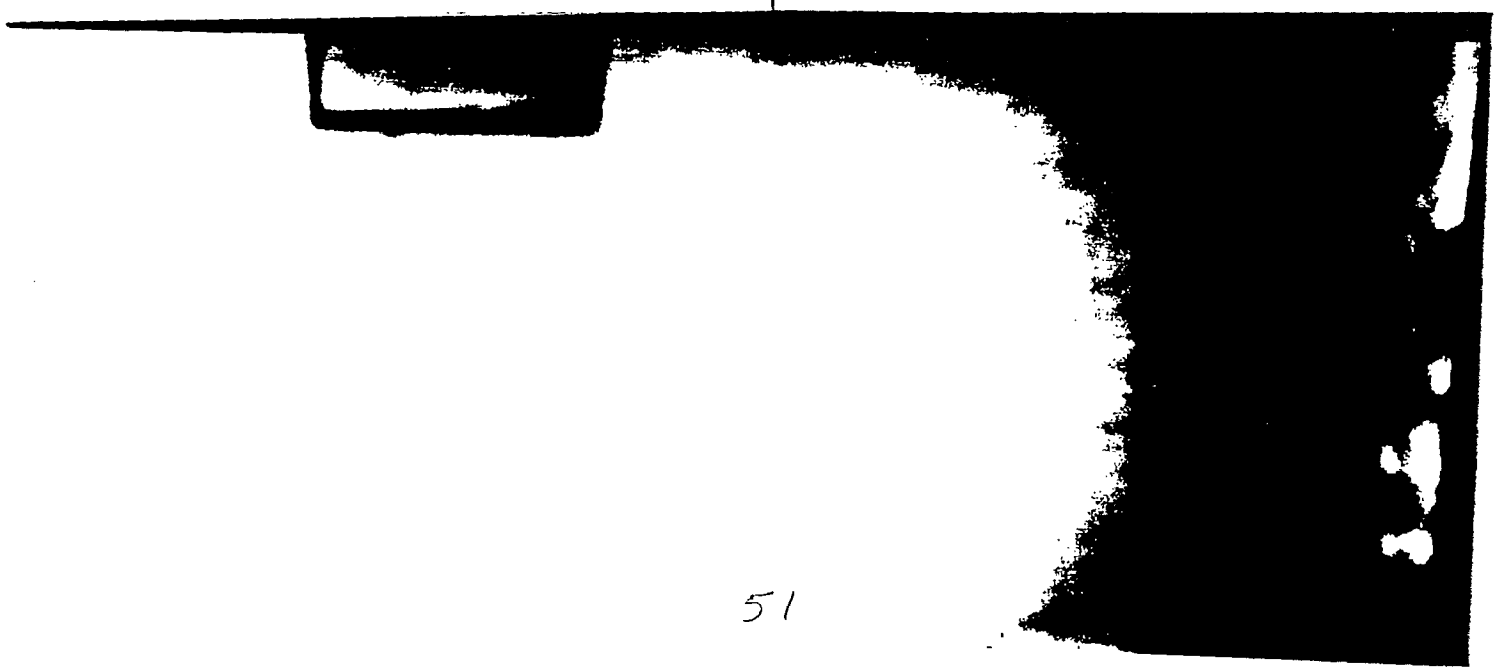
Sec. 113. Consideration by Paragraph

1. The natural order in considering and amending any paper is to begin at the beginning, and proceed through it by sections or paragraphs. This order is strictly adhered to in most legislative bodies, but in smaller bodies recurrences may be indulged when they seem, on the whole, to produce advantages overweighing their inconveniences.

2. Where recurrences are permitted, they should be permitted only after the paper has been considered to the end, unless some good reason appears, when recurrences may be permitted by unanimous consent.

3. To this natural order of beginning at the beginning, there is a single exception found in parliamentary usage.

Section 112—Continued
Paragraph 7—
Jefferson, Sec. XXXII; Cushing's Legislative Assemblies, Secs. 1553-1555.
Section 113—
Paragraph 1—
Jefferson, Sec. XXVI; Cushing, Secs. 95, 191.
Paragraph 2—
Reed, Sec. 130.
Paragraph 3—
Jefferson, Sec. XXVI; Cushing, Sec. 192; Reed, Sec. 130.



When a bill is taken up in committee, or on the final reading, the consideration of the title is postponed until the other parts of the bill are finished. The reason for this is that on consideration of the body of the bill, alterations may be made which will also require the alteration of the title.

4. Should the presiding officer fail to take up the proposition by paragraph, any member may move that the proposition be considered by paragraph, or seriatim.

5. The usual method of procedure in acting upon a complicated report or a bill or resolution is as follows:

(a) A member submits the report of a committee, or a bill. He reads the report or presents the bill or resolution, and moves its adoption. Should he neglect to move its adoption, the presiding officer may call for such a motion, or he may assume the motion and state the question accordingly.

(b) The member who submitted the report, or the secretary or clerk as the presiding officer directs, then reads the first paragraph, which is explained by the reporting member, after which the presiding officer should ask, "Are there any amendments?" or "What is the pleasure of the house?" The paragraph is then open to discussion and amendment.

(c) When there are no amendments or no further amendments are proposed to the paragraph, the presiding officer then directs that the next paragraph be read. In a similar manner each paragraph is read in succession, and may be debated and amended, but is not adopted.

Section 113—Continued
Paragraph 4—
Sturgis, p. 94.
Paragraph 5—
Cushing, Secs. 193, 194; Reed, Secs. 129, 130.

(d) After all the paragraphs have been considered, the report or bill or resolution is open to amendment as a whole, when additional paragraphs may be inserted and any paragraph may be further amended.

(e) When the report or measure is found satisfactory, or has been amended to the satisfaction of the house, the title or preamble, if any, is considered and may be amended, and then a single vote is taken on the adoption of the entire measure, report or resolution.

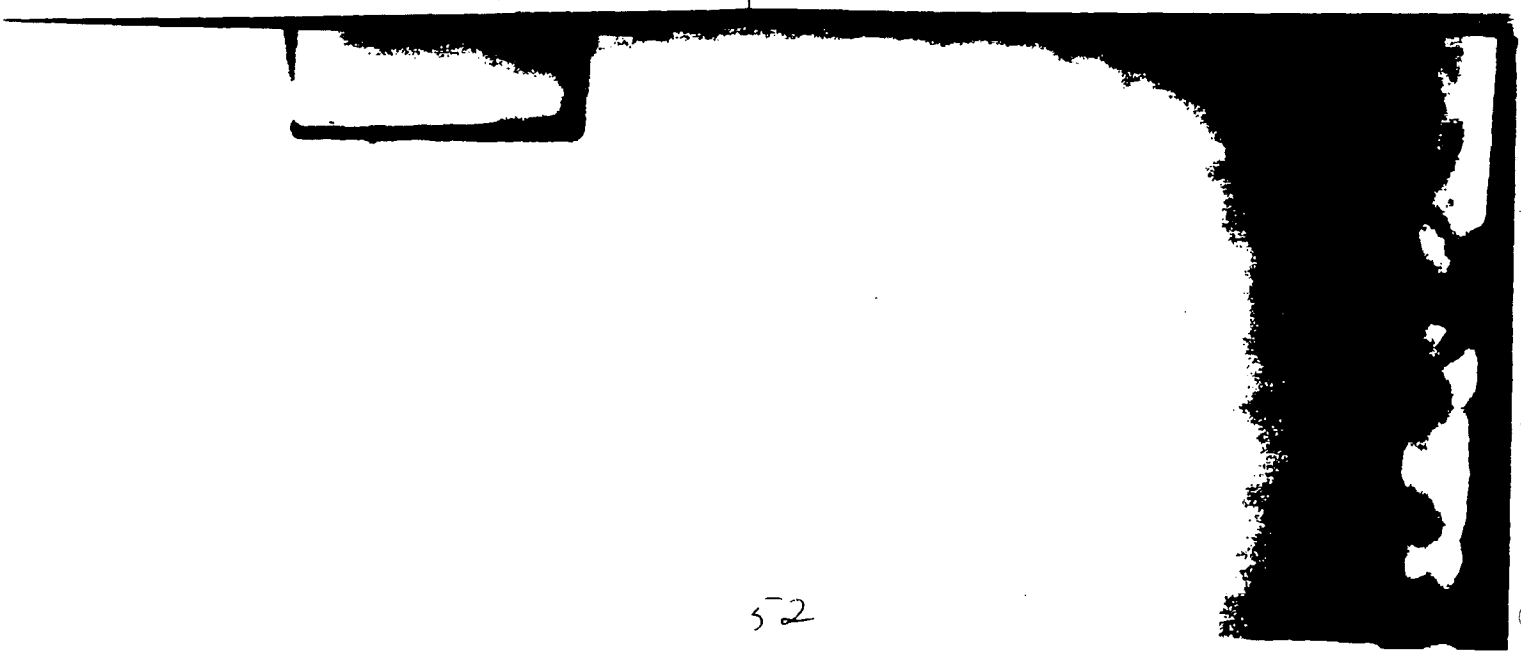
Sec. 114. Asking Questions of Members

A. Procedure on Asking Questions

1. If a member desires to ask a question of a member he may do so through the presiding officer, but it is discourteous and a strict violation of parliamentary rules to ask the question directly of the member. Unless some good reason exists, he should wait until the member has concluded speaking, but may interrupt with the consent of the member.

2. The procedure on asking questions is for the member to rise, and without waiting to be recognized, say, "Mr. President (or Mr. Speaker or Mr. Chairman), I wish to ask the Senator (or gentleman or otherwise designating the member speaking) a question." The presiding officer then asks the member speaking if he will yield to a question. The member may consent or decline, replying through the presiding officer. If the member speaking consents, the member desiring to ask the question may then state the question and the member speaking may reply. If the first reply does not fully answer the question,

Section 114—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1572; Sturgis, p. 213; Hughes, Sec. 700.
Paragraph 2—
Sturgis, p. 213.



it is the practice to permit a limited number of further questions to be asked.

3. In computing the time allowed for argument, the time consumed in asking questions must be considered. And if a member consents to the question, the time consumed by the interruption is taken out of any time allowed him.

B. Limitations on Questions

4. Questions addressed to members may relate only to a question before the body.

5. A question should not be permitted which reflects upon the character or conduct of any member or upon the executive or other official. A question as to what course a member proposes to follow is not in order.

6. The purpose of a question is to obtain information and not to supply it to the body. A question may not contain statements of fact unless they be necessary to make the question intelligible and can be authenticated. Neither should a question contain arguments.

C. Questions Are Not Debate

7. Merely asking a question, or making a suggestion, is not debate. A member is entitled to inquire concerning the meaning or purpose or effect of even an undebatable motion.

Section 114—Continued
Paragraph 3—
Hughes, Sec. 431.
Paragraph 4—
Hughes, Sec. 706; Sturgis, p. 212.
Paragraph 5—
Hughes, Secs. 706, 707.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 1573; Hughes, Sec. 707.
Paragraph 7—
Sturgis, p. 45.

CHAPTER 14

DECORUM IN DEBATE

Sec. 120. Equality of Members in Debate

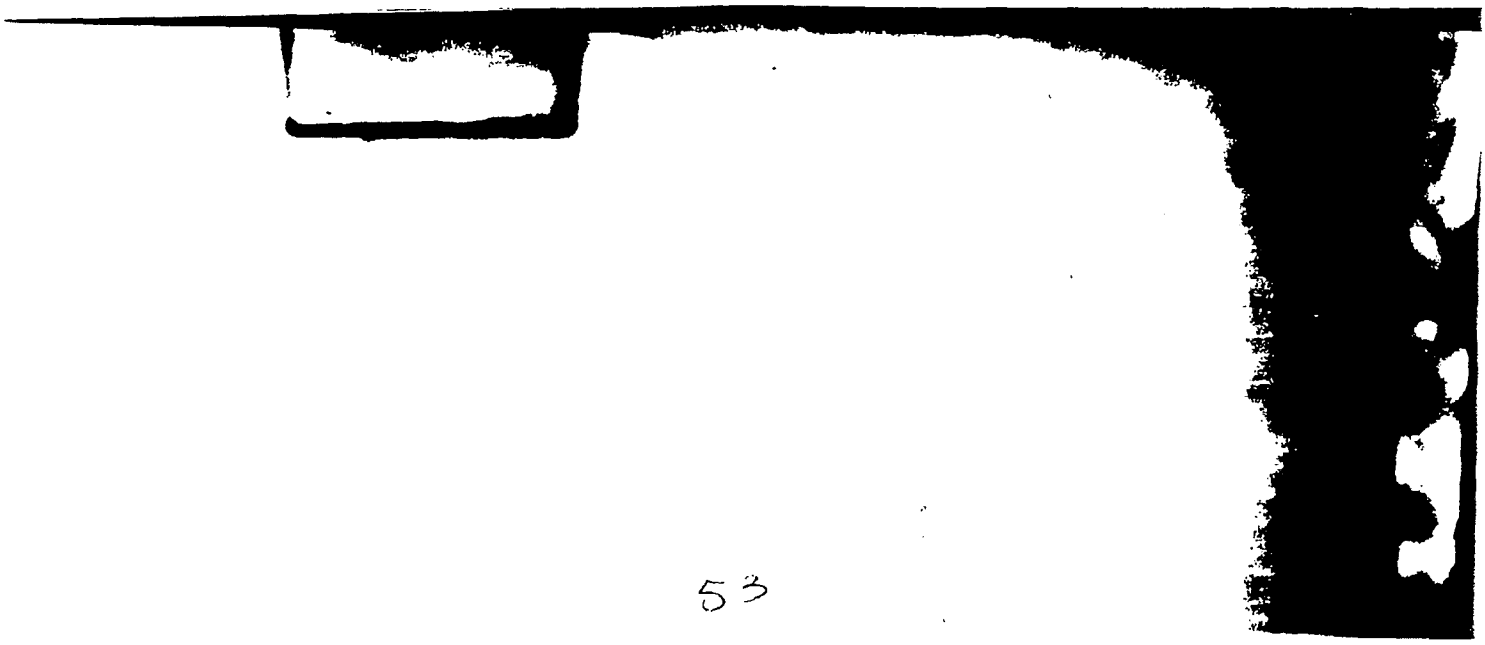
1. The rights and duties of members of a legislative body are derived from and founded upon the absolute equality of the members. Every member has the same right as any other member to present questions for the consideration of the house, and has the same right to be heard. Members must not be permitted by their conduct to deny to others that which they may claim for themselves. It is the duty of every member to conduct himself so as not to obstruct the like rights of other members. Freedom of speech involves obedience to all the rules of debate.

Sec. 121. Breaches of the Order of the House

1. That no one is to speak "impertinently or beside the question, superfluously, or tediously" is an ancient rule governing debate.

2. A member who resorts to persistent irrelevance or to persistent repetition after the attention of the house has been called to the matter may be directed to discontinue his speech by the presiding officer.

Section 120—
Cushing's Legislative Assemblies, Sec. 373; Cushing, Sec. 36; Hughes, Sec. 686; Sturgis, p. 43.
Section 121—
Paragraph 1—
2 Hatsell 166; Jefferson, Sec. XVII; N. Y. Manual, p. 457; Cushing's Legislative Assemblies, Secs. 1676-1700; Sturgis, pp. 44, 45.
Paragraph 2—
Sturgis, p. 45; Hughes, Sec. 734.



3. During debate, while the presiding officer is speaking, or the house is engaged in voting, no one is to disturb another in his speech by hissing, coughing, spitting, speaking or whispering to another, nor passing between the presiding officer and the member speaking, nor crossing the floor of the house, nor walking up and down, nor taking books or papers from the desk, nor writing there.

4. If, at any time, the presiding officer rises to state a point of order, or give information, or otherwise speak within his privilege, the member speaking must take his seat until the presiding officer has been heard.

5. A member in debate is not permitted to reflect upon a prior determination of the house unless it is his purpose to conclude with a motion to repeal or modify or rescind the action to which he has referred. The consequences of a measure may be denounced in strong terms; but to attack the motives of those who propose or advocate it is not in order. While a proposition is still under consideration and capable of change, though it has even been reported by a committee, reflections on it are not reflections on the house.

6. The reading in the house of any letter from a person not a member or any other communication calling in question acts of members or officials of the house, or being abusive, is out of order and should not be permitted.

Section 121—Continued
Paragraph 3—
2 Hatsell 171; Jefferson, Sec. XVII; Sturgis, p. 48; Cushing, Secs. 37, 211; Reed, Sec. 212; U. S. House Rule XIV, Par. 7.
Paragraph 4—
Cushing, Sec. 207; Hughes, Sec. 724.
Paragraph 5—
Jefferson, Secs. XXXIII, XXXIV; Hughes, Sec. 182; Cushing, Secs. 210, 211; Reed, Sec. 212.
Paragraph 6—
Hughes, Sec. 708.

7. Calls for the reading of papers or for roll calls or for the question made by members from their seats are not to be regarded as motions or demands. Such calls are themselves breaches of order and should not be recognized.

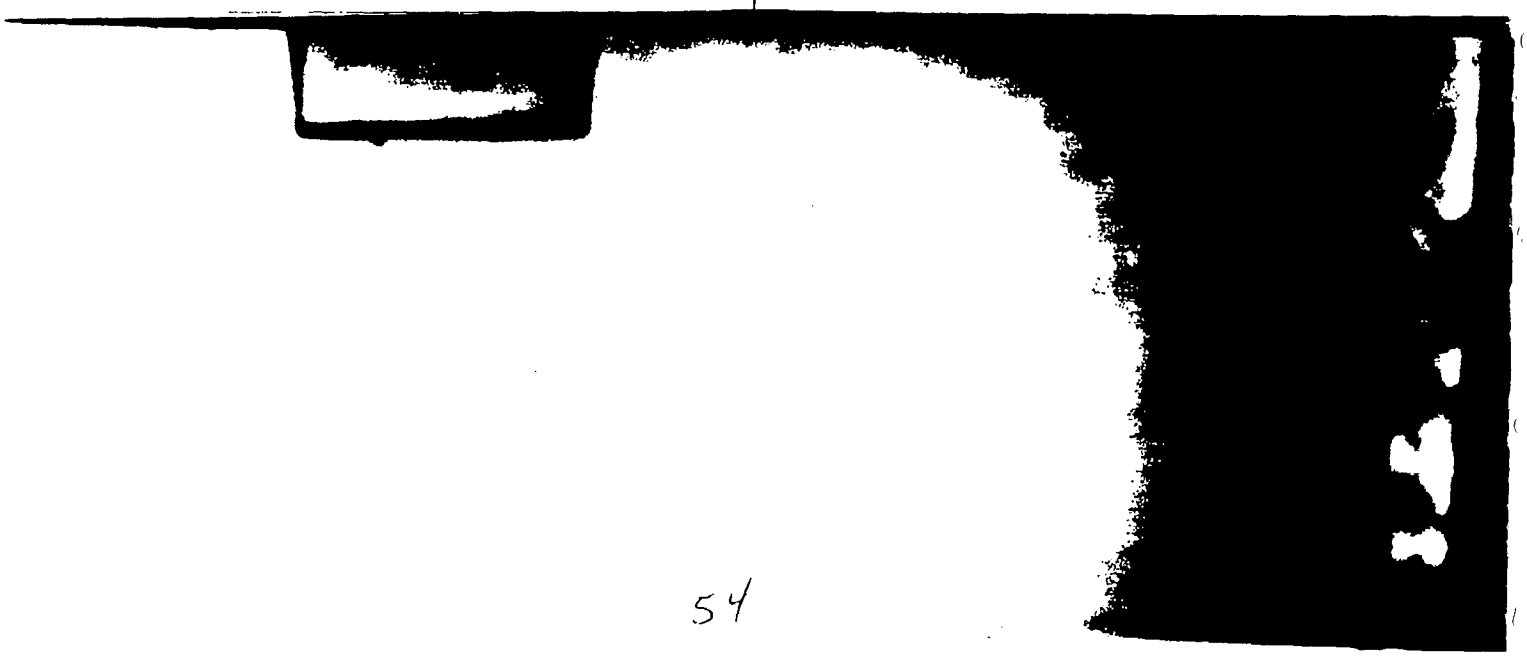
Sec. 122. Procedure Under Call to Order

1. If repeated calls do not produce order, the presiding officer may call any member, who obstinately persists in irregularity, by name.

2. When called to order by the presiding officer, the member must sit down until the question of order is decided. The member may not proceed unless the body permits him to do so. The presiding officer may state the offense committed, and the member may then be heard in explanation or justification, and may be required to withdraw while the body considers whether it will take any action against him.

3. Although the presiding officer is in control of debate on a question of order, yet he should put to a vote the question of whether a member called to order during a debate should be allowed to proceed. A member who has been called to order in debate and decided out of order, loses the floor and another may be recognized. When a member is called to order for irrelevancy, he may proceed in order unless the question was brought to a vote and the debate found irrelevant.

Section 121—Continued
Paragraph 7—
Hughes, Sec. 220.
Section 122—
Paragraph 1—
Jefferson, Sec. XXIV; Cushing, Secs. 40, 225; Reed, Sec. 221.
Paragraph 2—
Jefferson, Sec. XXIV; Reed, Sec. 223; Hughes, Sec. 690; Cushing, Secs. 40, 41, 228-232; Tilson, p. 47.
Paragraph 3—
Hughes, Sec. 693; Cushing, Sec. 214.



Sec. 123. Use of Disorderly Words in Debate

1. No person may use indecent language with reference to the body or its members.

2. When disorderly words are used by a member in debate, notice should immediately be taken of them by the member objecting, and if he desires the words taken down, he should repeat them exactly as he believes them to have been spoken. If the presiding officer is of the opinion that the words are disorderly, he should direct that the clerk take them down. If the presiding officer thinks the words are not disorderly, he may delay the order to the clerk to take down the words unless there is a demand by other members, when he should order the clerk to take them down as stated by the objecting member, or a member may insist on the determination of the question by the house by putting the question in the form of a motion.

3. When words are taken down, they are then a part of the minutes, and when read to the offending member, he may deny they were his words. When there is a dispute as to the words, before the question of disorderliness is voted upon, the presiding officer should first put the question, "Are the words written down the words spoken by the member?"

4. The question of whether the words are disorderly is then submitted to the body. If the body is satisfied that

Section 123—
Paragraph 1—
Jefferson, Sec. XXXIII.
Paragraph 2—
Jefferson, Sec. XXXV; Hughes, Sec. 709; Cushing, Secs. 227-232; Reed, Secs. 222, 223.
Paragraph 3—
Jefferson, Sec. XXXV; Cushing, Sec. 229.

the words are not disorderly, no further proceeding is necessary. If the words are found disorderly, the member using them should be permitted to explain and apologize to the body, but if the member refuses to apologize, it is the duty of the presiding officer to censor him, or of the body to act in the case.

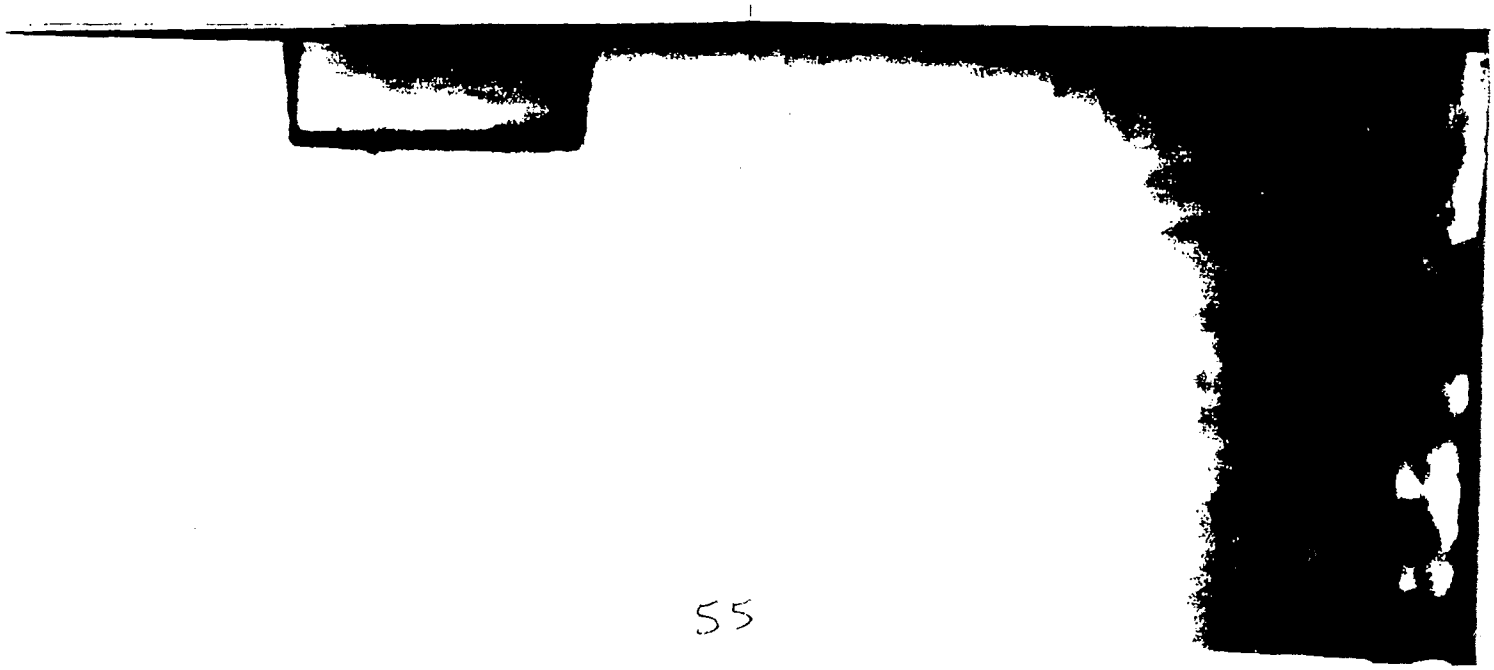
5. If the remarks of the member are decided to be improper, he may not proceed, if any one objects, without the permission of the body expressed by a vote, upon which question no debate is allowed.

6. When a member has been called to order for disorderly words, it is usual for a motion to be made to permit the member to explain and if the explanation is satisfactory, it is in order and customary for a motion to be made and carried that the member be allowed to "proceed in order." The motion should always be that the member be permitted to "proceed in order," and not merely to "proceed."

7. In order to take any action concerning disorderly words spoken in a committee they must be written down, but the committee can only report them to the parent body for its consideration and action.

8. The procedure here given is the established formal procedure for dealing with instances of disorderly conduct or disorderly words. Particularly in smaller groups, these matters are better dealt with informally.

Section 123—Continued
Paragraph 4—
Jefferson, Sec. XXXV; Hughes, Sec. 709; Cushing, Secs. 229, 230.
Paragraph 5—
Cushing, Sec. 230; Sturgis, p. 46.
Paragraph 6—
Hughes, Secs. 720, 721; Reed, Sec. 223.
Paragraph 7—
Jefferson, Sec. XXXV.



9. Improper conduct of a member can be referred to a committee for investigation and report or for action and the notoriety which comes from discussion on the floor avoided.

10. When any member has spoken or any other business has taken place since the member spoke, it is too late to take notice of any disorderly words he used for the purpose of censure.

Sec. 124. Personalities Not Permitted in Debate

See also Sec. 110, Addressing Members or Presiding Officer.

1. In debate a member must confine his remarks to the question before the house, and avoid personalities.

2. A member in referring to another member, should, as much as possible, avoid using his name, rather identifying him by the district which he represents, his seat, as the member who last spoke, or by describing him in some other manner.

3. It is not the man but the measure that is the subject of debate, and it is not allowable to arraign the motives of a member, but the nature or consequences of a measure may be condemned in strong terms.

Sec. 125. Personal Disputes Between Members

1. Whenever there has been a dispute or an assault between members, the body may require the members to

Section 123—Continued
Paragraph 9—
Jefferson, Sec. XXXV; Cushing, Sec. 232.
Section 124—
Paragraph 1—
Sturgis, p. 46; Tilson, p. 44.
Paragraph 2—
Jefferson, Sec. XVII; Cushing, Sec. 206.
Paragraph 3—
Sturgis, p. 46; Hughes, Sec. 705.

settle their differences and agree not to prosecute the disagreement further, and the members may be put under restraint if they refuse to settle their differences or until they do.

2. In a dispute between members, of which the body takes official notice, both parties to the dispute should retire after being heard while the body decides what action if any it will take concerning the matter. It is not, however, necessary for a member objecting to disorderly words to retire unless he is personally involved. Disorderly words to the presiding officer, or in respect to the official acts of an officer, do not involve the officer so as to require him to retire.

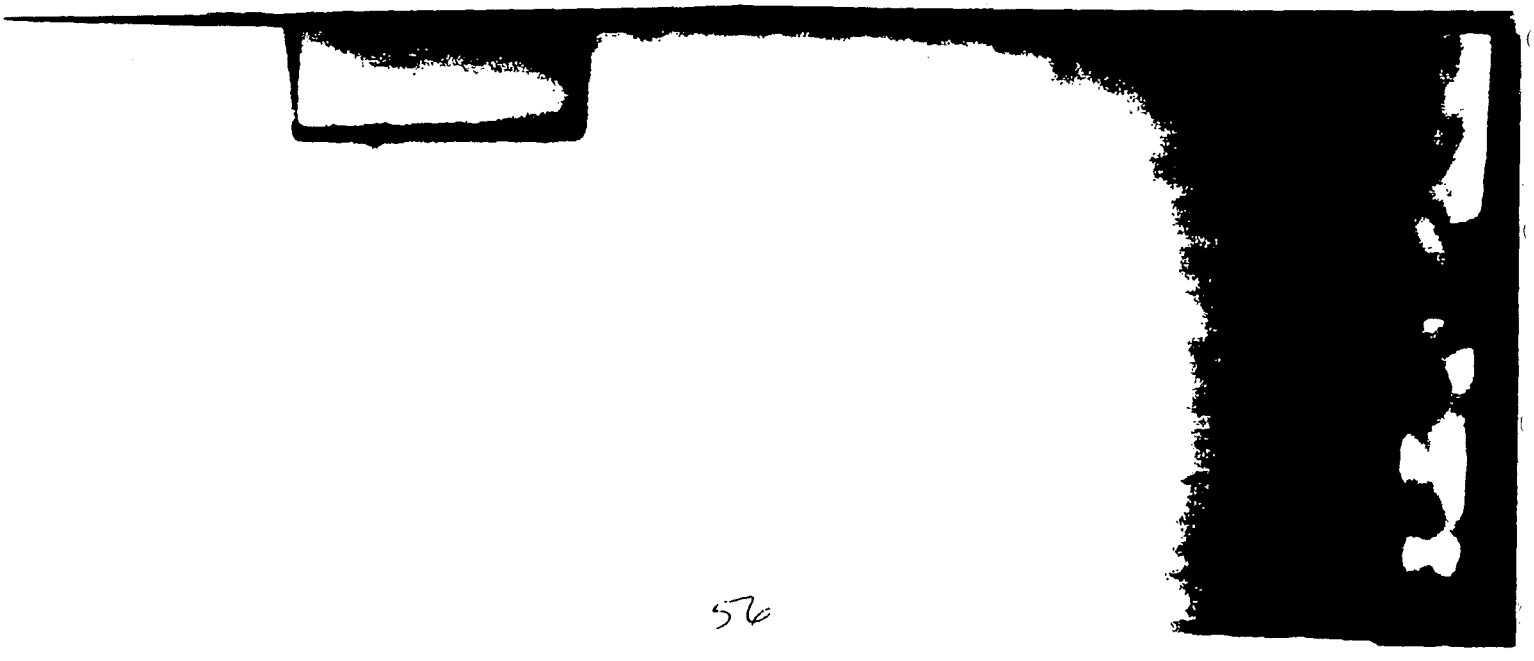
Sec. 126. Complaints Against the Presiding Officer

1. The presiding officer is subject to the same rules regarding disorderly words as members.

2. Complaint of the conduct of the presiding officer should be presented directly for action by the house, in which case the presiding officer should vacate the chair and call a member to preside until the matter is settled.

3. A question concerning conduct of the presiding officer should not be presented by way of debate on other matters. Allusions to, or critical reference to the pre-

Section 125—
Paragraph 1—
Jefferson, Sec. XVII.
Paragraph 2—
Jefferson, Sec. XVII.
Section 126—
Paragraph 1—
Hughes, Sec. 709.
Paragraph 2—
Hughes, Sec. 692.
Paragraph 3—
Hughes, Sec. 692.



siding officer, are not in order. Such attacks are not conducive to the good order of the house.

Sec. 127. Relations With the Other House and Its Members

See also Chapter 71, Secs., 760-764, Relations With the Other House.

1. Neither house of a legislative body can exercise any authority over a member or officer of another, but when it appears that some action should be taken it should complain to the house of which the person complained of is a member or officer, and leave the punishment to that house.

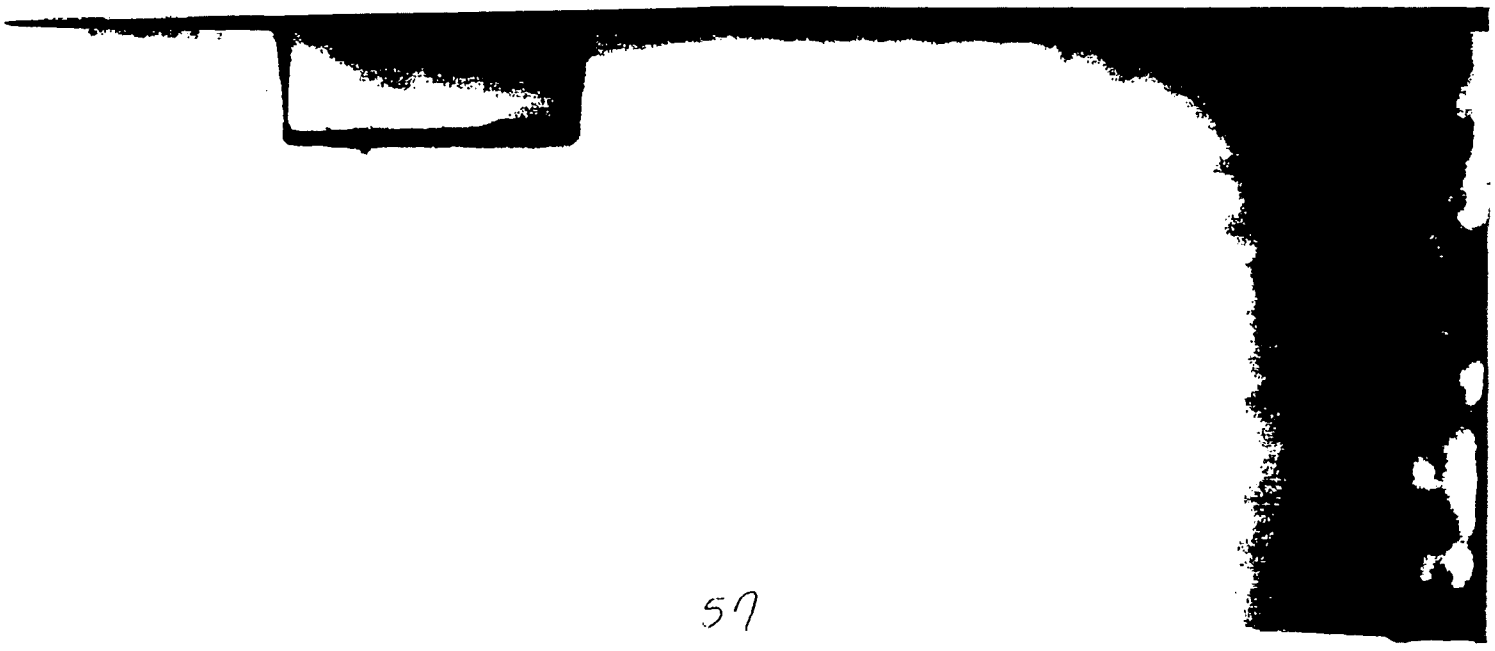
2. When the complaint is of words disrespectfully spoken by a member of the other house, it is difficult to obtain punishment because of the rules supposed necessary to be observed, as to the immediate noting down of words, for the security of members. Therefore, it is the duty of the house, and more particularly of the presiding officer, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other house, and introduce proceedings and mutual accusations between the two houses.

3. If the motives of a member of either house have been impugned in the other, he may refer to the proceedings of the other house sufficiently to explain his own motives under the right of personal privilege, but may not bring into discussion matters of controversy.

Section 127—
Paragraph 1—
Jefferson, Sec. XXXV; Hughes, Secs. 83, 84, 694.
Paragraph 2—
Jefferson, Sec. XXXV; Hughes, Sec. 694.
Paragraph 3—
Hughes, Sec. 694.

4. It is a breach of order in debate to notice what has been said on the same subject in the other house, or the particular votes or majorities on it there, because the opinion of each house should be independent and not influenced by the proceedings of the other, and because referring to or quoting the proceedings in one house might cause reflections leading to a misunderstanding between the two houses.

Section 127—Continued
Paragraph 4—
Jefferson, Sec. XXXV; Reed, Sec. 224; Cushing's Legislative Assemblies, Sec. 739.



CHAPTER 15

CLOSING DEBATE

Sec. 130. Bringing Question to Vote

See Sec. 523 for manner of putting questions to vote.

1. When the debate appears to the presiding officer to be closed, he should inquire, "Are you ready for the question?" If, after a reasonable pause, no one rises to claim the floor, he may assume that no member wishes to speak, and put the question to vote.

2. Debate is not closed by the presiding officer stating the question, as until both the affirmative and the negative are put, a member can rise and claim the floor and reopen the debate or make a motion, provided he rises with reasonable promptness after the presiding officer asks, "Are you ready for the question?"

3. The question is to be put first on the affirmative, and then on the negative side. After the presiding officer has put the affirmative part of the question, any member who has not spoken before to the question may rise and speak before the negative be put, because it is not a full vote until the negative part is also put. After the first member has voted on roll call, however, it is too late to resume the debate.

4. If the debate is resumed, both the affirmative and the negative of the question must be put again.

Section 130—
Paragraph 1—
Sturgis, p. 48; Cushing's Legislative Assemblies, Sec. 1610.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1610; Sturgis, p. 48.
Paragraph 3—
Jefferson, Sec. XXXIX; Cushing's Legislative Assemblies, Secs. 1610, 1615.
Paragraph 4—
Sturgis, p. 48.

5. Should the privilege of reopening a question be abused by members not responding to the inquiry, "Are you ready for the question?" and intentionally waiting until the affirmative vote has been taken, and then rising and reopening the debate, the presiding officer should act as in case of dilatory motions, or any other attempt to obstruct business, and protect the body from annoyance.

6. When a vote is taken a second time, as when a division is called for, debate cannot be resumed except by unanimous consent.

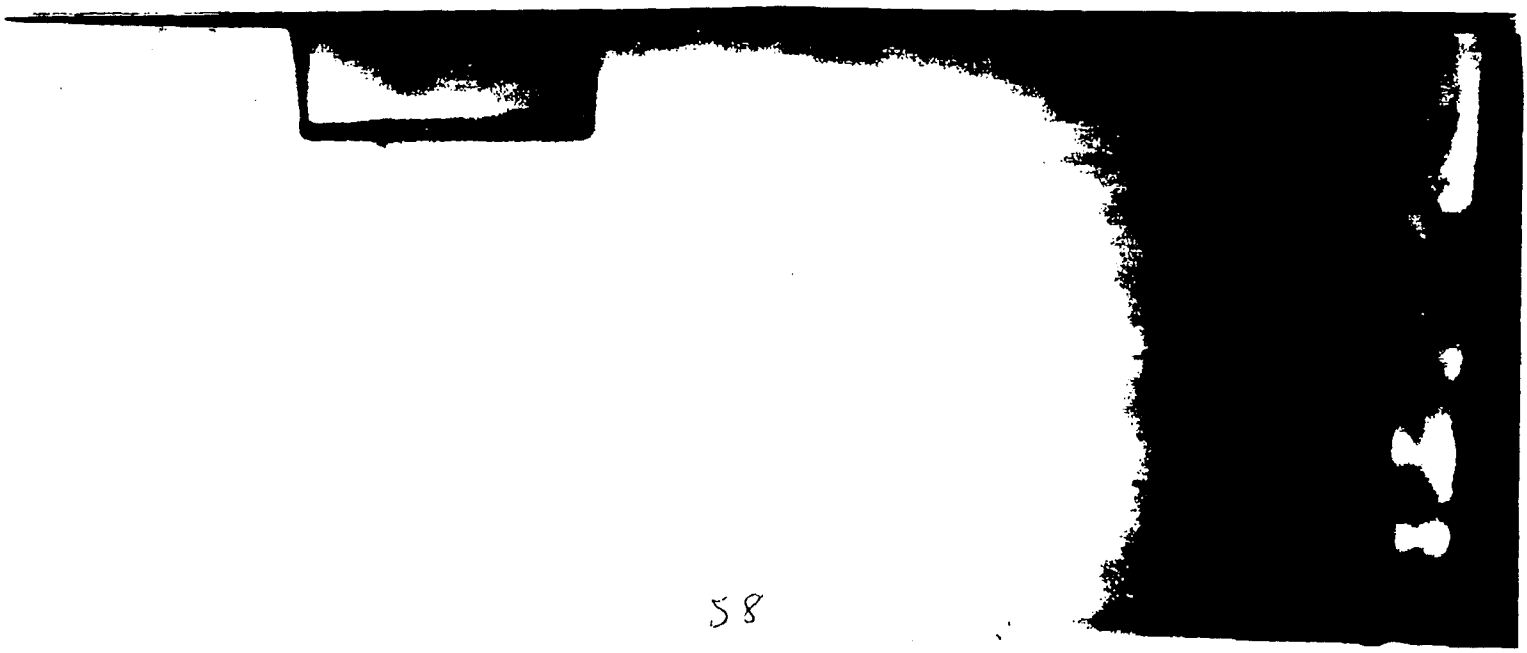
7. In routine matters, such as receiving petitions, reports, withdrawing motions, reading papers, etc., the presiding officer usually assumes the consent of the body where no objection is expressed.

Sec. 131. Cutting Off Debate

1. A majority of the members may close the debate without allowing all the time desired by others. They can do so by ordering either the previous question or the closing of the debate at a certain time, or they can limit the length of the speeches and allow each member to speak only once on each question. Rules have been adopted by some bodies requiring a two-thirds vote to limit or close debate but unless such a special rule has been adopted a majority vote only is required in legislative bodies.

See also Chapter 35, Secs. 345-352, The Previous Question, and Chapter 36, Secs. 355-361, Motions Closing, Limiting or Extending Limits on Debate.

Section 130—Continued
Paragraph 7—
Jefferson, Sec. XXXIX; Sturgis, p. 67.
Section 131—
Paragraph 1—
Sturgis, p. 48.



2. The body by a majority vote of the members voting, may lay the question on the table, and thus temporarily suspend the debate, but it can be resumed by taking the question from the table by a majority vote when no question is before the body at a time when business of that class, or unfinished business or new business is in order.

See Chapter 34, Secs. 330-341, Lay on the Table, and Sec. 492, Motion to Take From the Table.

3. When it is desired to prevent any discussion of a subject, even by its introducer, this can be done by objecting to the consideration of the question before it is debated, or any subsidiary motion is stated.

See Chapter 30, Secs. 293-300, Objection to Consideration.

4. A body may by unanimous consent limit the time for debate on any question.

5. When debate is limited and a member has spoken his allotted time the presiding officer should call him to order and notify him of the expiration of his time.

6. When debate has been limited, the time may also be extended by unanimous consent. And when unanimous consent to continue is not asked by another member, the member speaking may properly do so.

Section 131—Continued
Paragraph 2—
Sturgis, pp. 202-204.
Paragraph 3—
Sturgis, p. 222.
Paragraph 4—
Hughes, Sec. 697.
Paragraph 5—
Hughes, Sec. 738.
Paragraph 6—
Hughes, Secs. 703, 704.

Sec. 132. Preventing Debate by Putting Questions to Vote Prematurely

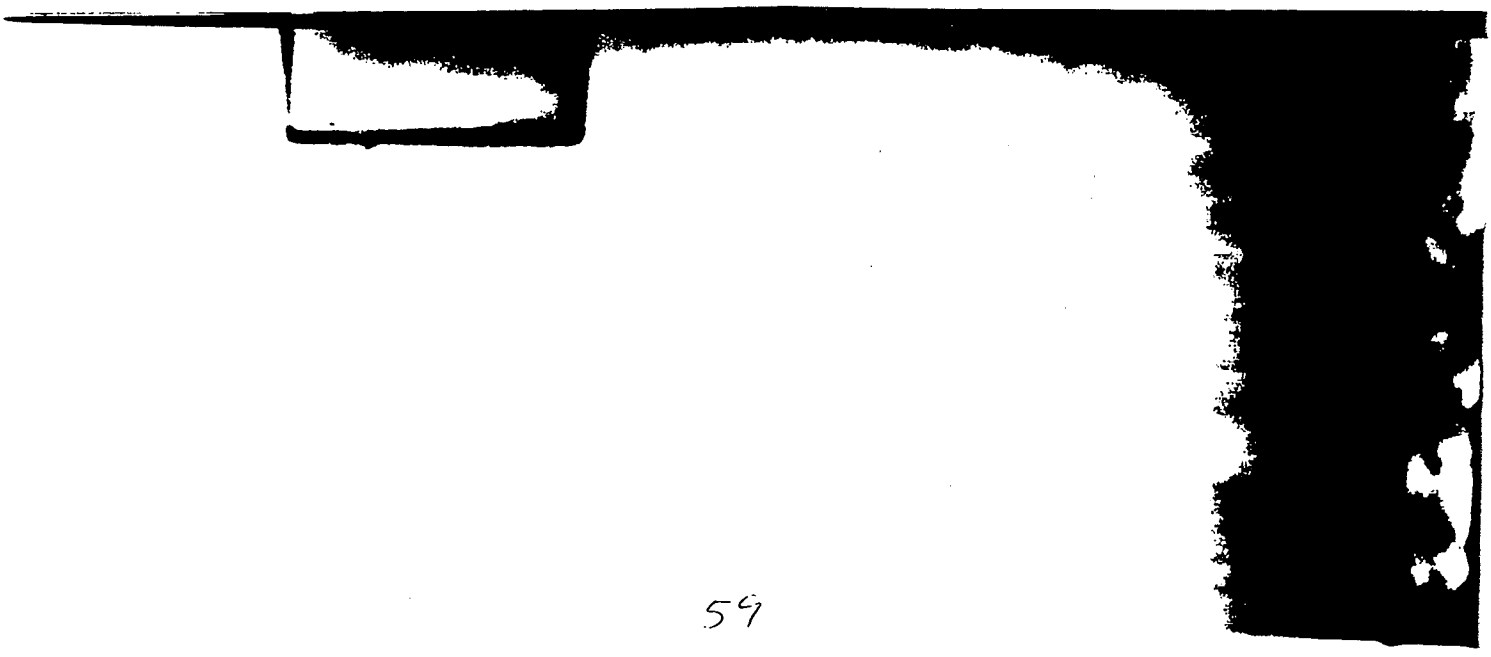
1. The right of members to debate and make motions cannot be cut off by the presiding officer putting a question to vote so rapidly as to prevent a member securing the floor after the presiding officer has inquired if the body is ready for the question.

2. When a member arises and addresses the presiding officer with reasonable promptness after the inquiry, "Are you ready for the question?" and before the voting is completed the member is entitled to the floor, and the question is in exactly the same position it was before it was put to vote. But if the presiding officer gives ample opportunity for members to claim the floor before putting the question to vote they cannot claim the right of debate after the question is put to vote.

Sec. 133. Debate Closed by Putting Question to Vote

1. After a question has been put and the vote taken, it is too late to claim the floor for debate. In voting by roll call, the negative being put at the same time as the affirmative, and the vote on both sides beginning and proceeding together, it is too late, after one member has answered the roll call, to renew the debate. In voting by a voice vote, debate is not closed until both the affirmative and negative vote have been taken.

Section 132—
Paragraph 1—
Reed, Sec. 220.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1616; Reed, Sec. 220.
Section 133—
Paragraph 1—
Jefferson, Sec. XLI; Cushing, Sec. 247; Reed, Sec. 220; Sturgis, p. 48.



2. Before the vote is taken, a member entering or any other member may renew debate, and even propose amendments, by which the debate may be opened again and the vote on the question may be deferred. When only the affirmative vote has been taken and the voting is in interrupted by debate, the affirmative as well as the negative is put when the question again comes to vote.

Section 133—Continued
Paragraph 2—
Jefferson, Sec. XLI; Cushing, Sec. 247; Reed, Sec. 220; Sturgis, p. 48.

PART III
RULES GOVERNING MOTIONS

CHAPTER 16
PROPOSALS FOR ACTION

Sec. 140. Must Be a Definite Proposal for Consideration

1. Every question presented to a legislative or administrative body for its determination must be submitted as a definite proposition. Until such a proposal is submitted there is nothing before the body upon which it can take any action.

2. A proposition is submitted in the form it is desired that the action be taken or question resolved. A motion states the order or decision it is proposed that the body make, and a bill states the law in the form that it is desired the law be enacted.

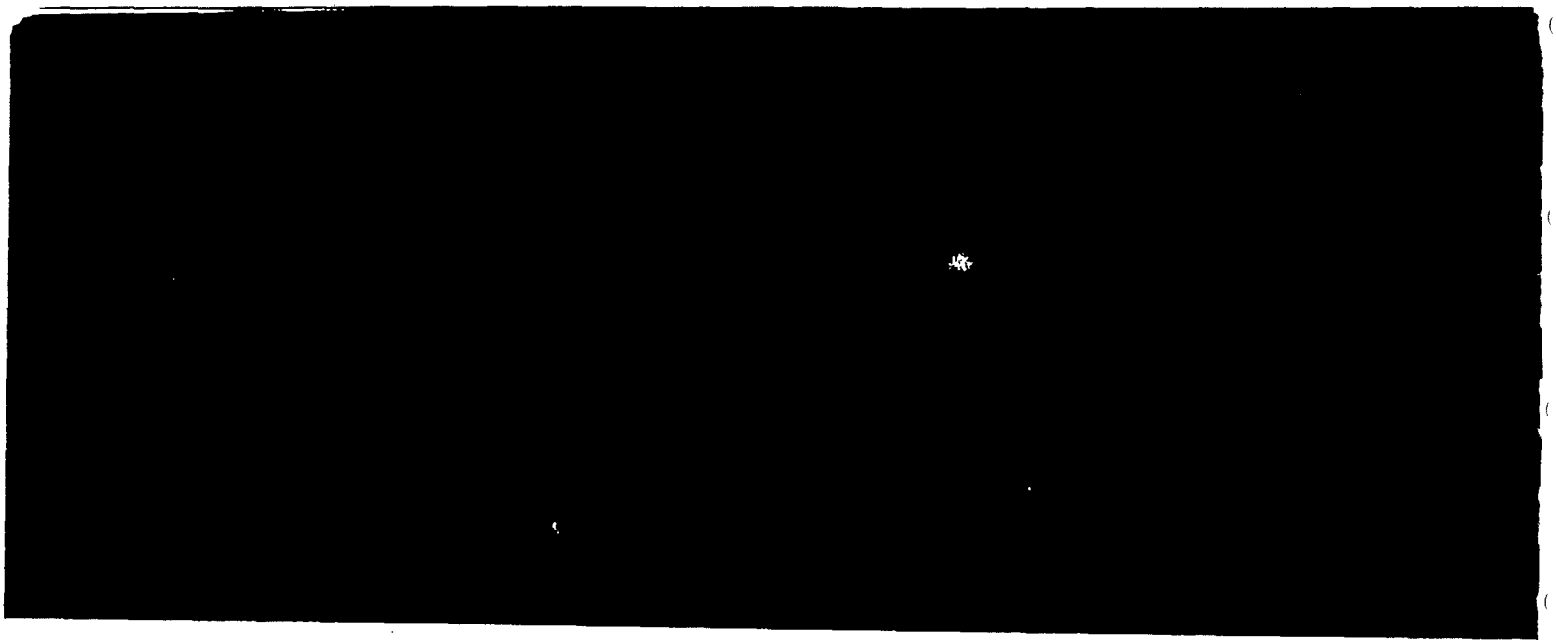
Sec. 141. The Moving Element in Proposals

See also Sec. 711, Motions Relating to Business Under Regular Order.

1. A motion is itself a proposal to act. The other forms of proposals embody the proposal but lack the moving element. Thus, a member presents a committee report and moves that it be approved, or presents a resolution and moves that it be adopted. Even a bill is presented with an actual or implied motion that it be passed.

Sec. 142. Form of Proposals

1. It is requisite that all proposals be in such form that they can be acted upon by approval or rejection.



2. Ordinarily any body can prescribe the form in which proposals are submitted. When no form is prescribed, language clearly signifying the intent is sufficient.

3. Constitution or governing statutory provisions concerning form must be complied with.

4. The form of the enacting clause and that the subject be stated in the titles of bills are usually prescribed by the state constitutions.

5. Statutes or charters usually specify the form of enacting or resolving clauses of municipal ordinances and resolutions.

6. Titles of legislative proposals are frequently regulated by statute and constitutional provisions, particularly as to requiring the subject to be accurately expressed in the title and frequently providing that any subject not expressed in the title is unconstitutional or void.

7. Constitutional and statutory provisions also often make other general requirements with reference to the form of a legislative proposal, and may specify among other things that the bill shall be in the English language, and how the proposal shall be divided into sections.

Sec. 143. How Questions May Come Before Body

1. Questions may come before a legislative or administrative body in any of several different ways.

2. The more usual way in which proposals may come before a body are as follows:

(a) Motions.
(b) Resolutions, orders, ordinances or bills.
(c) Committee reports.
(d) Communications or petitions.
(e) Points of order and appeals.
(f) Requests or demands.

Sec. 144. Motions as Presenting Questions

1. A motion is a proposal submitted to a deliberative body that certain action be taken or determination be made.

2. A motion is usually presented orally but if particularly long or involved, the presiding officer may require that it be presented to the secretary or clerk in writing in order that it may appear accurately on the record.

3. The essential element of a motion consists of the proposal actually made and not of the precise words used.

4. The presiding officer in stating a question is not bound by the exact words used by the person making the motion but he has no right or authority to modify the purpose or effect of the motion without the consent of the person making the motion.

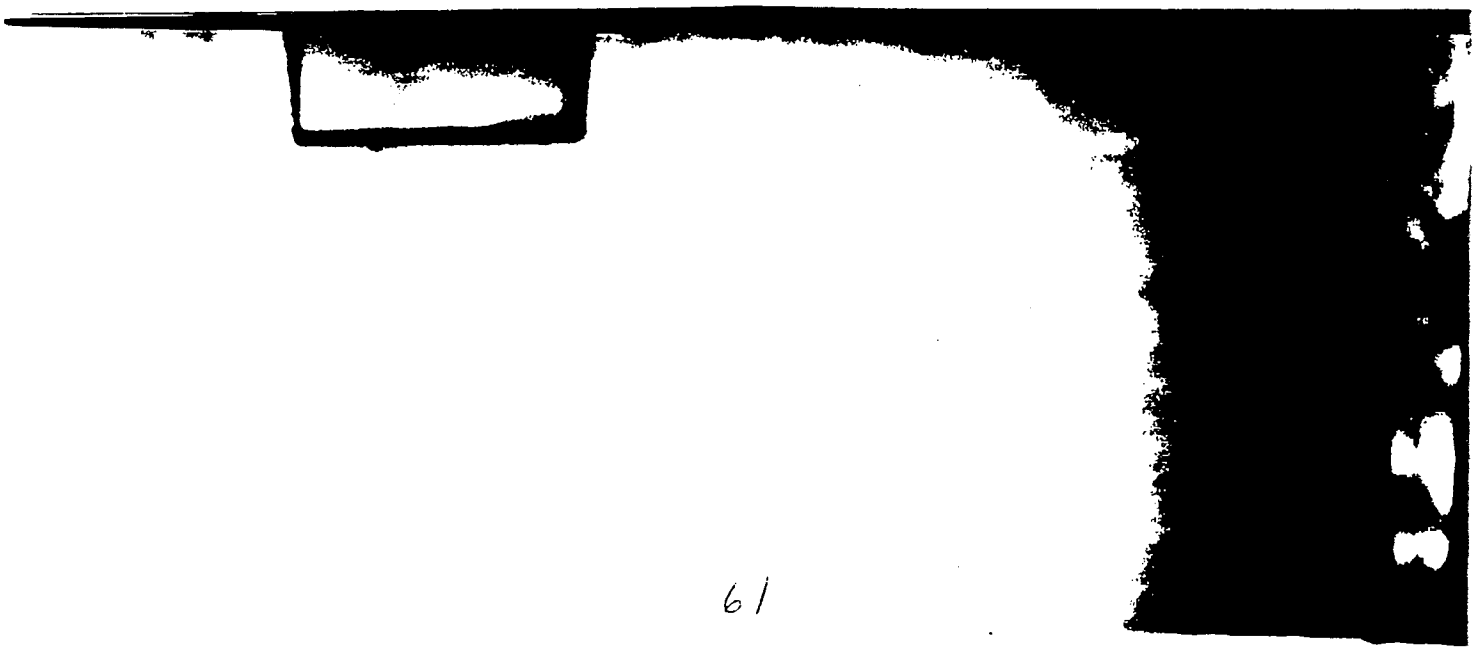
5. Motions are interpreted in the same manner as court decisions under the common law according to what is actually decided in the light of the situation rather than according to the particular words used, after the manner of statutes. Thus, if a member moves to recess until the following day the motion is to be understood as a motion to adjourn and may be stated by the presiding officer in that form.

Sec. 145. Resolutions and Orders

1. A resolution is a form of written proposal. It may be recognized by the use of the word "resolved" in its acting or declaratory clause.

2. Resolutions are used for making declarations, stating policies, and making decisions where some other form is

Section 144—
Paragraph 2—
Sturgis, p. 20.
Paragraph 3—
Sturgis, p. 22.



not required. For example, a statute or ordinance cannot be enacted by a joint resolution or a concurrent resolution, though an amendment to a constitution may be proposed by such a resolution.

3. Whenever a proposal is too complicated or too long to be readily stated orally or when its purpose is to present a rule which may have general application or a long duration, it is the practice and often the requirement of constitutions, charters, or statutes that the proposal be made in a particular written form.

4. For particular types of resolutions such as concurrent resolutions or joint resolutions, a particular form of resolving clause is required. Where no particular form is specified, the word "resolved" is sufficient.

5. Frequently in a resolution introductory clauses are used, introduced by the word "whereas" and stating the reason or purpose of the resolution. Such clauses are not a part of the resolution technically, but are introductory clauses only, and are not essential to the use or validity of the resolution.

6. Orders are a form of written proposal used in some organizations. The language giving effect to the proposal is the word "order" and from this word orders take their name. Orders are used in the same manner as resolutions for making determinations or laying down policies or stating positions. They are, in general, subject to the same rules as are resolutions.

Sec. 146. Bills and Ordinances

1. Bills and ordinances are used for making statutory enactments. The term "bill" is ordinarily used for legislation enacted by state legislatures or Congress, and the term "ordinance" is ordinarily used for city or county

or local legislation. The form and procedure governing ordinances is frequently covered in detail by statutory requirements and the constitutions of practically all the states make provisions concerning the form and procedure regarding bills. Sometimes these provisions are extensive.

2. Since bills and ordinances are the means of enacting legislation, they are often subject to rather complete control and restriction, and procedure concerning them is often specified in some detail by authority beyond the control of the body itself to change. Particularly, it is common to have extensive provisions as to titles and to procedural requirements such as three readings on separate days.

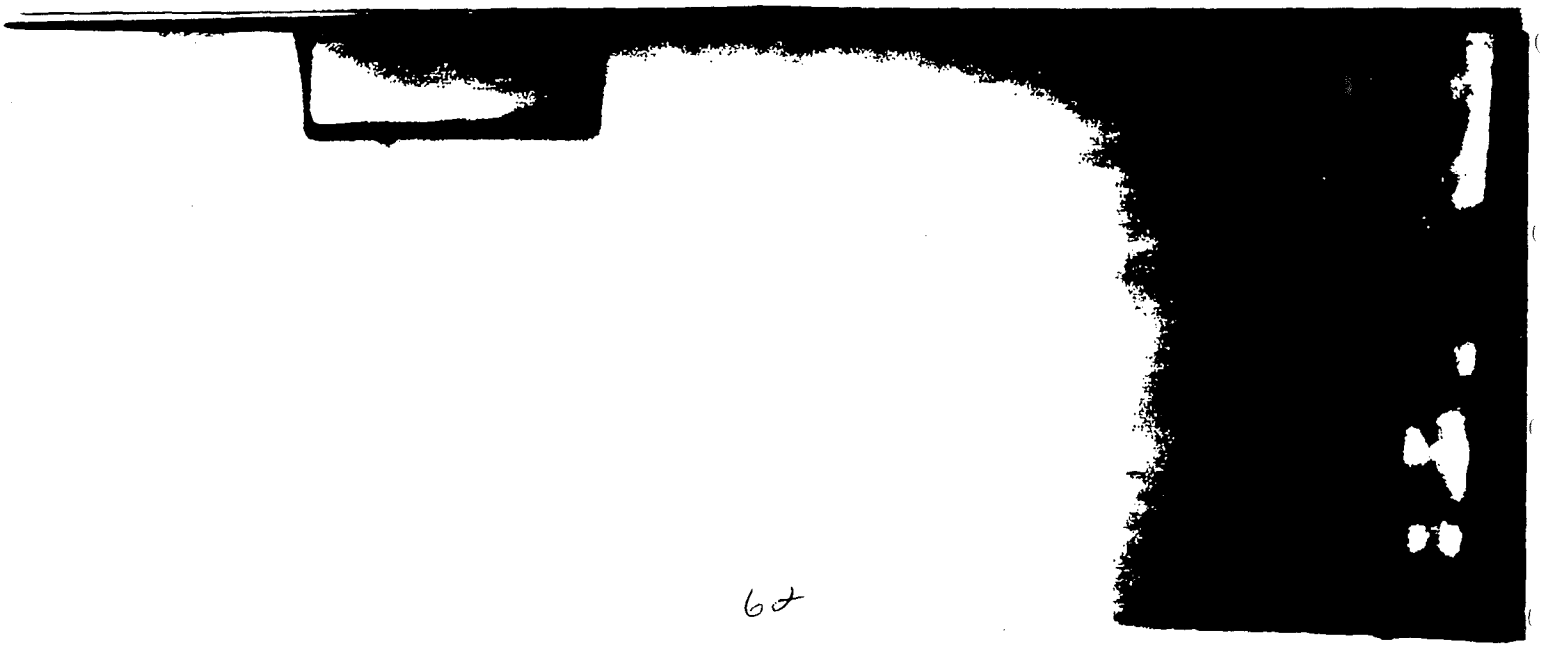
3. When proposals are submitted in written form, whether resolutions, orders, ordinances, or bills, they are not subject to change in statement by the presiding officer, nor can they be altered in any way except by amendment by the body itself.

Sec. 147. Committee Reports as Presenting Questions

See Chapter 64, Secs. 672-689, Committee Reports.

1. Questions for determination are frequently presented to legislative and administrative bodies by reports of their committees.

2. Committee reports most often contain recommendations such as that a bill or ordinance be passed which has been previously referred to them, but committees sometimes, in making studies referred to them, make recommendations or proposals which originate within the committee. These latter matters come before the body for its determination by the presentation of the committee report. Committee reports are usually presented and im-



mediately followed by a motion for adoption or other disposal.

3. Any committee making recommendations on a question other than as to a written proposal referred to it should submit a formal proposal to the body, either in the form of a motion, resolution, order or perhaps an ordinance or bill, upon which the body can properly determine the questions presented rather than attempt to secure a determination of the question by the adoption or rejection of the committee report alone.

Sec. 148. Communications and Petitions

1. There are many instances where a question is presented to a legislative or administrative body by communications or petitions. The communications may come from the executive, as from the governor or mayor, but in many instances they may come from administrative officers or others. The right of petition is usually guaranteed in the constitution and presents a means by which questions can be presented to a legislative body.

2. Any decision on a communication or petition which would have more than a temporary effect should be made by the adoption of the resolution or other formal proposal embodying the determination or decision.

3. Communications and petitions are usually disposed of by a deliberative body by reference to a committee for study and recommendation or by printing in its journal for the information of the members. Certain communications such as veto messages follow a prescribed course.

Sec. 149. Appeals, Points of Order, Inquiries

See Chapter 24, Secs. 230-235, Appeals; Chapter 25, Secs. 240-246, Points of Order; and Chapter 26, Secs. 250-254, Parliamentary Inquiries.

1. In conducting its business, a legislative or administrative body may have questions relating to policy or

procedure presented to it for decision on appeals from decisions on points of order. Appeals may involve important questions of policy and, therefore, appeals may take on all of the characteristics of a main motion and are subject, in general, to the same rules.

2. Points of order are presented to the presiding officer for his determination and the decision of the presiding officer on points of order may always be questioned by the body on appeal and the question decided by the body itself.

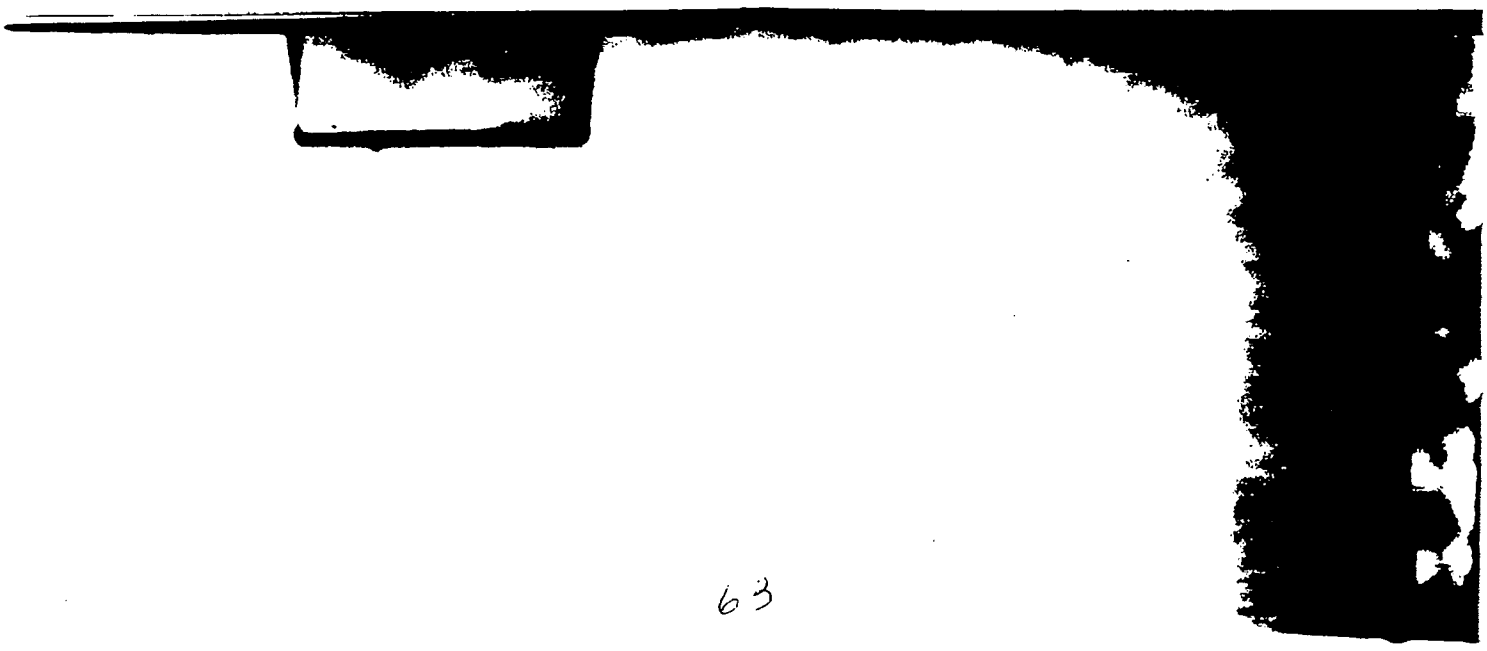
3. A parliamentary inquiry may be directed to the presiding officer or an inquiry may be made from one member to another. While these may involve questions of concern to the members, they rarely present any question to be determined by the body.

Sec. 150. Scope of Terms, "Motions" and "Questions"

1. The term "motion" is also used in a broad sense to include all kinds or forms of propositions presented for action to a legislative body. In this sense it includes resolutions, bills, points of order, appeals, objection to reconsider and all like proposals. We use motions in this sense when we refer to main motions or privileged motions, or to the precedence of motions.

2. Since any proposition presents a question for decision, all such propositions are also sometimes called "questions."

Section 149—
Paragraph 1—
Sturgis, p. 206.
Paragraph 2—
Sturgis, p. 209.
Section 150—
Paragraph 2—
Sturgis, p. 18.



CHAPTER 17

PRESENTATION OF MOTIONS

See also Sec. 726, Introduction of Legislation.

Sec. 155. Time and Manner of Presenting Motions

1. One of the fundamental rights of a member is the right to present any proper proposal for the consideration of the body. Generally any member who has been recognized by the presiding officer may present a motion or other proposal to the body. A member secures recognition for the purpose of making a proposal in the same manner and subject to the same rules as when he secures recognition to debate a question.

2. A proposal for consideration must be proposed at an appropriate time. A motion may ordinarily be presented at any time when the motion could be acted upon. A proposal may, of course, not be presented when business having higher precedence is under consideration.

3. Legislative bodies sometimes adopt special rules with reference to the presentation of ordinances or bills. These rules sometimes require the calling of the roll and the presentation of bills by members as their names are called. When there is no special provision, members may present their proposals at the desk, to the secretary, or from the floor in the appropriate order of business.

Sec. 156. Acceptance of Motion

1. It is the duty of the presiding officer to accept or to entertain any proper motion whenever it is in order. A motion is in order when it is presented at an appropriate time, violates no rule, and is not clearly dilatory.

Section 156—
Paragraph 1—
Sturgis, p. 22.

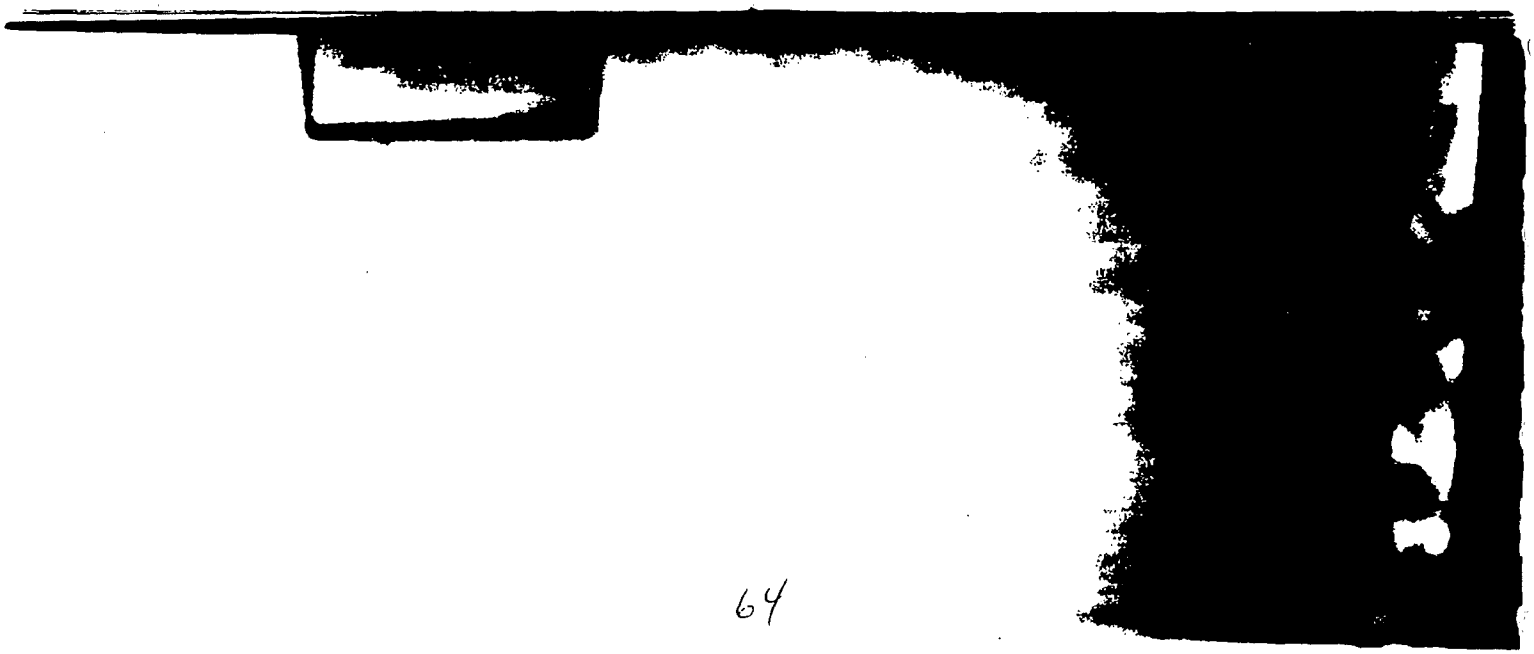
2. A motion is entertained by the presiding officer by accepting it and stating it.

3. A motion is not in the possession of the body nor available for consideration until it has been stated by the presiding officer. When a proper motion has been made, the presiding officer should state it or if it is in writing, he should order it read by the secretary or clerk, and it is then in the possession of the body. If it is debatable, the motion is then open to debate and is subject to such subsidiary or other motions as may be applicable to it.

4. When the motion appears to the presiding officer not to be in correct form or contrary to the rules or practice of the body, he may state that fact and may suggest the proper form of the proposal to the author. When it is possible to state the motion in proper form, the presiding officer may do so rather than in the form and the language of the proposer. In a case where there could be any question as to whether the presiding officer is inaccurately stating the proposal he should inquire of the proposer whether his statement is correct before finally entertaining and proceeding with the motion.

5. If the presiding officer states a motion inaccurately, the language of the member making the motion controls in determining the meaning of the motion.

Section 156—Continued
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1231; Hughes, Sec. 192; Sturgis, p. 22.
Paragraph 3—
Hughes, Secs. 181, 187, 192; N. Y. Manual, p. 450; Reed, Sec. 108; Cushing, Sec. 56; Tilson, p. 52; U. S. House Rule XVI, 82d Congress, par. 2.
Paragraph 4—
Sturgis, p. 22; Cushing's Legislative Assemblies, Sec. 1283; Reed, Sec. 103; Tilson, p. 51; U. S. House Rule XVI, 82d Congress, par. 1.
Paragraph 5—
Shoults v. Alderson (1922), 55 Cal. App. 527, 203 Pac. 209.



6. Whenever the presiding officer questions the form of a motion or the author on hearing the motion stated desires to correct it, he may do so. It is also proper for other members to question the form of a resolution on introduction and to suggest corrections or improvements in the motion. These, the author may accept or reject. It is much simpler to have a motion stated correctly originally than to amend it after debate or after other motions have been applied to it.

7. After a motion has been finally stated, debate has been begun or any subsidiary motions have been made with reference to the motion, it is too late to be corrected at the will of the author and it may be corrected only by amendments adopted by the body.

8. When a motion, which is not in order, but which is not otherwise objectionable, is made, the presiding officer may submit the matter to the body in such form as "Is there objection to entertaining the motion?" If no one objects, unanimous consent has been secured to the consideration of the motion, and a later objection may not be raised.

9. The house should be protected against dilitory or frivolous motions by the presiding officer refusing to entertain such motions or in case of doubt, submitting a question of whether motions are dilatory for decision by the body.

Section 156—Continued
Paragraph 7—
Sturgis, p. 23.
Paragraph 8—
Hughes, Sec. 485.
Paragraph 9—
Hughes, Sec. 218.

Sec. 157. Seconds to Motions

1. Parliamentary practice in American governmental bodies does not require seconds to motions, and in Parliament itself, where the practice of seconding motions originated, they have not been required for centuries.

2. The old rule was that when a motion was made it was not to be debated or put to vote until it was seconded.

3. A second to a motion is not out of order, but its effect is only to disclose the fact that one or more other members may favor the motion made or proposal submitted. Unless the rules require seconds they may be ignored and the presiding officer may not refuse to put a question because it is not seconded.

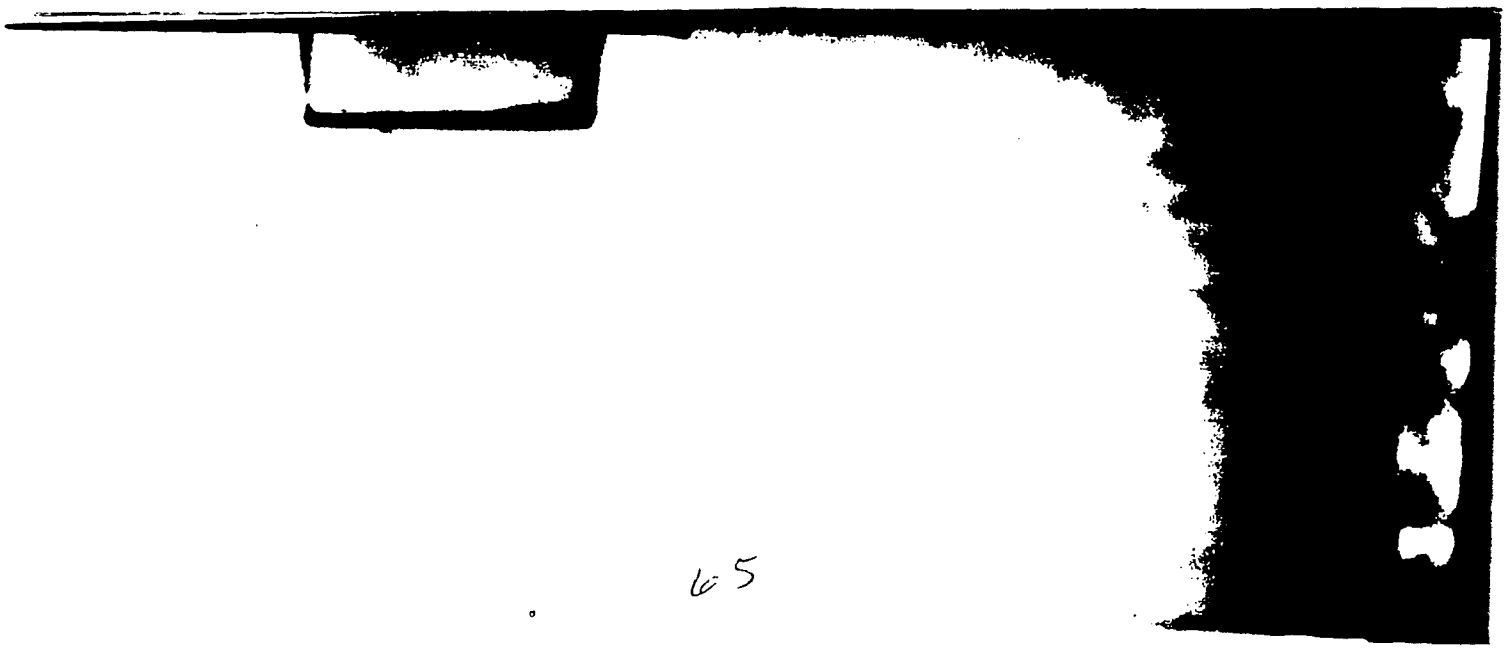
4. Whenever a member submits a motion which is in order, the motion should be stated by the presiding officer without waiting for a second.

5. It is still the practice in many private associations, based usually on adopted rules or adopted authority, to require seconds to motions.

Sec. 158. Only Motions Having Higher Precedence May Be Received During Consideration of a Question

1. It is a rule that a question before a legislative body must be disposed of before other business of the same

Section 157—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 224, 231; Hughes, Secs. 209, 210; Reed, Sec. 105; Tilson, p. 52.
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 224-227.
Paragraph 3—
Hughes, Sec. 216; Tilson, p. 52.
Paragraph 4—
Hughes, Sec. 217; Tilson, p. 52.



class or rank of precedence can be considered. When a motion is under consideration, motions of a higher precedence are in order, but motions having a lower precedence are not. A main question, and the subsidiary and other questions arising out of it, must be disposed of before another main question may be taken up for consideration.

2. The rules of some legislative bodies limit the motions which may be received when a question is under debate. These rules usually list all subsidiary motions and certain privileged motions as being admissible. The privileged motions usually listed are the motions to adjourn, to recess, and sometimes the motion to reconsider, and a call of the house. When a question is under debate the presiding officer may refuse to entertain any motions except those specifically authorized, although from the nature of the situation it is doubted if these rules can always be strictly enforced.

Sec. 159. Main Question May Be Considered Only Once at a Session

1. It was an ancient rule that when a bill was once passed or rejected, another of the same substance could not be brought in again during the same session. Various expedients were used to correct the effects of this rule, such as passing an explanatory act, if anything had been omitted or ill expressed, or an act to enforce and make more effectual an act, or to rectify mistakes in the act, etc.

Section 158—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 1291-1296, 1441, 1442.
Paragraph 2—
Reed, Secs. 264, 265.

Section 159—
Paragraph 1—
2 Hatsell 125; Jefferson, Sec. XLIII; Cushing, Sec. 250.

2. The difficulties resulting from the application of this rule became so serious that the right to reconsider any main motion became established.

3. A rule of one house relating to further consideration of a question which was defeated has reference to a measure once acted upon by that house and does not prevent the consideration of the same subject matter when embodied in a bill or resolution coming from the other house.

4. A bill having precisely the same title and subject as one previously rejected by the house may be refused introduction.

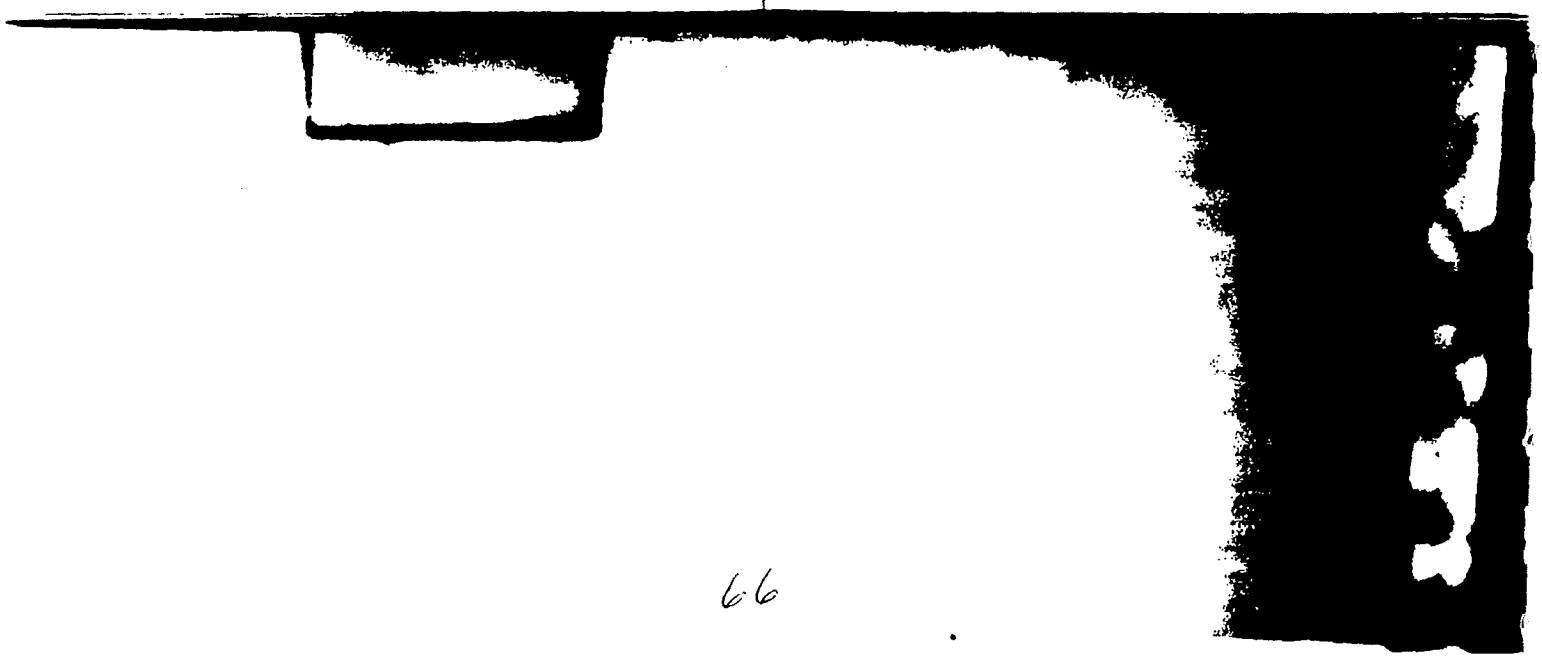
5. When a decision has already been made on any question, the equivalent question, whether in the affirmative or negative, is not in order. Questions are equivalent when the negative of one amounts to the affirmative of the other and leaves no other alternative.

6. Indefinite postponement suppresses the subject during the session in the same manner as the rejection of the proposition.

Sec. 160. Procedural Motions May Be Renewed

1. Procedural motions such as motions to adjourn, to recess, to lay on the table, the previous question, and motions to limit debate may be made again and again, pro-

Section 159—Continued
Paragraph 2—
Cushing, Secs. 254, 255.
Paragraph 3—
Leser v. Garnett (1921), 139 Md. 46, 114 Atl. 840, affirmed 258 U. S. 130.
Paragraph 4—
N. Y. Manual, p. 419.
Paragraph 5—
Jefferson, Sec. XLVI; Hughes, Sec. 524; Cushing, Sec. 251.
Paragraph 6—
Hughes, Sec. 325; N. Y. Manual, p. 447.



vided there has been progress in debate or business so that the actual question presented is different and the members might reasonably decide the question differently; the making of, or voting on, these motions is not business that justifies the renewal of a motion.

2. If no objection is made to the renewal of a motion without intervening business, objection to the repetition of the motion will be deemed waived.

3. The motion to take from the table, or a call for the orders of the day, may be renewed after the business is disposed of that was taken up when the motion to take from the table, or for the orders of the day, was lost. When a subject which has been referred to a committee is reported back at the same meeting, or a subject that has been laid on the table is taken up at the same meeting, it is not a renewal.

4. Minutes may be corrected regardless of the time elapsed and of the fact that the correction has been previously proposed and lost.

5. It is the duty of the presiding officer to prevent the privilege of renewal from being used to obstruct business, and when it is evident that it is being so misused, he should protect the house by refusing to recognize any motion which is clearly so used.

Section 160—
Paragraph 1—
Hill v. Goodwin (1876), 56 N. H. 441; Reed. Sec. 106; Sturgis, p. 41.
Paragraph 2—
Hill v. Goodwin (1876), 56 N. H. 441.
Paragraph 3—
Sturgis, p. 171.
Paragraph 4—
Sturgis p. 100.
Paragraph 5—
Sturgis, p. 244.

6. When the rules, or the parliamentary law, require that certain motions may not be renewed unless there has been intervening business, the intervening business constitutes motions and proceedings which can properly be entered in the journal, and unless such intervening business takes place, the motion may not be renewed.

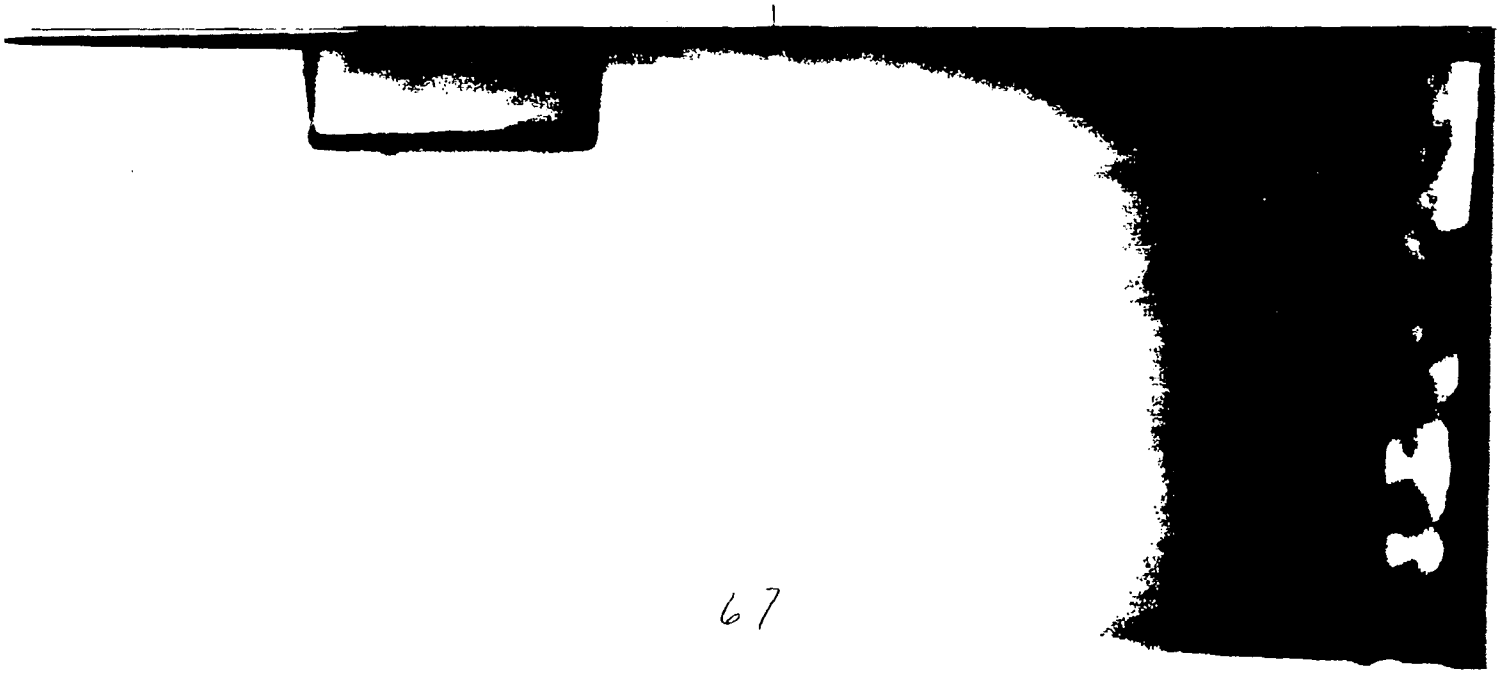
Sec. 161. Main Motions May Not Be Renewed

See Chapter 42, Secs. 450-473, Motion to Reconsider.

1. When an original main motion or an amendment has been adopted or rejected, or a main motion has been postponed indefinitely or an objection to its consideration has been sustained, neither it, nor substantially the same motion, can be again brought before the house at the same session, except by a motion to reconsider the vote.

2. The following motions, unless they have been withdrawn, may not be renewed at the same session: to adopt or to postpone indefinitely an original main motion, to adopt an amendment identical with one refused adoption, to strike out an amendment previously adopted, to reconsider, unless the question to be reconsidered was amended materially since previously reconsidered, or to object to the consideration of a question. The motion to suspend the rules for the same purpose is not in order at the same meeting, although it may be renewed at another meeting held the same day.

Section 160—Continued
Paragraph 6—
Hughes, Secs. 146, 220; Sturgis, p. 246.
Section 161—
Paragraph 1—
Sturgis, p. 160; N. Y. Manual, p. 464.
Paragraph 2—
Sturgis, pp. 166, 177, 187, 221, 224.



3. While neither a motion to postpone indefinitely nor an amendment may be renewed at the same session, the other subsidiary motions may be renewed whenever the progress in debate or business is such as to make the question before the house a different one. The motion to postpone indefinitely may not be renewed, even though the main motion has been amended since the indefinite postponement was previously moved.

4. A point of order cannot be raised if an identical one has been raised previously, without success, during the same session, and after the presiding officer has been sustained in a ruling, he need not entertain another appeal from a decision on precisely the same question during the same session.

Sec. 162. Demands by Members

A. Demands by Proportion of Membership

1. There are only a few situations in parliamentary practice where the demand of more than one person is required to place a matter before the body. There are

Section 161—Continued
Paragraph 3—
Sturgis, pp. 41, 177; N. Y. Manual, p. 464.
Paragraph 4—
Sturgis, pp. 207, 210.
Section 162—
Paragraph 1—
Hughes, Sec. 215; State Constitutions: Ala. IV, 55; Ariz. IV, 10; Ark. V, 12; Cal. IV, 10; Colo. V, 13; Conn. III, 9; Del. II, 10; Fla. III, 12; Ga. III, Sec. VII, 4; Idaho III, 13; Ill. IV, 10; Ind. IV, 12; Iowa III, 9; Kan. II, 10; Ky. 40; La. III, 15; Me. IV, Pt. III, 5; Md. III, 22; Mich. V, 16; Minn. IV, 5; Miss. IV, 55; Mo. IV, 42; Mont. V, 12; Neb. III, 11; Nev. IV, 14; N. H. II, 23; N. J. IV, Sec. IV, 4; N. M. IV, 12; N. Y. III, 11; N. C. II, 16; N. D. II, 49; Ohio II, 9; Okla. V, 30; Ore. IV, 13; Pa. II, 12; R. I. IV, 8; S. C. III, 22; S. D. III, 13; Tenn. II, 21; Tex. III, 12; Utah VI, 14; Vt. II, 9; Va. IV, 49; Wash. II, 11; W. Va. VI, 41; Wis. IV, 10; Wyo. III, 13.

frequent constitutional provisions providing that a certain number of persons or proportion of a quorum may demand an "Aye" and "No" vote on any question before the house and have the vote recorded in the journal.

2. Rules, in certain cases, require a demand by more than a single member to place the previous question before the body for its consideration.

B. Demands by a Single Member

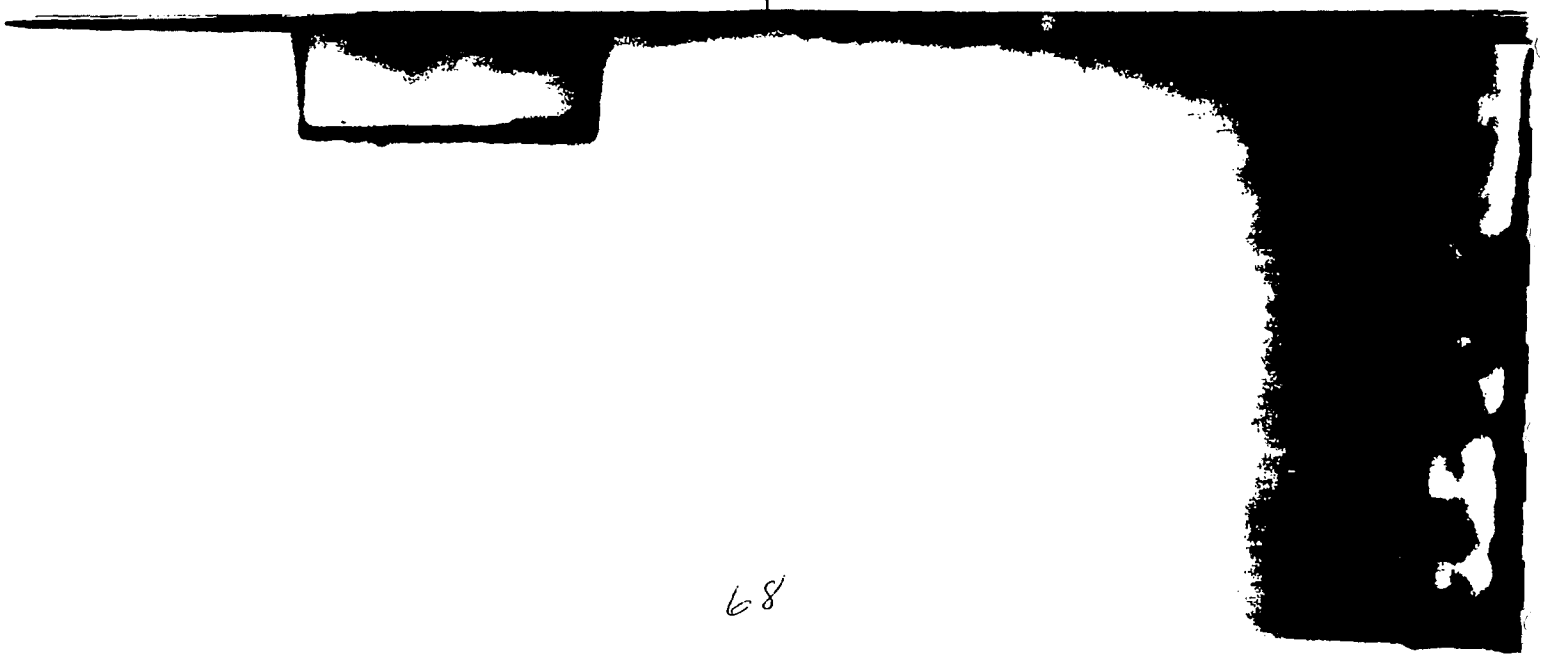
3. The only instance where a member has a right to insist on anything, is where he calls for the enforcement of the rules or for the execution of an existing order of the body. Any member has a right to insist that the presiding officer maintain order and enforce the rules or perform any other duty without debate or delay.

C. Calls for Action by Members From Their Seats

4. A call for adjournment, or for the question, by members from their seats, is not a motion. No regular motion can be made without rising and addressing the presiding officer. Such calls are themselves breaches of order, which a member who has risen to speak may regard as an expression of impatience of the house against further debate, but the member may proceed if he chooses.

5. There are certain demands which may be made or points which may be raised while a member has the floor. These demands and points are listed under Section 92, Interruption of Speaker.

Section 162—Continued
Paragraph 3—
Jefferson, Sec. XVIII, Sturgis, p. 135.
Paragraph 4—
Jefferson, Sec. XX; Sturgis, p. 48.



Sec. 163. Submission of Double Motions

1. It is not generally good practice to permit a member to submit more than one motion at a time and it may not usually be done without unanimous consent. There are three recognized exceptions to this rule: A member may offer a motion or resolution and move that it be set as a special order; he may move to reconsider a measure and an amendment to the measure when he desires to reconsider an amendment after the measure has been passed; or he may move that the rules be suspended and the action taken which the rules are to be suspended to permit. These are, in effect, single motions. In some bodies certain pairs of motions are permitted, as to move to reconsider, and to lay that motion on the table.

2. A motion to suspend the rules often includes a series of actions such as to suspend the rules and reconsider a vote, or to suspend the rules and amend a resolution. Two coordinate motions of this type are treated as one motion. This is a particularly frequent occurrence in Congress.

Sec. 164. Consideration of Motions at a Future Time

1. A member may make a motion and then request that the motion be set as a special order for a particular time. Such a motion should be printed in the journal with the record of the special order and should likewise be carried on the calendar as a special order.

2. A similar procedure is frequently provided by rule with reference to motions to reconsider.

See Chapter 42, Secs. 450-473, Motion to Reconsider.

Section 163—
Cushing's Legislative Assemblies, Sec. 1284; Hughes, Secs. 196, 197; Cushing, Sec. 199; Sturgis, pp. 165, 219.

Section 164—
Paragraph 1—
Hughes, Sec. 227; Sturgis, p. 192.

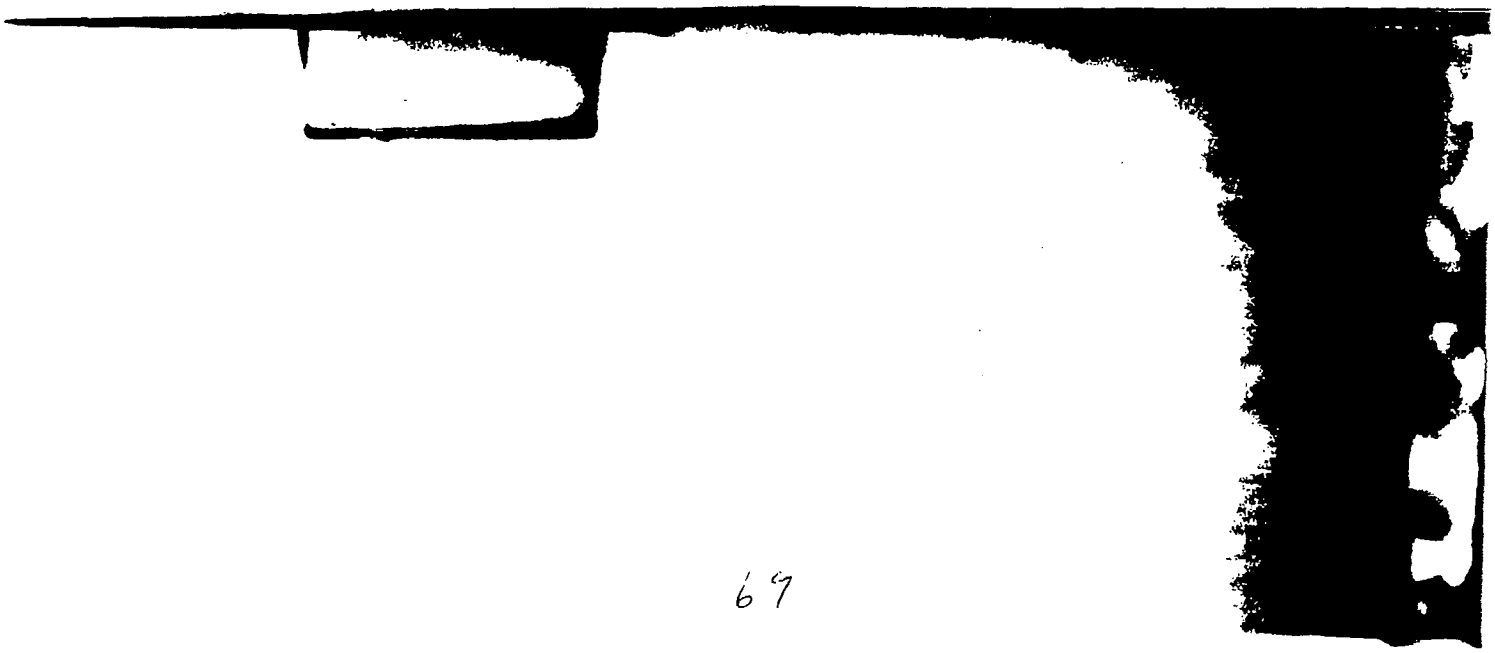
3. It is the practice in Parliament and in Congress when a member desires to bring forward a question for consideration at some future date for him to give notice of his intention to make a motion at the future time, rather than to make the motion and have it set as a special order.

Sec. 165. Motions Not Always Required for Routine Business

1. When items of routine business are presented in the regular order of business they may be understood to be presented with an implied motion to approve. The presiding officer may proceed as though the usual motion had been made, unless there is objection. If objection is made, the presiding officer must wait for the appropriate motion.

Section 164—Continued
Paragraph 3—
Hughes, Sec. 225.

Section 165—
Paragraph 1—
Hughes, Secs. 134, 676.



CHAPTER 18

CLASSIFICATION OF MOTIONS

Sec. 175. Classification of Motions Generally

1. The questions presented to and considered by a deliberative body may, for convenience in consideration, be divided into four classes. These are: privileged questions, incidental questions, subsidiary questions and main questions. Motions stating the questions are divided into the same four classes.

2. Legislative bodies meet for the purpose of passing laws, ordinances or of considering legislative proposals. Administrative boards lay down policy or make decisions. The consideration and decision of main questions constitute the principal purpose of these bodies. These are main motions.

3. In the course of consideration of these questions they are usually referred to committees, are often amended, and may be postponed, laid on the table, or have other subsidiary motions applied to them.

4. The consideration of bills also brings before the house points of order, questions on precedence of measures, objections to consideration, and other incidental motions which do not adhere directly to the main question, but which must be decided before the main question can be considered. These are incidental motions.

5. During the deliberation, a recess or adjournment is sometimes necessary, or the measure may be made a special order, or a call of the house may be ordered, or other privileged questions may arise.

Section 175—
Sturgis, pp. 24-28; Cushing's Legislative Assemblies, Secs. 1530-1609.

6. Different authors have classified motions in different ways, some carrying the classification much further than others. There are many ways that the motions could be classified as an aid in understanding and remembering the motions and their characteristics and rules. The classification used in this manual follows the one most usually adopted. It is based on precedence. The precedence of the classes of motions is as follows:

(a) Privileged motions.
(b) Incidental motions.
(c) Subsidiary motions.
(d) Main motions.

Sec. 176. Privileged Questions

A. Definition

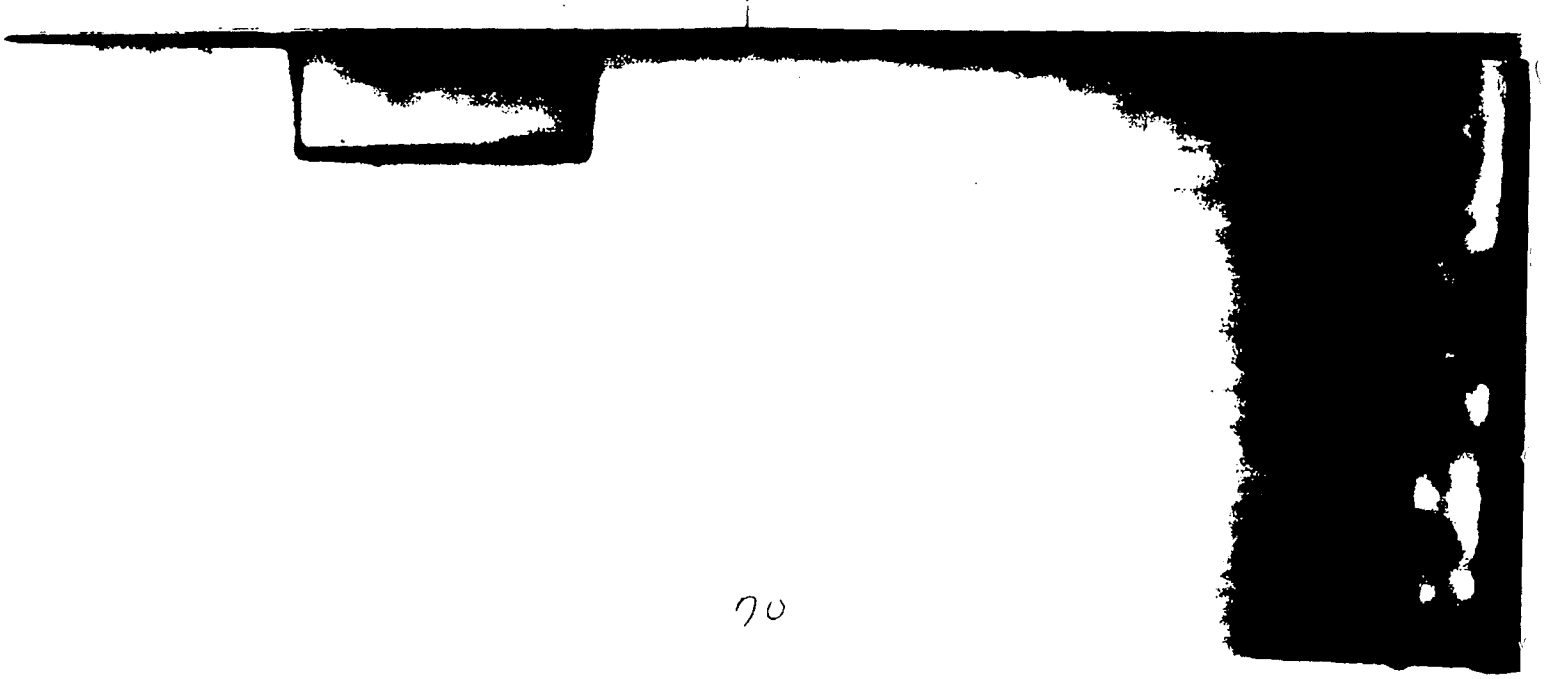
1. Privileged questions are those questions which, by established practice or by rule, have been given a special privileged status. These questions relate generally to the house itself, or its members, or to important matters which it has been found necessary to give a highly privileged status.

B. Precedence

2. Privileged questions, as a class, take precedence of the other classes of questions and have the following order of precedence among themselves:

(a) Call of the house when there is not a quorum present.
(b) To make, or give notice of, a motion to reconsider. (Consideration is incidental main motion.)
(c) To adjourn (when unqualified or when no provision has been made for next meeting).

Section 176—
Sturgis, pp. 28-31.



(d) To recess.

(e) To raise a question of privilege. (A call of the house when a quorum is present is a question of privilege of the house.)

C. Not Subject to Debate

3. Privileged motions are not themselves subject to debate, but a question of privilege, being a main question, privileged only as to precedence, is, when taken up, subject to debate and to the subsidiary motions the same as other main questions.

D. Not Usually Subject to Subsidiary Motions

4. The privileged motions may not have any subsidiary motions applied to them, except that the motion to adjourn when no other provision for the next meeting has been made may be amended as to the time, the motion to recess may be amended as to duration and questions of privilege are subject to all of the subsidiary motions.

Sec. 177. Incidental Questions

A. Definition

1. Incidental questions are questions of a general procedural nature which arise out of the work of the body. They are questions affecting the business of the body which do not relate directly to nor adhere to any one main question. These questions relate usually to what may be considered, and to the manner in which it is to be considered. They relate to the general business of the body in the same manner that subsidiary questions relate to the main questions to which they apply.

Section 177—
Sturgis, pp. 26-31.

B. Precedence

2. In not adhering directly to any particular main question, incidental questions have a greater independence of the main question than have subsidiary questions. They require determination before main motions and the group of motions relating directly to the disposition of main motions and so take precedence over main and subsidiary motions.

See also Sec. 185, Precedence of Incidental Motions.

C. Incidental questions yield to privileged questions

3. These incidental motions, since they require immediate decision, rarely present any problem of precedence. They must always be decided before the questions out of which they arise. Should they arise out of the same question, the more common incidental motions take precedence among themselves as follows:

(a) Appeals.

(b) Points of order.

(c) Parliamentary inquiries or like requests for information.

(d) Orders of the day.

(e) Requests or motions to withdraw a motion or question which is under consideration.

(f) Suspension of the rules for some immediate purpose.

(g) Objection to the consideration of a question.

(h) Manner or order of considering questions.

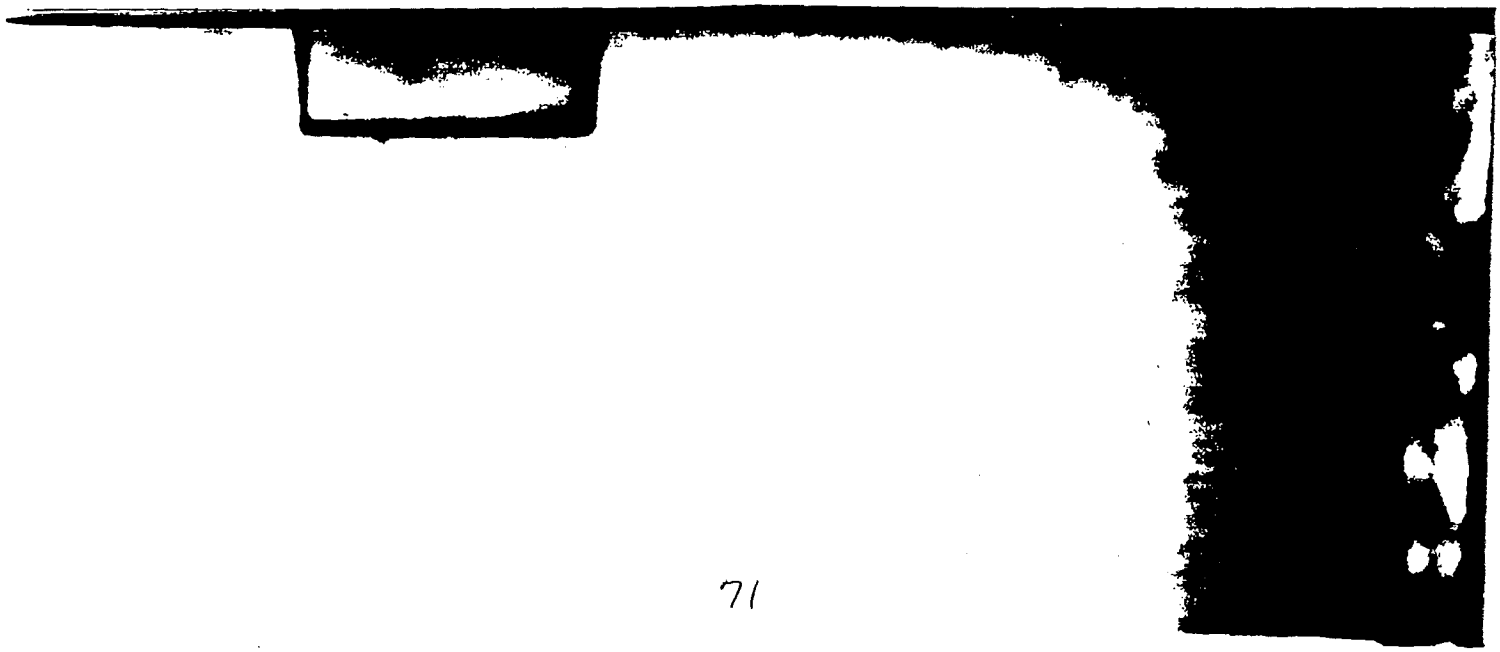
(i) Motions relating to voting.

(j) Motions relating to nominations or elections.

(k) Motions relating to division of a question.

D. Debate

4. Incidental motions, except an appeal, are not debatable. It is sometimes provided by rule that an appeal can-



not been debated when it relates to indecorum, transgression of the rules of speaking, or to the order of business. Appeals are debatable in all cases unless prevented by rule.

E. Application of Subsidiary Motions

5. An appeal may have the subsidiary motions applied to it, but no other subsidiary motion, except the motion to amend, may be applied to incidental questions. Some incidental motions are not capable of presenting alternative propositions, and therefore, are not subject to amendment. The following incidental motions may, however, be amended:

(a) Motions relating to the manner or order of considering questions.
(b) Motions concerning voting.
(c) Motions concerning nominations or elections.

Sec. 178. Subsidiary Questions

A. Definition

1. Subsidiary questions are questions of a procedural nature relating directly to or adhering to main motions.

2. It is not usually possible for main motions, upon presentation, to be immediately adopted or rejected. In legislative bodies, it is usually required that they be referred, and, frequently, they may be amended. The debate may be limited to a certain time, or the consideration postponed from time to time. The procedural motions, by which main motions are guided through a legislative body, are a type of motion subsidiary to main motions and from this they acquire their name.

3. Subsidiary motions are most often applied to main motions, but the motion to amend may be applied to

Section 178—
Sturgis, pp. 26-31.

any motion which is capable of being stated in more than one form.

B. Precedence

4. Subsidiary motions, as a class, yield to privileged and incidental motions and take precedence over main motions. But a subsidiary motion may sometimes be applied to a privileged, incidental or another subsidiary motion and it always takes precedence over the motion to which it is applied.

5. In their application to main motions, the more usual subsidiary motions take precedence among themselves as follows:

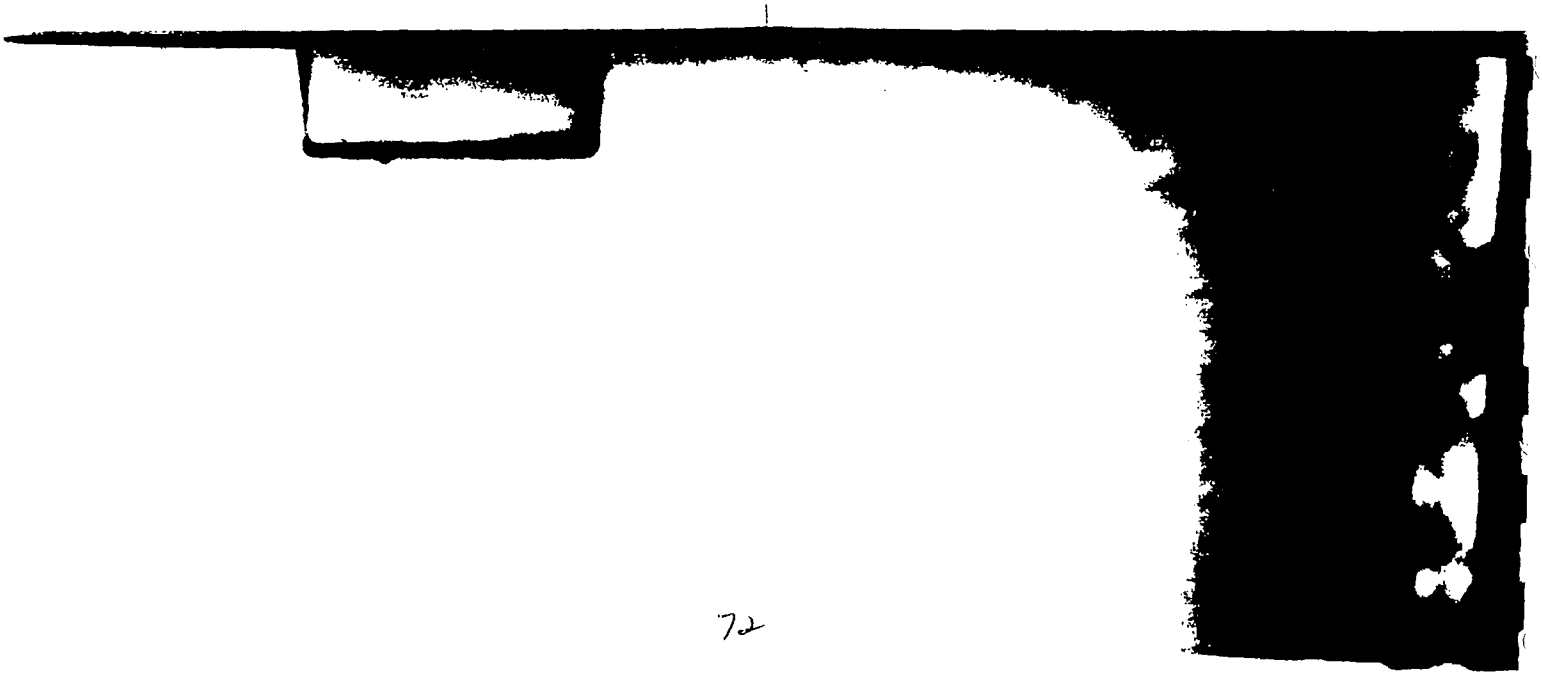
(a) To lay on the table (postpone temporarily).
(b) The previous question (vote immediately).
(c) To limit or extend limits of debate.
(d) To postpone definitely, or to a certain time.
(e) To refer or commit.
(f) To amend.
(g) To postpone indefinitely.

When any one of the motions listed above is pending, every motion above it in the table is in order, and every motion below it is out of order.

C. Application of Subsidiary Motions

6. Subsidiary motions may be applied to any main motion and when duly made, must be considered and decided before the main question can be acted upon. The motion to amend may be applied to certain subsidiary and incidental motions, as well as to main motions. The previous

Section 178—Continued
Paragraph 5—
Sturgis, p. 28.
Paragraph 6—
Sturgis, p. 40.



question and motions relating to the limits of debate may, naturally, be applied to any debatable question regardless of its privilege. But the other subsidiary motions may not be applied to motions of these classes.

D. Amendment

7. Subsidiary motions, except the motion to lay on the table, the previous question and the motion to postpone indefinitely, may be amended.

E. Debate

8. The motions to lay on the table, the previous question, and motions affecting the limits of debate, are not debatable. Motions to postpone definitely and to commit are debatable as to the propriety of postponement or reference to committee. Motions to amend are debatable. The motion to postpone indefinitely, since its effect is to defeat the measure, opens the main question to debate.

F. Vote

9. Subsidiary motions require a majority vote. It has been stated by some writers that the motions limiting debate require a two-thirds vote for their adoption, but the practice in legislative bodies and public and official bodies of all kinds is to require only a majority vote to order the previous question, or otherwise to restrict or limit debate.

See Sec. 350, Vote on the Previous Question.

Sec. 179. Main Questions

1. All general questions of a substantive nature are main questions. The main question is usually stated as—

Section 178—Continued
Paragraph 7—
Sturgis, p. 37.
Paragraph 8—
Sturgis, p. 35.

to pass, to adopt, to approve, to ratify, to confirm, to concur, to appoint, to elect, or to take other like action, or the main question may sometimes be stated in such form as to reject, to rescind, to repeal, to annul, to remove, to refuse to concur, or in some other form disposing of some substantive proposition.

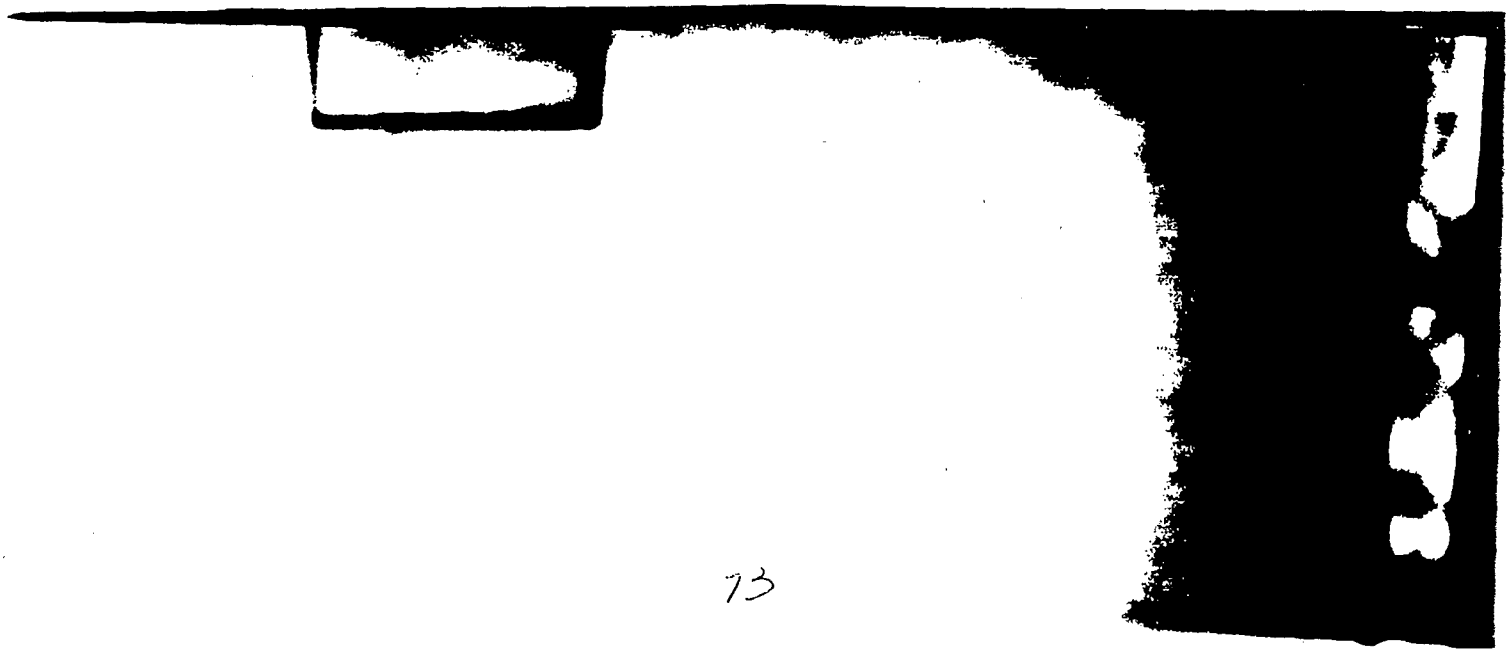
2. Main questions or main motions before a legislative body usually relate to the final disposition of bills or certain resolutions which, upon approval, become law and are usually found in the statutes of the session; while subsidiary, incidental and privileged motions are temporary in their purpose and their effect is exhausted in the process of legislation.

3. There are a group of questions which relate to procedure and still rank in precedence with main motions. These relate to procedural questions not requiring immediate determination, and not relating to any particular questions over which they take precedence. In the absence of a better name these motions will here be referred to as incidental main motions to distinguish them from substantive propositions of the same rank. Examples of motions of this type are the motions to take from the table, and to fix a different time to adjourn when a regular time is fixed.

Sec. 180. Dilatory Motions

1. Any regular parliamentary motion, when improperly used for the purpose of delaying or obstructing business, is a dilatory motion. For the convenience of legislative bodies, it is necessary to allow some highly privileged motions to be renewed again and again after progress in

Section 180—
Paragraph 1—
Hughes, Secs. 240, 241; Sturgis, p. 244.



debate or the transaction of any business. If there were no provision for protecting the body, a minority could be constantly raising questions of order and appealing from every decision of the presiding officer, calling for a division on every *viva voce* vote, even when it was nearly unanimous, moving to lay motions on the table, moving to adjourn, and offering frivolous and absurd amendments, and, by thus taking advantage of parliamentary forms and methods, practically stop business.

2. Every legislative body has the inherent right to protect itself from dilatory motions. Whenever the presiding officer is satisfied that a member is using parliamentary forms to obstruct business, he should not recognize him, but should rule him out of order. After the presiding officer has been sustained upon an appeal, he need not entertain another appeal from the same member or members, while he or they are evidently engaged in trying to obstruct business.

3. The presiding officer may properly refuse to permit debate on dilatory motions or on the question of whether a motion is dilatory, and may also refuse to entertain appeals from his decision on motions refused consideration, on the ground that they are dilatory. The presiding officer should never suppress or refuse to entertain motions as dilatory or frivolous, merely to expedite business. It is only justifiable when it is perfectly clear that the opposition is trying to obstruct business.

Section 180—Continued
Paragraph 2—
Hughes, Secs., 240, 241; Tilson, p. 75.

Sec. 181. There Is an Unlimited Number of Motions

1. Many of the motions have taken on a very definite form and may not be regarded as correct in any other form. Where in the above list of motions they are listed by classes only, such as motions relating to the manner or order of consideration of questions, motions relating to voting, and motions relating to nominations and elections, the possible variety of particular proposals that might be made for these purposes are much too extensive to attempt to list.

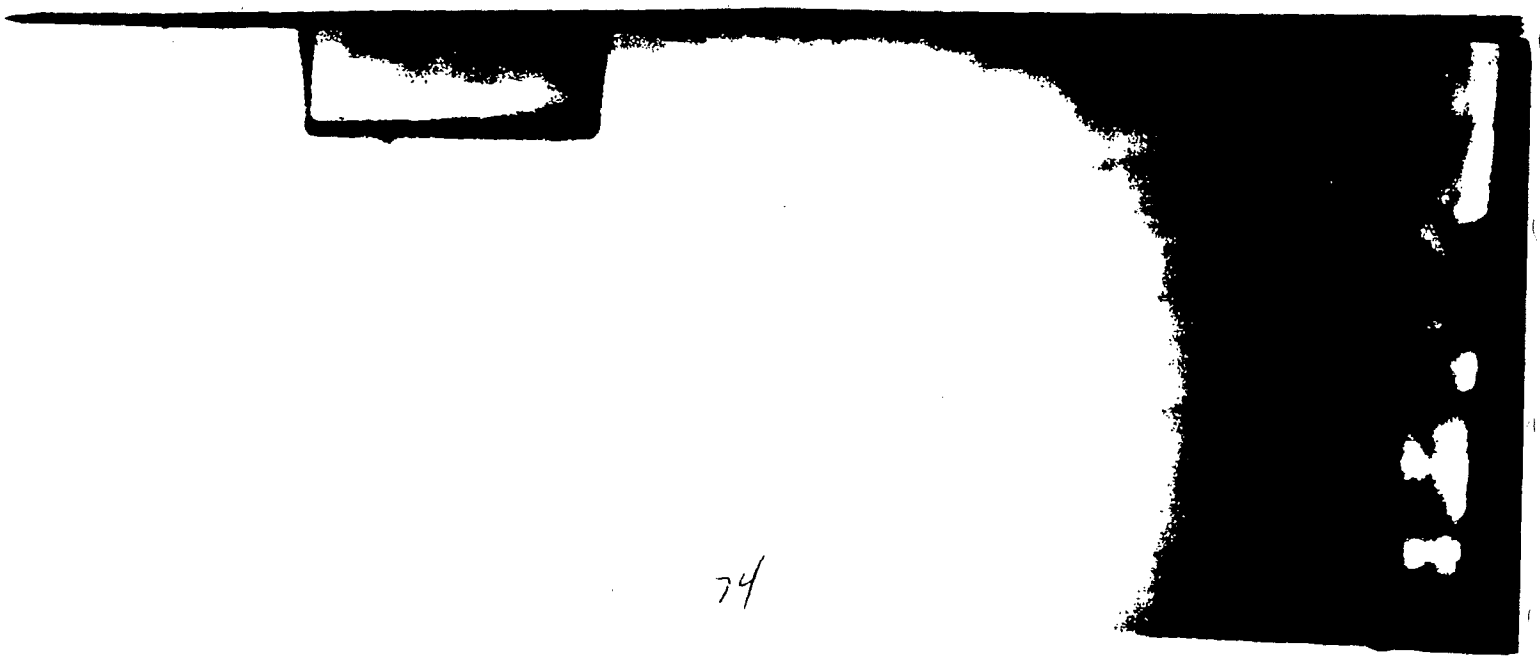
2. Even though the actual statement of a motion may vary rather widely, most motions can be classified according to purpose so that they fall definitely in the regular order of precedence.

Sec. 182. Use of Classification of Motions

1. There is no definite indisputable classification of motions. Classification is merely a device used as a convenient means of grouping motions according to some particular purpose. The more used classification, and the one used here is based primarily upon the precedence of motions. Motions for a particular purpose naturally have the same or a similar precedence.

2. Different authors at different times have used distinctly different systems of classification depending on the particular purpose sought to be accomplished. By using the classification according to precedence the motions can be arranged within each class and the classes placed in such an order that the order of precedence remains reasonably consistent.

Section 182—
Sturgis, pp. 24-27.



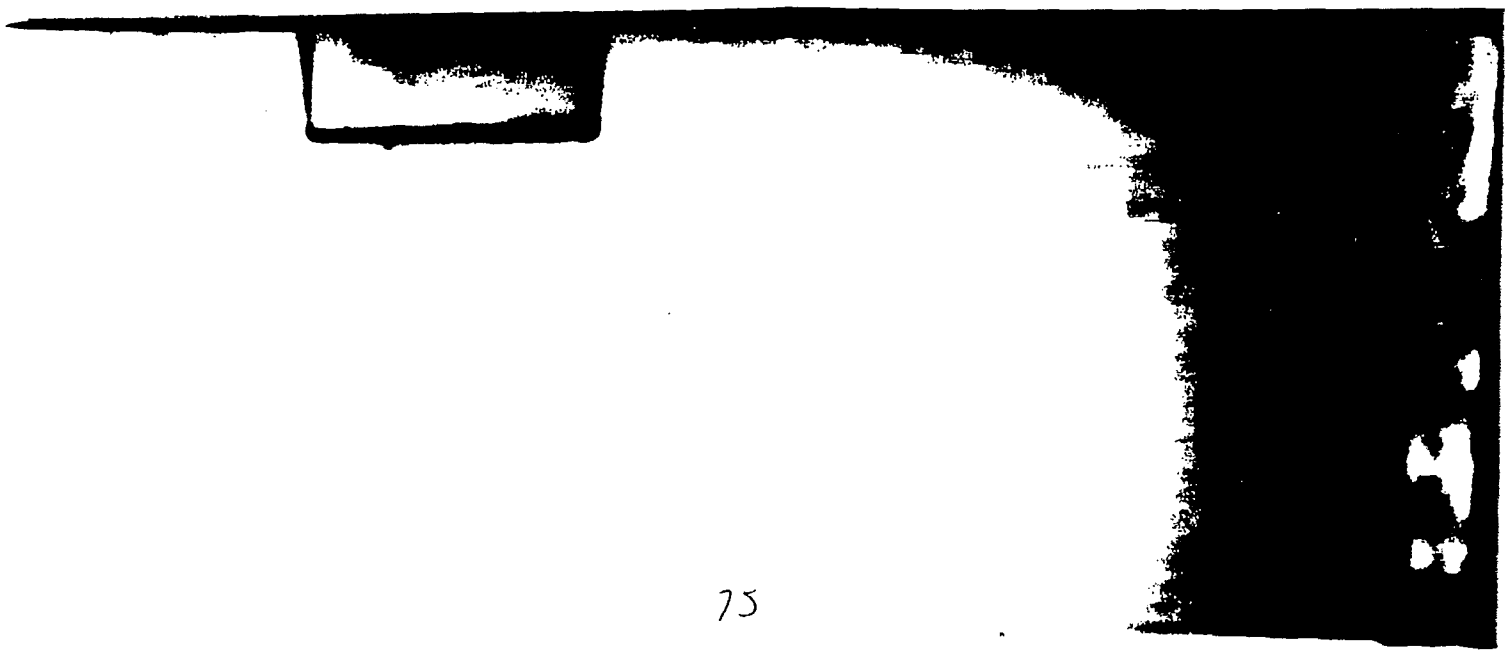
Sec. 183. Precedence With Reference to Main Motions

1. Most tables of precedence for motions arrange motions with reference to the precedence of main motions. For example, when a main motion may be under consideration, a motion to amend is in order, likewise, a motion to refer to a committee, a motion to lay on the table. While these motions are pending, a motion to suspend the rules for some immediate purpose is in order. After all of these have been made a point of order might be made and an appeal from the decision of the presiding officer might be taken, and without disposing of any of these matters a motion to adjourn would still be in order. Here we have an abbreviated table of precedence built upon the main motion.

2. There is another fundamental rule which should always be kept in mind. It is that a motion actually takes precedence with reference to the subject under discussion, at the time. If, for example, a motion to adjourn which has the highest order of precedence in any ordinary circumstance is under consideration, some irregularity may occur and a point of order with reference to the motion to adjourn is still in order and the decision of the presiding officer on the decision on the point of order can still be appealed. While a question of privilege has a much higher precedence for example than the motion to lay on the table, as lists are ordinarily arranged, still it is in order to move to lay a question of privilege on the table. Much confusion will be avoided if it is always kept in mind that the ordinary lists of precedence are based only on their relationship to the main motion.

Sec. 184. Precedence of Incidental Motions

1. It is sometimes said that incidental motions as a group have no precedence among themselves, but as a group take precedence over subsidiary motions and yield to privileged motions. This statement is substantially accurate in practice, and the rule is a practical rule for ordinary unofficial societies and associations. In such organizations it is extremely rare that more than one incidental motion would come up at the same time, and a convenient, practical rule in such cases which will rarely, if ever, result in unfairness is to decide each such question in the order in which it may arise. In legislative and administrative bodies, due to the more complex procedure, there may be important decisions in which different results would be obtained if this rule were applied instead of giving a definite order of precedence to incidental motions.



CHAPTER 19

LIST OF MOTIONS

Sec. 187. List of Motions

1. The following is a list of the more common questions or motions, arranged according to the usual classification, in the order of their precedence in relation to main motions, with citations to the sections of this manual relating to them.

A. Privileged Motions

(1) Call of the house.
See Chapter 20, Secs. 190-197.

(2) To make, or to give notice of, a motion to reconsider (usual precedence established by rule).
See Chapter 42, Secs. 450-473.

(3) To adjourn.
See Chapter 21, Secs. 200-211.

(4) To recess.
See Chapter 22, Secs. 214-216.

(5) Questions of privilege.
(a) Privilege of the house
(*1*) Presence of members. (When a quorum is present a call ranks as a question of privilege.)
(*2*) Organization of the house.
(*3*) Comfort of the members.
(*4*) Freedom from disturbance.
(*5*) Disorderly conduct of members.
(*6*) Conduct of officers or employees.
(*7*) Conduct of reporters or the press or the accuracy of published reports.
(*8*) The journal and records of the house.

Section 181—
Sturgis, p. 24.

(b) Personal privilege
Questions relating to the reputation or conduct of members in their representative capacity.
See Chapter 23, Secs. 220-226.

B. Incidental Motions

(6) Appeals.
See Chapter 24, Secs. 230-235.

(7) Points of order.
See Chapter 25, Secs. 240-246.

(8) Parliamentary inquiry and like requests for information.
See Chapter 26, Secs. 250-254.

(9) Orders of the day.
See Chapter 27, Secs. 257-269.

(10) Requests or motions for leave to withdraw a motion or question which is under consideration.
See Chapter 28, Secs. 272-276.

(11) Suspension of rules for some immediate purpose.
See Chapter 29, Secs. 279-287.

(12) Objection to consideration of a question.
See Chapter 30, Secs. 293-300.

(13) Manner or order of consideration of questions.
See Chapter 31, Secs. 302-304.

(14) Motions relating to voting.
See Chapter 32, Secs. 306-308.

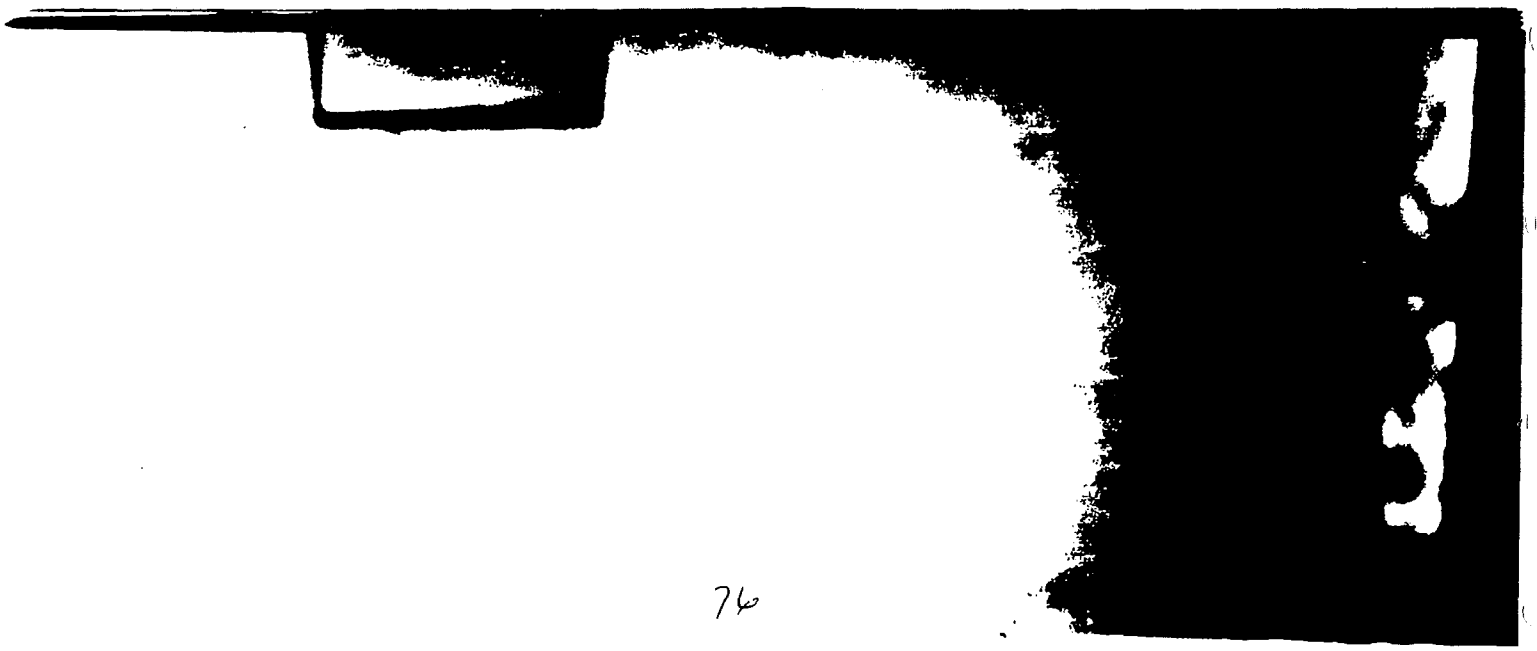
(15) Motions relating to nominations and elections.
See Chapter 32, Secs. 306-308.

(16) Motions relating to division of a question.
See Chapter 33, Secs. 310-316.

C. Subsidiary Motions

(17) To lay on the table (postpone temporarily).
See Chapter 34, Secs. 330-341.

(18) The previous question (vote immediately).
See Chapter 35, Secs. 345-352.



(19) Close, limit or extend limits of debate.
See Chapter 36, Secs. 355-361.

(20) Postpone definitely or to a certain time.
See Chapter 37, Secs. 365-374.

(21) To refer or commit.
See Chapter 38, Secs. 378-391.

(22) To amend.
See Chapter 39, Secs. 395-423

(23) To postpone indefinitely.
See Chapter 40, Secs. 430-436.

D. Main Motions

(24) The main motion.

The main question presents a bill, resolution, or other substantive proposition, for the passage, adoption, approval or rejection. The question is usually stated or assumed in the positive form as the final passage of a bill, the adoption of a resolution, or the approval of an appointment, but the question can be put in the negative form as to reject.
See Chapter 41, Secs. 440-445.

E. Incidental Main Motions

The following motions, though they have procedural elements, have the principal characteristics of main motions and take precedence in the same order. These motions are usually called incidental or specific main motions to distinguish them from substantive propositions with which they rank in precedence. Any main motion or question is in order during the appropriate order of business when nothing is before the house. These motions take the same rank. No one is in order when another is before the house, and any one is in order in the proper order of business when no business is before the house.

(25) To consider motion to reconsider.
See Chapter 42, Secs. 450-473.

(26) To rescind.
See Chapter 43, Secs. 480-483.

(27) To dissolve or adjourn sine die, when no hour has previously been fixed.
See Sec. 781.

(28) To fix the time for final adjournment or adjournment sine die.

(29) To fix different time to which to adjourn, when a regular time is fixed.

(30) To fix the time at which or to which to recess.

(31) To withdraw a bill from committee or discharge the committee.
See Sec. 491.

(32) To take from the table.
See Sec. 492.

(33) To take from desk.
See Sec. 493.

(34) To lay aside or pass on calendar.
See Sec. 494.

(35) Motion to change the order of consideration of questions not then under consideration.

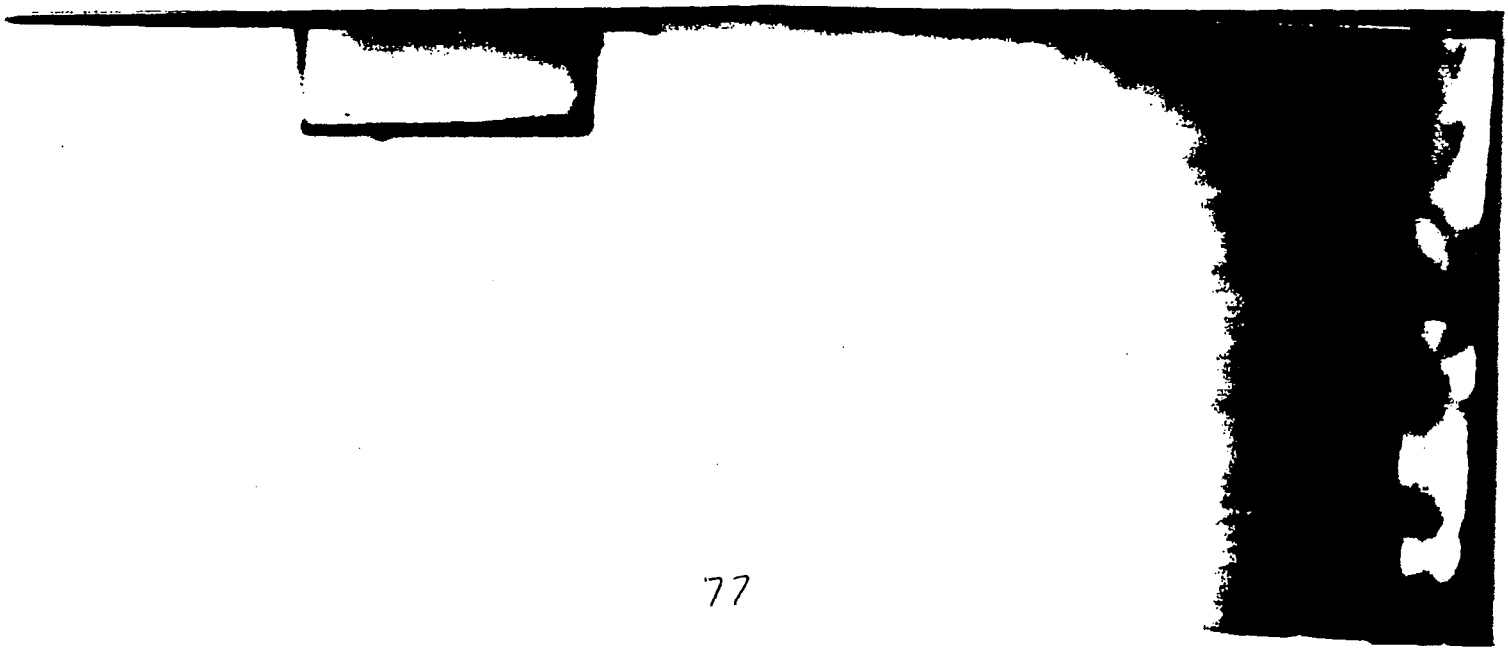
(36) To withdraw papers, not under consideration.

(37) To suspend the rules with reference to business not immediately pending.

(38) To close debate in committee of the whole.

(39) To expunge.
See Sec. 444.

(40) To consider petitions when no other provision for consideration of petitions is made by rules.



PART IV

RULES GOVERNING PARTICULAR MOTIONS

DIVISION 1

PRIVILEGED MOTIONS

CHAPTER 20

CALL OF THE HOUSE

Sec. 190. Right to Compel Attendance of Members

See also Chapter 45, Secs. 500-507, Quorum.

1. The purpose of a call of the house is to compel the attendance of absent members.

2. The right of a house of a state legislature to compel the presence of absent members is usually guaranteed by a constitutional provision, even to ordering the arrest of members.

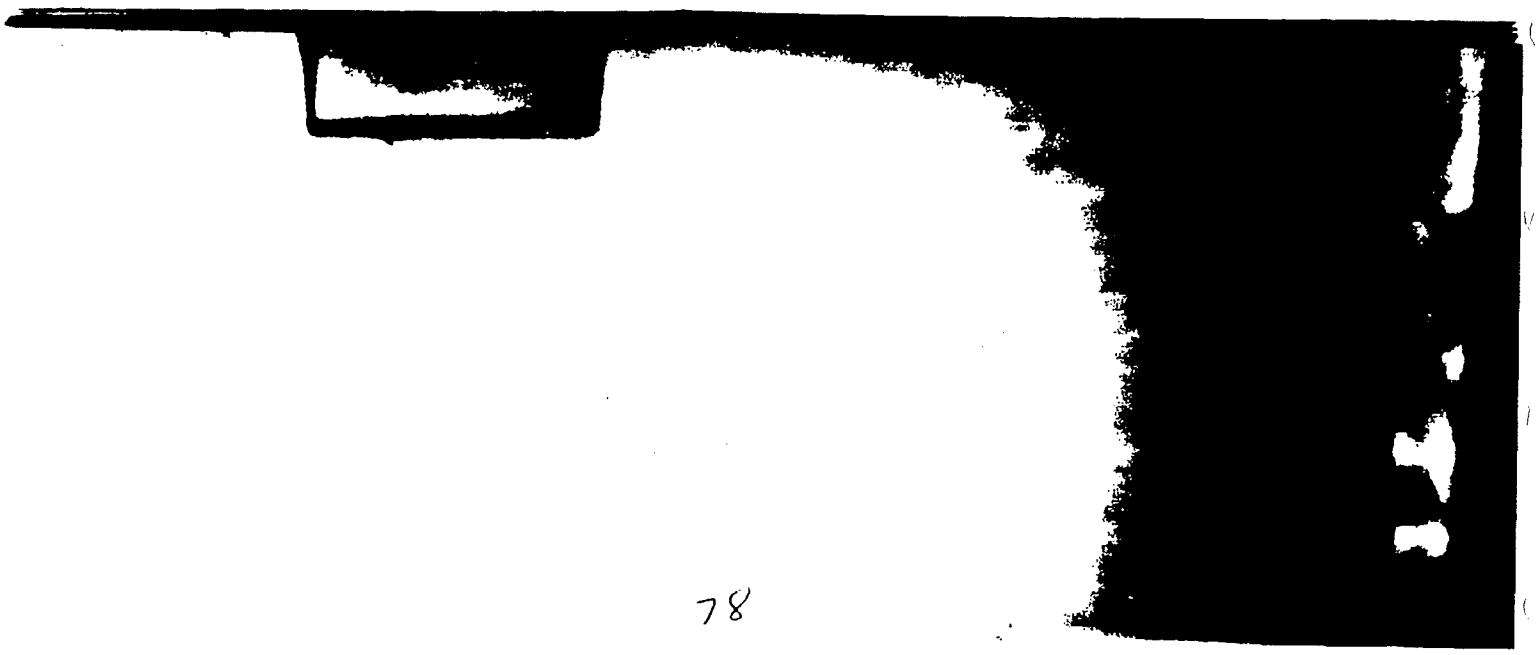
Section 190—

Paragraph 1—

Cushing's Legislative Assemblies, Sec. 264.

Paragraph 2—

State Constitutions: Ala. IV, 52; Ariz. IV, Pt. II, 9; Ark. V, 11; Cal. IV, 8; Colo. V, 11; Conn. III, 7; Del. II, 8; Fla. III, 11; Ga. III, Sec. IV, 4; Idaho III, 10; Ill. IV, 11; Ind. IV, 11; Iowa III, 8; Kan. II, 8; Ky. 37; La. III, 19; Me. IV, Pt. III, 3; Md. III, 20; Mass. Amend. XXXIII; Mich. V, 14; Minn. IV, 3; N. H. II, 19, 36; N. J. IV, Sec. IV, 2; N. M. IV, 7; N. Y. III, 10; N. C. II, 2; N. D. II, 46; Ohio II, 6; Okla. V, 30; Ore. IV, 12; Pa. II, 10; R. I. IV, 6; S. C. III, 11; S. D. III, 9; Tenn. II, 11; Tex. III, 10; Utah VI, 11; Vt. II, 14, 19; Va. IV, 46; Wash. II, 8; W. Va. VI, 24; Wis. IV, 7; Wyo. III, 11; Hughes, Sec. 666; Cushing's Legislative Assemblies, Secs. 256-259.



3. A legislature has power to punish, or even expel, members who fail, without sufficient cause, to attend when ordered by the house.

4. In Congress it has been held that a call is in order under the Constitution in the absence of any rule providing for a call of the house.

5. In legislative bodies other than state legislatures or other bodies exercising the sovereign authority, the right to compel the attendance of members may be given by statute. The procedure for compelling attendance of members is usually regulated by rule insofar as it is not controlled by constitutional provision, charter or statute. Unofficial bodies do not have the power to compel the attendance of members.

6. The absence of the power of a legislative body to compel the attendance of all members at all times would destroy its ability to function as a legislative body.

Sec. 191. Right of Less Than a Quorum to Compel Attendance

See also Sec. 208, Vote Required for Adjournment, and Sec. 506, Less Than Quorum Can Adjourn.

1. Until a legislature is organized it has no authority, unless granted by the constitution, to compel the attendance of absent members; but it can adjourn from day to day until a quorum can be secured and the body is organized. After organization a quorum has the unquestionable right to compel the attendance of other members, and less than a quorum is usually given that right by constitutional provision, the constitution or rules usually stating the minimum number who can exercise the right.

Section 190—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 264, 434; see U. S. House Manual, Sec. 5, Note 55.
Paragraph 4—
U. S. House Manual, Sec. 5, Note 55.
Paragraph 6—
Hughes, Sec. 655.
Section 191—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 255-259, 264, 268.

Sec. 192. Precedence of Call of the House

1. When no quorum is present a call of the house takes precedence over all other motions.

2. When a quorum is present, a call of the house ranks as a question of privilege.

3. Even the reading of the journal is not in order in the absence of a quorum, and in such a case a call may be moved before the reading of the journal.

Sec. 193. Who May Order a Call of the House

1. When no quorum is present, a call is, in effect, demanded. Any member may raise the question of no quorum, and if a quorum is not present, the house must either order a call or adjourn.

2. When a quorum is present, a call may be ordered by a majority of the members present whenever any member is absent, provided the minimum number authorized to order a call are present.

Section 192—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 437.
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 269, 438.
Section 193—
Paragraph 1—
Hughes, Secs. 666, 671.
Paragraph 2—
Hughes, Sec. 658.

3. It is provided in the state constitutions of almost all of the states that a certain number of the members of a house of the legislature may demand a call. Similar provisions will also usually be found in the rules.

Sec. 194. Motion or Demand for Call of the House

1. Rules sometimes prohibit the making of a call after the commencement of a vote if a quorum is present. Unless some special rule prevents, a call is in order at any time.

2. A motion or demand for a call of the house is in order in any order of business but may not be permitted to interrupt a roll call unless authorized by the rules. Raising a question of no quorum, when no quorum is present, compels the house to act on that question and the house may either order a call or adjourn.

3. When one call is in effect, another call is not in order.

4. If, when a quorum is present, a motion or demand for a call is lost, it cannot be renewed until after intervening business.

5. A motion or demand for a call is not debatable or amendable and may not be laid on the table, postponed,

Section 193—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 255-259.
Section 194—
Paragraph 1—
Hughes, Sec. 655; N. Y. Manual 1948-49, p. 493.
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 436-439; N. Y. Manual, 1948-49, p. 416.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 438.
Paragraph 4—
Cushing's Legislative Assemblies, Secs. 269, 438; N. Y. Manual, 1948-49, p. 416.
Paragraph 5—
N. Y. Manual, 1948-49, p. 417; Cushing's Legislative Assemblies, Sec. 270.

referred to committee or have other subsidiary motions applied to it.

6. The usual form of the motion is: "I move a call of the Senate (or house or council, etc.)." The question of the presence of a quorum can be raised by raising a point of order that there is not a quorum present or by raising the question as: "Mr. President: Is there a quorum present?" or "Mr. Chairman: I suggest the absence of a quorum."

Sec. 195. Bringing in Members Under a Call of the House

1. When a call of the house has been ordered, the doors are promptly closed, and the clerk calls the roll of members and notes the absentees. The list of the members not recorded as present may be verified by calling the names, and the list of absentees is then given to the sergeant-at-arms with instructions to bring in the absent members. The original use of the call was to secure the attendance of members at the session and was accomplished by setting a particular day when the roll was to be called and when absent members would be sent for.

2. When a member appears in the house during a call and presents himself to the presiding officer, the clerk is usually directed to record him as present and he is discharged; but when a member is brought in by a sergeant-at-arms he may be required to pay any costs incident to bringing him in.

3. It is a common practice to permit members to enter and take their seats during a call and to take part in any

Section 195—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 264-266.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 265.

80

business conducted without being excused, and to remove the call when a count discloses that a quorum is present or that the members who were absent, and not excused, are present.

4. A call was not originally used to compel members to remain in attendance, but only to bring the members into the chamber. In modern practice the doors may be kept locked under a call to keep the members in attendance during a session.

5. Members who have been granted leaves of absence should not be brought in by the sergeant-at-arms under a call. A leave of absence may be granted on the request of a member himself or upon the request of another member in his behalf. The body has the authority to revoke leaves of absence at any time and to require the members to attend.

Sec. 196. Proceedings During a Call of the House

1. After a call has been ordered, and until further proceedings under the call are dispensed with, if a quorum is not present, no motion is in order except a motion to adjourn or to remove the call. But if a quorum is present the rules or the established practice may permit business to be conducted either generally or under certain limitations, the only necessary limitation being that another call cannot be ordered while one is in effect, unless specifically authorized by the rules.

Section 195—Continued
Paragraph 4—
Cushing's Legislative Assemblies, Secs. 440-442.
Paragraph 5—
Cushing's Legislative Assemblies, Secs. 267, 435.
Section 196—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 438, 439; N. Y. Manual, 1948-49, pp. 416, 417.

2. A recess may not be taken, even by unanimous consent, during a call unless specifically authorized by the rules.

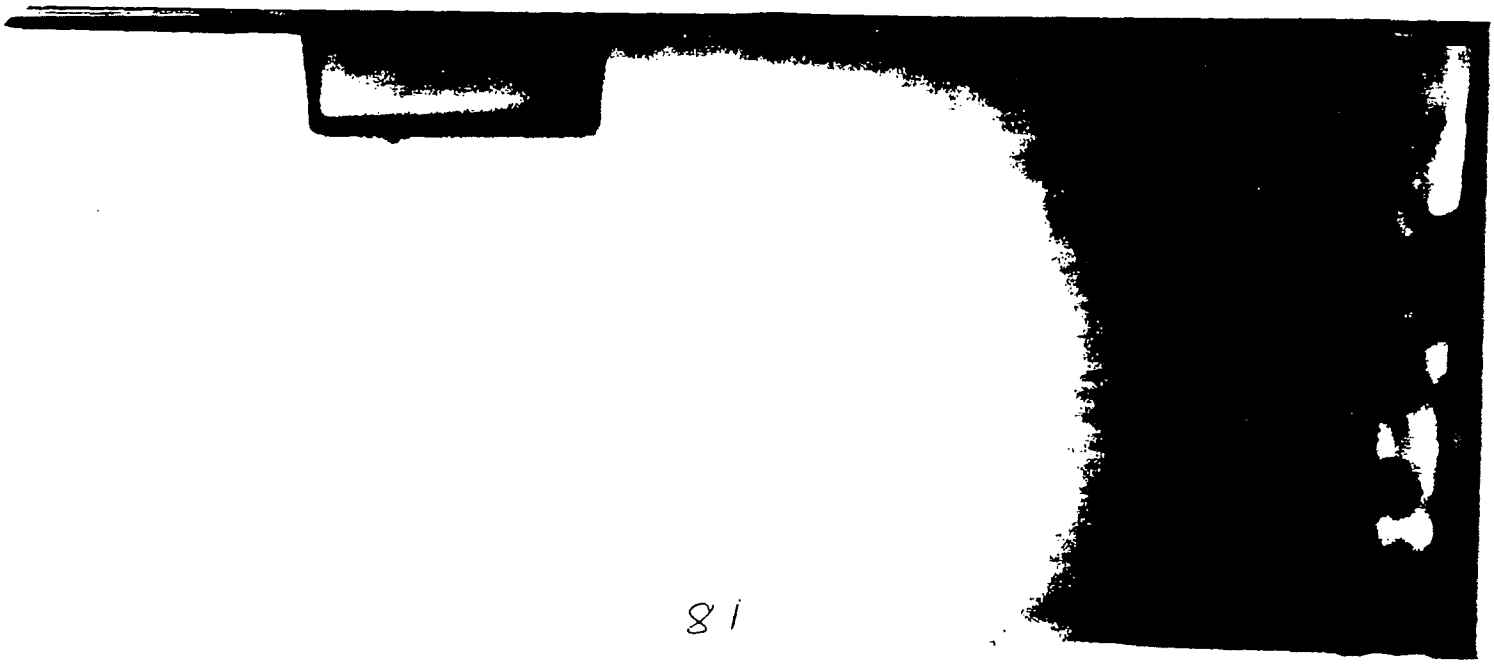
3. An adjournment puts an end to all proceedings under a call, except that if a quorum is present the house may, before adjournment, order members already brought into the house to make their excuse at a later meeting.

Sec. 197. Terminating a Call of the House

1. A call is terminated at any time by a vote to that effect or by the adoption of a motion to adjourn. The better procedure is not to admit the motion to adjourn during a call, but to require that the house first dispense with the call before the motion to adjourn is in order.

2. A motion to dispense with further proceedings under a call is necessarily in order at any time during the call. Proceedings under a call may be terminated at any time by a motion to that effect or by an adjournment. Proceedings under a call are from their very nature suppressed by an adjournment. The motion to dispense with further proceedings under a call requires a majority vote of the members present and voting for its adoption. The motion to dispense with further proceedings under the call or the motion to adjourn, may be made by any member but, by courtesy, the member moving the call is usually permitted to make the motion to remove it.

Section 196—Continued
Paragraph 2—
Hughes, Sec. 449; N. Y. Manual, 1948-49, p. 417.
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 270, 439.
Section 197—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 439.
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 270, 439.



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3. If a quorum is present and the house desires to "take off" the call, the proper motion is, "I move that further proceedings under the call be dispensed with." Upon the adoption of this motion, business is taken up in regular order at the point it was interrupted by the call.

Section 197—Continued
Paragraph 3—
Hughes, Sec. 654.

CHAPTER 21

MOTION TO ADJOURN

See also Sec. 496, Motion to Adjourn Sine Die, and Sec. 781, Adjournment of Legislative Sessions.

Sec. 200. Precedence of Motion to Adjourn

1. A motion to adjourn, when it is unqualified, takes precedence of all other motions except a call when there is not a quorum present and except as some bodies have by rule given higher precedence to other motions.

2. The motion to change the time to which to adjourn, to fix the time at which to adjourn, or the motion to adjourn when otherwise qualified, loses its precedence as a privileged motion to adjourn, and becomes a main question, subject to debate and amendment, and to subsidiary motions.

Sec. 201. Adjournment When There Is No Provision for Future Meetings

1. When no provision has been made as to the time of reconvening, and the adoption of the motion to adjourn would have the effect of dissolving the body, the motion is in fact a motion to dissolve or to adjourn sine die, which is a main motion, and it is subject to all of the rules applicable to main motions. In this situation, a motion to fix the time to which to adjourn takes precedence of the unqualified motion to adjourn, or the unqualified motion may be

Section 200—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 1390-1392; Sturgis, p. 243; Hughes, Sec. 265; Reed, Sec. 168; Cushing, Sec. 137; Tilson, p. 57; 2 Hatsell 106.
Paragraph 2—
Sturgis, p. 239; Reed, Sec. 170; Tilson, p. 57.
Section 201—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 254; Sturgis, p. 246.

amended to fix a time of reconvening. This situation will rarely, if ever, arise in legislative bodies, or in public boards and commissions.

Sec. 202. When Motion to Adjourn Is in Order

1. A motion to adjourn is always in order, except:
   (a) It may not interrupt a member who has the floor.
   (b) It cannot be renewed when it has been defeated until after some business has intervened.
   (c) It is not in order during the taking or verification of a vote.
   (d) It is never in order for dilatory purposes.
2. A motion to adjourn may be made:
   (a) After a roll call has been ordered and before the roll call has begun
   (b) After a vote by ballot has been taken and during counting of the ballots, or
   (c) After the previous question has been ordered but before voting has commenced.

3. The motion is not in order during committee of the whole. The motion to rise must first be carried before the motion to adjourn is in order.

Sec. 203. Adjournment When Time for Future Meetings Is Not Fixed

1. The houses of the state legislatures convene at the date fixed by the constitution and continue in session until

Section 202—
Paragraph 1—
Jefferson, Secs. XIX, XXXIII; Sturgis, p. 239; Hughes, Sec. 267; N. Y. Manual, pp. 443, 444, 465, 466; Reed, Sec. 169; Cushing, Sec. 137a; Tilson, p. 57.
Paragraph 3—
Hughes, Sec. 267.

adjourned sine die. When such a house adjourns without fixing the hour of reconvening, it will reconvene on the next legislative day at the hour fixed in the rules, if rules have been adopted which fix a regular hour for convening. When no time is fixed for reconvening, the houses reconvene on the next legislative day at the usual hour, or if no hour has been established by custom, then at the appropriate or usual hour for meetings of a similar nature, or if no such hour can be ascertained then by ancient custom they meet at noon.

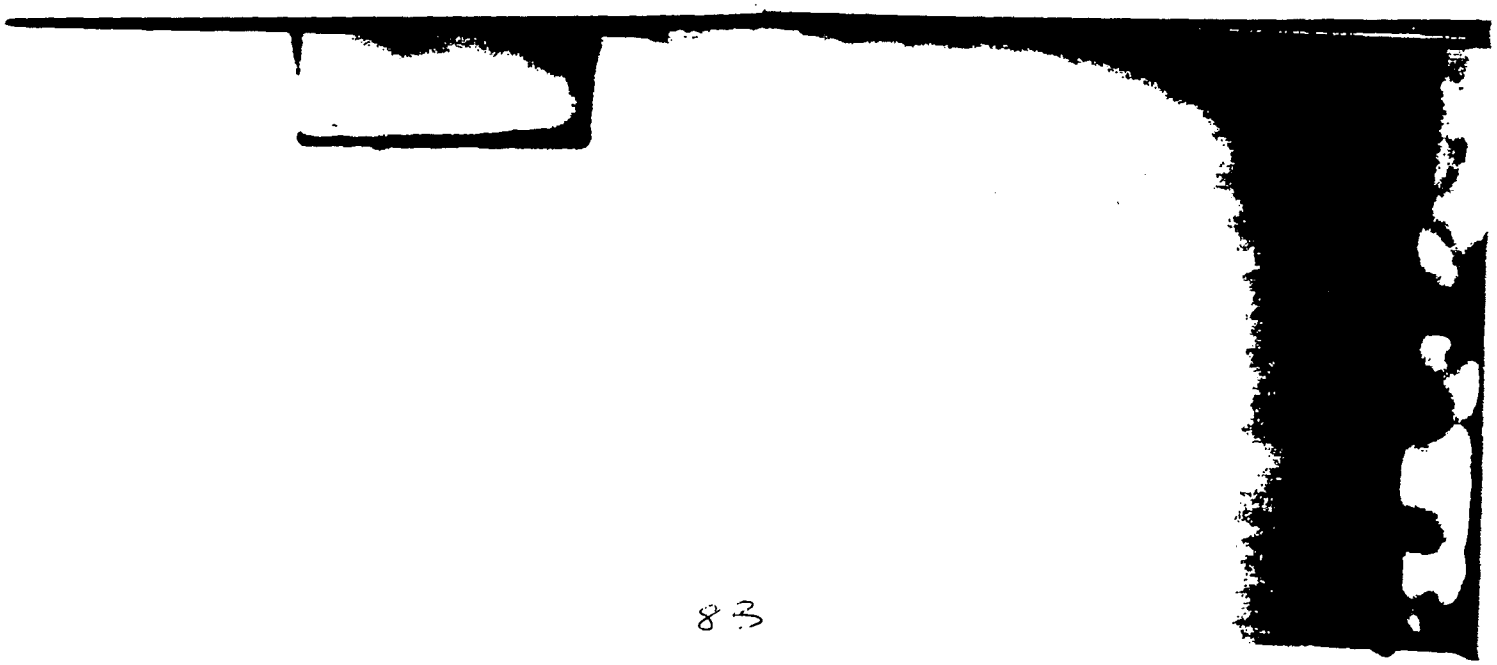
2. The next legislative day is the next day except when it falls on Sunday or certain holidays, as Christmas, which are usually observed by such bodies. Meetings may be held on Sundays and holidays when specially ordered.

3. The sessions and hour of convening of legislative and other public bodies are usually regulated by statutes or rules. In city councils and like bodies which have short but frequent sessions, the adoption of an unqualified motion to adjourn has the effect of adjourning the body until the next regular meeting. There is usually also provision in the statutes or rules for calling special meetings.

Sec. 204. Right to Adjourn

1. Legislative bodies and public administrative boards and commissions have the right to adjourn whenever they determine to do so. It is not necessary that the work of a body be completed before it can adjourn.

Section 203—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 254, 368, 509-515, 1390-1393; Cushing, Sec. 139; Reed, Sec. 171; Tilton, p. 57.
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 509-511; Ex parte Seward (1923), 299 Mo. 385, 253 S. W. 356, 264 U. S. 599.
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 254, 509.



2. A board called to meet at a certain time to perform some particular function can adjourn to some later time when there is some reason to do so. For example:

(a) A majority of a board of commissioners appointed to appraise damages for the taking of land has the power to adjourn. The board consisted of three members but in the absence of one member at a regular meeting the two attending adjourned the meeting until the next day.

(b) A board of school instructors while engaged in proceedings to alter the boundaries of the district has the right to adjourn both as to time and place for any sufficient reason and unless it is made to appear that such adjournment was in the abuse of the corporate function such act is not subject to review by the courts.

(c) A board of supervisors of a county which is required to meet at a particular time to equalize taxes has power to adjourn from time to time until its business is completed.

Sec. 205. Form of Motion to Adjourn

1. The usual form of the unqualified motion to adjourn is "I move that the Senate (or house or council, etc.) do now adjourn."

Section 204—
Paragraph 2 (a)—
In re Newland Avenue (1891), 38 N. Y. 796.
Paragraph 2 (b)—
Donough v. Hollister (1890), 82 Mich. 309, 46 N.W. 782.
Paragraph 2(c)—
Ex parte Mirande (1887), 73 Cal. 365, 14 Pac. 888.
Section 205—
Paragraph 1—
Sturgis, p. 238.

2. When the rules authorize the body to fix the time of reconvening or fix a different time of reconvening, the motion may be in the following form, "I move that the Senate (or house, or council) do now adjourn until—(stating the day and hour as) 10 o'clock tomorrow morning."

3. The rules in bodies having daily meetings usually provide that the body shall convene at a certain hour each day except Sunday, unless a different time is fixed by the body.

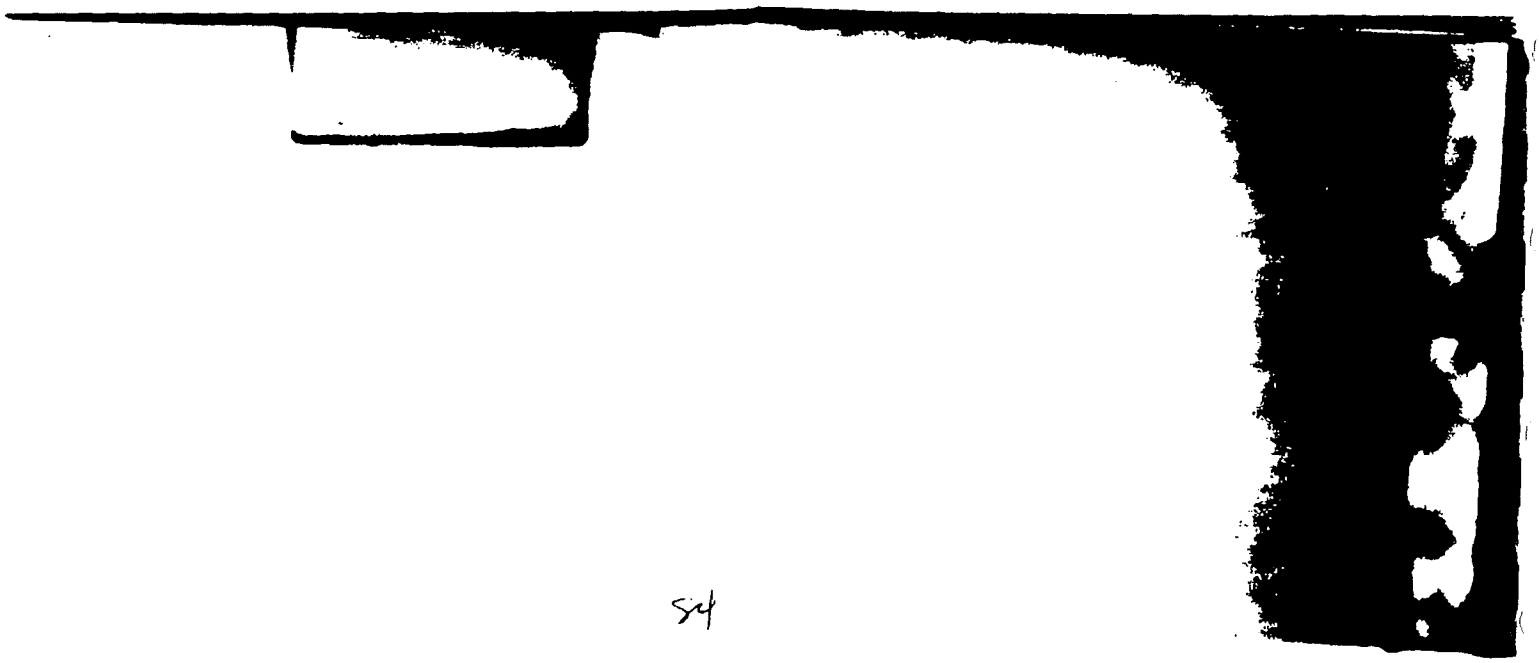
Sec. 206. Motion to Adjourn Is Not Debatable

1. While the unqualified motion to adjourn is not debatable, it does not prevent a statement of the business requiring attention before adjournment, and, before putting the motion, the presiding officer should be certain that no matters requiring attention that day have been overlooked, and any necessary announcements should be made before putting the motion to adjourn to a vote.

Sec. 207. Amendment and Application of Motions to Motion to Adjourn

1. An unqualified motion to adjourn is not subject to any of the subsidiary motions, except when no time is fixed for the next meeting, when the motion loses its

Section 205—Continued
Paragraph 2—
Sturgis, p. 258.
Paragraph 3—
Reed, Sec. 281; Cushing, Secs. 137, 138.
Section 206—
N. Y. Manual, p. 403; Reed, Secs. 170, 171; Cushing, Sec. 137b; Sturgis, p. 241.
Section 207—
Paragraph 1—
Hughes, Sec. 264; Cushing's Legislative Assemblies, Sec. 1523; Sturgis, p. 243.



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privileged status. The motion is subject to any incidental motions which arise out of it such as a parliamentary inquiry, point of order or appeal, and the motion can, of course, be withdrawn.

2. When the daily hour of meeting is fixed, the motion to adjourn may not be amended to specify that particular time, but when the hour of meeting is not fixed, or when fixed subject to the power of the house to change it, the motion to adjourn may be amended to state the time of reconvening.

3. The motion to adjourn to a certain time is subject to debate and to amendment as to the time.

4. As a matter of practice based upon convenience, it is not unusual in a motion to adjourn to state the time of reconvening although the hour may be definitely fixed by the law or rules. When this form of the motion is used simply as a matter of notice to the members, it may be treated as an unqualified motion to adjourn.

5. A motion to adjourn may not be reconsidered, but if lost, may be renewed after intervening business.

See Sec. 210, Renewal of Motion to Adjourn.

Sec. 208. Vote Required for Adjournment

See also Sec. 506, Less Than Quorum Can Adjourn.

1. It is a rule of parliamentary law applicable to all deliberative bodies that less than a quorum have the power to adjourn. In this respect the motion to adjourn differs

Section 207—Continued
Paragraph 2—
Hughes, Sec. 267; Sturgis, p. 239.
Paragraph 3—
N. Y. Manual, p. 403; Sturgis, p. 243.
Paragraph 4—
Sturgis, p. 241.
Paragraph 5—
Reed, Sec. 204; Sturgis, p. 243.

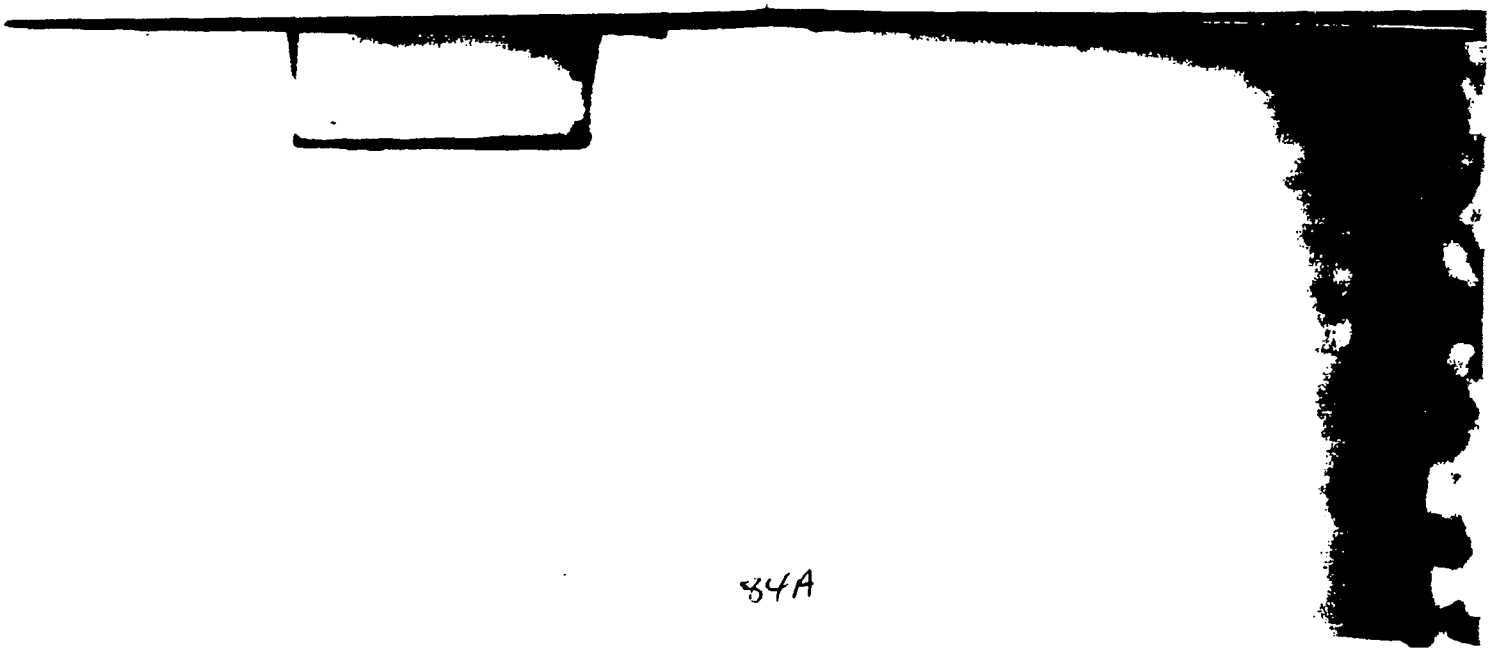
from all other motions. It is, of course, necessary that a body finding itself without a quorum have a means of terminating its session. The constitutions of most of the states authorize the houses of the state legislatures to adjourn from day to day in the absence of a quorum, and statutes in the case of other legislative bodies frequently contain similar provisions. The right of less than a quorum to adjourn does not depend, however, on constitutional or statutory provisions, but exists in all cases by virtue of general parliamentary law and the necessity of the situation.

Sec. 209. Challenging Vote on Motion to Adjourn

1. Where a ruling that a motion for the adjournment of the city council is carried, is immediately questioned, the presiding officer should at once resolve the doubt by requiring the members to stand while they are counted and he cannot relieve himself of such duty by leaving the chair when the doubt is raised.

2. If the president of a city council leaves his council chamber immediately after a doubt was raised as to the result of a vote on a motion to adjourn without resolving

Section 208—
Paragraph 1—
Reed, Secs. 20, 175; Hughes, Sec. 671; N. Y. Manual, p. 422; Cushing's Legislative Assemblies, Secs. 244, 254, 258, 1390, 1396; Choate v. North Fork Highway Dist. (1924), 39 Idaho 483, 228 Pac. 885; Moore v. Perry (1903), 119 Iowa 423, 93 N.W. 510; Rolla v. Schuman (1915), 189 Mo. App. 252, 175 S.W. 241; Kimball v. Marshall (1863), 44 N. H. 465; O'Neil v. Tyler (1892), 3 N. D. 47, 53 N.W. 434; Smith v. Law (1860), 21 N. Y. 296; Duniway v. City of Portland (1905), 47 Ore. 103, 81 Pac. 945.
Section 209—
Paragraph 1—
Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315.
Paragraph 2—
Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315.



the doubt by recounting the votes, the members may choose a temporary presiding officer in any reasonable way in order to resolve the doubt raised, and the clerk or any member may preside until the temporary president is chosen.

3. Where after an indecisive motion to adjourn a town meeting it was moved to proceed to vote on an election but before the voting commenced the previous vote was challenged it was not too late to raise the question.

4. The presiding officer cannot arbitrarily adjourn a meeting.

5. While electing a temporary president of a city council after the president left the chair immediately after declaring that a motion to adjourn was carried without waiting to resolve a doubt raised as to the result of the vote, it is the duty of the meeting to then resolve the doubt by counting the members voting in the affirmative and negative as required by council rules. They did in effect resolve the doubt by deciding that the motion to adjourn was not carried where they proceeded without objection to continue to do business and the subsequent acts of the council were valid notwithstanding the irregularity in resolving the doubt.

Sec. 210. Renewal of Motion to Adjourn

1. The motion to adjourn may be defeated simply to permit the completion of some business which is under

Section 209—Continued
Paragraph 3—
Kimball v. Lamprey (1848), 19 N. H. 215.
Paragraph 4—
Dingwell v. Detroit (1890), 82 Mich. 568, 46 N.W. 938; State v. McKee (1890), 20 Ore. 120, 35 Pac. 292.
Paragraph 5—
Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315.

consideration and the requirement of intervening business should not be as strictly construed in this case as in case of other motions.

2. The motion to adjourn may be renewed after any business has been completed, although that business be only progress in debate, and although no question has been put in the meantime. The calling of the roll may be regarded as intervening business for this purpose, as may also a decision of the presiding officer on a question of order, the reception of a message from the other house, or an announcement by a member, and these are sufficient to justify renewal of this motion.

3. Where no objection is made to renewal of a motion to adjourn without interposition of other intermediate questions as required by parliamentary law, an objection to such successive motions to adjourn is deemed waived.

4. After a meeting had voted down motions to adjourn and a motion was immediately made to adjourn until a certain time, such motion was in order as being different from the motions previously voted down and consequently not in violation of the parliamentary rule requiring intermediate business before a motion could be renewed.

5. This motion is particularly subject to abuse and the presiding officer should refuse to entertain it when it appears to be made for obstructive purposes.

Section 210—
Paragraph 1—
Sturgis, p. 241; Reed, Sec. 169.
Paragraph 2—
Sturgis, p. 241.
Paragraph 3—
Hill v. Goodwin (1876), 56 N. H. 441.
Paragraph 4—
Hill v. Goodwin (1876), 56 N. H. 441.
Paragraph 5—
N. Y. Manual, p. 476.

Sec. 211. Absence of Quorum Does Not Adjourn Body

1. Where a roll call shows there is no quorum present it does not automatically adjourn the body and if before a declaration of adjournment a quorum is secured by the arrival of absent members it can continue in session for the transaction of business.

See Sec. 193.

Section 211—
Pollard v. Gregg (1914), 77 N. H. 190, 90 Atl. 176.

CHAPTER 22

MOTION TO RECESS

Sec. 214. Distinction Between Adjournment and Recess

See also Chapter 21, Secs. 200-211, Motion to Adjourn.

1. The basic distinction between adjournment and a recess is that an adjournment terminates a meeting, while a recess is only an interruption or break in a meeting. After an adjournment a meeting begins with the procedure of opening a new meeting. After a recess the business or procedure of a meeting takes up at the point it was interrupted.

2. Breaks in the meetings of a day, as for meals, are usually recesses, but termination of meetings until a later day are adjournments.

Sec. 215. Precedence of Motion to Recess

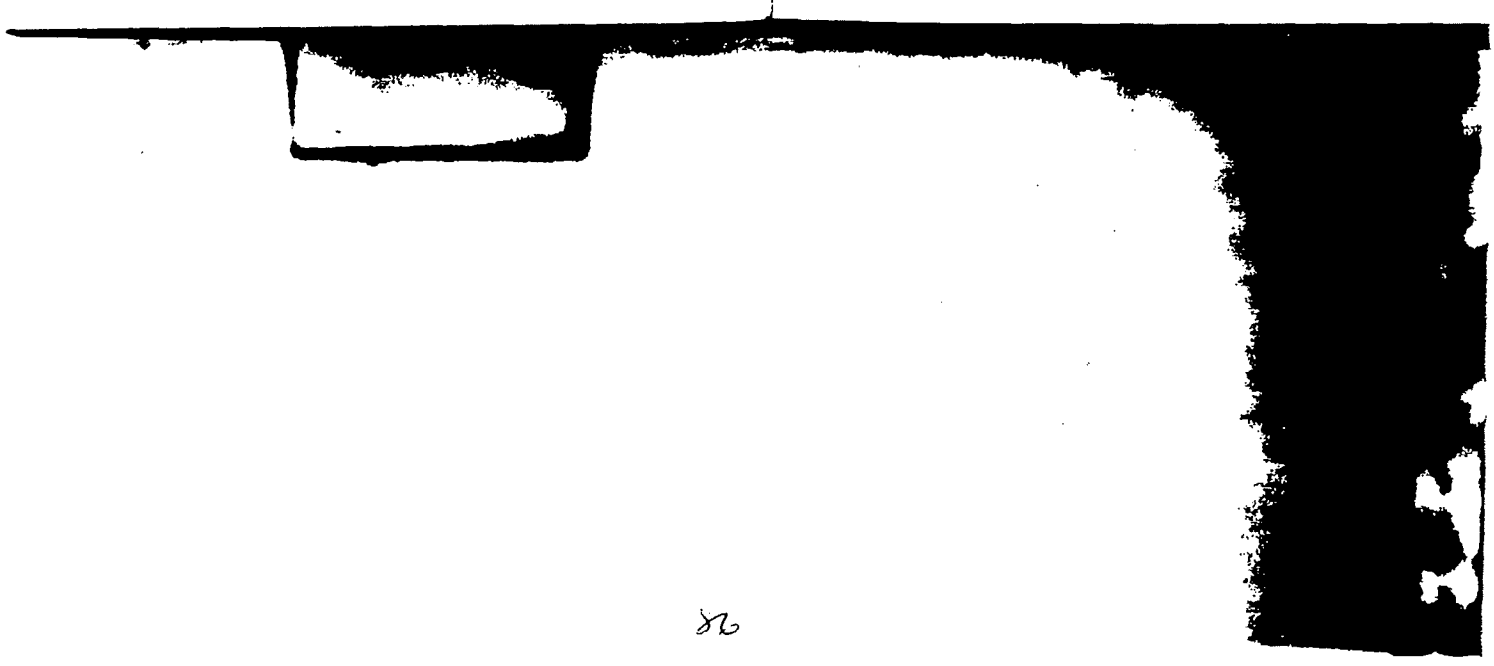
1. The motion to recess takes precedence over all motions except a call of the house and the motion to adjourn.

Sec. 216. Rules Governing Motion to Recess

1. The motion to recess cannot be made while another has the floor, during voting or the verification of a vote.

2. A motion to recess may be unqualified or may be for a specified period as "for 10 minutes" or "until 1

Section 214—
Paragraph 1—
Sturgis, p. 237; Hughes, Sec. 166.
Section 215—
Sturgis, p. 237; Hughes, Sec. 448; Reed, Sec. 174; N. Y. Manual, 1948-49, p. 379.
Section 216—
Paragraph 1—
Sturgis, p. 237.
Paragraph 2—
Reed, Sec. 174.



o'clock." An unqualified motion to recess, when adopted and announced, places the house at recess until called to order by the presiding officer.

3. The motion to recess is not debatable. It is not subject to the subsidiary motions, except to amend, and may be amended only as to the length of the recess.

4. Requires a majority of the legal votes cast.

5. A motion to recess unless otherwise specified takes effect immediately following adoption and the recess should be promptly announced by the presiding officer.

6. A motion to recess may be renewed subject to the same rules as the motion to adjourn.

7. The motion to recess is not in order in the absence of a quorum. Either a call must be ordered or the body must adjourn.

8. A motion to recess is not in order during a call. The call must be terminated before a recess is in order.

9. A motion to recess when it relates to a recess at some future time, takes precedence as a main motion and is subject to debate.

Section 216—Continued
Paragraph 3—
Sturgis, p. 237; Hughes, Secs. 167, 449.
Paragraph 4—
Sturgis, p. 237; Hughes, Secs. 165, 167.
Paragraph 5—
Sturgis, p. 237; Hughes, Sec. 449.
Paragraph 6—
Sturgis, p. 237; Hughes, Sec. 166.
Paragraph 7—
U. S. House Manual (1947), Sec. 50, Note 586; Hughes, Secs. 165, 166, 449.
Paragraph 8—
Hughes, Sec. 449.
Paragraph 9—
Sturgis, p. 237; Hughes, Sec. 448; Reed, Sec. 174.

CHAPTER 23

QUESTIONS OF PRIVILEGE

Sec. 220. What Is a Question of Privilege

1. Questions which relate to the body or to its members in such a manner as to effect proper functioning of the body are questions of privilege. It is necessary that these questions be under the immediate control of the body. They relate to the rights and privileges of the body or to any of its members in their official capacity or to the comfort and convenience of the body or its members in the performance of their official duties.

2. "Questions of privilege" should be distinguished from "privileged questions," which is a class of motions having the highest precedence.

3. Questions of privilege are of two types: They may relate to the privilege of the entire body, which are known as questions of "privilege of the house," and questions of privilege which relate to a member, which are known as questions of "personal privilege." In case of conflict, questions of privilege of the house take precedence over questions of personal privilege.

Sec. 221. Privilege of the House

1. Some of the questions which are recognized as questions of privilege of the house are as follows:

(a) Questions concerning organization of the house.

Section 220—
Paragraph 1—
Sturgis, p. 233; Reed, Sec. 178.
Paragraph 3—
Sturgis, pp. 232, 234; Hughes, Sec. 546; Reed, Sec. 178; Cushing, Sec. 141; U. S. House Manual (1947), Notes to U. S. Constitution, Art. I, Secs. 5 and 9.

(b) Questions concerning expelling or censuring a member or his capacity to serve.
(c) Call of the house when a quorum is present.
(d) Comfort of the members.
(e) Freedom from disturbance.
(f) Disorderly conduct of members.
(g) Conduct of officers or employees or the removal or censure of officers or employees.
(h) Conduct of reporters or the press or the accuracy of published reports.
(i) The journal and records of the house.

Sec. 222. Questions of Personal Privilege

1. Questions affecting the rights, reputation and conduct of members of the body in their representative capacity are questions of personal privilege.

2. Questions of privilege of a member must relate to a person as a member of the body or relate to charges against his character which would, if true, incapacitate him for membership, and he is not entitled to the floor on a question of personal privilege unless the subject which he proposes to present relates to him in his representative capacity.

3. A person raising a question of personal privilege must confine himself to the remarks which concern himself personally, and when speaking under a personal privilege, a member has no right to defend any person other than himself.

Section 221—
N. Y. Manual, p. 469.
Section 222—
Paragraph 1—
Hughes, Secs. 556, 548; Reed, Sec. 178; U. S. House Rule IX.
Paragraph 2—
Hughes, Secs. 556, 563, 567, 648.
Paragraph 3—
Hughes, Secs. 556, 563, 567, 648.

Sec. 223. Questions Not Constituting Personal Privilege

1. A charge in the public newspaper against a member is not a question of personal privilege so long as the charge, if true, would not incapacitate him from membership.

2. A newspaper article merely criticizing a member's acts in a house does not constitute a question of personal privilege, nor does a newspaper article charging a person with disreputable conduct before he became a member, nor a like criticism of a member personally and not in his capacity as a member.

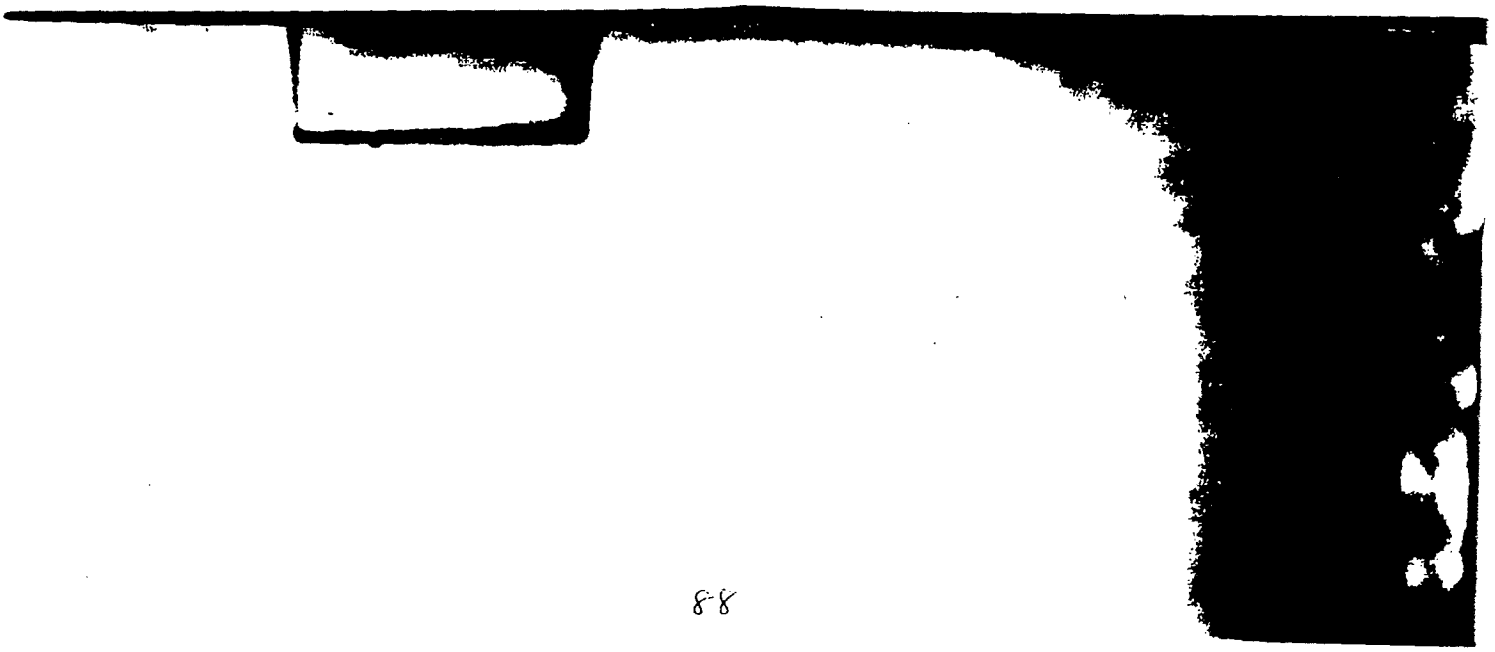
3. The fact that the presiding officer may have refused to grant recognition to a member would not constitute a question of personal privilege.

Sec. 224. Personal Explanation

1. A matter of personal explanation does not constitute a question of personal privilege and may be received only by permission of the house.

2. Permission to make a personal explanation is not a transferable right and the member making explanation must confine himself to the matter personal to himself,

Section 223—
Paragraph 1—
Hughes, Sec. 560.
Paragraph 2—
N. Y. Manual, p. 469; Hughes, Sec. 560.
Paragraph 3—
Hughes, Sec. 558.
Section 224—
Paragraph 1—
Hughes, Sec. 564; Cushing's Legislative Assemblies, Sec. 1565; N. Y. Manual, p. 469.
Paragraph 2—
Hughes, Sec. 565.



but a member having the floor for this purpose may not be interrupted so long as he keeps within parliamentary bounds.

Sec. 225. Precedence of Questions of Privilege

1. Questions of privilege take precedence of all other questions except the motion to adjourn, the call of the house when no quorum is present and the motion to recess.

2. A matter of privilege, arising out of any question as from a quarrel between two members, supersedes the consideration of the original question, and must be first disposed of.

3. Questions of privilege are privileged only as to the right to immediate consideration, and when once stated and before the house are subject to debate and to all subsidiary motions in the same manner as main motions.

4. The previous question applies to debate on questions of privilege the same as to any other questions.

5. When a question of privilege has been disposed of, the business is resumed at the point where it was interrupted.

Section 225—
Paragraph 1—
Sturgis, p. 235; U. S. House Rule IX; N. Y. Manual, pp. 467, 468; Reed, Sec. 179; Cushing, Sec. 141.
Paragraph 2—
Jefferson, Sec. XXXIII; 2 Hatsell 88; N. Y. Manual, 1948-49, p. 445.
Paragraph 3—
Sturgis, p. 235; N. Y. Manual, p. 468.
Paragraph 4—
N. Y. Manual, p. 470.
Paragraph 5—
Sturgis, p. 233; Cushing, Sec. 141; Cushing's Legislative Assemblies, Sec. 1501.

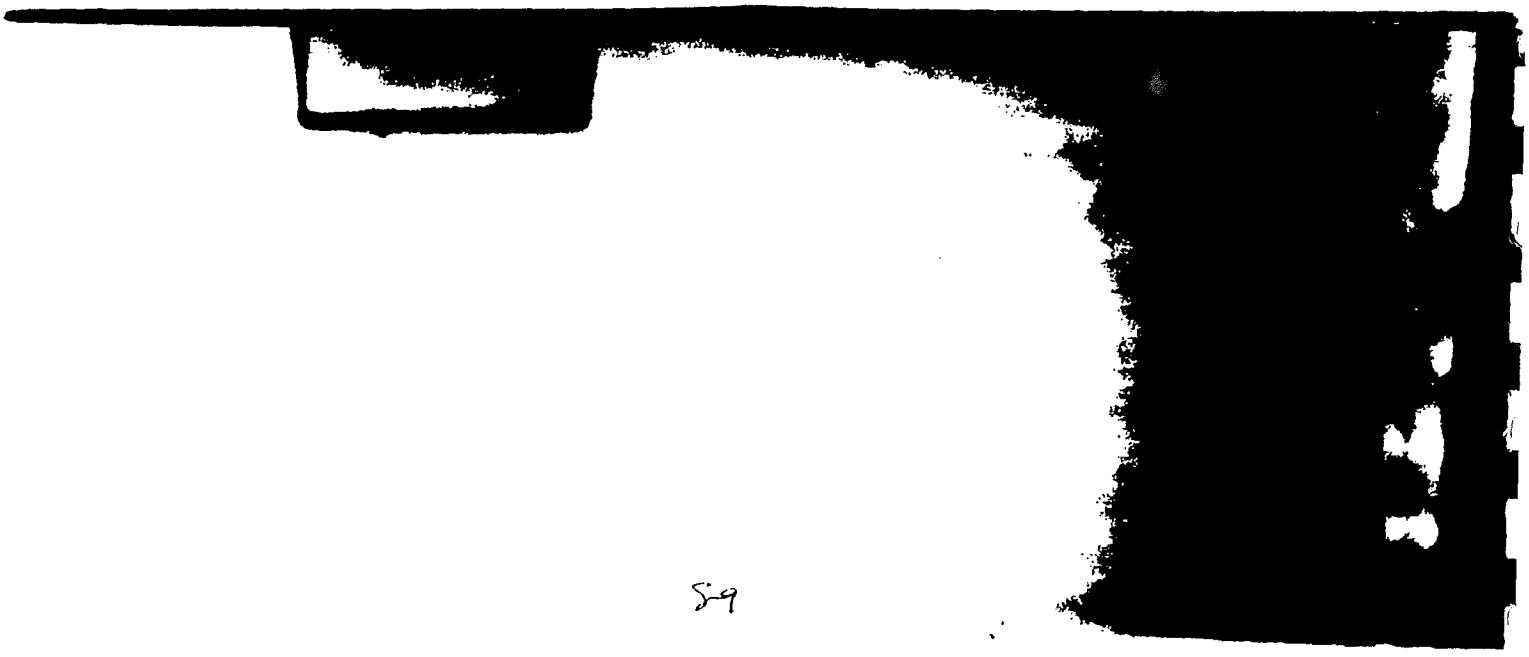
Sec. 226. Manner of Raising a Question of Privilege

1. When the question is one affecting the house or any of its members and requires immediate action, it may be raised while a member is speaking.

2. It is in order to raise a question of privilege at any time, the presiding officer deciding whether it is in fact a question of privilege and if it is of sufficient urgency to justify interrupting a speaker.

3. A member wishing to raise a question of privilege should rise and address the presiding officer and without waiting to be recognized say, "I rise to a question of privilege of the house," or "I rise to a question of personal privilege." The presiding officer should then request the member to state the question of privilege.

Section 226—
Paragraph 1—
Sturgis, p. 233; Cushing, p. 153; N. Y. Manual, 1948-49, p. 445.
Paragraph 2—
Sturgis, p. 233; Cushing's Legislative Assemblies, Sec. 1500; N. Y. Manual, p. 468.
Paragraph 3—
Sturgis, p. 232.



DIVISION 2

INCIDENTAL MOTIONS

CHAPTER 24

APPEALS

Sec. 230. When an Appeal Is in Order

See also Sec. 245, Par. 4.

1. The proper method of taking exception to a ruling of a presiding officer is by appeal. All questions of order are decided by the presiding officer, subject to appeal by any member.

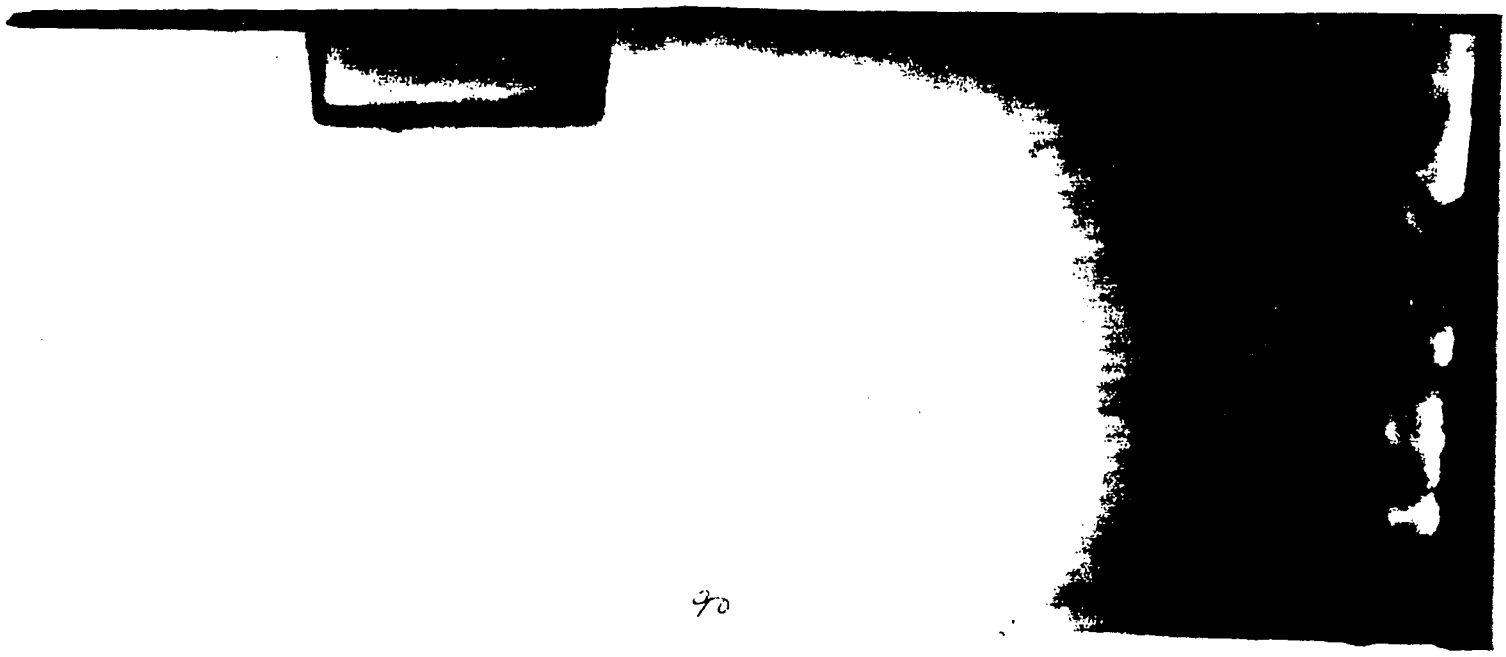
2. An appeal from a decision of the presiding officer must be made promptly and it is too late to appeal after debate or other business has intervened.

3. When a presiding officer rules a motion out of order, the proper procedure is to appeal from his decision. It is not proper for a member to put a question to vote which has been ruled out of order.

See also Sec. 576, Refusal of Presiding Officer to Perform Duties.

4. An appeal from a decision of a presiding officer is in order while a member has the floor if made promptly.

Section 230—
Paragraph 1—
Sturgis, p. 205; U. S. House Rule 1, Sec. 4; Hughes, Sec. 527; N. Y. Manual, p. 457; Tilson, p. 32; State v. Lasher (1899), 71 Conn. 540, 42 Atl. 636; Proctor Coal Co. v. Finley (1895), 98 Ky. 405, 33 S.W. 188.
Paragraph 2—
Sturgis, p. 206; N. Y. Manual, p. 410; Tilson, p. 30; Cushing's Legislative Assemblies, Sec. 1465; Hughes, Secs. 534, 719.
Paragraph 3—
Proctor Coal Co. v. Finley (1895), 98 Ky. 405, 33 S.W. 188.
Paragraph 4—
Sturgis, p. 206; Hughes, Sec. 541; N. Y. Manual, p. 410.



5. While an appeal is pending, a point of order on any other question is not in order but a point of order relating to the appeal may be raised and if the determination of the appeal is dependent on this point it may be decided by the presiding officer. This second decision is also subject to appeal. There is an early precedent in Congress that there can be no appeal from a second decision while the other appeal is pending, but that the correctness of the ruling can be brought up when no other business is pending, and the presiding officer is subject to censure by the house if the ruling be irregular.

6. A second point of order on the same general subject, but not on the same point, is not in order while an appeal is pending, but when the first appeal is decided, laid on the table or otherwise disposed of, the second point of order is in order and is subject to appeal.

7. When an appeal has been taken from a decision of the presiding officer, no new business is in order until the appeal has been disposed of.

8. An answer to a parliamentary inquiry is not a decision and therefore cannot be appealed from.

Sec. 231. Form of Question on Appeal

1. When a member wishes to appeal from a decision of the presiding officer, he should rise and address the presiding officer and, without waiting to be recognized say, "I appeal from the decision," or "I appeal from the decision of the President (or Speaker or Chair)."

2. When an appeal is taken, the presiding officer should clearly state the decision appealed from and may state his reasons for his decision.

3. If there is no debate, or when debate is concluded, the presiding officer may put the question in the following form: "Shall the decision of the President (or Speaker or Chair) stand as the judgment of the Senate (or house or council or board)."

Section 230—Continued
Paragraph 5—
Reed, Sec. 185; Cushing's Legislative Assemblies, Sec. 1470.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 1469.
Paragraph 7—
Sturgis, p. 206; N. Y. Manual, p. 457.
Paragraph 8—
Hughes, Sec. 542.
Section 231—
Paragraph 1—
Hughes, Sec. 543; Sturgis, p. 205.

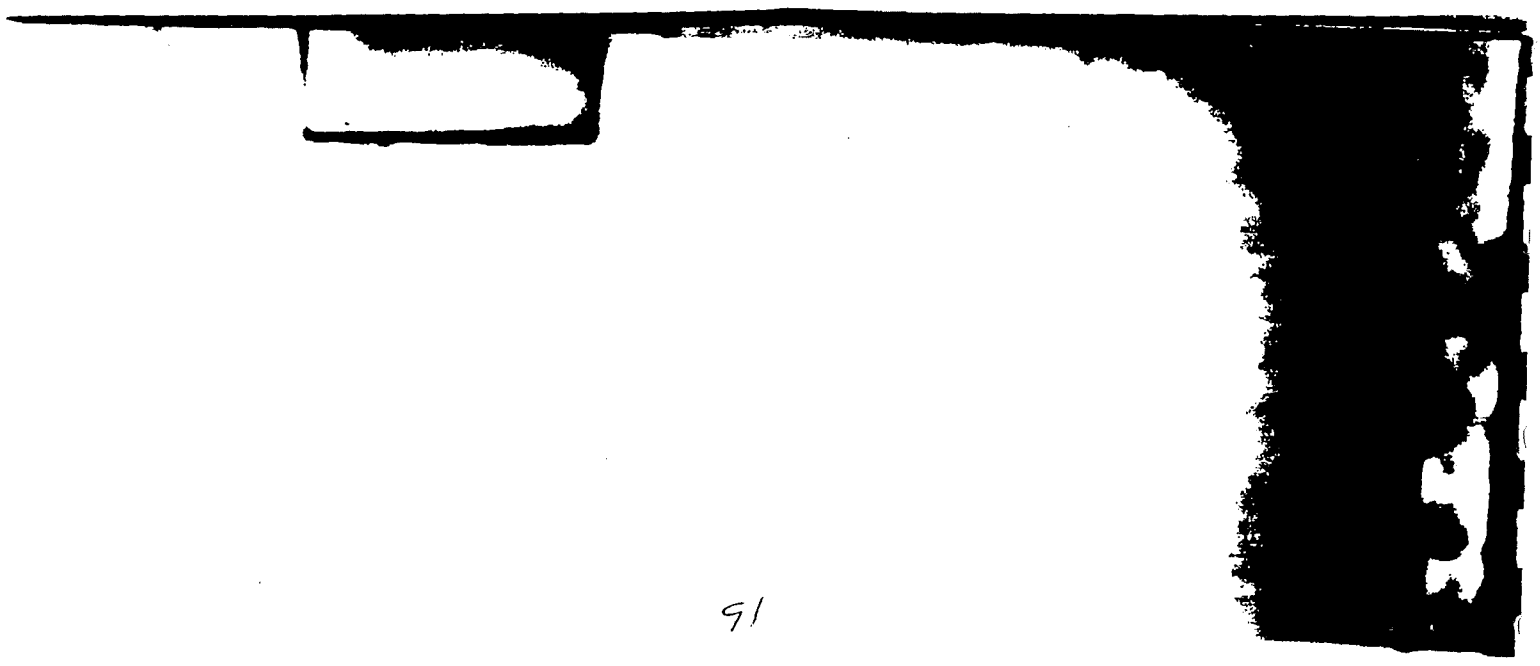
Sec. 232. Debate on Appeals

1. A decision of the presiding officer is not debatable unless an appeal is taken from the decision.

2. An appeal is debatable even though the question out of which it arose was undebatable, being governed by the same rules as debate on other questions.

3. The question out of which an appeal arose is not subject to debate on appeal, but only the specific question involved in the point of order from which the appeal was taken.

Section 231—Continued
Paragraph 2—
State v. Lasher (1899), 71 Conn. 540, 42 Atl. 636; Sturgis, p. 206; Hughes, Sec. 543; Cushing's Legislative Assemblies, Sec. 1461.
Section 232—
Paragraph 1—
Sturgis, p. 206; N. Y. Manual, 1948-49, p. 407.
Paragraph 2—
Croswell's Manual, Sec. 30; N. Y. Manual, 1948-49, p. 407.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1466; N. Y. Manual, 1948-49, p. 410.



4. Whether or not an appeal has been debated, the presiding officer, when making his decision on the appeal, may state the reasons for his decision without leaving the chair.

5. It is sometimes provided by rule that an appeal is not debatable when the ruling relates to indecorum, transgression of the rules or to the priority of business, nor if made while the previous question is pending, nor while the immediately pending question is undebatable.

6. An appeal from a decision of the presiding officer may be withdrawn by the person making it, but if it is so withdrawn, it may be renewed, by the same or another member, provided no other business has intervened.

Sec. 233. Amendment—Laying an Appeal on the Table

1. An appeal may not be amended as the question on appeal is simply whether the decision of the presiding officer shall be sustained.

2. An appeal may be laid upon the table but may not be referred to committee. Where the rules do not permit an appeal to be taken from the table, it is a common practice of opponents of an appeal to move that it be laid on

Section 232—Continued
Paragraph 4—
N. Y. Manual, 1948-49, p. 407; Sturgis, p. 207.
Paragraph 6—
Hughes, Sec. 544; Cushing's Legislative Assemblies, Sec. 1466; N. Y. Manual, p. 610.
Section 233—
Paragraph 1—
Sturgis, p. 207; Croswell's Manual, Sec. 30; N. Y. Manual, 1948-49, pp. 407, 408; Hughes, Sec. 541.
Paragraph 2—
Sturgis, p. 206; Hughes, Sec. 542; N. Y. Manual, 1948-49, p. 409.

the table, since this procedure has the effect of closing debate and sustaining the decision of the presiding officer.

3. When an appeal is laid on the table, it does not carry the main subject with it, but the question out of which the appeal arose is still before the body.

Sec. 234. Vote on Appeal

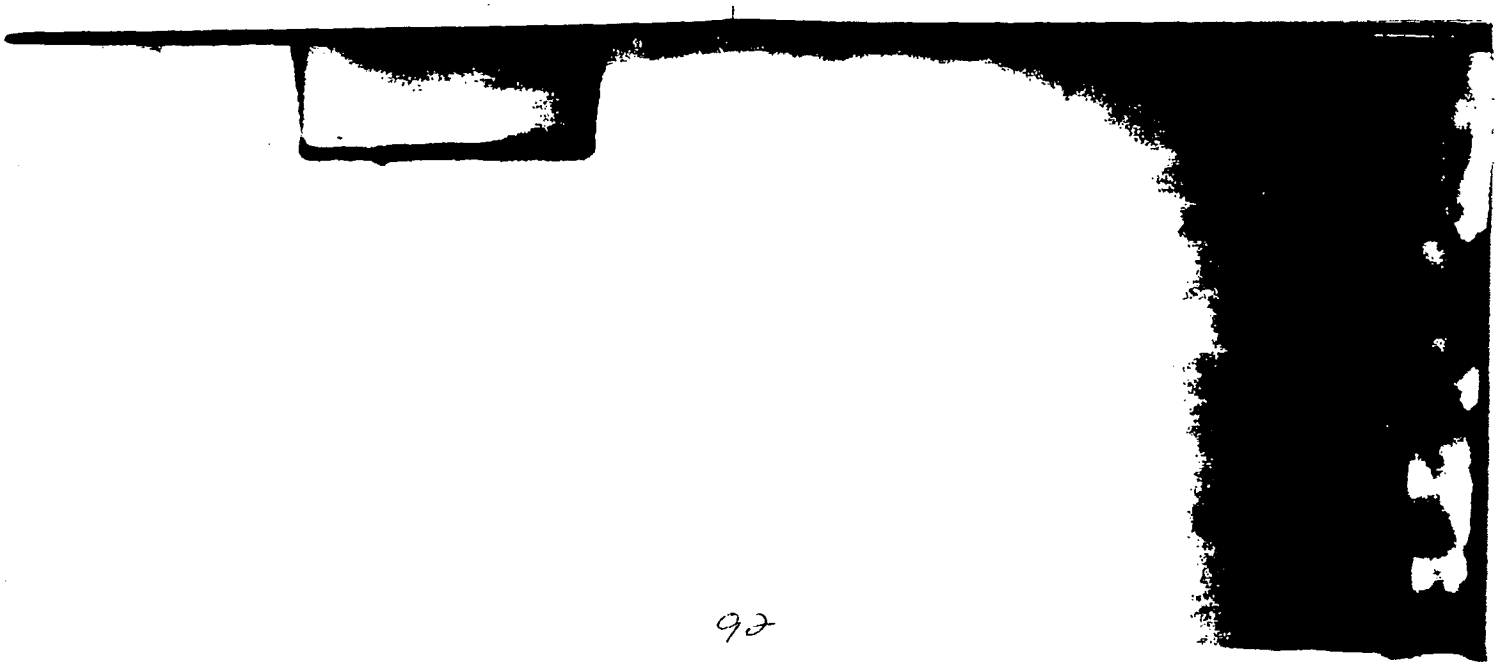
1. One-half of the legal votes cast, a quorum being present, sustains a decision of the presiding officer on appeal. A tie vote sustains the presiding officer since a majority is required to overrule his decision.

2. When the presiding officer is a member of the house, he may vote to sustain his own decision on appeal.

Sec. 235. Reconsideration of Appeals

1. An appeal may be reconsidered, but when the subject matter upon which the appeal was taken has been disposed of, and it is impossible for the house to reverse its action, it is too late to move to reconsider the appeal.

Section 233—Continued
Paragraph 3—
Sturgis, p. 206; Reed, Sec. 185; Cushing's Legislative Assemblies, Sec. 1467; N. Y. Manual, 1948-49, p. 410.
Section 234—
Paragraph 1—
Sturgis, p. 206; Jefferson, Sec. XLI; Reed, Sec. 185.
Paragraph 2—
Sturgis, p. 206; Hughes, Sec. 542; N. Y. Manual, 1948-49, p. 409; Cushing's Legislative Assemblies, Sec. 1471.
Section 235—
Sturgis, p. 206; Hughes, Sec. 541; N. Y. Manual, 1948-49, p. 409.



CHAPTER 25

POINTS OF ORDER

Sec. 240. Purpose of Points of Order

1. It is the duty of the presiding officer to enforce the rules and orders of the body without delay and without waiting to have his attention called to breaches of order. It is also the right of every member who notices a breach of order or of a rule to insist upon its enforcement. This is called raising a question or point of order, because the member puts to the presiding officer the question as to whether there has been a breach of order or of the rules, it being the duty of the presiding officer to maintain order and enforce the rules.

2. A point of order is the parliamentary device that is used to require a deliberative body to observe its own rules and to follow established parliamentary practice.

3. Any request for compliance with the rules, is in effect a point of order and is subject to the same rules.

4. The presiding officer is not required to decide any point of order not directly presented in the proceedings of the body.

Section 240—
Paragraph 1—
Sturgis, pp. 208, 209; Hughes, Secs. 261, 527; Reed, Secs. 48, 111, 182, 183; Cushing, Sec. 151; Cushing's Legislative Assemblies, Secs. 1457, 1460.
Paragraph 2—
Hughes, Sec. 261.
Paragraph 3—
Hughes, Sec. 528.
Paragraph 4—
Sturgis, pp. 308, 309.

Sec. 241. When Point of Order May Be Raised

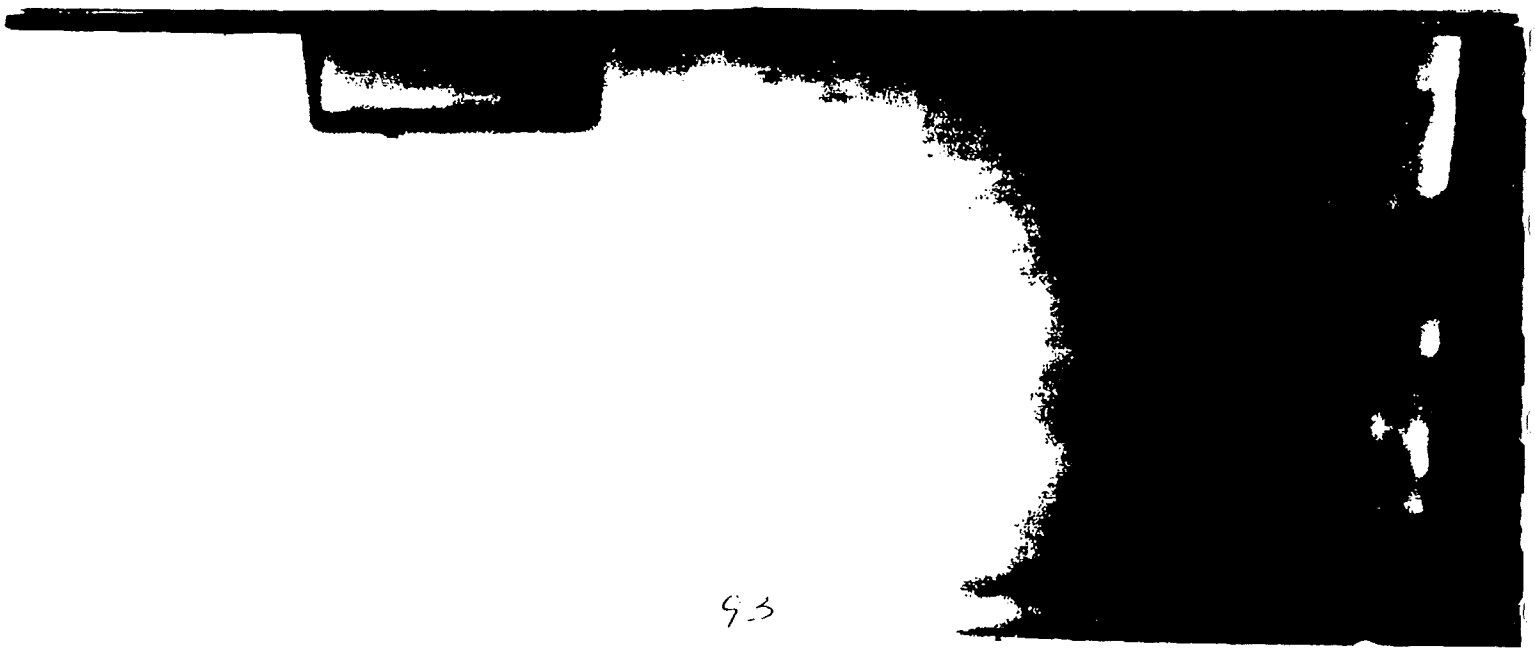
1. A point of order must be raised before the irregularity or occasion for raising the point of order has passed. On procedural questions it is too late as soon as the particular point has been passed or the next business taken up. On substantive questions a point of order, such as that the amendments now in the bill are not germane, may be raised so long as the bill or proposition is within the control of the body. When the question relates to a violation of the constitution or statutes, such as a requirement of three readings of bills, the question can be raised so long as the measure is within the control of the body.

2. It is not in order to raise one point of order while another is pending, but as soon as one point of order is disposed of another is in order and the overruling of a point of order does not preclude other points of order being raised against the same proposition.

3. It has been said that one point of order cannot be raised upon another as there would be two points pending at the same time. This would seem to be in error as a question on one point of order might well give rise to another. Unless prevented by the rules, one point of order can be raised upon another. The presiding officer should be careful that this procedure is not used for dilatory purposes.

4. A question of order may be raised when a member has the floor and may interrupt a speech, the reading of a

Section 241—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1465; Sturgis, p. 209; Hughes, Secs. 534, 710; Tilson, p. 30.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1470; N. Y. Manual, p. 458; Hughes, Sec. 268.
Paragraph 4—
Sturgis, p. 208; Hughes, Sec. 529; Tilson, p. 31.



paper, or the making of a report when it arises out of the speech, paper or report.

5. A point of order must be raised at the time the particular question is pending. It is premature to raise a point of order against an amendment when an amendment of the amendment is pending or when a motion to recommit is pending.

6. The proper time to raise a point of order questioning the right of a member to vote on account of interest is after the vote has been recorded and before the result is announced.

Sec. 242. Limitations on Use of Points of Order

1. It is not the duty of the presiding officer to rule upon any question which is not presented in the course of proceedings. It is not his right to rule upon the constitutionality or legal effect or expediency of a proposed bill, as that authority belongs to the house.

2. It is not within the province of the chair to decide as to the constitutionality of an amendment.

3. A point of order may not be raised on the ground that a bill does not conform to the subject matter as

Section 241—Continued
Paragraph 5—
Mass. Manual, p. 669.
Paragraph 6—
Mass. Manual, p. 610.
Section 242—
Paragraph 1—
Hughes, Secs. 28, 270; 35th Cong., 2d Sess., Congressional Record, p. 680; 46th Cong., 2d Sess., Congressional Record, p. 1501; U. S. House Manual, 80th Cong., Rule 627; N. Y. Manual, 1948-49, p. 443.
Paragraph 2—
Mass. Manual, p. 594.
Paragraph 3—
Mass. Manual, p. 662.

stated in the title because this is a question which must be decided by the body.

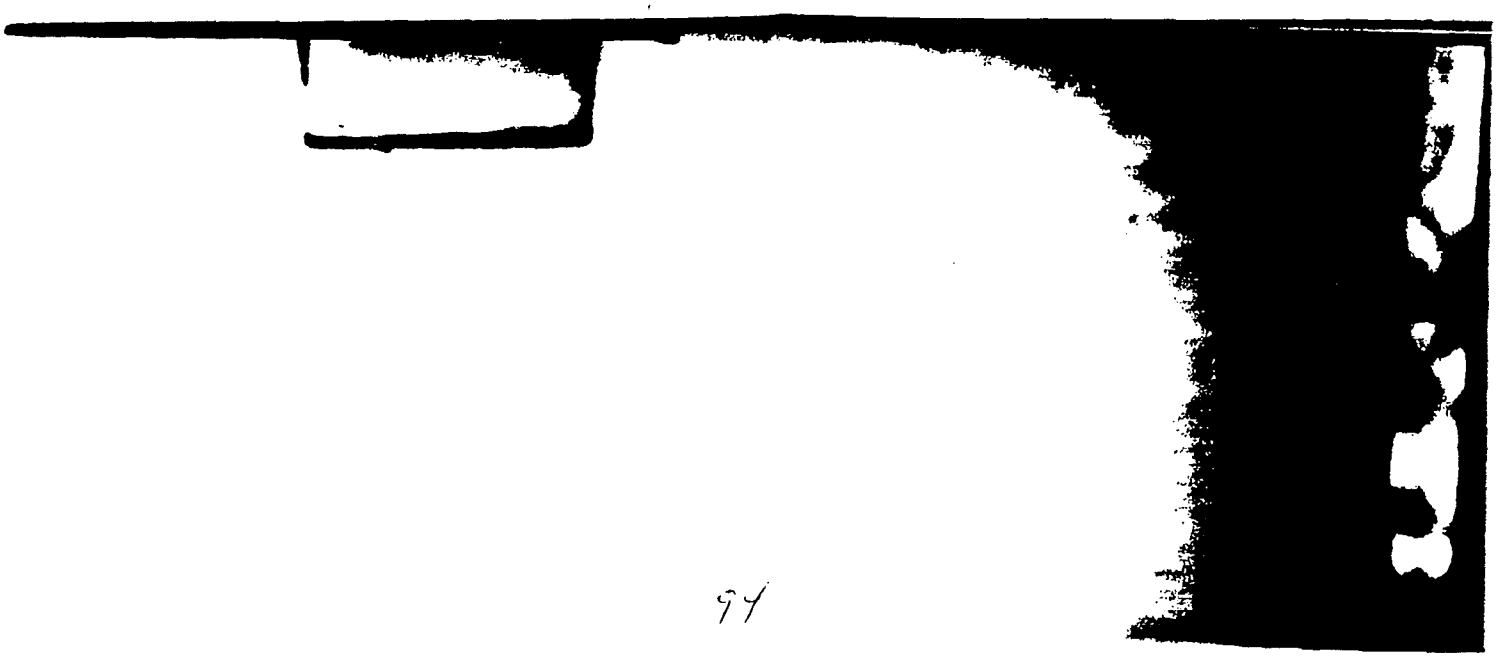
Sec. 243. Form of Point of Order

1. A member wishing to raise a point of order should arise and address the presiding officer, and without waiting to be recognized say, "I rise to a point of order." The presiding officer should interrupt the proceeding; if a member is speaking, he should immediately yield the floor, and the presiding officer should then direct the member raising the point of order to state his point. The member should then state the point as briefly and concisely as possible, citing the authority for the point whenever possible, but should not presume to decide the question or argue the point. A point of order is not a motion and does not require a second, even where seconds to motions are required by rule.

Sec. 244. Consideration of a Point of Order

1. It is the duty of the presiding officer to immediately take notice of any point of order although his decision may be deferred until a decision can be reached on it. Before rendering his decision on any point of order, the presiding officer may request the advice or opinion of members. When the question is particularly complicated or important, it may require research or investigation for its determination, and the decision may be put over by

Section 243—
Hughes, Secs. 273, 529, 531; Reed, Sec. 184; Cushing, Sec. 151; Sturgis, p. 206.
Section 244—
Jefferson, Sec. XVII; Hughes, Secs. 529, 541; Cushing, Sec. 152; Tilson, p. 32; Cushing's Legislative Assemblies, Sec. 1464; Sturgis, p. 209; U. S. House Manual, 80th Sess., Rule 1, note 627; Mass. Manual, p. 622.



the presiding officer to give him an opportunity to look into the precedents or to reach a decision.

Sec. 245. Submission of Point of Order to the House

1. A point of order is decided by the presiding officer without debate unless in doubtful cases he submits the question to the body for advice or decision. When the presiding officer submits a question to the house for its decision, the question is open fully to debate, because the decision of the house is not subject to appeal. When, during debate, the presiding officer rules on the point debate is closed but the decision may be appealed.

2. Whenever the presiding officer makes a decision on a point of order, he has a right, without leaving the chair, to state the reasons for his decision, and in such case, he may speak on points of order in preference to members, or if he is a member of the house, in preference to other members.

3. It is in order for a member to courteously request, but not demand, the presiding officer to reconsider his decision on a point of order.

4. It was the practice in the House of Commons not to permit debate on a point of order during division of the house, though informal consultation with members by the speaker was permitted. With the particular procedure used for division in the Commons to have permitted debate would have created too much confusion. For the same reason, appeals were not permitted on points of order while the house was divided and waiting to be counted. With the modern methods of voting, the reason for this technical rule has ceased to exist and points of order arising out of the procedure of voting are not now subject to any special rules or different procedure than if they arose out of any other situation or during any other procedure. Adopted rules, however, sometimes contain the ancient restrictions.

Section 245—
Paragraph 1—
State v. Lasher (1899), 71 Conn. 540, 42 Atl. 636; Hughes, Secs. 541, 683; Croswell's Manual, Sec. 30; N. Y. Manual, p. 407; Cushing, Sec. 154; Cushing's Legislative Assemblies, Sec. 1462; Sturgis, p. 210.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1471; N. Y. Manual, 1948-49, p. 407; State v. Lasher (1899), 71 Conn. 540, 42 Atl. 636.
Paragraph 3—
Hughes, Sec. 41.
Paragraph 4—
3 Hatsell 143; Jefferson, Sec. XLI.

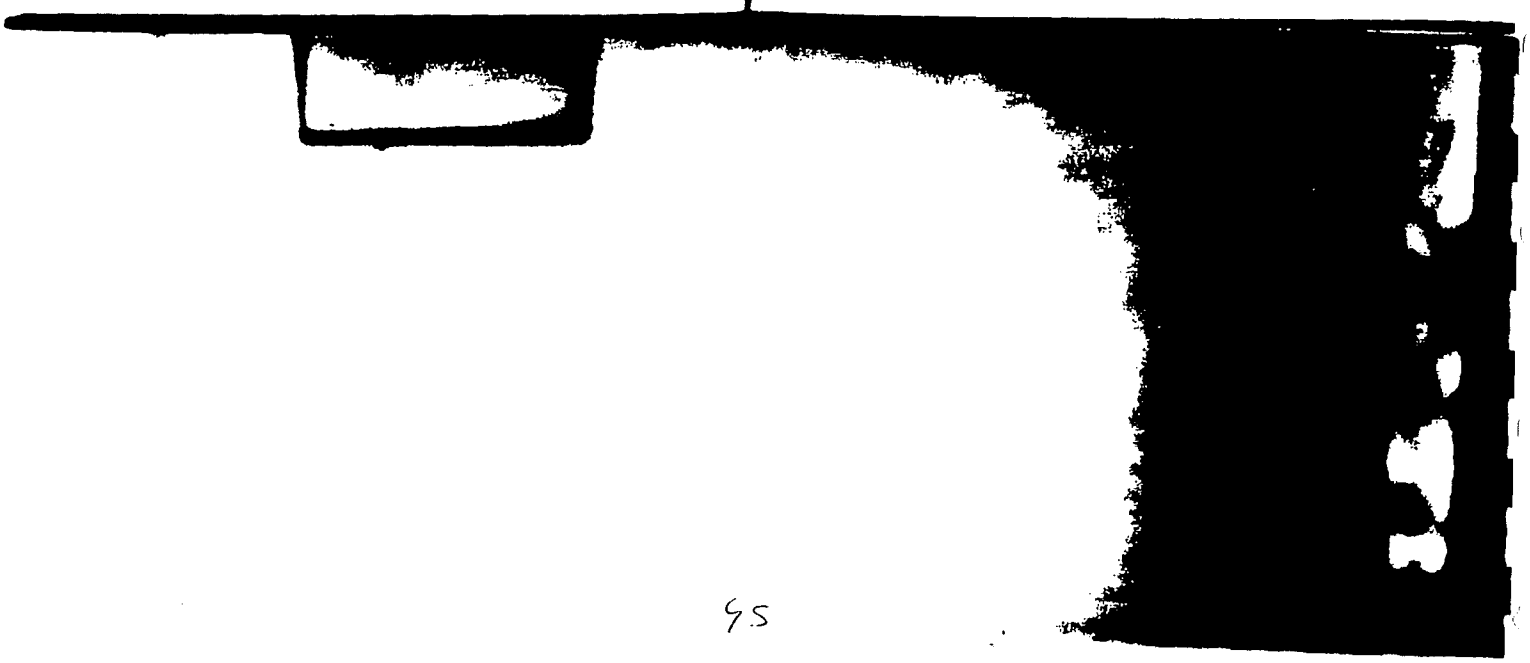
Sec. 246. Precedence, Debate and Subsidiary Motions

1. A point of order takes precedence of the pending question out of which it arises until the point of order is disposed of, and yields to motions having a higher precedence than the motion out of which it arose.

2. Neither a point of order nor a decision thereon can be amended nor have any other subsidiary motion applied to it, except that an appeal can be taken from a decision and that a point of order or appeal can be withdrawn.

3. A point of order is not debatable unless submitted to the house. The point can be debated on appeal if an appeal is taken from the decision.

Section 246—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1459; Sturgis, pp. 210, 211; Hughes, Sec. 541; N. Y. Manual, 1948-49, p. 439.
Paragraph 2—
Hughes, Sec. 527; Sturgis, p. 211.
Paragraph 3—
N. Y. Manual, pp. 457, 464; Cushing's Legislative Assemblies, Sec. 1460; Sturgis, p. 210.



4. If the presiding officer does not submit a point of order to the body for its decision no vote is taken upon a point of order unless an appeal is taken from the decision of the presiding officer.

CHAPTER 26

PARLIAMENTARY INQUIRIES AND OTHER REQUESTS FOR INFORMATION

Sec. 250. Purpose of Parliamentary Inquiry

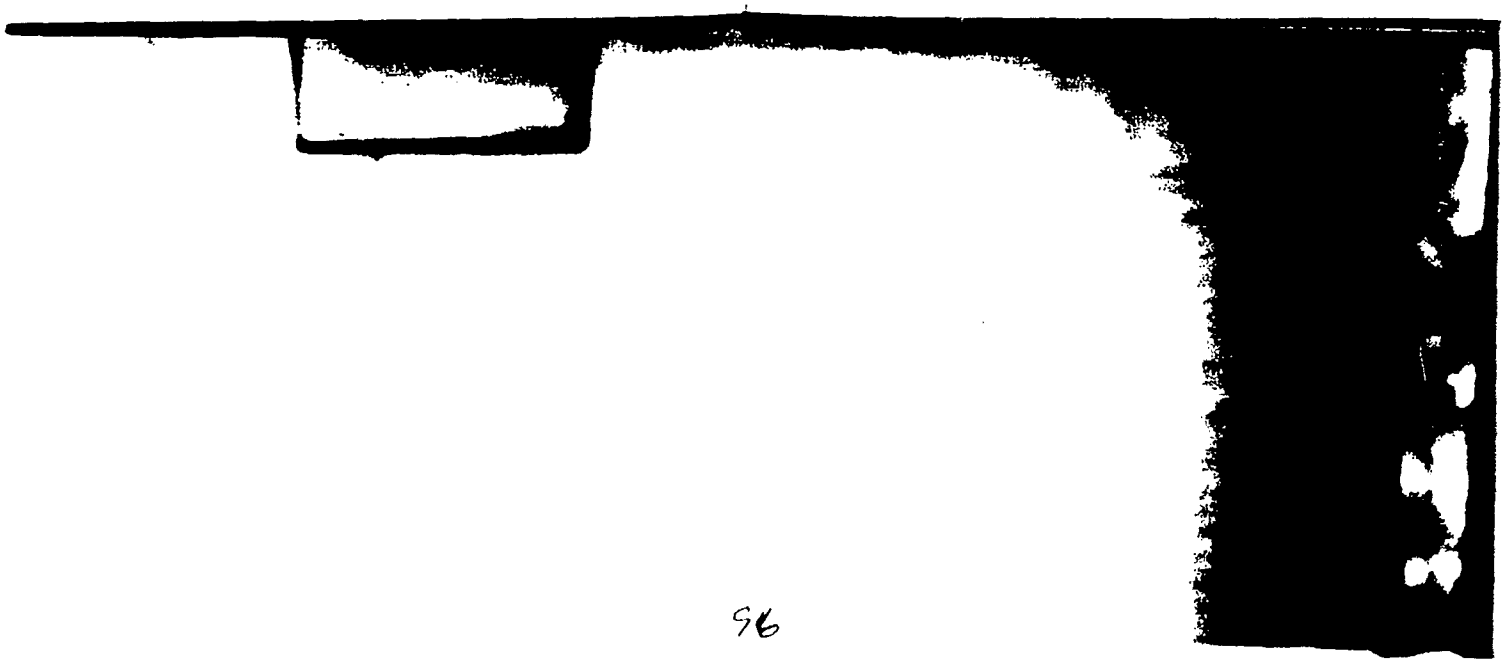
See also Sec. 114, Asking Questions of Members.

1. During the sessions of a legislative body, members may desire to obtain information concerning the procedure or business before the house. These requests are not technically motions but, for convenience are classified with them. A parliamentary inquiry is a request for information from the presiding officer with respect to procedure concerning some question before the house or which may be immediately brought before the house.

2. The presiding officer should, when requested by a member, answer any questions on parliamentary law, pertinent to the business before the house, in order to enable a member to make a proper motion or to raise a timely point of order, but it is not his duty to answer general questions concerning parliamentary law.

3. When the presiding officer is not in possession of the information requested, he may direct the question to a member who should be in possession of the information.

Section 250—
Paragraph 1—
Hughes, Sec. 521; Sturgis, p. 212.
Paragraph 2—
Sturgis, p. 214.
Paragraph 3—
Sturgis, p. 214.



Sec. 251. Form of Parliamentary Inquiry

1. A member desiring information concerning a question before the body, or which may be immediately brought before the body, may rise, address the presiding officer, and without waiting to be recognized say, "I rise to a parliamentary inquiry," or he may say, "I rise for information," or "I rise to a point of information." The presiding officer should ask the member to state his inquiry, and if the question should appear to be pertinent to the business of the body, he should supply this information, but if a member is speaking and the question does not require an immediate reply, the presiding officer may delay the reply until the speech is completed.

Sec. 252. Rules Governing Parliamentary Inquiries

1. When a parliamentary inquiry relates to a question which requires immediate attention, it may be made while a member has the floor, and may even interrupt a speech.

2. A parliamentary inquiry is not a motion but is simply a request for information and is, therefore, not debatable or amendable nor subject to any other motion.

3. A parliamentary inquiry is an incidental question which yields only to privileged questions, appeals and questions of order and takes precedence of all other incidental motions, subsidiary and main motions. The presiding officer may answer parliamentary inquiries even after the previous question has been ordered.

4. A parliamentary inquiry is never in order when made for dilatory purposes.

Section 251—
Sturgis, p. 214.
Section 252—
Paragraph 1—
Sturgis, p. 214; Hughes, Secs. 521, 522.
Paragraph 2—
Hughes, Sec. 522; Sturgis, p. 214.
Paragraph 3—
Hughes, Secs. 521, 522; U. S. House Manual, 80th Congress, Rule 1, note 627; Sturgis, p. 215.

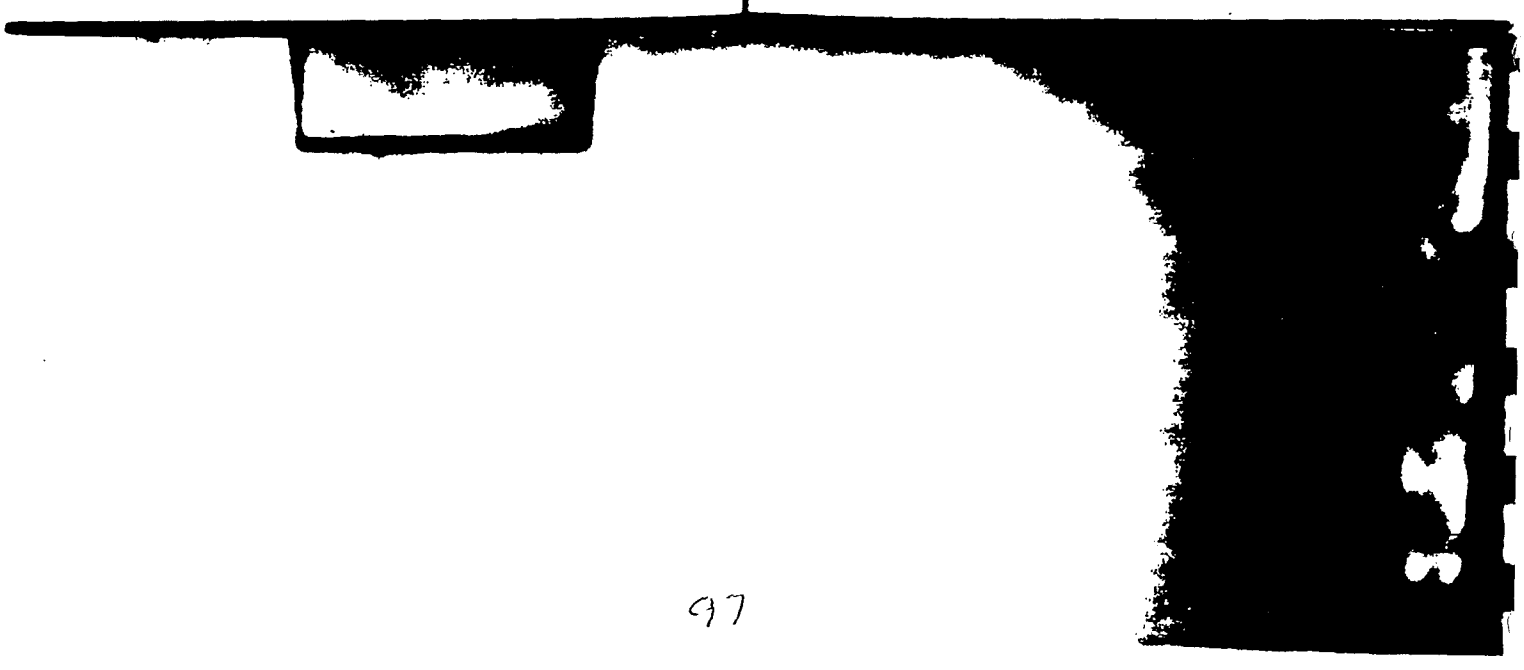
Sec. 253. Request for Information From Members

1. Occasions frequently arise when one member desires information of another. Such requests are not technically parliamentary inquiries, but are generally subject to the same rules.

2. When the information is desired from a member who is speaking, or from any other member, instead of from the presiding officer, the member desiring the information should rise and say, "Mr. President (or Mr. Chairman or Mr. Speaker), I desire to ask the Senator (or gentleman (further describing the member when necessary) a question." The presiding officer should inquire whether the member speaking, or other member, is willing to be interrupted, or to answer the question, and if the member consents, the presiding officer directs the inquiring member to state the question. He then states the question to the presiding officer, who may restate the question or merely request the other member to reply. The reply is made to the presiding officer and not to the inquirer.

3. In committees and small groups the procedure of asking and answering questions may properly become

Section 252—Continued
Paragraph 4—
Hughes, Sec. 522; Sturgis, p. 214.
Section 253—
Paragraph 1—
Sturgis, p. 212.
Paragraph 2—
Sturgis, p. 213.
Paragraph 3—
Sturgis, p. 121.



quite informal. Questions from one member to another are more frequent in committees than in larger bodies.

4. A few questions to a member presenting a proposition will often clarify the points better than extended debate.

5. The presiding officer should never permit a speaker to be heckled by questions nor permit a member to present arguments under the guise of questions. A member should not be permitted to interrupt a speaker to ask questions of other members unless some urgent reason exists.

6. When the time of speeches is limited and a member consents to be interrupted by questions, the time consumed is taken out of the time allowed him for his speech.

Sec. 254. Requests Other Than Parliamentary Inquiries

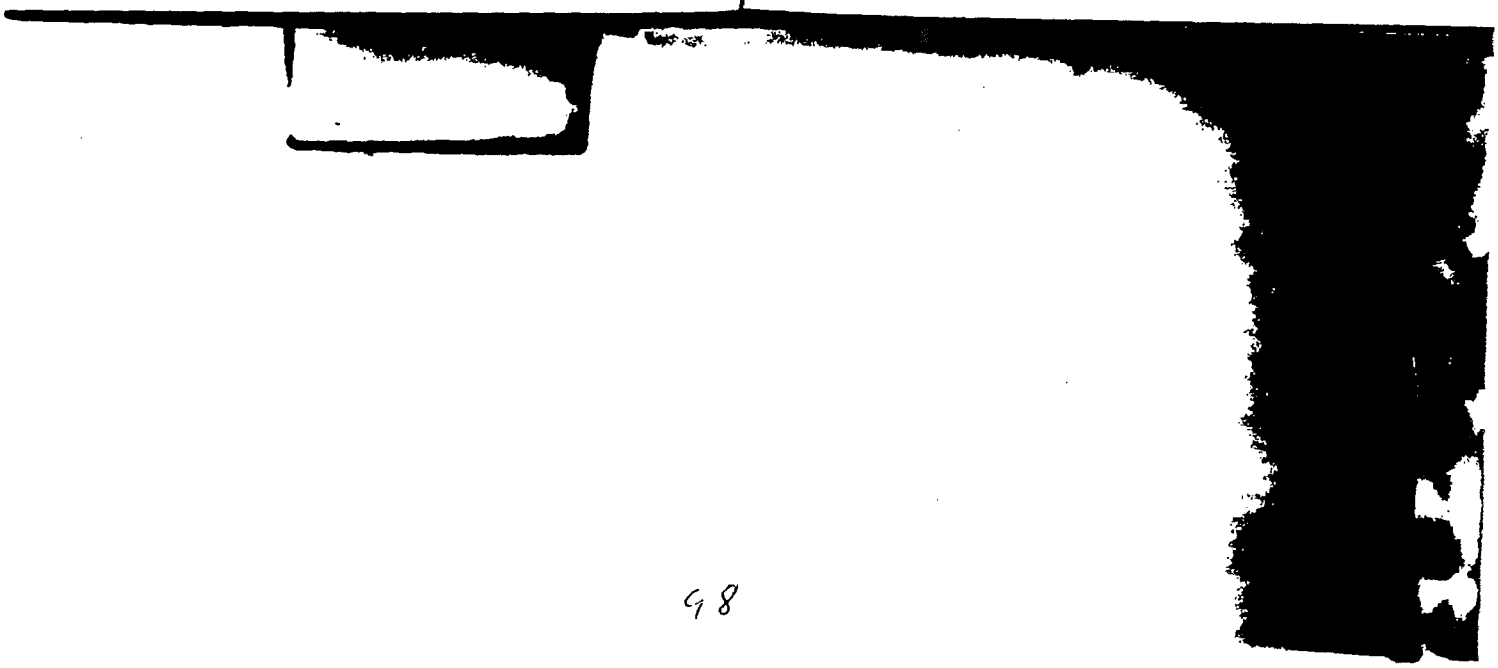
1. There are numerous other requests which should be distinguished from parliamentary inquiries. These are requests like a request to withdraw a motion, a request to be excused from a duty or a request for some privilege. These requests are usually subsidiary in nature, that is, they arise out of certain other questions and must be decided before those questions out of which they arise. Thus a request of a member to be excused from voting on a certain question would be in order when that question comes before the house.

Section 253—Continued
Paragraph 5—
Sturgis, p. 214.

Section 254—
Paragraph 1—
Sturgis, p. 213.

2. Such requests are not subject to amendment or other subsidiary motions, but, if denied, may be followed by a motion to the same effect which may be subject to debate and subsidiary motions.

Section 254—Continued
Paragraph 2—
Sturgis, p. 215.



CHAPTER 27

ORDERS OF THE DAY AND CALENDAR

See also Chapter 67, Secs. 710-714, General Order of Business.

Sec. 257. Nature of the Call for Orders of the Day

1. A call for the orders of the day is a demand that the body conform to its order of business. Formerly it was the practice to assign questions for consideration on a certain day and the questions set for a particular day were the general orders for that day. A demand for the orders of the day was a demand that the body proceed to consider those questions. It is the modern practice, at least in the larger legislative bodies, to have a calendar or file which is a list or file of measures arranged in the order in which they come up for consideration. This calendar or file takes the place of general orders. Under this latter procedure a demand for the orders of the day is a demand that the body proceed with the consideration of this calendar or file.

2. It is the duty of the presiding officer to announce the business to come before the house in its proper order, and if he always performs this duty, there will be no occasion for calling for the orders of the day. If the presiding officer fails to notice that the time set for a special order has arrived and has not interrupted a pending question, or has permitted a digression from the calendar when consideration of the calendar is the proper order of business, it is in order for any member to call for

Section 257—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 1373, 1377.
Paragraph 2—
Reed, Sec. 257.

the regular order or for the orders of the day, or to raise a point of order that the proper order of business is not being followed.

3. Any member may demand that the order of business be conformed to. The call must be simply for the orders of the day, for a call for any specified order would have no privilege.

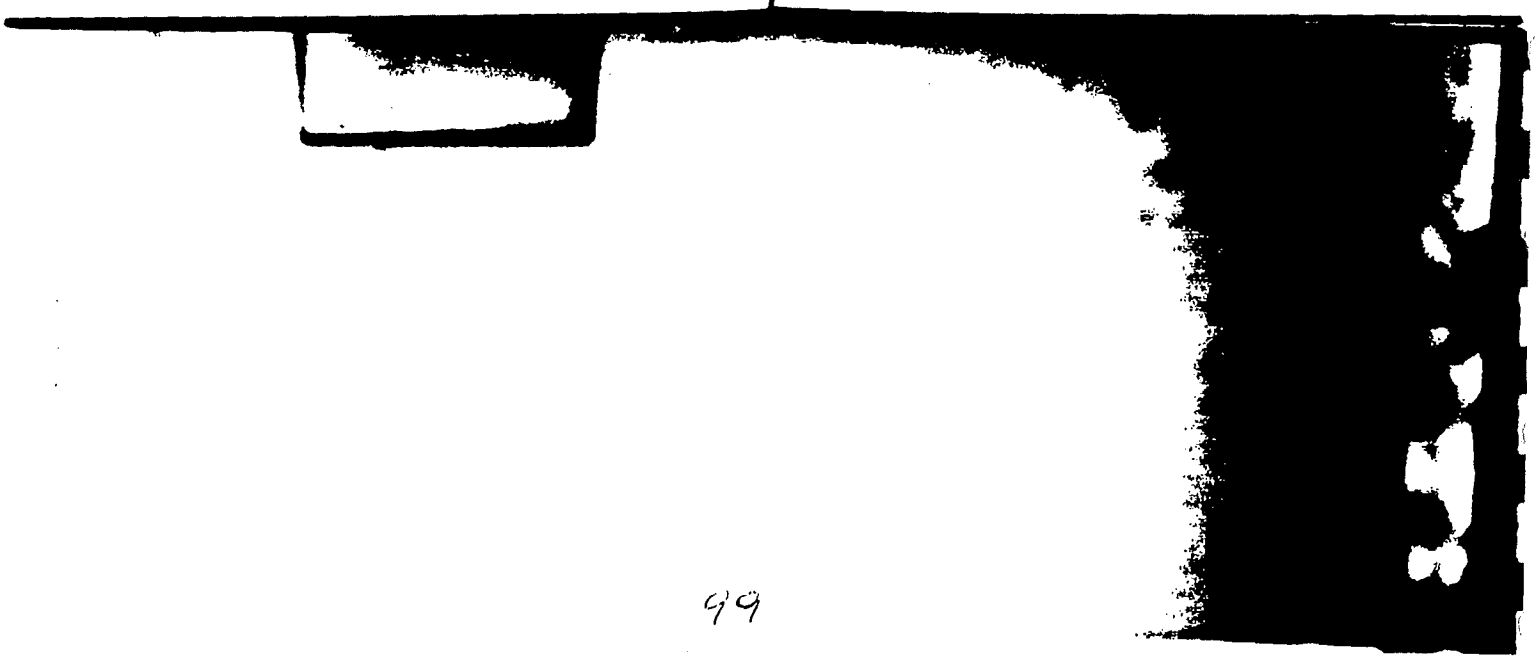
Sec. 258. Precedence of Call for the Regular Order or for Orders of the Day

1. The call for the orders of the day takes precedence as an incidental motion and yields only to the privileged motions, and to appeals, points of order and parliamentary inquiries.

2. A demand for the regular order or a call for the orders of the day can be made at any time when no motion of higher precedence is under consideration and the order of business is being varied from. It may be made even while a member is speaking if the speaking is not conforming to the regular order.

3. Under our modern legislative practice the order and manner in which the business of the body is considered is set out in the rules so that it follows a definite and predictable order. To vary from the plan provided for in the

Section 257—Continued
Paragraph 3—
Jefferson, Sec. XXXIII; Cushing, Sec. 144; Cushing's Legislative Assemblies, Sec. 1401; Sturgis, pp. 173, 192.
Section 258—
Paragraph 1—
Hughes, Sec. 157; N. Y. Manual, p. 499; Jefferson, Sec. XXXIII.
Paragraph 2—
Jefferson, Sec. XX.
Paragraph 3—
Hughes, Secs. 145-152.



rules being a violation of the rules is permissible only under suspension of the rules. It is in order to insist upon a compliance with the rules at any time there is a variation from the procedure required by the rules.

Sec. 259. Debate and Application of Other Motions

1. A call for the regular order or for the orders of the day is a demand that the body conform to its order of business and is not technically a motion. It therefore cannot be debated or amended, laid on the table, postponed, committed or amended, nor have any other subsidiary motion applied to it.

2. The modern practice is to permit the call for the regular order or for orders of the day to be renewed after intervening business or a change in the parliamentary situation. When the business in the regular order has been taken up, it is subject to the same motions and procedure as any other business of the same class. A call for orders of the day cannot be reconsidered.

Sec. 260. Effect of Call or Demand

1. When the regular order or orders of the day have been called for, the presiding officer should either announce the first or next business in the order of business, or put the question, "Will the house proceed with the regular order (or the calendar, or the orders of the day)?"

Section 259—
Paragraph 1—
Sturgis, p. 175.
Paragraph 2—
Sturgis, p. 175.

Section 260—
Paragraph 1—
Jefferson, Sec. XXXIII; Reed, Sec. 257; Cushing's Legislative Assemblies, Secs. 1399, 1400.

2. To refuse to proceed with the regular order or to the orders of the day, when it is the proper order of business, is a variation from the order of business and is equivalent to suspending the rules. It, therefore, requires the same vote. If under a special rule, a two-thirds vote is necessary to suspend the rules, a two-thirds vote in the negative is necessary to defeat a demand for the regular order.

3. At the time fixed for consideration of the calendar or orders of the day or when they are called for, a member may move that the time for consideration of the pending question be extended for a certain time. Such a motion, since it changes the order of business, is equivalent to a motion to suspend the rules and requires the same vote.

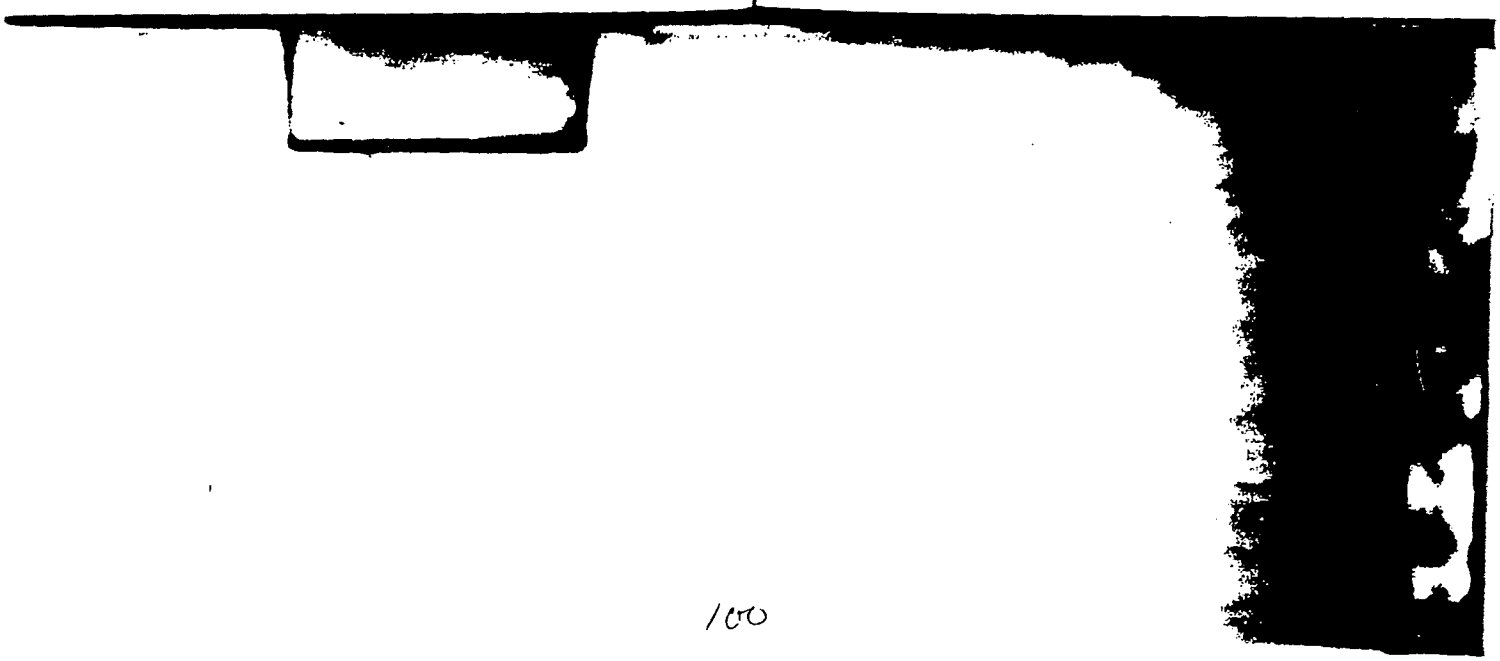
4. Whenever the calendar or orders of the day have been disposed of, the consideration of the interrupted business is taken up at the point where it was interrupted.

Sec. 261. Consideration of Calendar or File

1. After an item on the calendar or an order of the day has been announced and is pending, it is debatable and may be amended or have any other subsidiary motion applied to it, the same as any other main question or proposal of that class.

Section 260—Continued
Paragraph 2—
Hughes, Sec. 154.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1398.
Paragraph 4—
Sturgis, p. 175.

Section 261—
Paragraph 1—
Sturgis, p. 174.



2. The items on the calendar or orders of the day, as a group, cannot be laid on the table nor postponed, but an individual item, after it has been taken up, may, by a majority vote, be laid on the table, postponed or referred to a committee, and so the matters may be disposed of and the consideration of the question previously pending may be resumed.

3. By suspending the rules, any question may be taken up out of its regular order.

Sec. 262. Making Up the Calendar

1. Business takes precedence on the general calendar in the order specified in the rules, but if there are no specific rules, business takes precedence in the order in which it was ordered to, or became business, under that order of business. Thus, bills reported from committee take their place on second reading in the order in which the committee reports were read and the bills ordered to second reading, and bills take their place on third reading in the order in which they were read second time and ordered to third reading. This order may be changed in such manner as the rules provide, by unanimous consent or by suspension of the rules.

Sec. 263. General and Special Orders

1. Orders of the day may be divided into general orders and special orders.

Section 261—Continued
Paragraph 2—
Sturgis, p. 173; Reed, Sec. 257.
Paragraph 3—
Sturgis, p. 193.
Section 262—
Paragraph 1—
Reed, Sec. 255.
Section 263—
Paragraph 1—
Sturgis, p. 174.

2. All official business on the calendar or file which, by the regular rules of procedure, come before the house for consideration under the proper order may be considered the general orders of the day. All measures or pending matters set for a special hour for decision or consideration, either by postponing them to that time, by setting them as special orders for that time, or by adopting a special program or order of business, constitute special orders of the day for the time fixed.

3. When a special order has been set for a particular time, it has no special privilege until the time set for its consideration, and if it is set only for a particular day, it can be brought up any time during that day.

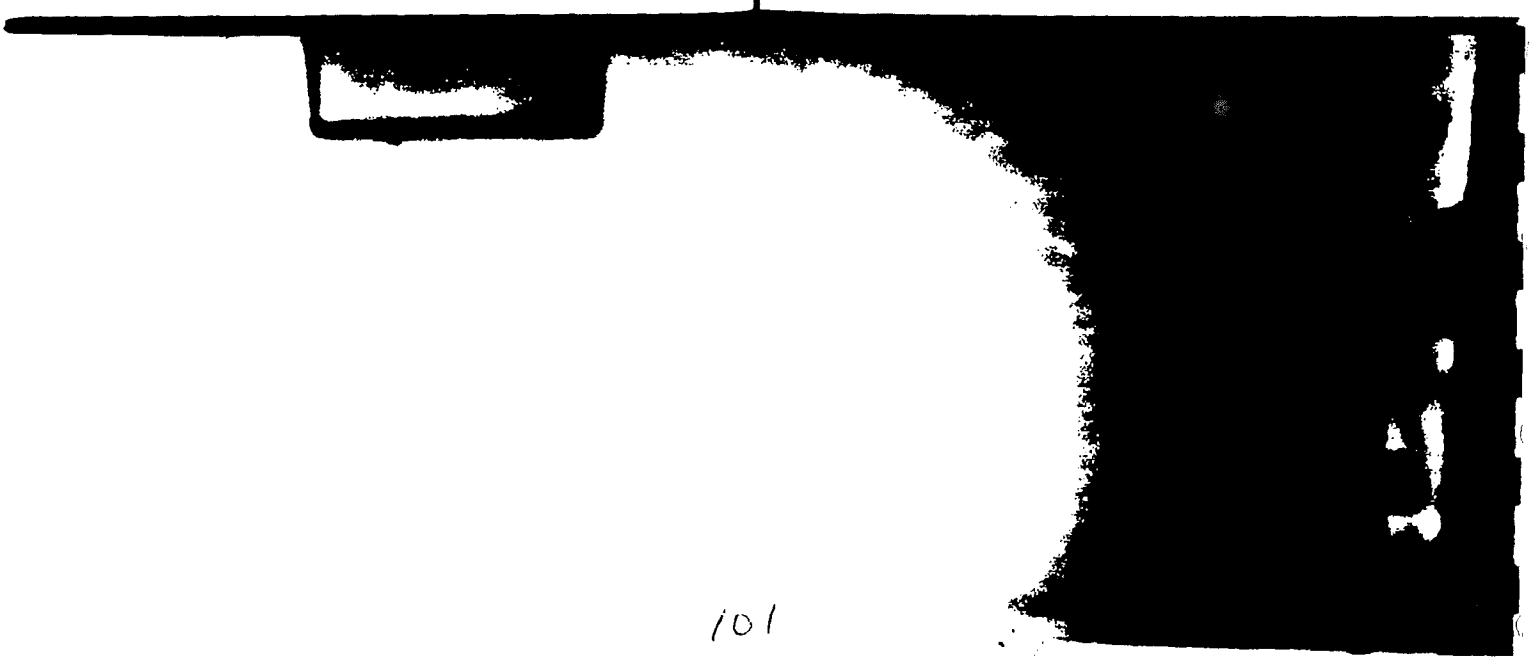
4. In case of conflict, special orders always take precedence over general orders.

5. In a legislative body having a general order of business which makes provision for special orders, any business coming up for consideration in the usual order on the calendar or file is a general order, and any business set specially for that day without specifying the hour is a special order, and is in order in that part of the order of business designated as special orders.

Sec. 264. Motions to Set Special Orders

1. The purpose of a special order is to expedite important business and set a definite time for its considera-

Section 263—Continued
Paragraph 2—
Sturgis, pp. 174, 192; Hughes, Secs. 141, 143, 150; Cushing, Sec. 142; Reed, Secs. 255, 256.
Paragraph 3—
Cushing, Sec. 145; Sturgis, p. 174.
Paragraph 4—
Sturgis, p. 174.
Paragraph 5—
Sturgis, p. 174.



tion, which gives such a special order privilege over other pending business. Whenever the making of a special order sets aside the general rules regarding the order of business it requires the same vote as would be required to specifically suspend the rules.

2. The usual form of the motion to set a special order is, "I move that—(specifying the bill, ordinance, resolution, or other business) be made a special order for—(specifying the day and hour)."

3. The form of setting a general order is the same except that it is designated as an order or general order and that no hour is specified.

4. A motion to set a special order may be amended as to time. It is debatable only as to the question of setting the special order and does not open up the main question to debate.

5. A pending question may be made a special order for a future time by "postponing it and making it a special order for" a specified time. Such a motion is a form of the subsidiary motion to postpone definitely and it takes precedence as such.

6. If the question is not pending, the motion to make it a special order for a certain time takes precedence as a main motion.

Section 264—
Paragraph 1—
Hughes, Sec. 157; N. Y. Manual, p. 499; Sturgis, p. 175.
Paragraph 2—
Sturgis, p. 173.
Paragraph 3—
Sturgis, p. 173.
Paragraph 4—
Hughes, Sec. 159; Sturgis, p. 176.
Paragraph 5—
Sturgis, p. 192.
Paragraph 6—
Sturgis, p. 175.

7. A member may make a motion and request that the motion be set as a special order for a particular time. Such a motion should be printed in the journal with the record of the special order and should likewise be carried on the calendar as a special order.

Sec. 265. Special Orders Set for Same Day or Same Hour

1. If several orders appointed for the same time are made at the same time, then they take precedence in the order in which they were arranged in the motion making the general order.

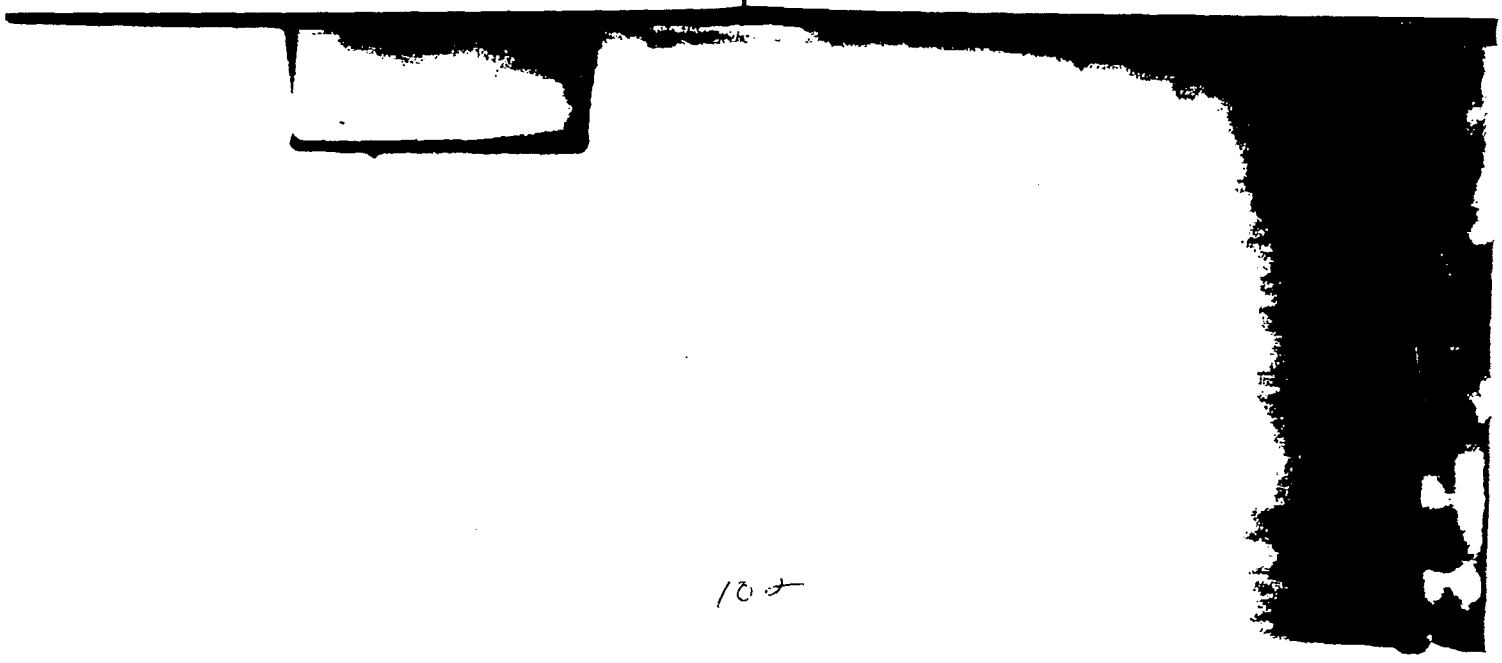
2. When two special orders are set for the same day, without specifying the hour, the first one set must be disposed of before the second can be considered.

3. A series of special orders made by a single vote is treated as a program.

Sec. 266. Conflict Between Special Orders Made at Different Times

1. When special orders that have been made at different times come into conflict, the one that was first made takes precedence of all special orders made afterwards, although the latter were made for an earlier hour.

Section 264—Continued
Paragraph 7—
Hughes, Sec. 227.
Section 265—
Paragraph 1—
Sturgis, p. 174.
Paragraph 2—
N. Y. Manual, 1948-49, p. 465; Reed, Sec. 255; Cushing, Sec. 144.
Section 266—
Paragraph 1—
Cushing, Sec. 144.



2. A special order does not interfere with one previously made unless it clearly indicates that it is intended to do so, it being presumed that a later order was not intended to effect the earlier unless it so indicates.

3. When the presiding officer announces the hour set for a special order, any member can move to extend the time for considering the pending question. Such a motion is not debatable, and must be decided before the new question can be taken up.

Sec. 267. Postponement of Special Order

1. A special order may be postponed by a majority vote when it comes up for consideration.

2. When there is no rule to the contrary, a special order may be canceled or changed by a majority vote before it comes up for consideration. If there is a rule preventing such an action, it can be taken up by suspending the rule.

3. If a special order is not taken up at the hour fixed, it does not thereby lose its privileged character but may be called up at a later hour, but where a special order is set for one day and it is not considered on that day, it thereupon loses its privileged position. Likewise, where a special order is set for a particular legislative day, the special order may be called up at any time after the hour fixed on the same legislative day, even though several calendar days have elapsed.

Section 266—Continued
Paragraph 3—
Sturgis, p. 174.
Section 267—
Paragraph 1—
N. Y. Manual, p. 499; Sturgis, p. 175.
Paragraph 3—
Hughes, Secs. 161, 162, 163, 167.

Sec. 268. The Special Order for a Meeting

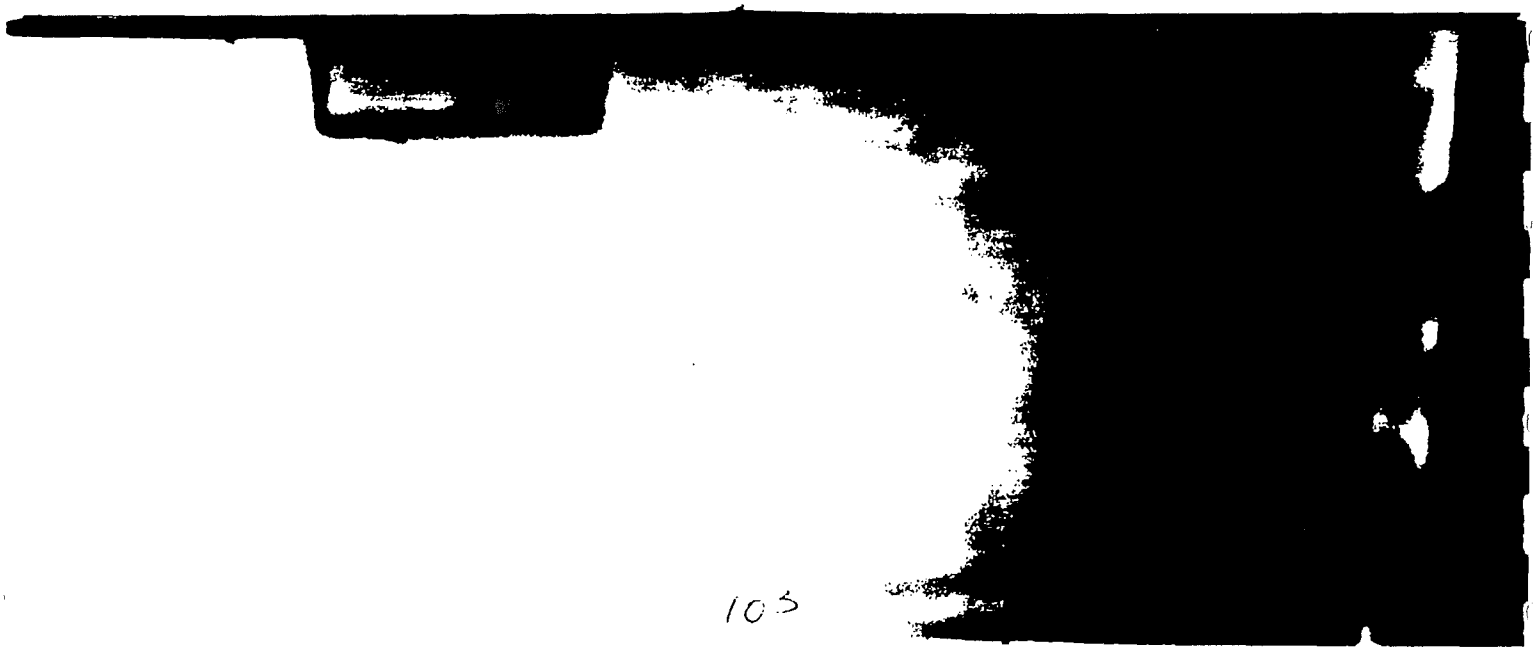
1. Sometimes a subject is made the special order for a meeting, in which case it is announced by the presiding officer as the pending business immediately after the convening of the meeting. This method is used when it is desired to devote an entire meeting, or so much of it as is necessary, to the consideration of a special subject. This form of special order takes precedence of the other forms of special orders.

Sec. 269. Special Calendar or Program

1. Especially in the later days of a legislative session, a special calendar or program may be adopted for the consideration of certain matters. A program is in the nature of a special order.

2. While working under a program, when the time assigned to a certain subject arrives, the presiding officer puts any questions pending to vote and announces the subject set for that time. This is done because, under such circumstances, the form of the program implies that the period of time assigned to each subject or measure is all that can be allowed. But, if at the expiration of the time any member moves to lay the question on the table, or postpone it to a certain time, refer it to a committee, or extend time for debate, the presiding officer should recognize the motion and immediately put it to vote without debate.

Section 268—
Sturgis, p. 124.
Section 269—
Paragraph 2—
Sturgis, p. 174.



CHAPTER 28

WITHDRAWAL OF MOTIONS

Sec. 272. Right to Withdraw Motions

1. Until a motion is stated by the presiding officer to the body as a question for its determination, the mover may withdraw or modify it without asking consent of anyone. Upon presentation of a motion, objections may be made to its form or questions may be raised as to its effect, and the maker can modify or withdraw it. The fact that the motion may be repeated by the presiding officer in the course of preliminary discussion of the motion does not take it out of the possession of the proposer and place it in the possession of the body until it is stated to the body for its action.

Sec. 273. When Consent to Withdraw Is Required

1. When a motion has been stated by the presiding officer or read by the secretary or clerk and presented to the body for determination it is in possession of the body and can, thereafter, be withdrawn or modified only by consent of the body.

2. The houses of Congress and those of many of the state legislatures have provided by rule that a motion may be withdrawn without the consent of the house at any time before decision or amendment.

Section 272—
Cushing's Legislative Assemblies, Secs. 1233, 1241; Sturgis, p. 217; Reed, Sec. 108.

Section 273—
Paragraph 1—
Jefferson, Sec. XXXIII; Cushing's Legislative Assemblies, Secs. 1232, 1235, 1237, 1240, 1241, 1477; Cushing, Secs. 56, 92, 161; Reed, Secs. 108, 189.
Paragraph 2—
Reed, Sec. 190; Cushing, Sec. 56a; Cushing's Legislative Assemblies, Sec. 1241; U. S. House Rule XVI, Par. 2.

3. The motion to reconsider, when it is too late to renew it, cannot be withdrawn without unanimous consent.

Sec. 274. Request for Leave to Withdraw a Question

1. A request for leave to withdraw a question, or a motion to grant such leave, may be made at any time before voting on the question has commenced, even though the question has been amended. The request or motion to withdraw a motion may be made while motions incidental or subsidiary to the motion sought to be withdrawn are pending, and these motions cease to be before the body when the question to which they are incidental or subsidiary is withdrawn.

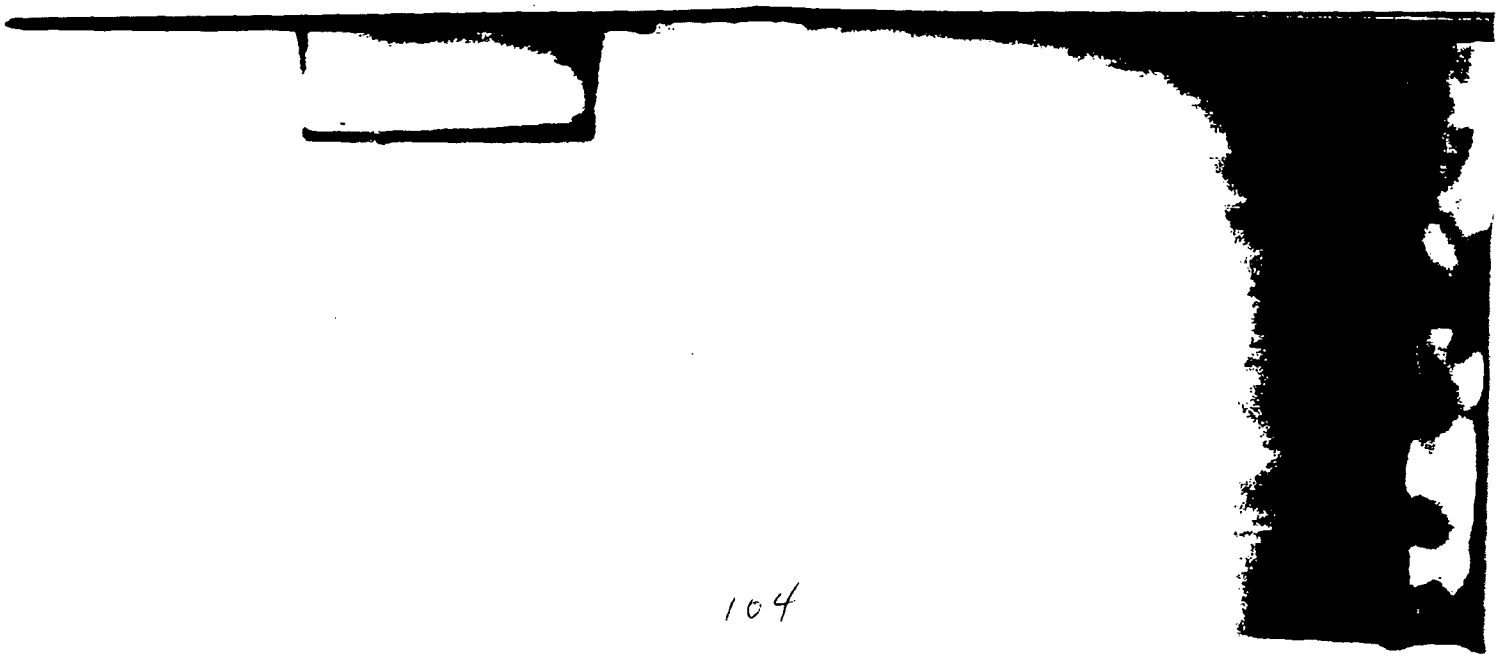
2. The request or motion to withdrawn a question or motion then under consideration is an incidental question which ranks below privileged questions and questions of order but takes precedence of all other incidental motions, subsidary motions and main motions.

3. A request to withdraw a question may not be amended, debated, laid on the table, nor have any other subsidiary motion applied to it.

4. When the mover requests permission to withdraw his motion, the practice is for the presiding officer to ask if there is any objection, and if there is none, he announces that the motion is withdrawn.

Section 273—Continued
Paragraph 3—
Sturgis, p. 218; Hughes, Sec. 198.

Section 274—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1241; Sturgis, p. 217.
Paragraph 2—
Reed, Secs. 181, 199.
Paragraph 3—
Cushing, Sec. 563.
Paragraph 4—
Cushing's Legislative Assemblies, Secs. 1237, 1310, 1477; Sturgis, p. 217; N. Y. Manual, 1948-49, p. 437.



Sec. 275. Motion for Leave to Withdraw a Question

1. If anyone objects to granting leave to withdraw a motion, the presiding officer may put the question on granting the request, or a motion to grant the request may be made from the floor. The motion may be made by the author or any other member. A majority vote of the members present and voting is required to authorize the withdrawal of a question or motion when unanimous consent is refused.

2. The motion for leave to withdraw a motion takes the same precedence as a request, is not subject to debate, amendment or the other subsidiary motions, but differs from the request by submitting the question to a vote of the members.

Sec. 276. Effect of Withdrawal of Motions

1. When a motion is withdrawn, the effect is the same as if it had never been made. When permission to withdraw a motion is refused, the business proceeds as though the motion or request had not been made.

2. Motions, once offered and withdrawn, may be again offered by either the same or a different member in the same or a modified form.

Section 275—
Paragraph 1—
Sturgis, p. 217.
Paragraph 2—
Sturgis, p. 218.

Section 276—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1477; Cushing, Sec. 162.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1310; Hughes, Sec. 200.

CHAPTER 29

SUSPENSION OF THE RULES

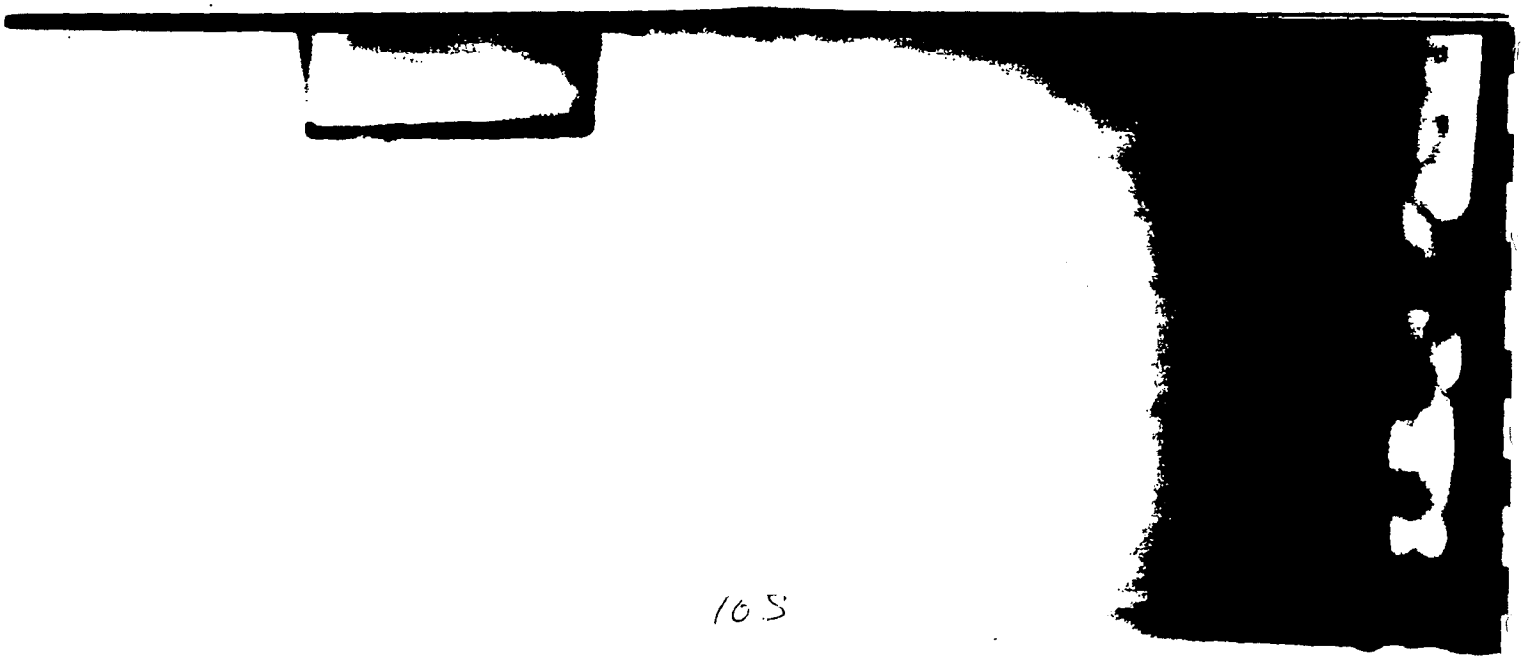
Sec. 279. Purpose of Suspension of the Rules

1. The purpose of suspending the rules is to give a deliberative body the liberty to follow whatever course it may choose, unhampered by any provision of its rules.

2. When a body wishes to do something that cannot be done without violating its own rules, and yet which is not in conflict with the constitution, with any controlling statutory or charter provision, it "suspends the rules that interfere with" the proposed action. Suspension differs from amendment in being limited in scope and in time. A change in the rules which would be in effect for more than a very limited period of time or which would be general in its application would, in effect, be an amendment to the rules and not a suspension, and would, therefore, be subject to different rules. For this reason the object of the suspension must be specified, and nothing which was not mentioned in the motion to suspend the rules can be done under the suspension.

3. Whenever it may be desired a general rule of parliamentary law can be placed in the rules of the body. The rules are not subject to sudden changes, and may be considered as expressing the deliberate views of the body.

Section 279—
Paragraph 1—
Hughes, Sec. 574; Cushing, Sec. 165; Cushing's Legislative Assemblies, Secs. 1478-1486; Sturgis, p. 219.
Paragraph 2—
Cushing, Sec. 163; Cushing's Legislative Assemblies, Secs. 1478-1480; Sturgis, p. 219.



Sec. 280. Suspension of General Parliamentary Rules and Adopted Rules

1. The phrase "suspension of the rules" is used in two distinct senses. In one case the term applies to the rules of parliamentary law and in the other case to the rules adopted to govern the body. The general rules of parliamentary law may be suspended according to the established parliamentary practice. The rules of either house or the joint rules of the legislature or the rules of any local legislative body or administrative board may be suspended as provided by the rules themselves.

Sec. 281. Right of Public Bodies to Suspend Rules

See Chapters 2, 3, 4, Secs. 6-15, and Sec. 512, Par. 6.

1. The right to suspend rules depends on the nature of the body and the manner by which it acquired its powers.

2. The rules which relate to priority of business, or to procedure, and would usually be termed rules of order, can be suspended.

3. Rules which are required by, or which protect rights granted by, the federal or state constitutions, or in the case of local bodies, by statutes, cannot be suspended.

4. A public body which has been given power and had duties imposed upon it is bound to exercise those powers and duties according to the conditions under which they were granted.

Section 280—
Reed, Sec. 191; Sturgis, p. 219.

Section 281—
Paragraph 2—
Sturgis, p. 220.

5. Any restriction or limitation on the authority granted must control its exercise. Provisions of the constitutions, charters or statutes which grant powers may provide how those powers may be used.

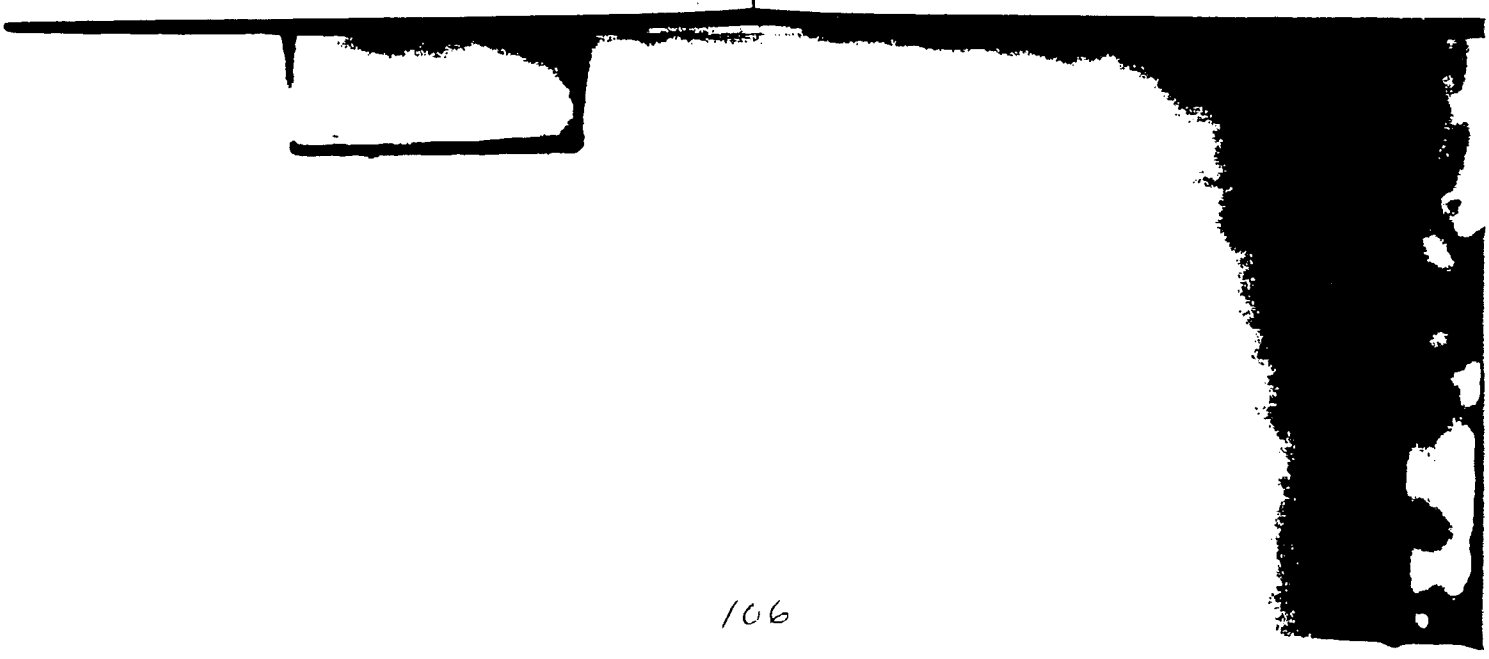
6. It has been said that public bodies can adopt rules, even by a majority vote, which cannot be suspended or amended without a two-thirds vote, but it is also held by the courts that actions, taken in violation of procedural rules of parliamentary law and of adopted rules, are valid nevertheless, since failure to conform to rules of this class suspended them by implication.

See also Sec. 286.

Sec. 282. Right of Voluntary Associations to Suspend Rules

1. In voluntary associations the powers are derived from an entirely different source than in public bodies. The powers of an association are granted to it by its members. The members can surrender such rights as they choose to the association. The relationships and powers are determined on the basis of contractual rights. Members are bound by the agreement they enter into—the constitution or by-laws of the association.

2. No rights can be taken away from a member except by his consent. If no provision is made in the agreement for change of the constitution, by-laws or rules, it has been held that they can be changed only by unanimous consent. But, if as a part of the agreement, there is a provision for a change (or suspension) of the rules by a two-thirds vote, a majority vote, or by some other proportion of the members, that part of the agreement is binding on all of the members and a member cannot complain of changes made pursuant to that grant of authority which was given by the members.



Sec. 283. Motion to Suspend the Rules

1. The motion to suspend the rules may be made at any time when no question is pending, or while a question is pending, provided it is for a purpose connected with that question.

2. A motion to suspend the rules may be made either under the order of business of motions and resolutions or under the order of business to which the matter, proposed to be considered under suspension of the rules, relates.

3. The more usual form of the motion to suspend the rules is "I move to suspend the rules that interfere with (stating the object of the suspension)," or "I move that the rules be suspended which prevent, etc."

4. A motion to suspend the rule should specify what rule or rules are to be suspended and, particularly, should state the purpose of suspending the rules.

5. A motion to suspend the rules yields to all the privileged motions and to appeals, points of order, parliamentary inquiry, and to calls for the orders of the day. It yields to other motions except incidental motions arising out of itself.

6. A motion to suspend the rules may not be amended, debated, laid on the table, referred to committee, postponed, nor have any other subsidiary motion applied to it. It may not be reconsidered and may not be renewed for the same purpose on the same day, unless other business has intervened or there has been a change in the parliamentary situation.

Section 283—
Paragraph 1—
Sturgis, p. 221.
Paragraph 2—
N. Y. Manual, p. 459.
Paragraph 3—
Sturgis, p. 219.
Paragraph 4—
Hughes, Sec. 577; Sturgis, p. 220.
Paragraph 5—
Sturgis, p. 221.

Sec. 284. Suspension of the Rules by Unanimous Consent

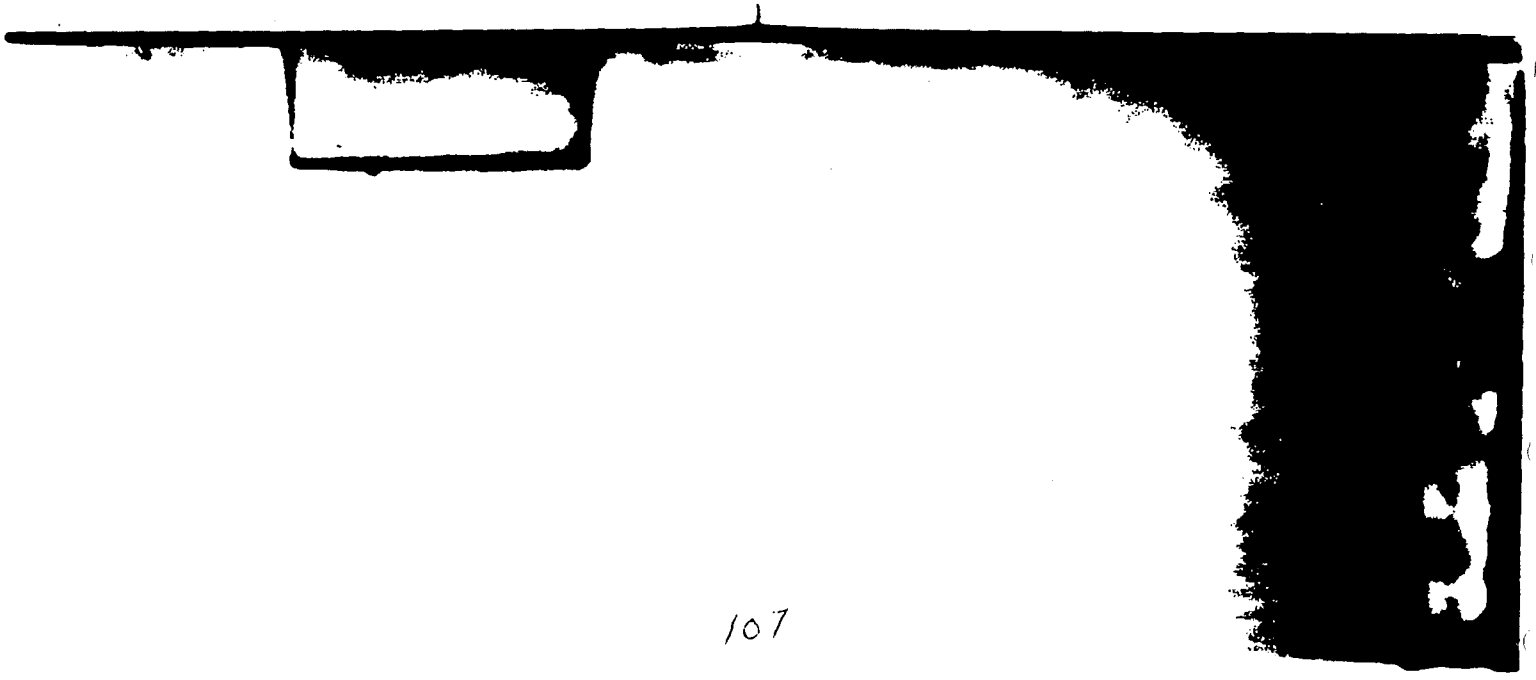
1. Instead of a formal motion to suspend the rules, it is not unusual for a member to request unanimous consent to consider particular business or to take a special action which would not be permitted by the rules. As soon as the request is made, the presiding officer should inquire if there is any objection, and if no one objects, he may declare the rule suspended and direct the member to proceed as if the rules had been suspended by a vote.

Sec. 285. Suspension of Rules by Implication

1. Actions are not infrequently taken by legislative bodies which are in violation of general parliamentary rules, of rules adopted by the body or of an adopted authority without formally suspending the rules but without objection being made by any member, this may be regarded as implied suspension and the action taken in violation of the rules is valid so long as the body had the authority to suspend the rules violated. This of course could not apply to mandatory constitutional provisions.

See also Secs. 25 and 280.

Section 283—Continued
Paragraph 6—
Hughes, Sec. 573; N. Y. Manual, pp. 451, 476, 478; Reed, Sec. 204; Cushing's Legislative Assemblies, Secs. 1487, 1488.
Section 284—
Cushing's Legislative Assemblies, Secs. 794, 1483.
Section 285—
Cushing's Legislative Assemblies, Sec. 794; Hughes, Sec. 583.



Sec. 286. Vote Required to Suspend the Rules

See also Secs. 22, 23 and 512.

1. A motion to suspend the rules of parliamentary law requires a majority vote. A motion to suspend adopted rules or the rules of an adopted authority requires a majority vote only when a body is specifically given the power to make or adopt rules having more than normal force can it make or adopt rules of procedure which it can require more than a majority vote to suspend or repeal. It cannot curtail or restrict its essential powers by rules which require more than a majority vote to suspend or repeal. It cannot, for example, require a two-thirds vote to pass legislation which the constitution permits it to pass by a majority vote.

2. In many legislative bodies, it is provided by rule that the standing rules may be suspended by a two-thirds vote. A notice may also be required for a motion to suspend the rules.

3. Rules required by the constitution or any charter or controlling statute are mandatory and cannot be suspended unless that authority provides for their suspension. When suspension of such rules is permitted the act must be taken in strict conformity with the rules.

See also Secs. 7 and 8.

Section 286—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 794, 1480, 1491; Reed, Sec. 53; Hughes, Sec. 572; Waples, Sec. 134.
Paragraph 2—
Hughes, Secs. 575, 580; Cushing, Sec. 164; Reed, Sec. 191.
Paragraph 3—
Capito v. Topping (1909), 65 W. Va. 587, 64 S.E. 845; State v. Alt (1887), 26 Mo. App. 673.
Paragraph 4—
Armitage v. Fisher (1893), 26 N. Y. Supp. 364.

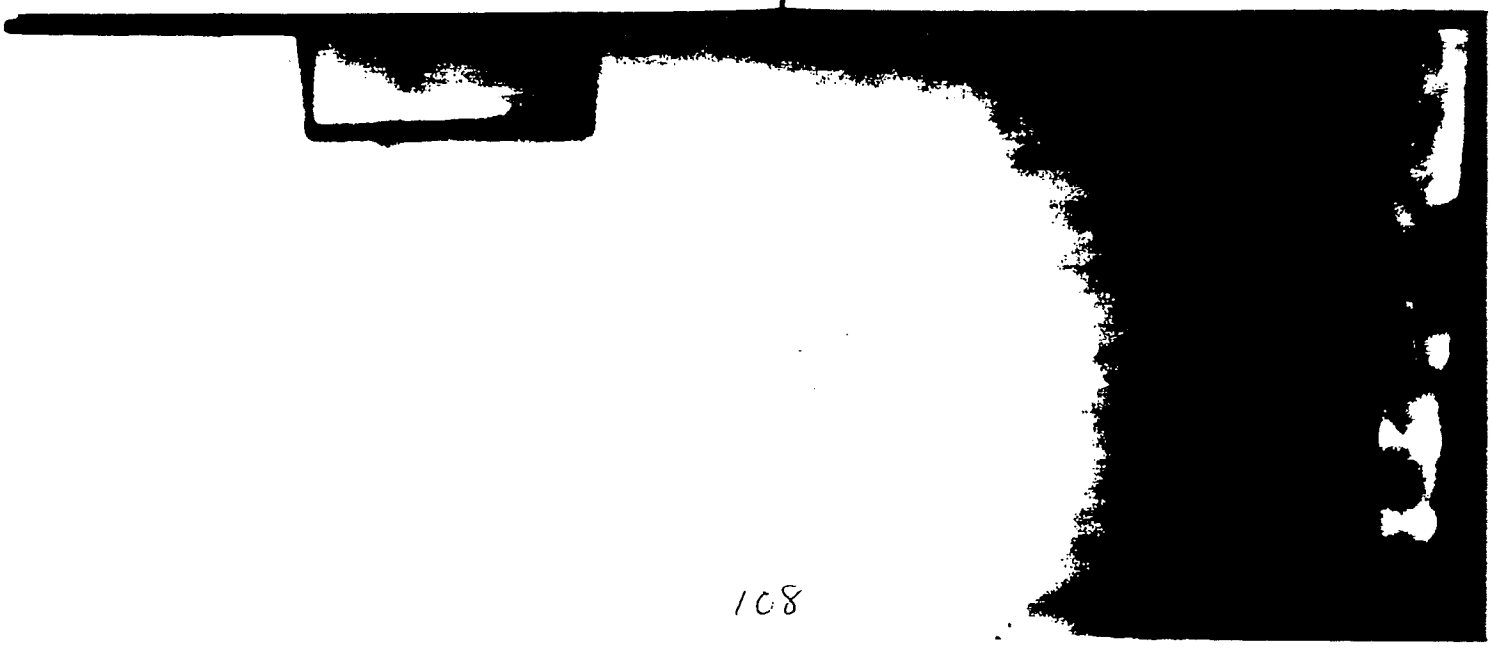
4. Although rules of a prior legislative body, adopted temporarily until new rules are adopted, require a two-thirds vote for their amendment or suspension, new rules can be adopted by a majority vote.

5. Private clubs and associations almost always provide in their rules that they can be suspended by a two-thirds vote. So general is this practice that some writers have assumed that this is a rule of parliamentary law applicable to public bodies.

Sec. 287. Business in Order Immediately After Suspension of the Rules

1. If the motion to suspend the rules is carried, the business for which the rules were suspended is immediately in order, and the presiding officer should recognize, for the purpose of presenting the measure or business, the member who moved to suspend the rules.

Section 287—
Sturgis, p. 220; Hughes, Sec. 579.



CHAPTER 30

OBJECTION TO THE CONSIDERATION OF QUESTIONS

Sec. 293. Purpose of Objection to Consideration

1. The purpose of the objection to consideration is to bar from discussion or consideration any matter which is considered irrelevant, contentious or unprofitable, or which for any reason it is not thought advisable to discuss.

Sec. 294. To What Objection to Consideration May Be Made

1. Objection may be made only to the consideration of main motions. Objection may not be made to matters pending before the house in their regular established order, such as reports of committees on subjects referred to them, nor communications from any source entitled to file its communications, such as messages from the other house or from the executive; nor may objection be made to such matters incidental to the procedure of the house, as proposed amendments to the rules.

2. When the rules require that all bills when offered be referred to committee, or contain like provisions, the rules must be suspended before objection may be made to the introduction of a bill.

Sec. 295. Who May Raise Objection to Consideration

1. Objection to the consideration of a question may be made by any member, or the presiding officer may, on his own responsibility when he considers such action advisable, submit to the members the question as to whether any question will be considered.

2. When the presiding officer considers a question entirely outside of the scope of consideration, he may rule it out of order, and an appeal may be taken from the ruling.

Sec. 296. When Objection May Be Made

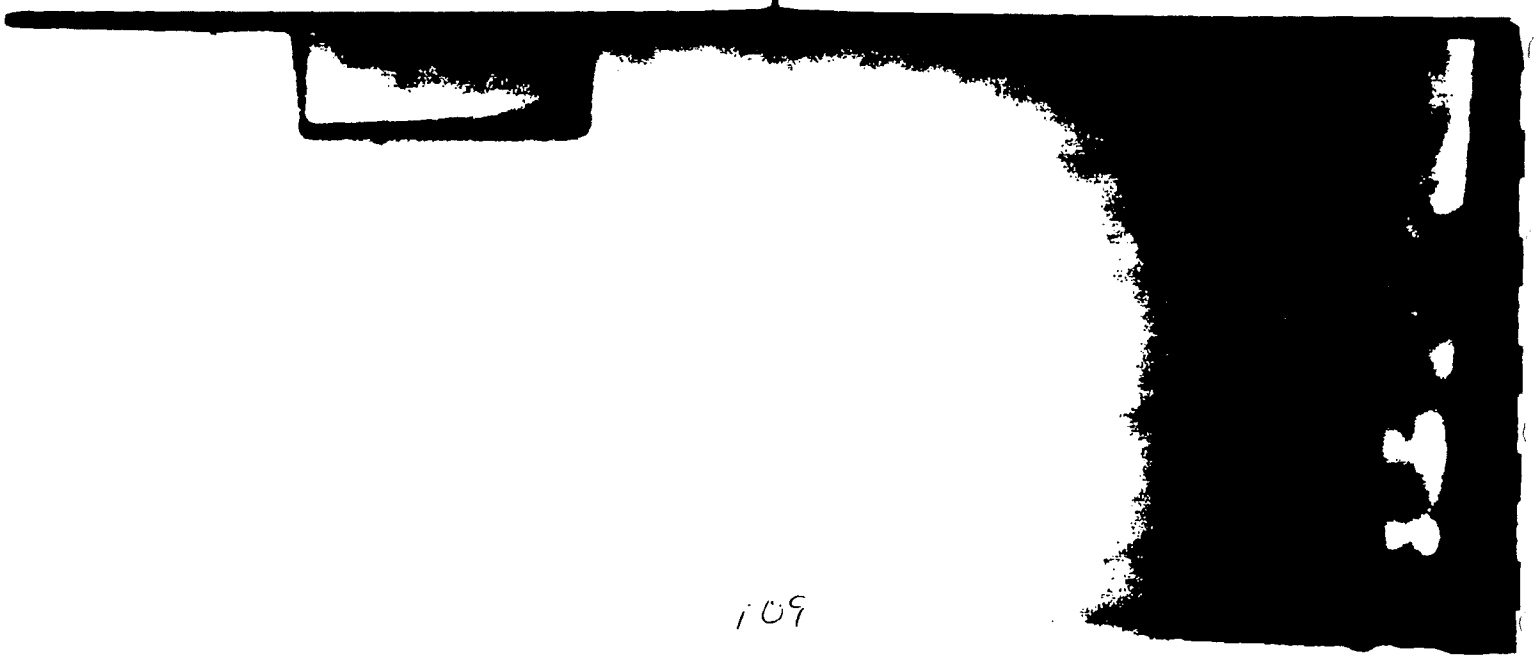
1. Objection to consideration must be made immediately following the statement of the question. It may be made when another has the floor but must be made before debate has begun and before any action has been taken or before any subsidiary motion is stated by the presiding officer.

2. An objection to consideration cannot be renewed, as it is too late to object after consideration has begun.

Sec. 297. Form of Question on Objection to Consideration

1. A member desiring to object to the consideration of a question should rise before debate of the question has begun and, without waiting to be recognized, say, "Mr. President (Mr. Speaker, or Mr. Chairman), I object to the consideration of the question (further identifying the question when necessary)."

Section 293—
Sturgis, p. 222; Tilson, p. 54.
Section 294—
Paragraph 1—
Sturgis, p. 223; Hughes, Secs. 228, 231; Reed, Sec. 110.
Section 295—
Sturgis, p. 223.
Section 296—
Paragraph 1—
Hughes, Secs. 230, 233; Reed, Sec. 112; Waples, Sec. 4; Sturgis, p. 223; Tilson, p. 54.
Paragraph 2—
Sturgis, p. 223; Reed, Sec. 112; Tilson, p. 54.
Section 297—
Paragraph 1—
Hughes, Secs. 228, 231; Sturgis, p. 222.



2. The form of the question on objection to consideration may be, "Will the Senate (house, council, etc.) consider the question?" or "Shall the question be considered?"

Sec. 298. Debate and Application of Subsidiary Motions to Objection to Consideration

1. An objection to the consideration of a question may not be debated, for to open the question to debate would defeat its purpose. Being a procedural motion in character, it cannot have any other subsidiary motion applied to it. It cannot be amended.

Sec. 299. Vote Required to Sustain Objection to Consideration

1. In legislatures there are few occasions when an objection to consideration may be properly made, but the legislative practice is to require a majority vote to sustain an objection to the consideration of a question.

Sec. 300. Effect of Objection to Consideration

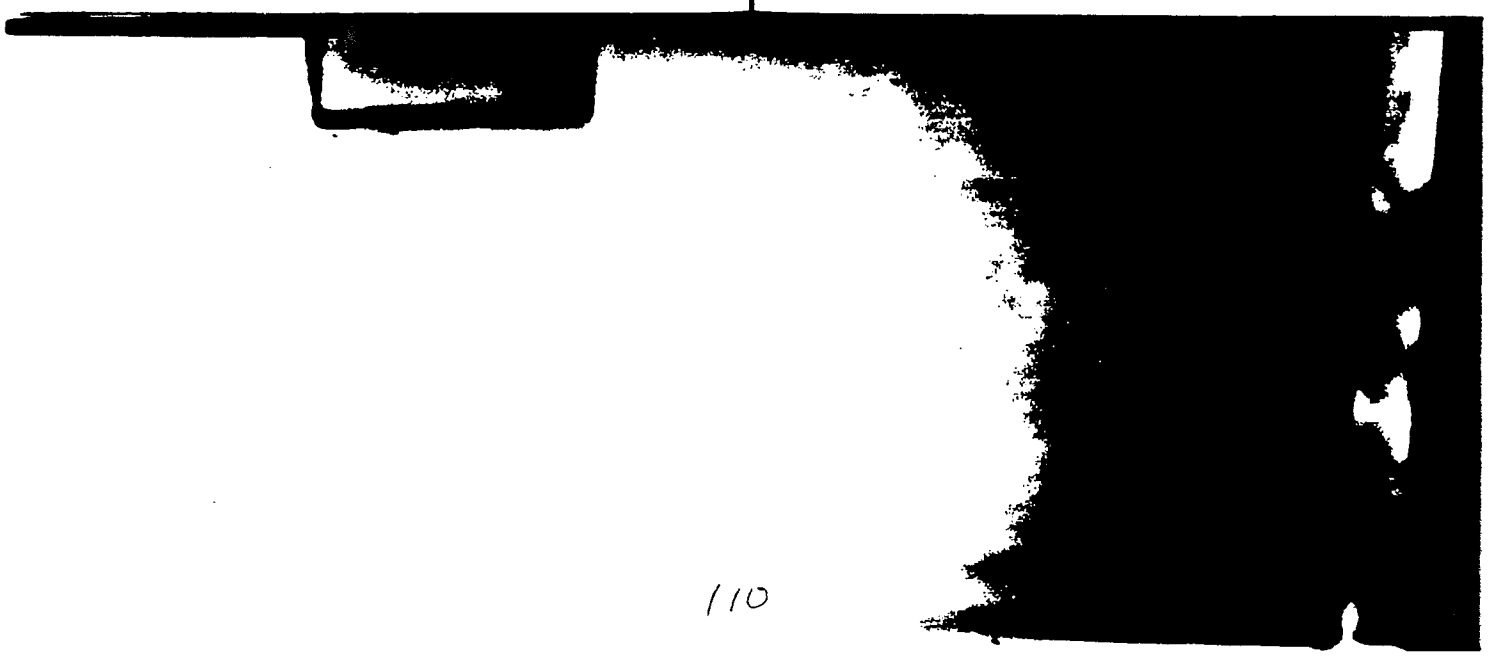
1. When objection to the consideration of a question is sustained, the whole question is dismissed for the session. When an objection is overruled, procedure continues as if no objection had been made.

Section 297—Continued
Paragraph 2—
Sturgis, p. 222; Hughes, sec. 231.
Section 298—
Sturgis, p. 224; Hughes, Secs. 233, 715; Reed, Sec. 110; Waples, Sec. 4.
Section 299—
Jefferson, Sec. XLI; Hughes, Sec. 234; Reed, Sec. 110; Sturgis, p. 224, referring to private associations, states that a two-thirds vote is required.
Section 300—
Paragraph 1—
Sturgis, p. 224.

2. A vote on an objection to consideration of a matter may not be reconsidered and the subject objected to cannot be again presented to the session unless the proposal or the situation is so changed as to present an essentially new question.

3. Objection to consideration of new questions or motions should not be confused with actions requiring unanimous consent and which permit the objection of any member to prevent action being taken.

Section 300—Continued
Paragraph 2—
Hughes, Sec. 230; Sturgis, p. 224.



CHAPTER 31

ORDER AND MANNER OF CONSIDERING QUESTIONS

Sec. 302. Order of Considering Questions

1. Questions often arise as to what items of business should be first considered and, naturally, such questions must be resolved before consideration can be undertaken of any such questions. These motions, therefore, have priority over the problems out of which they arise and in general take precedence as incidental questions following priority order next below objections to consideration.

Sec. 303. Manner of Considering Questions

1. After the order in which questions are to be considered has been decided it is frequently important to decide questions of how consideration should be given. Should consideration be paragraph by paragraph, or should the entire question be discussed first or, if there are distinct phases of the problem involved in a decision, which of these should be given prior consideration are among the questions which often arise and sometimes prove vexatious.

Sec. 304. Debate and Application of Other Motions to Questions of Order or Manner of Considering Questions

1. The determination of the order or manner of considering questions presents simple procedural questions and is governed by the same rules which relate to other purely procedural matters.

2. These questions are not subject to debate, but, as in other cases, comments or suggestions may be permitted.

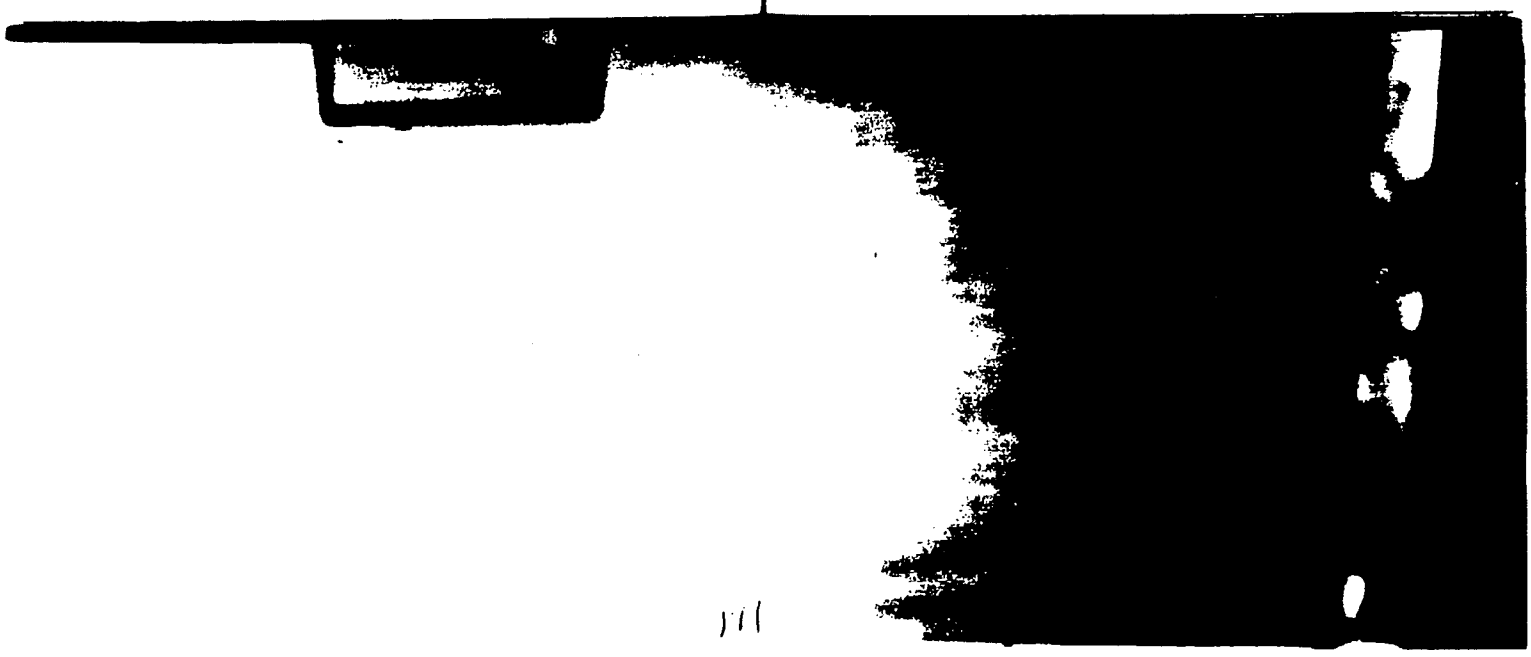
Questions, however, are ordinarily so simple that to permit argument would be a waste of the time.

3. Questions relating to order or manner of considering questions are not ordinarily subject to amendment. If, however, some member presents an entire program for considering measures this program would be subject to amendment as it may be desired to change the items on the program or to change the order of their consideration.

4. These motions are not subject to other subsidiary motions as to postpone either temporarily, to a definite time, to refer to committee, or postpone indefinitely. The questions may not be reconsidered but may be renewed in an essentially different form or may be renewed after a change in the parliamentary situation.

5. Only motions relating to pending questions of order or manner of considering have priority. Questions as to future consideration are main questions and subject to all of the rules of main questions, but if the question presented involves the present consideration of any question, it is entitled to priority as an incidental question and is entitled to consideration and determination before the question out of which it arises.

6. Motions relating to the order or manner of considering questions must vary widely in form to meet varied questions which may require a decision. They are a family of motions which can be recognized by their purpose and use.



CHAPTER 32

MOTIONS RELATING TO VOTING, NOMINATIONS, AND ELECTIONS

See also Chapter 47, Secs. 520-528, Rules Governing Voting, Chapter 49, Secs. 545-550, Nominations, Chapter 50, Secs. 552-556, Elections, and Sec. 531, Determining Manner of Voting.

Sec. 306. Motions Relating to Voting

1. The essential procedures of voting are established by parliamentary law and will in most cases prove entirely adequate. Special rules relating to voting may be contained in the rules of the body. There are still, however, occasions when it may be necessary or desirable at the time of voting to decide how the vote is to be taken or make other decisions with reference to voting.

2. If, for example, voting is ordinarily viva voce and some member feels that on a particular measure the vote should be by roll call or by ballot, he is entitled before the vote is taken to propose the manner in which the vote may be taken. Or, if the voting is to be by ballot, a member may propose such procedure as may be necessary to put into effect or further regulate the voting by ballot.

Sec. 307. Motions Relating to Nominations and Elections

1. While the general rules relating to nominations and elections are determined by parliamentary law or by the rules of an organization, it is frequently necessary or desirable to meet immediate problems by some particular

Section 306—
Sturgis, p. 71.
Section 307—
Sturgis, pp. 71, 72.

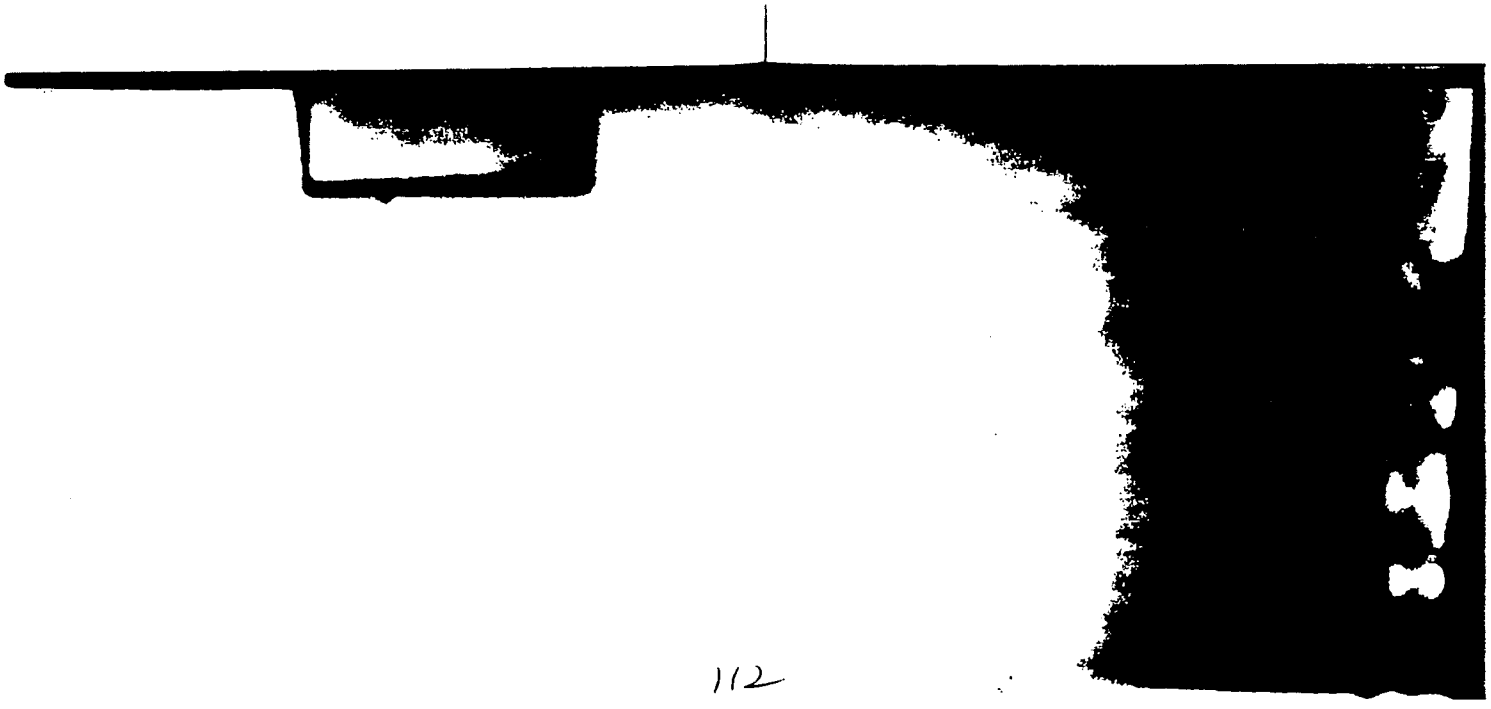
decision or rule relating to a pending question of nomination or election. When such occasion arises, it is in order for a person, prior to the nomination or election or at the time the decision becomes necessary, to propose such procedure as he thinks proper.

Sec. 308. Motions Relating to Voting, Nominations, or Elections

1. Motions relating to voting, nominations, or elections, have a higher precedence than questions out of which they arise and must be decided before proceeding with the voting, nomination, or election. They take precedence following motions relating to manner or order of considering questions, and before division of questions.

2. Such motions are not debatable because they are simple procedural motions requiring immediate determination and are for the same reason not subject to subsidiary motions, except the motion to amend. Decisions on these questions are not subject to reconsideration and decisions are ordinarily promptly carried out. A motion which is voted down may be renewed as an essentially different proposition at any time so long as the subject matter is within the control of the body and when the situation is essentially different.

3. Because of the varied situations from which these motions arise they may vary widely in specific purpose and form. They are rather to be recognized by their general purpose than by any characteristics of form. A qualified presiding officer should have no difficulty in recognizing and dealing with them.



CHAPTER 33

DIVISION OF QUESTIONS

A. DEMAND FOR DIVISION WHEN RIGHT IS GIVEN

Sec. 310. Single Subject, When Mandatory

1. The constitutions of most of the states require that no bill shall contain more than one subject, and sometimes contain other provisions, such as requiring, in an election, that candidates be voted upon separately. Similar provisions are made in statutes or charters governing local legislative bodies and the requirement is often made with reference to boards. The purpose of these provisions is to secure the independent judgment of the members on each question and prevent members being required to vote for one proposition, which they may not approve, in order to secure the enactment of another.

2. Adopted rules often give the members the right to insist on a separate vote on each independent proposition.

3. In some jurisdictions this principle is recognized in the absence of clear constitutional or statutory requirements to that effect, on the basis of the sound fundamental principle.

Sec. 311. When Division of Question Can Be Required

1. When the constitution, law or rules requires that each proposition have a single subject and a question contains two or more separate and distinct propositions, it is the right of any member to demand that the question be divided into the separate propositions.

2. When there is a requirement that each question or candidate be voted upon separately any member has the right to demand that any proposal containing more than one question be divided into its separate parts or that separate votes be taken upon each proposition or candidate.

Sec. 312. When Right of Division Can Be Suspended

1. When the requirement of a single subject or separate vote is contained in a constitution, charter, or controlling statute it is binding on the body and cannot be suspended.

2. When the rule exists only as a rule adopted by the body it can be suspended as any other such rule, and where it is applied as a rule of parliamentary law it can be suspended as can other rules of parliamentary law.

Sec. 313. What Questions Can Be Divided

1. To be divisible, a question must include points so distinct and separate that, one of them being taken away, the other will stand as a complete proposition. A question not capable of being so divided may still be objectionable as containing more than one subject.

2. However complicated a single proposition may be, so long as it contains only one subject, no member has a right to insist upon its division. His remedy is to move

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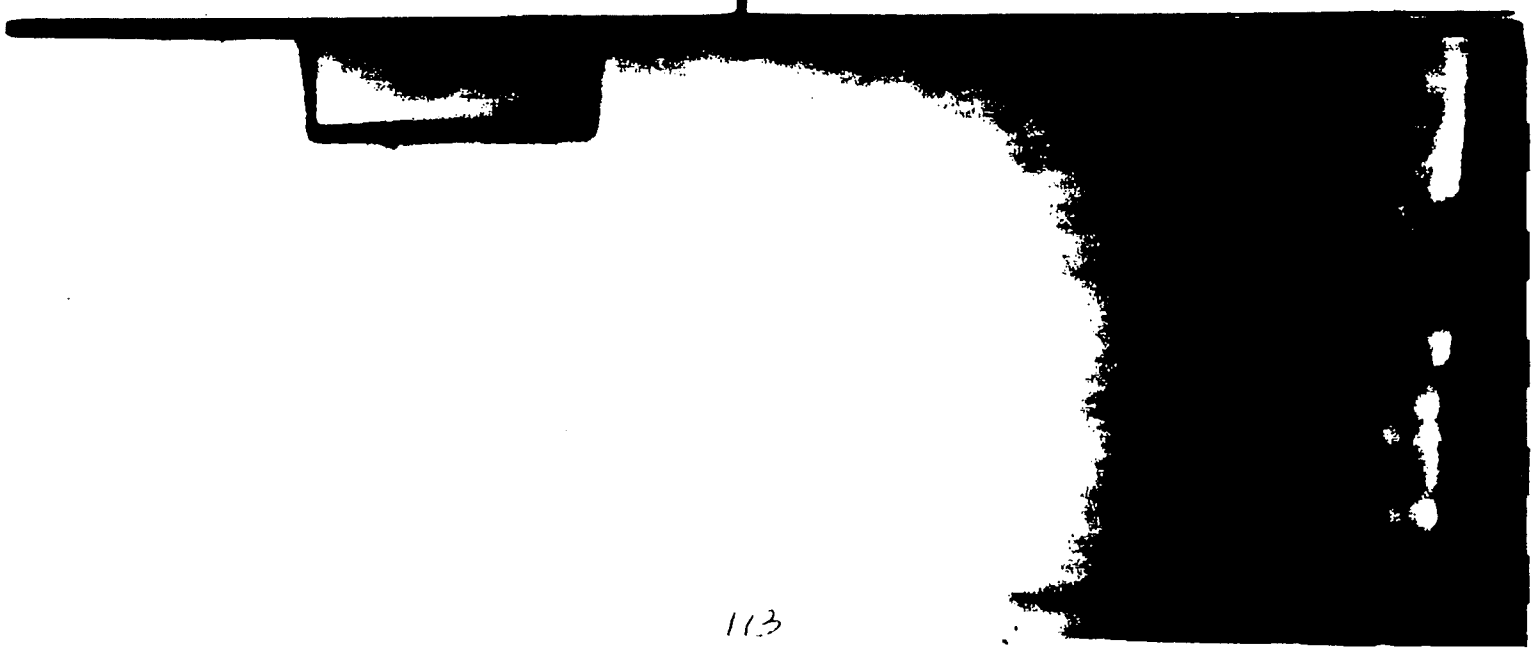
Section 311—
Sturgis, p. 225-228; U. S. House Rule XV, paragraph 6 and notes following; Hughes, Secs. 403-405; Tilson, pp. 70, 193; Cushing, Sec. 81; Cushing's Legislative Assemblies, Secs. 1342-1348; Reed, Sec. 152.

Section 313—
Paragraph 1—
Jefferson, Sec. XXXVI; N. Y. Manual, p. 471; Tilson, p. 70; Cushing, Sec. 80; Reed, Sec. 151; Sturgis, p. 226.
Paragraph 2—
Jefferson, Sec. XXXVI; Sturgis, pp. 226, 227; Cushing's Legislative Assemblies, Sec. 1348.



that it be divided, if it is capable of division, or, if not, to move to strike out the objectionable parts.

3. If a series of independent resolutions, relating to different subjects, is included in one motion, it must be divided on the request of a single member and wherever there are several names in a question they must, on demand, be put to vote separately.

4. When a committee reports a number of amendments to a question referred to it, one vote may be taken on adopting, or agreeing to, all of the amendments, provided no one objects. But if a member requests separate votes on one or more of the amendments relating to separate or distinct points, they must be voted upon separately. The others may all be voted on together.

Sec. 314. Precedence and Rules Governing Demand for a Division

1. A demand for a division takes precedence as an incidental motion but yields to privileged motions and all other incidental motions.

2. When a member has the right to demand a division his demand is not subject to debate, amendment, or the other subsidiary motions.

3. Whether a proposition contains two or more subjects is a question to be decided by the presiding officer in the first instance but that decision is subject to appeal.

Section 313—Continued
Paragraph 3—
Jefferson, Sec. XXXVI.
Paragraph 4—
Sturgis, p. 227.
Section 314—
Sturgis, pp. 226, 228; Tilson, p. 70; Cushing's Legislative Assemblies, Secs. 1347, 1348.

B. DIVISION OF QUESTIONS WHERE SINGLE SUBJECT OR SEPARATE VOTE RULE DOES NOT EXIST

Sec. 315. When Questions May Be Divided on Motion

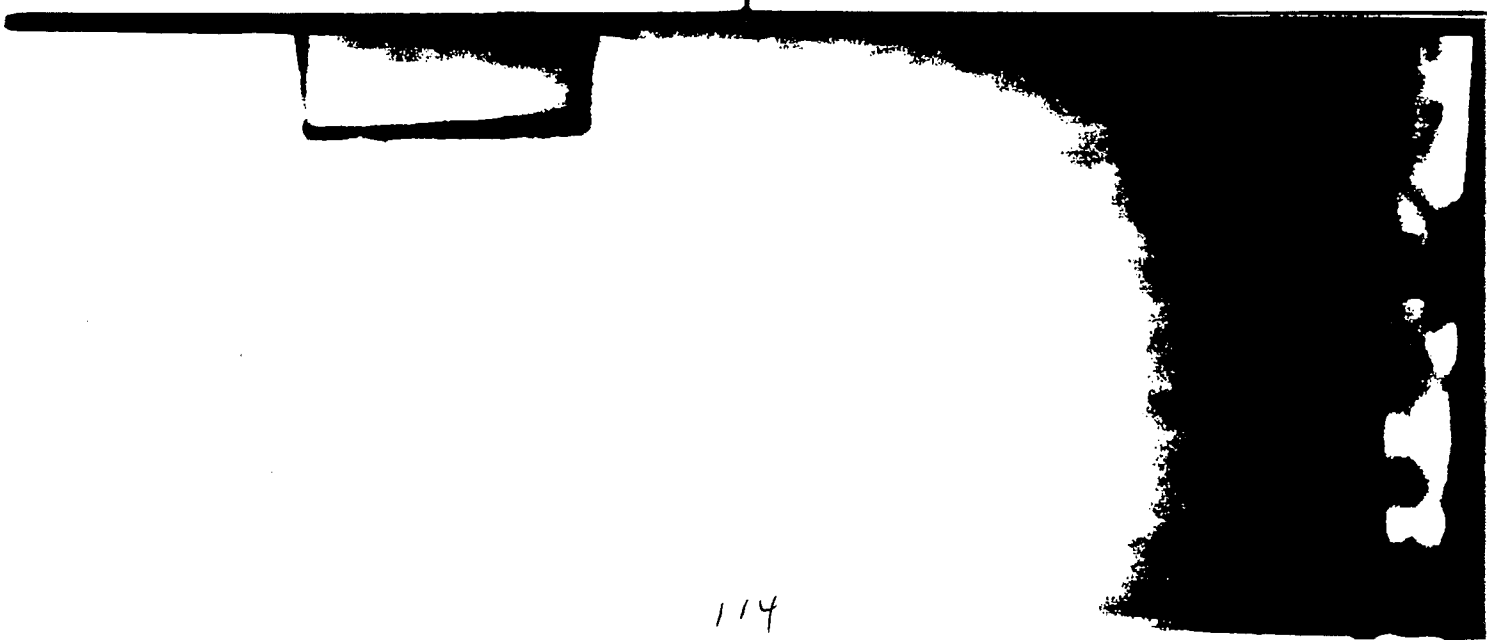
1. Where there is no rule giving members the right to vote separately on each proposition, a member still has the right to submit a motion to divide a question when it contains two or more distinct propositions.

2. When a measure includes several distinct propositions, but is so written that they cannot be separated without its being rewritten, the measure cannot simply be ordered divided. An order to divide a question must not require the secretary to do more than to mechanically separate the resolution into the required parts, prefixing to each part the words, "Resolved, That," or "Ordered, That," dropping conjunctions when necessary, replacing pronouns by the nouns for which they stand whenever the division makes it necessary, renumbering divisions, and making like changes.

3. When a question is divided, each separate question must be complete and proper, irrespective of any action taken upon the other or any of the other questions.

4. The motion to strike out certain words and insert others is strictly one proposition, and, therefore indivisible.

Section 315—
Paragraph 1—
Sturgis, p. 227.
Paragraph 2—
Cushing, Sec. 83; Sturgis, p. 226; Cushing's Legislative Assemblies, Secs. 1342-1345.
Paragraph 3—
Cushing, Secs. 80-83; Reed, Sec. 151; Sturgis, pp. 226, 227.
Paragraph 4—
N. Y. Manual, p. 471; Tilson, p. 70; Reed, Sec. 141.



Sec. 316. The Motion to Divide a Question

1. When a proposition contains several parts, each of which is not capable of standing as a separate proposition if the others are removed, it can be divided by a motion to divide the question in a specified manner. The motion must clearly state how the question is to be divided. Any other member may propose a different division, and these different propositions are alternative propositions and should be voted on in the order in which they are made, unless they suggest different numbers of questions, when the largest number is voted on first.

2. The motion or demand to divide a question can be applied to main motions and to amendments containing two or more distinct propositions.

3. The motion or demand to divide a question may be made at any time when the question to be divided, or the motion to postpone the question indefinitey is immediately pending, even after the previous question has been ordered.

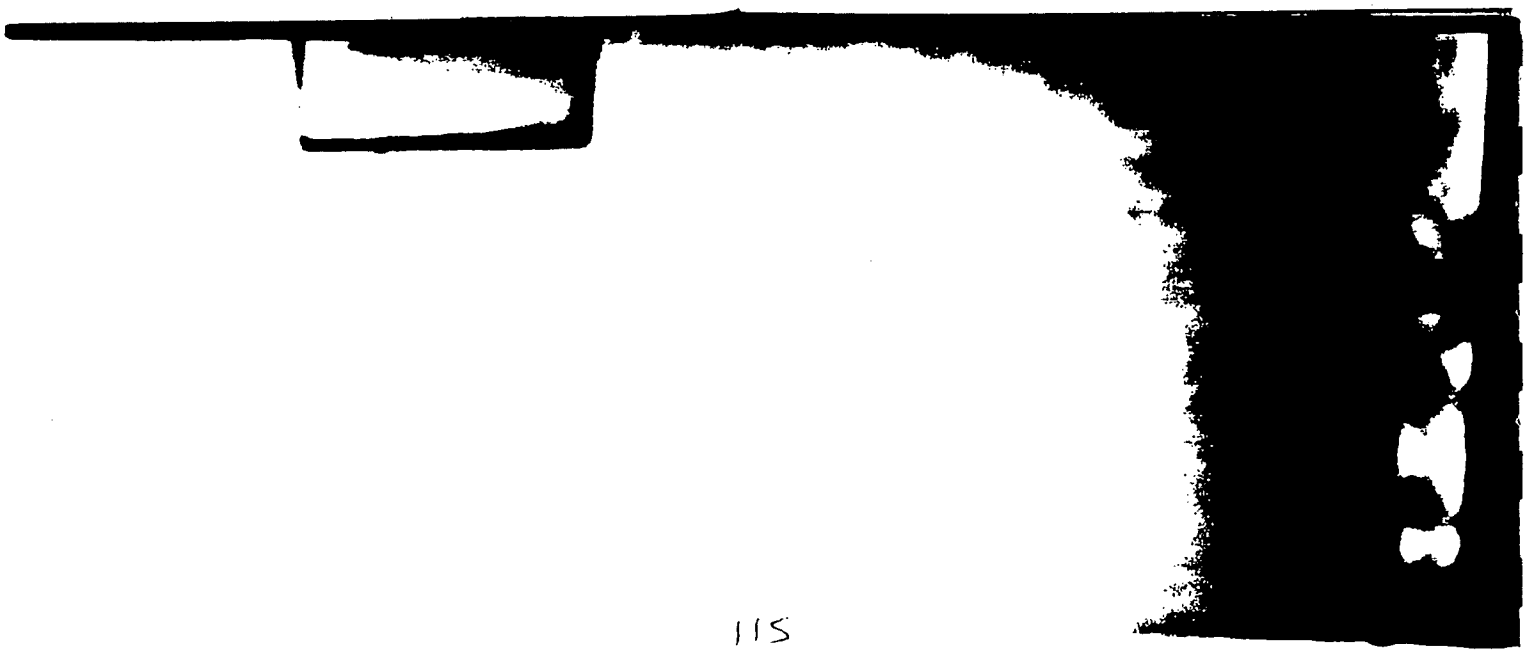
4. A member does not have the right to insist on a motion to divide when another member has the floor, but in the interest of saving time and more orderly consideration of business a member may be asked to relinquish the floor while it is determined whether a proposition should be divided.

5. The motion to divide a question takes precedence as an incidental question having priority over all subsidiary motions. An amendment to strike out extraneous matter or to rewrite a proposal containing more than one subject but not capable of division is a motion to amend and takes precedence as such. The motion to divide a question may

Section 316—
Cushing's Legislative Assemblies, Secs. 1343-1353; Sturgis, pp. 227, 228; Reed, Sec. 151.

be amended as to the manner of dividing the question, but it can have no other subsidiary motions applied to it. It is not subject to debate.

6. The formality of a vote on dividing the question is generally dispensed with, as it is usually arranged by general consent. But if this cannot be done, then a formal motion to divide is necessary, specifying the exact method of division.



DIVISION 3

SUBSIDIARY MOTIONS

CHAPTER 34

MOTION TO LAY ON THE TABLE (Postpone Temporarily)

Sec. 330. Purpose of Motion to Lay on the Table

1. The purpose of this motion is to enable the body to lay aside the pending question in order to attend to more urgent business, in such a way that its consideration may be resumed at the will of the body as easily as if it were a new question, and in preference to new questions competing with it for consideration. The motion to lay on the table, being undebatable and requiring but a majority vote, serves this purpose.

Sec. 331. Application of Motion to Lay on the Table

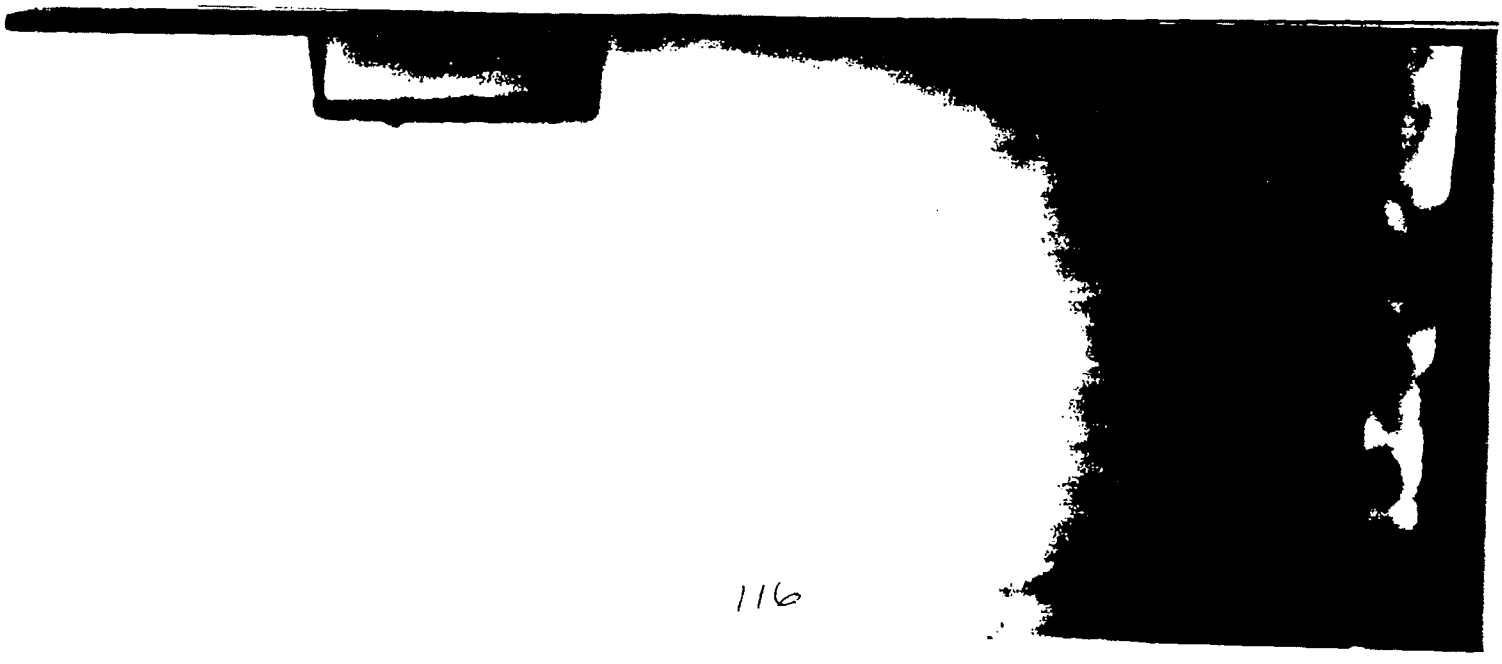
1. The motion to lay on the table may be applied to any main motion, to any question of privilege, to any order of the day after it is before the house for consideration, to any appeal, or to any motion to reconsider, when immediately pending. Procedural motions may not be laid on the table.

2. The motion to lay on the table may be applied to a bill of either house of a state legislature in any stage of

Section 330—
Jefferson, Sec. XXXIII; People v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Cushing, Secs. 71, 171; Reed, Sec. 114; Cushing's Legislative Assemblies, Sec. 1449; Sturgis, p. 202; Tilson, p. 58.

Section 331—
Paragraph 1—
Sturgis, p. 204; Waples, Sec. 50.

Paragraph 2—
Hughes, Sec. 285.



its progress and even after being returned from the other house with amendments.

3. The motion to lay on the table may not be applied to privileged, incidental, or subsidiary motions relating to procedure, or the disposal of business.

4. The motion to lay on the table cannot be applied to anything except a question actually before the house; therefore, it is not in order to lay on the table a class of questions as the orders of the day, unfinished business, or reports of committees, because only one main motion can be pending at a time.

Sec. 332. When Motion to Lay on the Table Is in Order

1. The motion to lay on the table is in order immediately after the stating of a question and before a member entitled to prior recognition has been recognized, or at any time thereafter while the question is still before the body, even after the adoption of the previous question. The motion can be made by any member who secures recognition.

Sec. 333. Precedence of Motion to Lay on the Table

1. The motion to lay on the table takes precedence of all other subsidiary motions and yields to privileged and incidental motions.

Section 331—Continued
Paragraph 3—
Hughes, Secs. 278, 285.
Paragraph 4—
Sturgis, p. 203.
Section 332—
Hughes, Sec. 278; Sturgis, p. 203.
Section 333—
Reed, Secs. 117, 201; Cushing, Sec. 171a; Sturgis, p. 204.

Sec. 334. Form of Motion to Lay on the Table

1. The motion to lay on the table may vary somewhat in form. The more usual forms are: "I move that the question be laid on the table," or "I move to lay the question (or motion, bill or resolution, etc.) on the table," or "I move that consideration (or further consideration) of the motion be postponed temporarily." The question cannot be qualified in any way, for if it is qualified it loses its status. A motion to lay the question on the table until a certain time is a motion to postpone definitely and takes a lower rank of precedence.

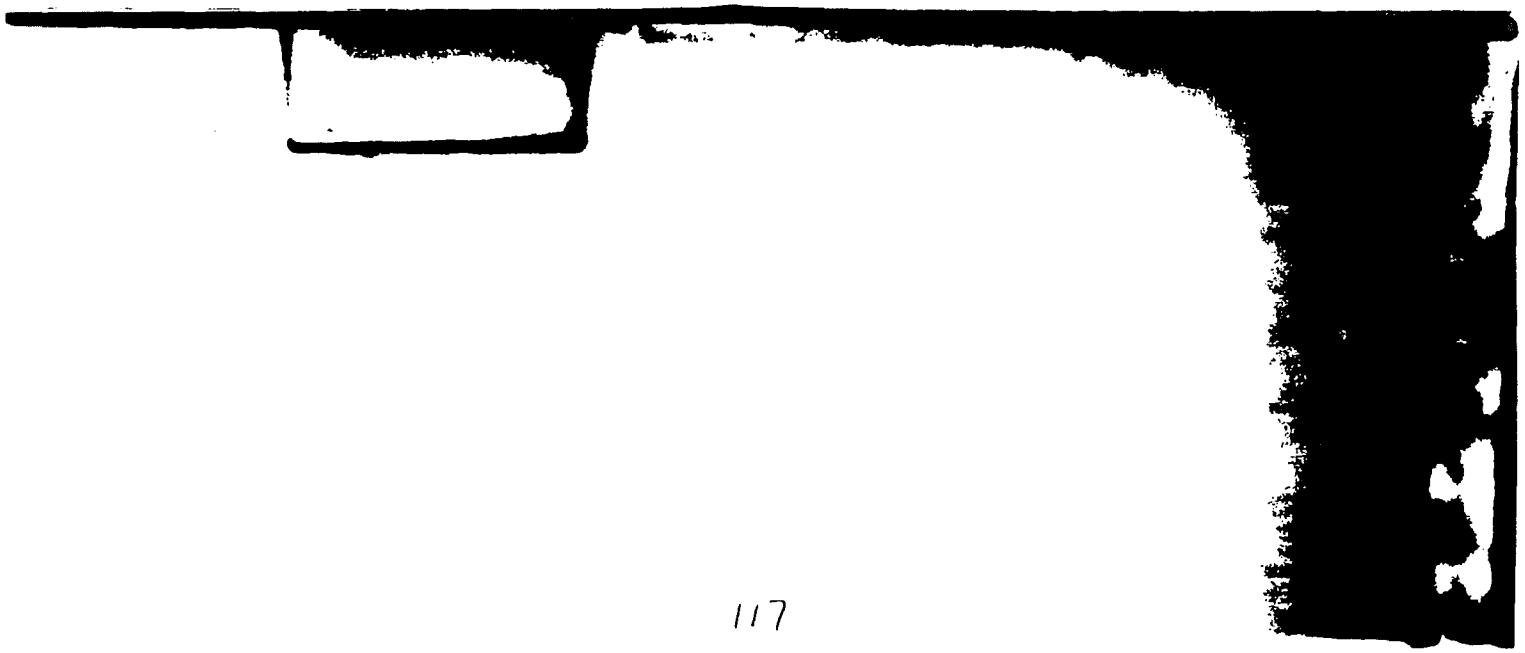
Sec. 335. Debate on Motion to Lay on the Table and Application of Subsidiary Motions

1. It is a matter of importance to a body that the consideration of a question may be put over to a later date without debate or delay. To permit debate on the motion to lay on the table would defeat this purpose. This motion is therefore not debatable.

2. The motion to lay on the table is not subject to amendment.

3. No motion to amend or other subsidiary motions can be applied to the motion to lay on the table.

Section 334—
Sturgis, p. 202.
Section 335—
Paragraph 1—
Hughes, Sec. 274; Cushing, Sec. 171a; Reed, Secs. 117, 201; N. Y. Manual, p. 464; Cushing's Legislative Assemblies, Sec. 1523; Sturgis, p. 204.
Paragraph 2—
Sturgis, p. 204; Reed, Secs. 117, 164, 201; Hughes, Sec. 274; Waples, Sec. 55.
Paragraph 3—
Reed, Sec. 164; Waples, Sec. 55; Sturgis, p. 204; Hughes, Sec. 274.



Sec. 336. Vote Required to Lay Question on Table

1. A motion to lay on the table requires only a majority vote even though the question is suppressed if not taken from the table.

Sec. 337. Effect of Laying a Question on the Table

1. The effect of the adoption of this motion is to place on the table, that is, in charge of the secretary or clerk, the pending question and everything adhering to it. According to the usual practice of legislative bodies in this country, a motion laid on the table may be taken from the table and proceeded with at any time, even on the same day as laid on the table.

2. As sometimes used in legislative bodies under a special rule a motion to lay on the table has the effect of final adverse disposition of the question. When this use is permitted, it has the advantage to the mover, over the question to postpone indefinitely, that it is not debatable and has a higher order of precedence.

3. A question laid on the table is not to be regarded as finally disposed of unless the rules clearly so provide, or unless the practice is established beyond question. The general rule is that the motion to table leaves the tabled measure open, to be thereafter taken up.

Section 336—
Sturgis, p. 204.

Section 337—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1449; Sturgis, p. 204; Waples, Sec. 30; Cushing, Sec. 172.
Paragraph 2—
Hughes, Sec. 285.
Paragraph 3—
Wright v. Wiles (1938), 173 Tenn. 334, 17 S.W. 2d 736, 119 A. L. R. 456.

4. The practice of the House of Representatives of the United States, in regard to use of motion to lay on the table is different from that of general parliamentary law. In that body, a motion to lay on the table is used only for the purpose of making a final unfavorable disposition of a matter.

5. Questions laid on the table remain there for the entire session unless taken up before the session closes.

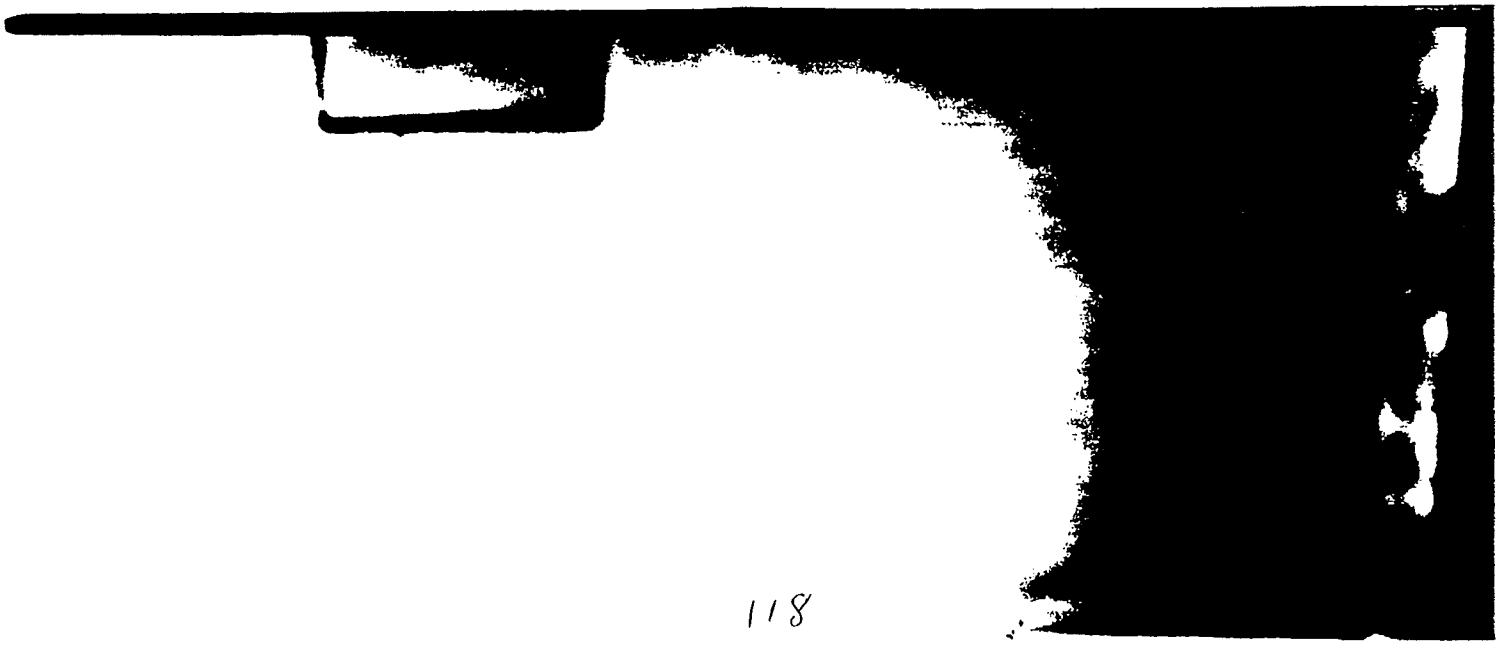
Sec. 338. Matters Adhering to Question When Laid on the Table

1. When a question is laid on the table, the principal motion, together with all of the incidental and subsidiary motions connected with or adhering to it, are laid on the table with it.

2. When an amendment is pending to a question and the main question is laid on the table, the amendment goes to the table. A motion to amend being a subsidiary motion cannot be laid on the table by itself, but it is sometimes the practice to accept a motion to lay an amendment on the table since it carries the main motion

Section 337—Continued
Paragraph 4—
People v. Davis (1918), 284 Ill. 439, 120 N.E. 326.
Paragraph 5—
People v. Davis (1918), 284 Ill. 439, 120 N.E. 326.

Section 338—
Paragraph 1—
Cushing, p. 144; N. Y. Manual, pp. 452, 472; Reed, Sec. 114; Cushing's Legislative Assemblies, Sec. 1449; Sturgis, p. 203.
Paragraph 2—
Hughes, Sec. 274; N. Y. Manual, p. 408; Reed, Secs. 114, 166; Cushing's Legislative Assemblies, Sec. 1449; Sturgis, p. 203.



with it. When either is taken from the table, the other comes with it.

3. A motion to refer likewise adheres to the main question and goes with it to the table.

4. When a motion to reconsider is laid on the table, the question proposed to be reconsidered goes with it, but when a motion to reconsider a vote whereby amendments of the other house were agreed to is laid on the table, the motion does not carry the bill with it to the table.

5. A question of privilege may be laid on the table without carrying with it the question which it interrupted.

6. An appeal from the decision of the presiding officer may be laid on the table and, when so disposed of, has the effect of defeating the appeal, and the decision stands. Neither the question out of which the appeal arose, nor any other matter, is carried with it to the table but the main question is unaffected and is still before the house.

7. Either a committee report or a "minority" report may be laid on the table without affecting the other report.

8. When a motion to instruct conferees is laid on the table, the bill does not accompany it.

Section 338—Continued
Paragraph 3—
Sturgis, p. 203.
Paragraph 4—
Hughes, Sec. 642.
Paragraph 6—
Hughes, Sec. 286; N. Y. Manual, p. 410 ; U. S. House Rule No. XVI and notes following in House Manual.
Paragraph 7—
N. Y. Manual, p. 485.
Paragraph 8—
Hughes, Sec. 287; U. S. House Rule No. XVI and notes following House Manual.

Sec. 339. Renewal of Motion to Lay on the Table

1. A motion to lay a question on the table may be renewed after progress in debate or business, or after the amendment of the question.

2. When a motion to lay on the table has been lost, or a question has been taken from the table, a motion to lay that question on the table is not in order until there has been progress in business or debate, or unless an unforeseen urgent matter requires immediate attention. The house cannot be required to vote again the same day on laying the question on the table, unless there is such a change in the situation as to make it a new question.

Sec. 340. The Motion to Lay on the Table May Not Be Reconsidered

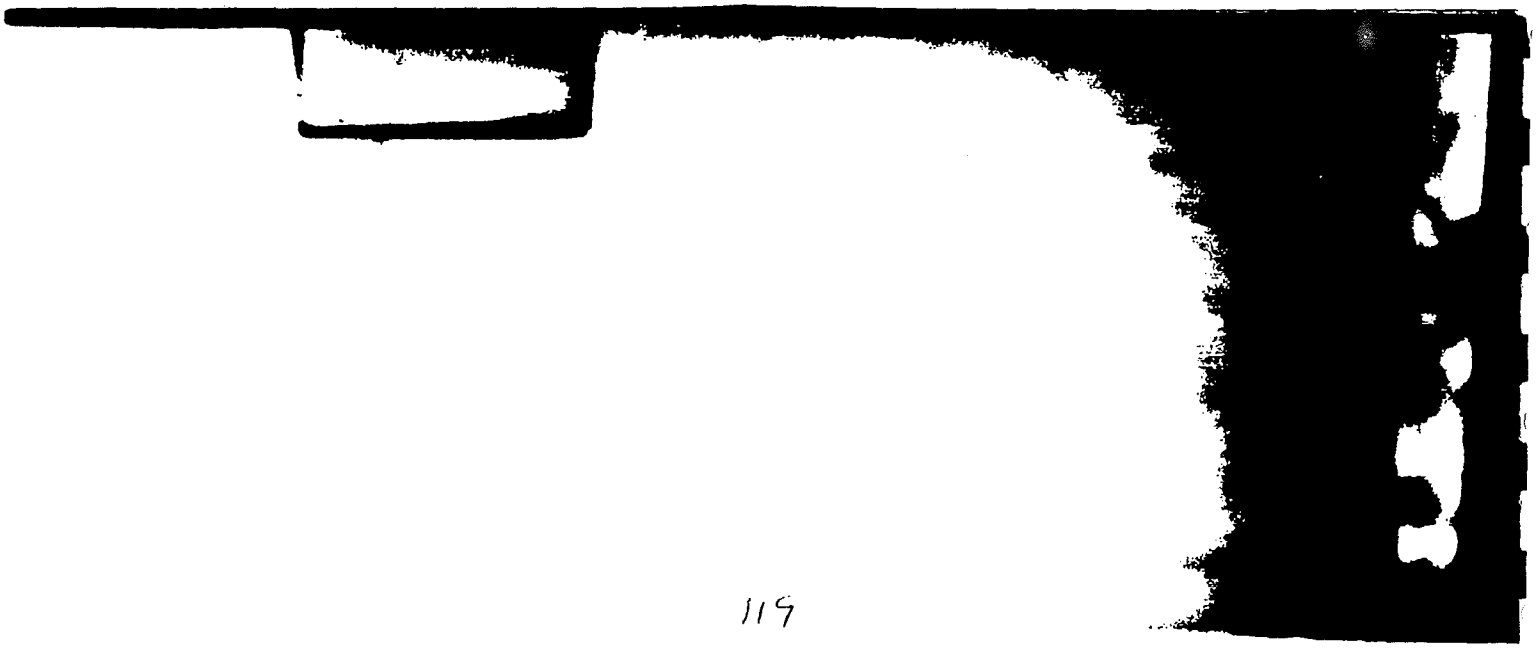
1. The usual rule is that an affirmative vote on a motion to lay on the table may not be reconsidered because the proper procedure is to move to take from the table, and a negative vote on the motion cannot be reconsidered because the proper procedure is to renew the motion.

Sec. 341. Taking Question From the Table

See also Sec. 492, Motion to Take From the Table.

1. The motion to take from the table or to resume consideration of a question is a main motion and is, therefore, not in order when a question is under consideration.

Section 339—
Paragraph 1—
Hughes, Sec. 274; Reed, Secs. 116, 201; Cushing's Legislative Assemblies, Sec. 1451; Sturgis, p. 204.
Paragraph 2—
Reed, Sec. 116.
Section 340—
Hughes, Sec. 274; N. Y. Manual, p. 502; Reed, Sec. 204; Sturgis, p. 204.
Section 341—
Paragraph 1—
Hughes, Sec. 277.



2. When a question has been laid on the table because an urgent matter requires immediate attention, it may be taken from the table as soon as the urgent business has been disposed of, and before other business is taken up.

3. In legislative and other governmental bodies a question is laid on the table only temporarily with the expectation that its consideration being resumed after the disposal of the interrupting questions or at a more convenient season. When taken up, the question with everything adhering to it, is before assembly exactly as when it was laid on the table.

Sec. 342. Postpone Temporarily

1. The motion to lay on the table is also sometimes called the motion to postpone temporarily. This name is more descriptive than the usual name since the real purpose of the motion to lay on the table is to postpone the question for an undetermined but usually brief period.

2. The same rules apply to the motion by whichever name it may be known.

3. The motion may be stated as: "I move that (identifying the proposition) be postponed temporarily."

Section 341—Continued
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1449.
Paragraph 3—
People v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Goodwin v. State Board (1925), 210 Ala. 453, 102 So. 718; Reed, Sec. 114.

CHAPTER 35

THE PREVIOUS QUESTION
(Vote Immediately)

See also Chapter 36, Secs. 355-361, Motions Closing, Limiting or Extending Limits on Debate; Sec. 131, Cutting off Debate, and Sec. 132, Preventing Debate by Putting Questions to Vote Prematurely.

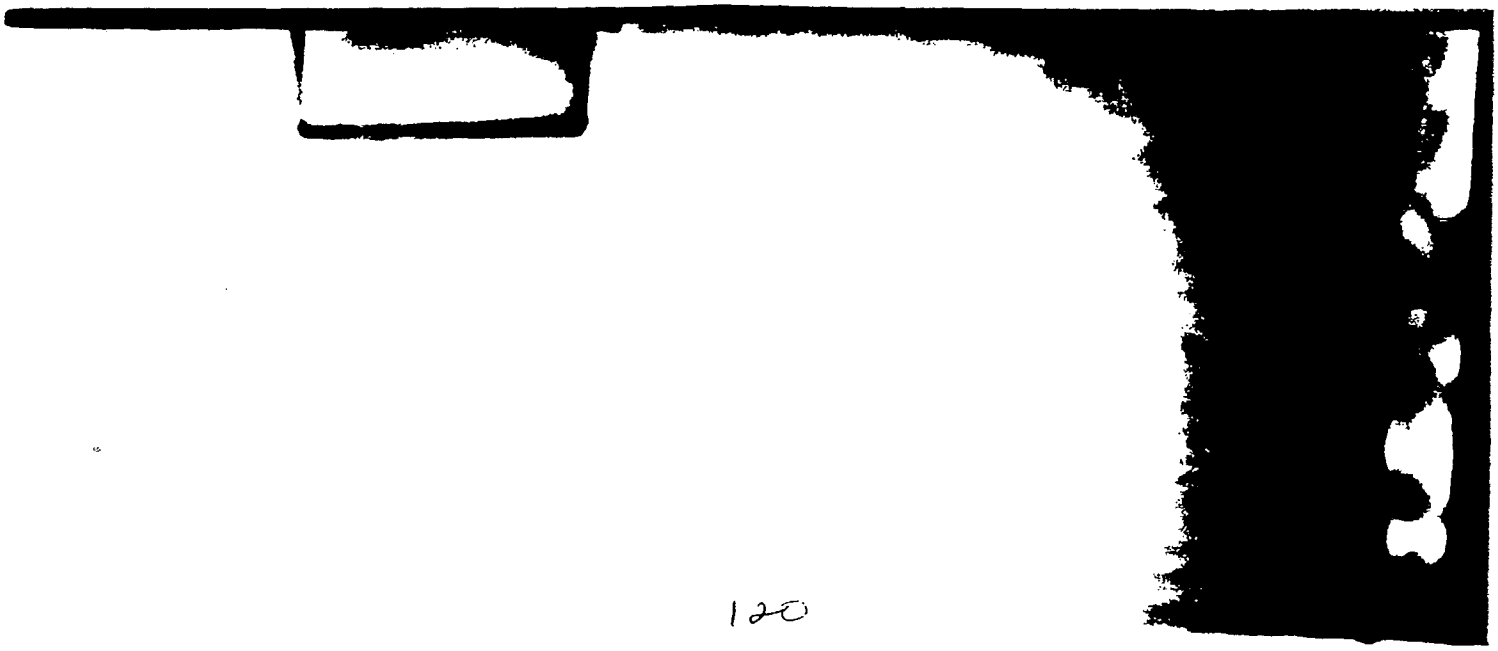
Sec. 345. Use of the Previous Question

1. There is a large and not well defined group of motions which may be used to restrict, close or prevent debate. The previous question had a different origin than the other motions having the same or a similar purpose and differs from the other motions in having a definite and distinct form and in several other particulars. This motion is frequently confused with other motions because its name is not indicative of the nature of the motion.

2. The previous question may be used to close debate on any debatable question, and may be applied to any question to which subsidiary motions may be applied, to prevent the making of subsidiary motions. The effect of the motion, if adopted, is to require that the question be put to vote immediately. It would be more aptly designated "vote immediately," and that term is in use.

3. The previous question applies to the immediately pending motion and adhering motions. A motion to bring some particular question to vote is a motion to close debate even though stated as the previous question.

Section 345—
Paragraph 1—
Jefferson, Sec. XXXIII; Cushing's Legislative Assemblies, Sec. 1428; Reed, Sec. 126; Tilson, p. 82.
Paragraph 2—
Jefferson, Sec. XXIV; Cushing's Legislative Assemblies, Sec. 1428; Sturgis, pp. 200, 201.
Paragraph 3—
Waples, Sec. 114; Sturgis, p. 201.



4. The previous question applies to questions of privilege the same as to other debatable questions, such questions being privileged only as to priority of consideration.

5. The previous question when applied to a motion to postpone or a motion to refer does not affect the main question.

6. The previous question may be moved on a series of resolutions, but this does not preclude a division of the resolutions for the purpose of voting on them separately.

Sec. 346. Motion or Demand for the Previous Question

1. The early practice was to require a demand of a certain proportion of the house before the previous question could be put to vote. The rules in some of the state legislatures still require that the previous question must be demanded by a certain number or by a certain proportion of the members. Where the rules do not specifically require that the previous question be demanded by a certain number or proportion of the members, it may be called for, or moved, the same as any other question or motion.

Sec. 347. Form of the Previous Question

1. The form of the motion for the previous question is, "I move the previous question." It is also proper to state

Section 345—Continued
Paragraph 4—
N. Y. Manual, 1948-49, p. 444.
Paragraph 5—
Cushing, Sec. 70a; Sturgis, p. 201.
Paragraph 6—
U. S. House Rules, 80th Congress, Rule 17, note 806.
Section 346—
Hughes, Sec. 291.
Section 347—
Paragraph 1—
Jefferson, Sec. XXIV; Cushing's Legislative Assemblies, Secs. 1280, 1427; Cushing, Sec. 170; Sturgis, p. 198.

the question as, "I call for the previous question," or "I move that we vote immediately." The use of the obscure and confusing designation for the previous question has often led in practice to the use of a more descriptive name. The term "vote immediately" has acquired recognition and is sometimes used in place of the old designation of "previous question."

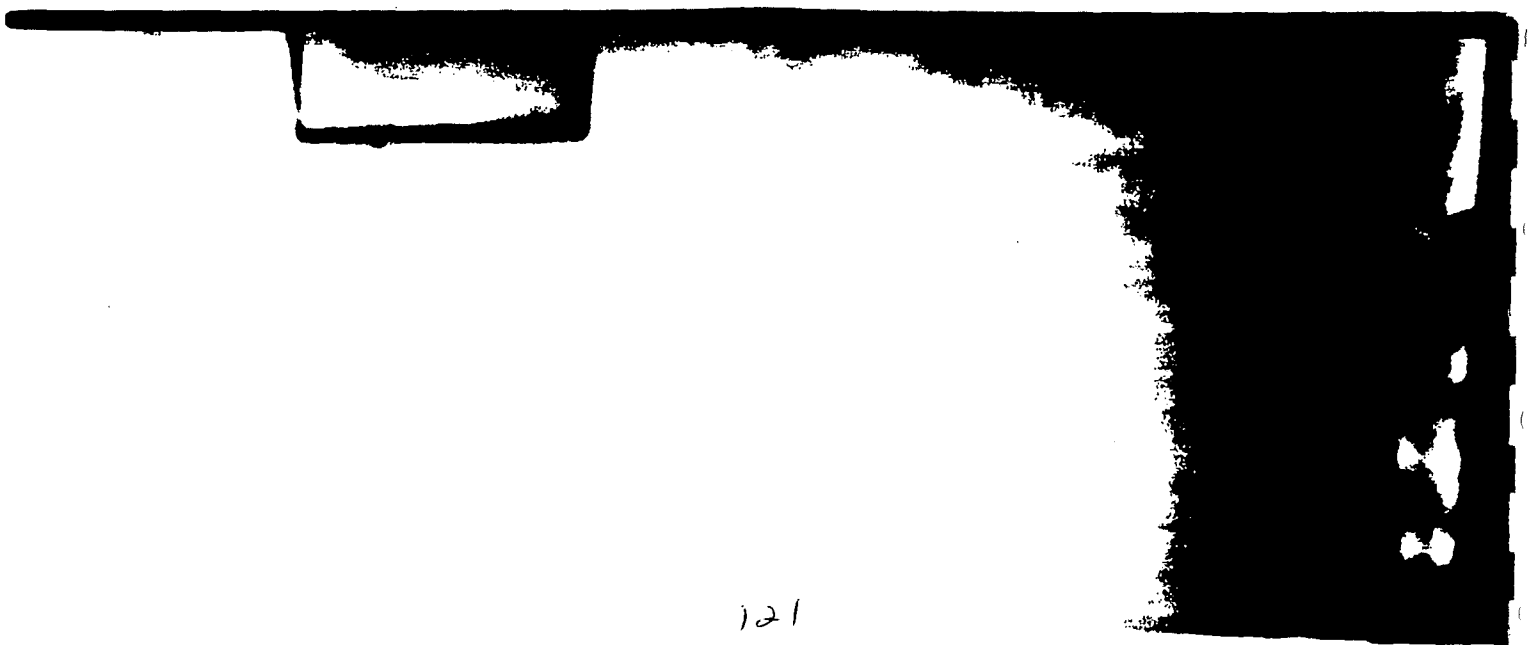
2. The form of the previous question, as established by ancient parliamentary practice, and the form which is required by the rules of many of the states, is, "Shall the main question be now put?" The motion in this form applies only to the question before the house and adhering questions.

3. The question on closing debate is frequently put to vote in the form, "As many as are in favor of ordering the previous question on (stating the question or questions)," or "all in favor of voting immediately on, etc." When the question is permitted in this form it is proper to specify the pending questions to which it is to be applied. This is really a form of the motion to close debate and should be governed by the rules applicable to those motions.

Sec. 348. Precedence of the Previous Question

1. The previous question takes precedence of the question out of which it arose, of all debatable questions, and of all subsidiary motions except the motion to lay on the table, and yields to all privileged and incidental motions and to the motion to lay on the table.

Section 347—Continued
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1433; Waples, Sec. 114.
Paragraph 3—
Sturgis, p. 108; Hughes, Sec. 292.
Section 348—
Cushing, Sec. 174; Sturgis, p. 201.



2. A question may be laid on the table after the previous question has been moved, after the previous question has been ordered on it, and until the last vote has been taken under the previous question.

3. A motion or demand to divide a question, when otherwise in order, is in order even after the adoption of the previous question, as it relates to a question of voting which must be determined before the taking of the vote.

Sec. 349. The Previous Question and Debate and Subsidiary Motions

1. The previous question is undebatable and cannot be amended nor have any other subsidiary motion applied to it. It may not be debated nor amended, because the purpose of the motion is to prevent further debate and amendment, and to bring the matter immediately to vote. The motion cannot be laid on the table, postponed, nor referred to committee because it is a subsidiary motion of such a nature that a decision is required before other action may be taken. The previous question requires an immediate vote on the main question and adhering subsidiary questions, consequently, if an amendment were permitted, it would change the previous question to a motion of some other kind. The form of the previous question is fixed by parliamentary usage and for that reason also it is not subject to amendment.

2. When the previous question is moved on the motion to reconsider, the previous question applies only to that motion and, if the motion to reconsider is laid on the table, it does not take with it the question which it was moved to reconsider.

Section 349—
Paragraph 1—
Jefferson, Sec. XXXIII; Sturgis, p. 201; Hughes, Sec. 290; Reed, Secs. 164, 201; Cushing, Sec. 170; Cushing's Legislative Assemblies, Sec. 1523.
Paragraph 2—
N. Y. Manual, 1948-49, p. 451.

Sec. 350. Vote on the Previous Question

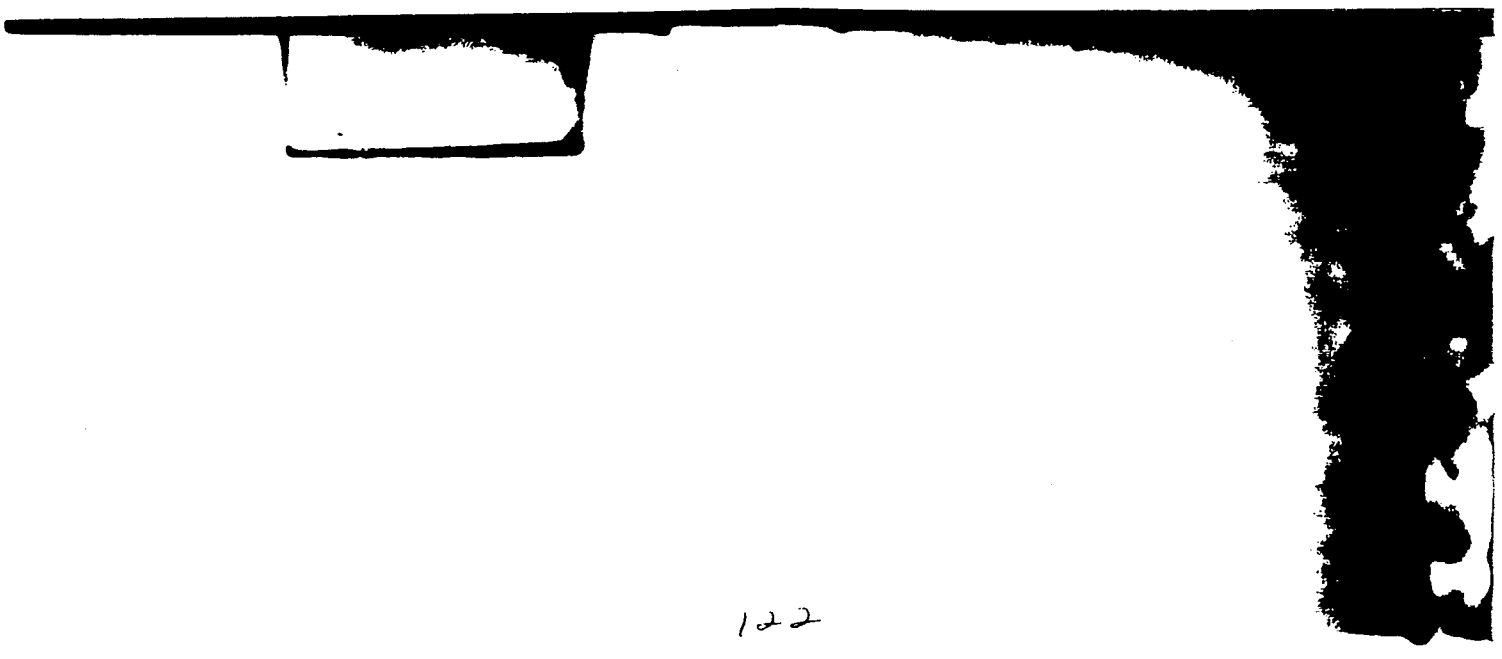
1. A majority vote only is required for the adoption of the previous question in legislative bodies. In private associations it is the usual practice to provide by rule that a two-thirds vote is required to adopt the previous question and manuals intended for use of such association may state that as a rule. The established practice in legislative and administrative bodies, however, is to require only a majority vote to order the previous question.

2. There is no more reason for requiring a two-thirds vote to order the previous question than to require a similar vote in deciding the main question, and such a requirement is at variance with the basic principle of majority rule.

Sec. 351. Effect of the Previous Question

1. The effect of ordering the previous question is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary questions.

Section 350—
Paragraph 1—
Hughes, Sec. 290; Cushing's Legislative Assemblies, Sec. 1428; Reed, Sec. 269; Tilson, p. 79. A majority vote only is required by the rules of many of the states.
Paragraph 2—
Tilson, p. 79.
Section 351—
Paragraph 1—
Jefferson, Sec. XXIV; Sturgis, p. 197; Cushing, Sec. 175; N. Y. Manual, p. 466.



2. When the previous question is ordered, the presiding officer should immediately put the question, or questions, upon which it was ordered to vote until all the questions affected have been disposed of, or there has been an affirmative vote on a pending motion to lay on the table, to postpone definitely or indefinitely, or to refer to committee.

3. A rule of Congress provides that an appeal, made after the previous question has been ordered and before its effect is exhausted, is undebatable. This rule appears to have been rather widely copied. Where there is no such rule an appeal is debatable after the previous question has been ordered on the question out of which the point of order and appeal arose.

Sec. 352. Renewal of the Previous Question and Reconsideration

1. If the previous question is lost, the motion may be renewed after intervening business or after progress in debate or a change in the parliamentary situation.

2. The previous question may not be reconsidered.

Section 351—Continued
Paragraph 3—
Tilson, p. 82; U. S. House Rule XVII, Par. 3.
Section 352—
Paragraph 1—
Sturgis p. 201; Hughes Sec. 290.
Paragraph 2—
N. Y. Manual, 1948-49, p. 451.

CHAPTER 36

MOTIONS CLOSING, LIMITING OR EXTENDING LIMITS ON DEBATE

See also Chapter 35, Secs. 345-352, The Previous Question, and Sec. 132, Preventing Debate by Putting Questions to Vote Prematurely.

Sec. 355. Nature of Motions Limiting Debate

1. Motions closing, limiting or extending limits on debate are a group of motions used for the same general purpose and which are subject to the same rules. These motions are closely related to the previous question but that motion had a different origin, has a definite form, and is subject in part to different rules.

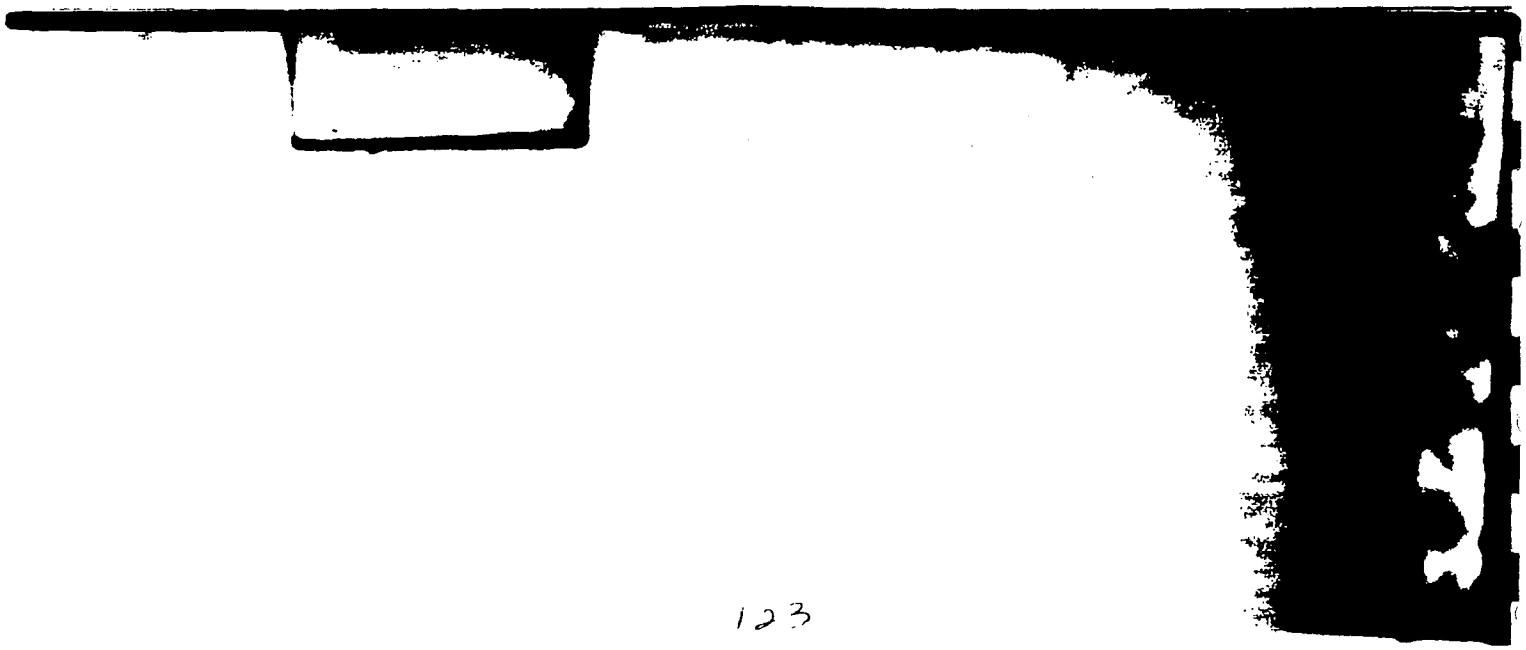
Sec. 356. Application of Motions Limiting Debate

1. Motions to close, to limit or to extend limits of debate may be applied to any debatable motion or series of motions, but if not specified to the contrary, apply only to the immediately pending question. They may be made only when the immediately pending question is debatable.

2. Motions to close or limit debate may be applied to a series of pending questions, or to a consecutive part of a series, when the matter immediately pending is one of the series affected. When debate is closed or limited on one or more questions, its effect adheres to these questions, preventing debate until they are finally disposed of or until the order is changed.

3. When a motion to limit or close debate is ordered on more than one pending question, its effect is not exhausted

Section 355—
Sturgis, pp. 197-201.
Section 356—
Sturgis, p. 196; Cushing, Sec. 221; Hughes, Sec. 697.



until all the questions have been voted upon, or the effect of those voted upon has been to refer the main question to committee or to postpone it definitely or indefinitely.

4. When it is voted to close or limit debate on a question, the order applies to all incidental and subsidiary motions and the motion to reconsider, subsequently made, as long as the order is in force. But an order extending the limits of debate does not apply to any motion except the one immediately pending and such others as are specified.

5. After the adoption of an order merely limiting the number or length of the speeches, or extending these limits on a particular question, it is in order to move any of the other subsidiary motions on the pending question.

6. The time for debate on any question may be limited by unanimous consent.

Sec. 357. Form of Motions Limiting or Extending Debate

1. Motions closing, limiting or extending limits of debate may taken numerous forms. Illustrations of some of the more usual forms of these motions follow:

(a) To fix the hour for closing debate and putting the question, the form is similar to this: "I move that debate be closed and the question be put on the pending question at three p.m."

(b) To limit the length of the debate, the motion may be made thus: "I move that debate on the pending question be limited to twenty minutes." This motion may also contain the provision that the time should be allotted equally between the proponents and the opponents of the measure or any similar provision.

Section 357—
Sturgis, p. 195; Cushing, Sec. 222.

(c) To reduce or increase the number or length of speeches, the motion might be made in a form similar to the following: "I move that debate on the pending bill, and its amendments, be limited to one speech of five minutes from each member," or "I move that speeches be limited to five minutes each."

(d) To extend the limits of debate, the two following forms are perhaps the most common: "I move that the time of the speaker be extended five minutes," and "I move that the time for debate on the pending question be extended twenty minutes."

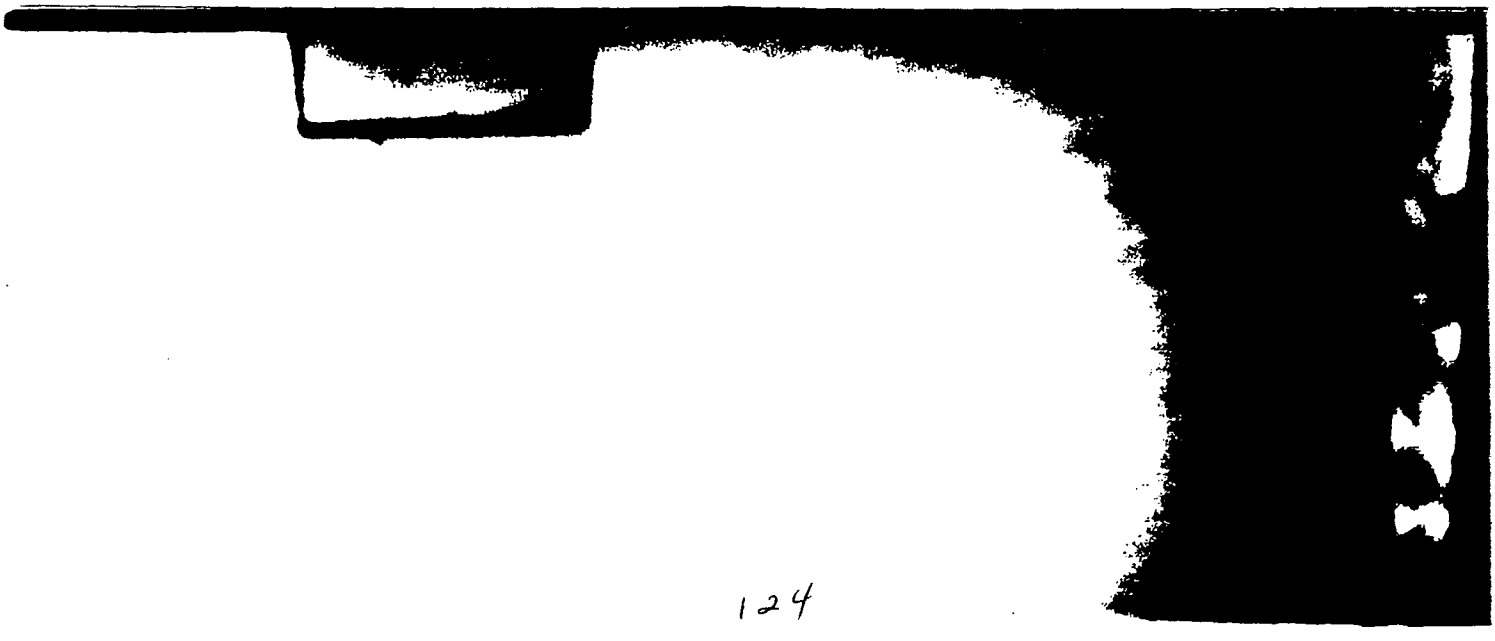
Sec. 358. Motions to Close, Limit, or Extend Limits on Debate

1. Motions or orders to limit or to extend the limits of debate are undebatable, for to permit debate on these motions would defeat their purpose.

2. Motions to close or limit debate may be amended. When one of them is pending, another one that does not conflict with it may be moved as an amendment. After one of these motions has been adopted, it is in order to move another one of them, provided it does not conflict with the one in force.

3. These motions yield to privileged and incidental motions, and to the motions to lay on the table and for the previous question. These motions take precedence of the

Section 358—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1428; Reed, Sec. 269; Hughes, Sec. 290; Sturgis, p. 197; Tilson, p. 79.
Paragraph 2—
Sturgis, p. 196.
Paragraph 3—
Sturgis, p. 197.



other subsidiary motions, and any debatable motion out of which they arise.

4. Motions to close, to limit or to extend the limits of debate are not subject to subsidiary motions, other than the motion to amend.

5. These motions require only a majority vote.

Sec. 359. Effect of Closing or Limiting Debate

1. After the adoption of a motion limiting the number or length of the speeches, or extending these limits, it is in order to move any of the other subsidiary motions on the pending question since such motions do not dispose of the motions to which they are applied.

2. When debate has been limited, the time may be extended by unanimous consent or by the adoption of a motion to that effect.

3. When debate has been limited and a member has spoken his allotted time, the presiding officer should call him to order and notify him of the expiration of his time.

4. When consent to continue is not asked by another member, the member speaking may properly do so.

5. Adoption of a motion to close debate at a specified time does not shut off the opportunity of moving amendments as would the adoption of the previous question.

Section 358—Continued
Paragraph 4—
Reed, Sec. 269; Tilson, p. 79; Sturgis, p. 197.
Paragraph 5—
Tilson, p. 79; Reed, Sec. 269; Hughes, Sec. 697.
Section 359—
Sturgis, p. 196; Hughes, Secs. 703, 704, 738; Mass. Manual, p. 667.

Sec. 360. Renewal and Reconsideration of Motions Limiting Debate

1. The motions to limit or extend the limits of debate, if lost, may be renewed after there has been sufficient progress in debate to make it a new question. After motions closing or limiting debate are adopted, the limitations are often modified by motions to extend time or to extend debate, without reconsideration of the original motion. A motion changing a limit or restriction on debate may be made whenever the situation is so changed that a different decision might reasonably be made by the house. Limitations on debate are also frequently modified by unanimous consent.

Sec. 361. Other Means of Preventing or Limiting Debate

1. A legislative body may lay a question on the table, and thus temporarily suspend the debate, but it can be resumed by taking the question from the table when no question is before the house and at a time when business of this class or unfinished business, or new business is in order.

See Chapter 34, Secs. 330-341, Motion to Lay on Table.

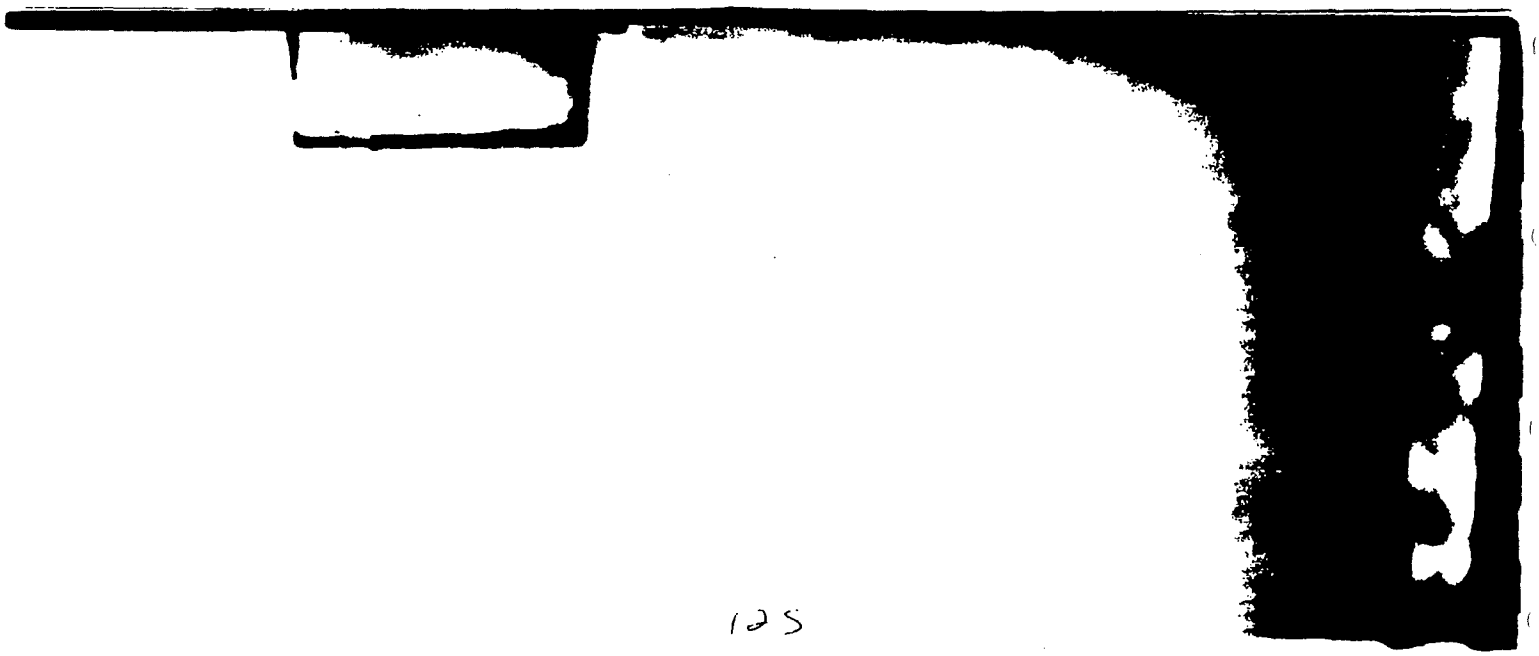
2. A legislative body may prevent or stop debate at any time by the adoption of the previous question.

See Chapter 35, Secs. 345-352, The Previous Question.

3. If it is desired to prevent any discussion of a subject, even by its introducer, this can be most effectively accomplished by objecting to the consideration of the question before it is debated or any subsidiary motion is stated.

See Chapter 30, Secs. 293-300, Objection to Consideration of Questions.

Section 360—
Sturgis, p. 197.
Section 361—
Sturgis, pp. 108-191, 198, 203, 222.



4. Debate may also be terminated for the time by postponement to a definite time or by reference of the question to a committee.

See Chapter 37, Secs. 365-374, Motion to Postpone to a Certain Time or Definitely, and Chapter 38, Secs. 378-391, Motion to Refer or Commit.

CHAPTER 37

MOTION TO POSTPONE TO A CERTAIN TIME OR DEFINITELY

Sec. 365. Application of Motion to Postpone Definitely

1. The motion to postpone to a certain time may be applied only to main motions. To permit it to be applied to privileged, incidental or subsidiary motions would be piling questions one on another, which is not allowed, and the same result may be accomplished more simply by voting down such subsidiary motions and renewing them at a later time if desired. A question of privilege being a main question is subject to postponement.

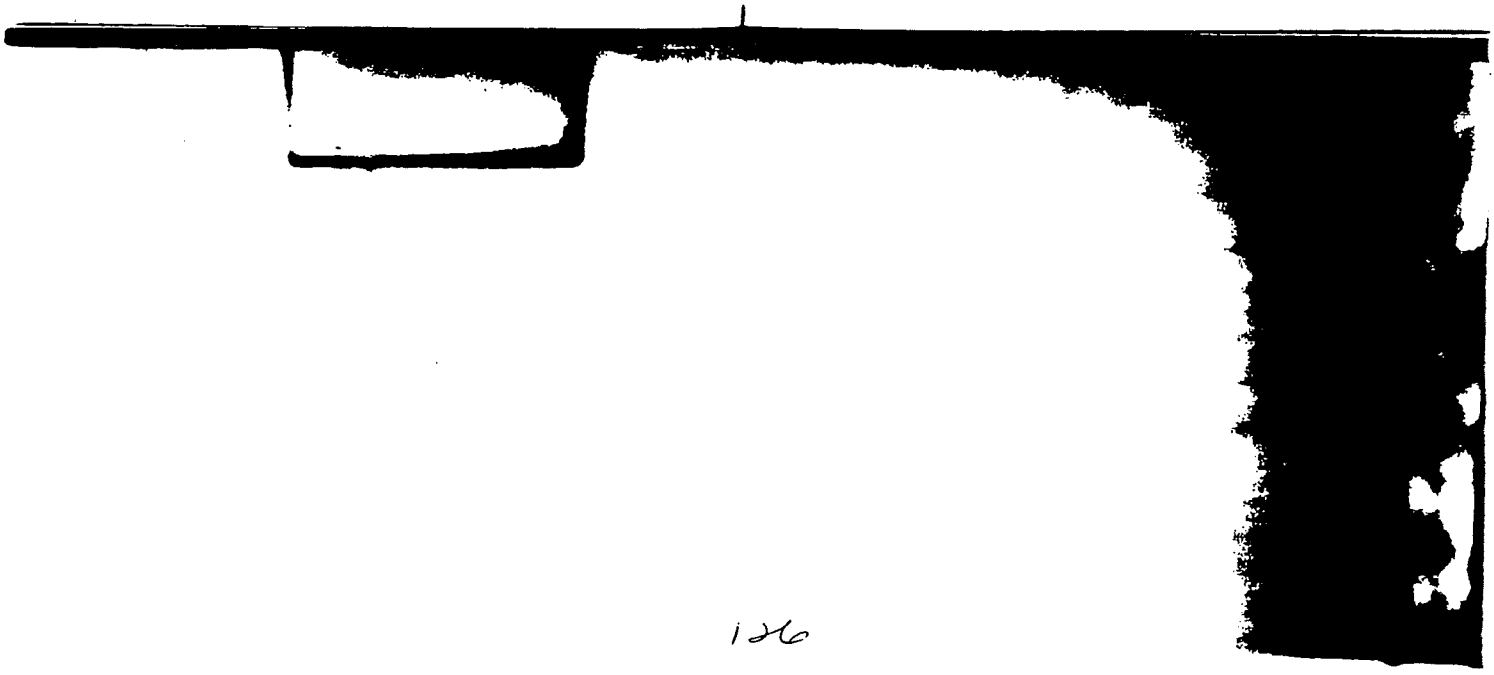
Sec. 366. Precedence of Motion to Postpone Definitely

1. The motion to postpone to a certain time or definitely takes precedence of the motions to commit, to amend, to postpone indefinitely, and main motions, and yields to all privileged and incidental motions, to the motion to lay on the table, the previous question, and motions to close, to limit, or to extend the limits of debate.

Sec. 367. Only Pending Question May Be Postponed

1. Business that is required by the rules to be attended to at a specified time or in a particular order cannot be postponed in advance to another time, but when the speci-

Section 365—
Jefferson, Sec. XXXIII; **Cushing**, Secs. 168, 169, 180; **Sturgis**, pp. 193, 194; **Hughes**, Sec. 315.
Section 366—
Sturgis, p. 193; **Reed**, Sec. 118; **Cushing**, Sec. 70a; **N. Y. Manual, 1948-49**, p. 474.
Section 367—
Sturgis, p. 193.



fied time arrives, it may be postponed to a later time or order of business.

2. It is not in order to postpone a class of business, as reports of committees, but as each question is announced or called for, it may be postponed; or the rules may be suspended and the desired question be taken up.

3. After an order of the day or a question of privilege is before the house for action, its further consideration may be postponed, or any other subsidiary motion may be applied to it.

Sec. 368. Form of the Motion to Postpone Definitely

1. The usual form of the motion is, "I move to postpone consideration (or further consideration) of (describing the question) until (stating time)," or "I move that the consideration (or further consideration) of (describing the question) be postponed until (stating the time)."

2. The motion should either specify the hour or the order of business to which the question is to be postponed, as "at 10 a.m.," or "following second reading" on a certain day.

3. If it is desired also to set the question as a special order, the motion might be "I move that the question be postponed and made a special order for (stating the time)."

Sec. 369. Limited Debate Permitted on Motion to Postpone Definitely

1. On the motion to postpone to a definite time, the question of postponement is open to debate, but the main question is not. The merits of the main question must

Section 368—
Sturgis, pp. 191, 192; Hughes, Sec. 317.

not be referred to any more than is necessary to enable the house to determine the propriety of the postponement. The theory upon which debate on the question postponed is prohibited is that the effect of the motion is merely to defer debate on the question. The purpose of the motion would be entirely lost if discussion of the merits of the bill were permitted at this stage.

2. The previous question and the motions closing, limiting or extending the limits of debate may be applied to the motion to postpone definitely, but these motions, when so applied, do not affect any other pending motions.

Sec. 370. Application of Subsidiary Motions to Motion to Postpone Definitely

A. Motion to Lay on the Table

1. The motion to postpone definitely, or to a certain time, may not be laid on the table, but when it is pending, the main question may be laid on the table, which carries with it and defeats the motion to postpone.

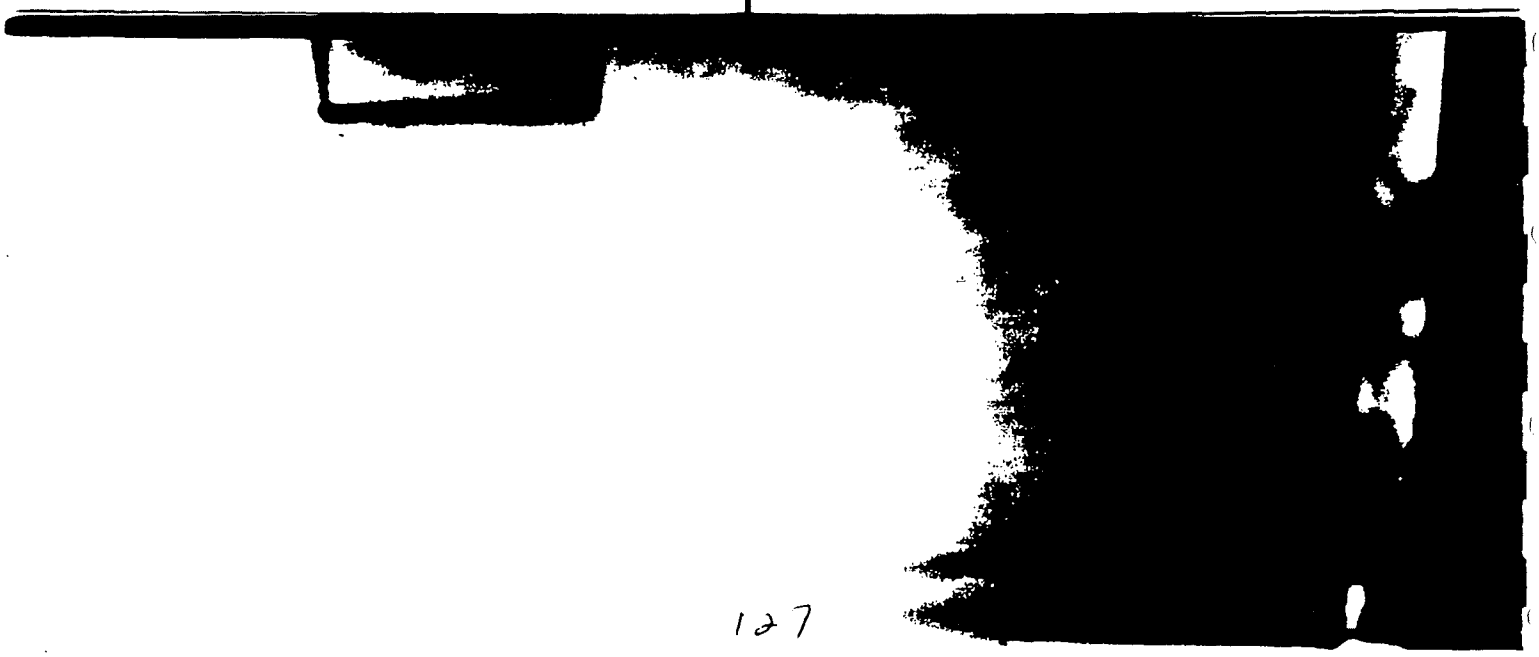
B. Reference to Committee

2. The motion to postpone definitely may not be referred to committee, but when the motion to refer or commit is pending and the main question is laid on the table, the motion to refer or commit is carried with it and defeated.

Section 369—
Hughes, Secs. 316, 733; Sturgis, p. 193; N. Y. Manual, pp. 364, 463; Reed, Secs. 118, 201; Tilson, p. 64; Cushing, Sec. 70a.

Section 370—
Paragraph 1—
Hughes, Sec. 316; Sturgis, p. 194.

Paragraph 2—
Sturgis, p. 194; Hughes, Sec. 316.



C. Amendment

3. The motion to postpone definitely may be amended as to the time, and also by making the postponed question a special order, but not otherwise.

4. The better procedure appears to be to regard proposals for postponement to different times as alternative propositions, putting the question on the longest time first.

D. Postponement

5. The motion to postpone definitely cannot itself be postponed either to a certain time or indefinitely.

6. A motion to postpone to a certain day having been voted down, the presiding officer may entertain a motion to postpone to a different day.

Sec. 371. Vote Required on Motion to Postpone Definitely

1. The simple motion to postpone definitely requires a majority vote.

2. In legislative and administrative bodies the general rule is that special orders require only a majority vote. But if a motion to postpone also sets the question as a special order and, by rule, a two-thirds vote is required

Section 370—Continued
Paragraph 3—
Jefferson, Sec. XXXIII; Sturgis, p. 193, 194; Hughes, Sec. 316; Reed, Secs. 118, 165, 201; Cushing, Sec. 176.
Paragraph 4—
Cushing, Secs. 176, 178.
Paragraph 5—
Sturgis, p. 194; Hughes, Sec. 316.
Paragraph 6—
Mass. Manual, p. 620.
Section 371—
Sturgis, p. 193; Hughes, Sec. 316.

to set a special order, then a motion to postpone and set as a special order requires a two-thirds vote.

3. A majority vote only is required to amend the motion to postpone, even though the amendment also sets the question as a special order, and under a special rule a two-thirds vote is required to set a special order.

Sec. 372. Reconsideration and Renewal of Motion to Postpone Definitely

1. The motion to postpone may be renewed after intervening business or progress in debate.

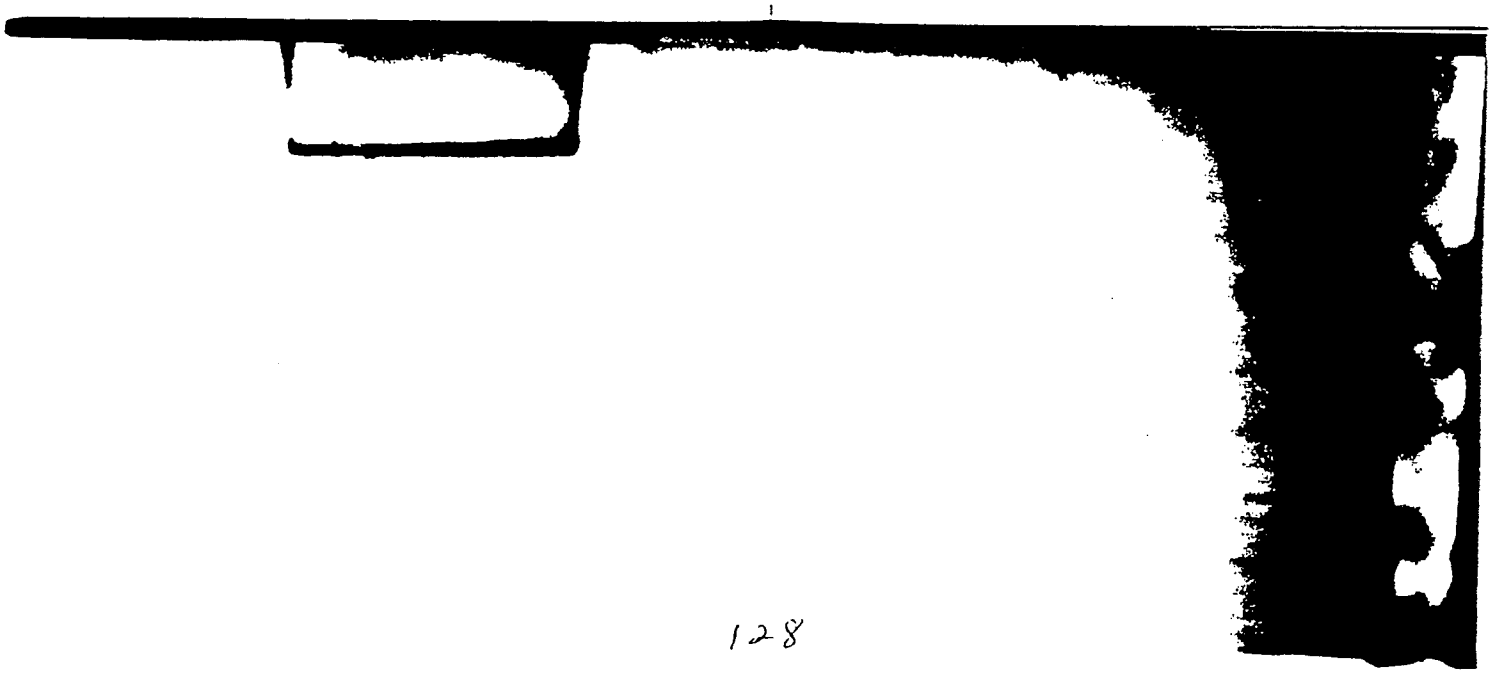
2. If a question has been postponed and it is desired to give it further consideration before the time to which it was postponed it may be taken up without reconsidering the vote by which it was postponed. Public bodies retain control over the business before them. In private associations the usual practice would be to require a suspension of their rules.

Sec. 373. Postponed Question May Become an Order of the Day

1. The effect of postponing a question to a certain day and hour is to make it a general order of the day for the time to which it was postponed, and if it is not then disposed of, it becomes unfinished business. Postponing a question to a certain hour does not make it a special order unless so specified in the motion.

2. When a question has been postponed to a certain time, it becomes an order of the day for that time.

Section 372—
Sturgis, p. 193; Hughes, Sec. 316; Cushing's Legislative Assemblies, Sec. 1376.
Section 373—
Sturgis, p. 192; Cushing's Legislative Assemblies, Sec. 1377.



Sec. 374. Definite Distinguished From Indefinite Postponement

1. The time to which a question is postponed must fall within the session. Neither the motion to postpone definitely nor an amendment to this motion is in order which would have the effect of an indefinite postponement, that is, to defeat the measure by postponing it until after final adjournment or until it is too late to act upon it, or until action would be ineffective.

2. When the motion to postpone is, in fact, a motion to postpone indefinitely, and that motion is in order at the time, the presiding officer may treat the motion as such at his discretion, but it cannot be recognized as a motion to postpone definitely.

Section 374—
Jefferson, Sec. XXXIII; Sturgis, p. 192; Cushing, Sec. 70.

CHAPTER 38

MOTION TO REFER OR COMMIT

Sec. 378. Purpose of Reference to Committee

1. The purposes of referring a question to committee may be:

(a) To secure a more thorough study of the question than the time of the larger organization would permit.

(b) To secure an investigation or to give time and an opportunity to conduct an investigation.

(c) To secure privacy for the consideration of a delicate question.

(d) To give a better opportunity for persons to appear either for or against the matter and to hear and question witnesses to an extent that would not be possible in committee of the whole.

(e) To permit more informal consideration.

(f) To revise or redraft a proposal or a report and put it into better form.

(g) To keep the consideration more completely within the control of a particular group.

(h) To delay consideration of the question until a more favorable opportunity.

(i) To prevent action on the question or to delay action.

2. In legislative bodies it is good practice to refer every main question to a committee for its consideration unless immediate action is required.

Section 378—
Sturgis, p. 188; Jefferson, Sec. XXXIII; Cushing, Secs. 73, 181a, 183; Reed Sec. 119; Hughes, Sec. 331.

Sec. 379. Precedence of Motion to Refer

1. The motion to refer a pending question takes precedence of the motions to amend, to postpone indefinitely, and main motions; and yields to all the other subsidiary motions and to all privileged and incidental motions.

2. The motion to refer to committee is in order at the time a question is brought up for consideration, or at any time during the consideration of the question.

3. The motion to refer, when made with reference to a question not pending, takes precedence as a main motion.

Sec. 380. Application of Motion to Refer

1. The motion to refer or commit may be applied to any main motion. Procedural motions concerning pending questions are decided by the body as they arise and not referred to committee. They do not require study by committees and may be made when they are needed.

Sec. 381. Reference of Bills to Committee

1. Bills or other matters may be referred to standing or special committees not yet appointed.

Section 379—
Paragraph 1—
Jefferson, Sec. XXXIII; Hughes, Sec. 330; Cushing, Sec. 70a; Reed, Sec. 119.
Paragraph 2—
Sturgis, p. 190.
Paragraph 3—
Sturgis, p. 189.
Section 380—
Paragraph 1—
Jefferson, Sec. XXXIII; Sturgis, p. 190; Hughes, Sec. 330; Reed, Sec. 10.
Section 381—
Paragraph 1—
Hughes, Sec. 840.

2. Where the rules require that all bills be referred to committee, a bill which has been introduced by a committee is not required to be referred back to a committee for further consideration.

Sec. 382. Correction of Errors in Reference to Bills

1. A bill, which has been referred to the wrong committee, may be re-referred by the presiding officer upon unanimous consent, or upon a motion from the floor; or the bill may be reported back by the committee to which it was referred with the recommendation that it be re-referred to the appropriate committee.

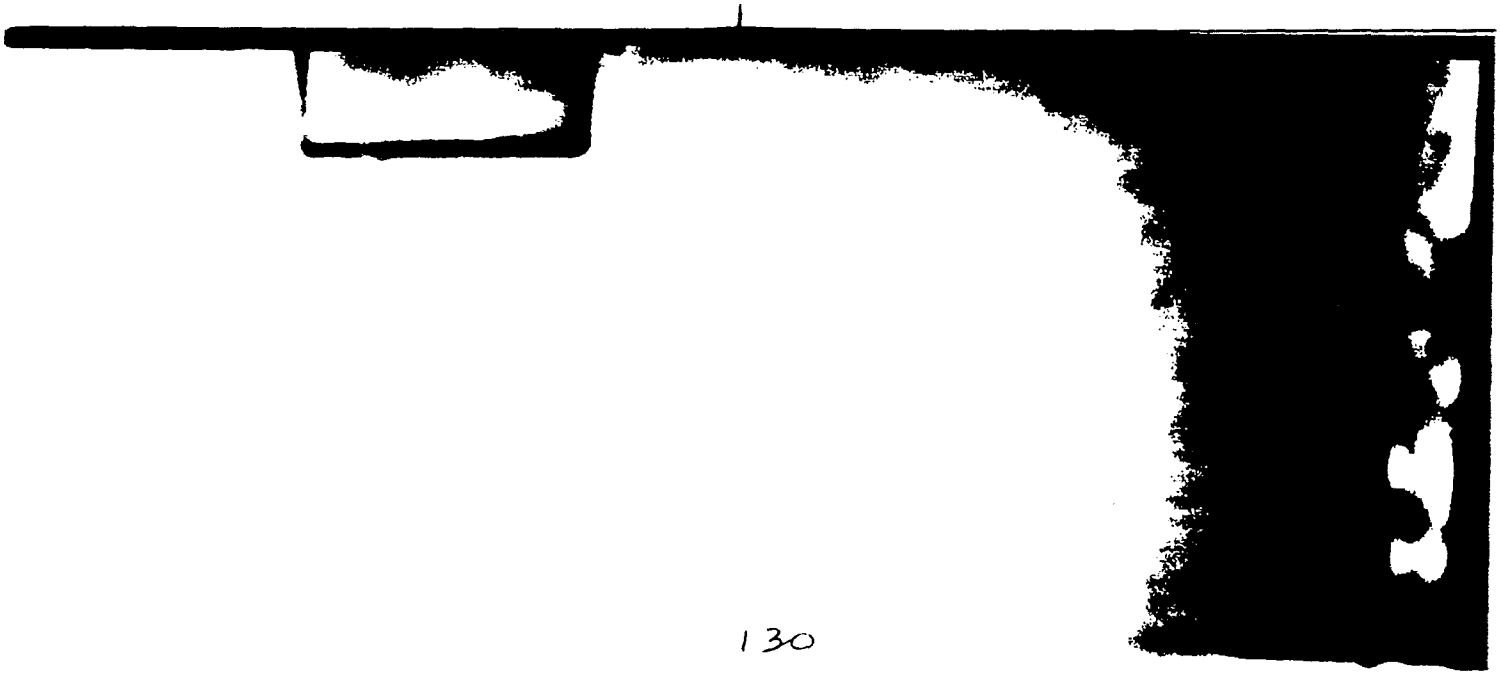
Sec. 383. Variation From Rule Regarding Reference of Bills

1. When the matter of reference of bills is covered by rule, any variation from this rule, made by a motion to refer, is, of course, equivalent to a suspension of the rules. The usual and better form of rule is to provide for legislation to be referred to particular committees subject to the right of the body to direct otherwise.

Sec. 384. Re-reference of Bills

1. A bill may be re-referred to a committee which originally considered it, or to any other committee including the committee of the whole, and when re-referred without limitation, the entire bill is open to consideration by

Section 381—Continued
Paragraph 2—
N. Y. Manual, p. 416.
Section 382—
Hughes, Secs. 49, 792.
Section 384—
Paragraph 1—
Hughes, Sec. 803.



the committee; or when amendments are proposed to a bill, the committee may be restricted to consideration of the amendments only.

2. After a bill has been reported by a committee, it should be recommitted only in cases of importance, and for special reasons. It is usually referred back to the same committee. When a measure is recommitted before the report has been considered or approved in the house, the whole question is again before the committee and the first report of the committee is disregarded.

3. It is advisable to refer a bill back to committee when numerous amendments are to be proposed or substantial revision of the bill is required.

Sec. 385. Motions to Take From Calendar and Refer

1. A motion to take a bill from the calendar and refer it to a committee takes precedence over the main question. This motion is in order whenever the bill to which it refers is reached on calendar and is before the house. This motion requires a majority vote of the members present and voting, but is usually approved by unanimous consent.

Sec. 386. Form of Motion to Refer

1. The motion to refer to committee may vary substantially in form. The most usual form is, "I move that the

Section 384—Continued
Paragraph 2—
Jefferson, Sec. XXVIII.
Paragraph 3—
Hughes, Sec. 882.
Section 385—
Hughes, Sec. 488.
Section 386—
Sturgis, pp. 188, 189.

(bill, resolution, etc.) be referred to the committee on (naming the committee)." Or, in case of the reference of a question to a special committee, the motion may be, "I move that (the bill, resolution, etc.) be referred to a committee of five to be appointed by the president (or speaker or chairman) with the following instruction * * *" Details of the motion may be added or changed by amendments, although proposed changes are usually not treated as amendments but as alternative propositions.

2. Motions to consider in committee of the whole or "informally" are equivalent to motions to refer to committee, and in these cases the motions may be, "I move that the house (or senate or council) do now resolve into committee of the whole for the purpose of considering (specifying the measure or question)," or, "I move that the (specifying the measure or question) be considered informally," or "as if in committee of the whole."

3. All the rules in regard to the motion to commit or refer, except where stated to the contrary, apply equally to the motions to "go into committee of the whole," to "consider informally," and "to recommit."

Sec. 387. Choice of Committee for Reference

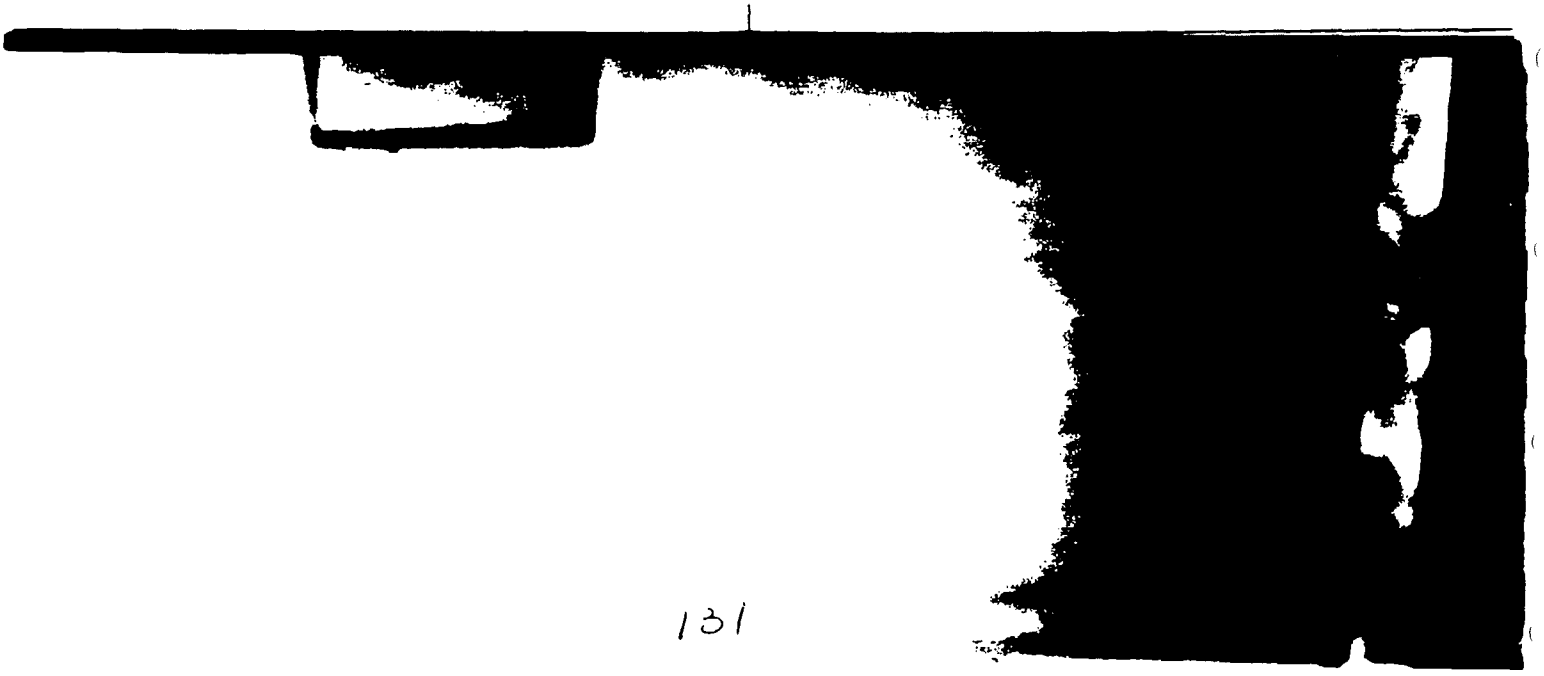
1. When the motion to refer is modified and different committees are proposed, the question should be put in the following order:

(a) Committee of the whole.

(b) Standing committees.

(c) Special committees.

Section 387—
Paragraph 1—
Hughes, Sec. 337.



2. When two or more standing committees are named, the question is first put as to the last committee named unless the reverse is required by rule.

3. When it has been decided to refer a question to a committee and only two committees are proposed, or when two committees remain, a negative vote on the first proposed is equivalent to an affirmative on the second or remaining committee.

Sec. 388. Debate and Application of Subsidiary Motions to Motion to Refer

1. The motion to refer is debatable only as to the propriety of committing the main question, and does not open the main question to debate. The motion to refer with instructions is debatable as to the instructions.

2. The motion to refer to committee may not be amended, except as to the committee or as to instructions to the committee.

3. Reference of a measure to committee when amendments are pending, carries the amendments to the committee with it. A motion to refer amendments to committee is not technically in order but may be accepted as referring to the main question and all pending amendments. If adopted they will carry with them the question or measure to which the amendments were proposed.

Section 387—Continued
Paragraph 2—
Hughes, Sec. 337; Cushing, Sec. 74.
Paragraph 3—
Hughes, Sec. 337.

Section 388—
Paragraph 1—
Hughes, Sec. 330; Reed, Secs. 120, 201; Tilson, p. 65; House Manual 71st Congress, Sec. 770; Cushing, Sec. 70a; Sturgis, p. 190.
Paragraph 2—
Hughes, Sec. 330; Cushing, Sec. 181; Reed, Secs. 120, 165, 201; Sturgis, p. 190.
Paragraph 3—
Reed, Sec. 166; Sturgis, p. 190.

4. The motions to close, to limit, or to extend the limits of debate, may be applied to debate on the motion to refer without affecting debate on the main question.

5. The motion to refer to committee may not be laid on the table but if the main question be laid on the table, it carries a pending motion to refer or commit with it.

6. The motion to refer to committee may not be postponed to a certain time but if the main question is postponed, any pending motion to refer to committee is carried with it.

Sec. 389. Vote Required to Refer Question to Committee

1. A majority vote is required to refer a question to committee.

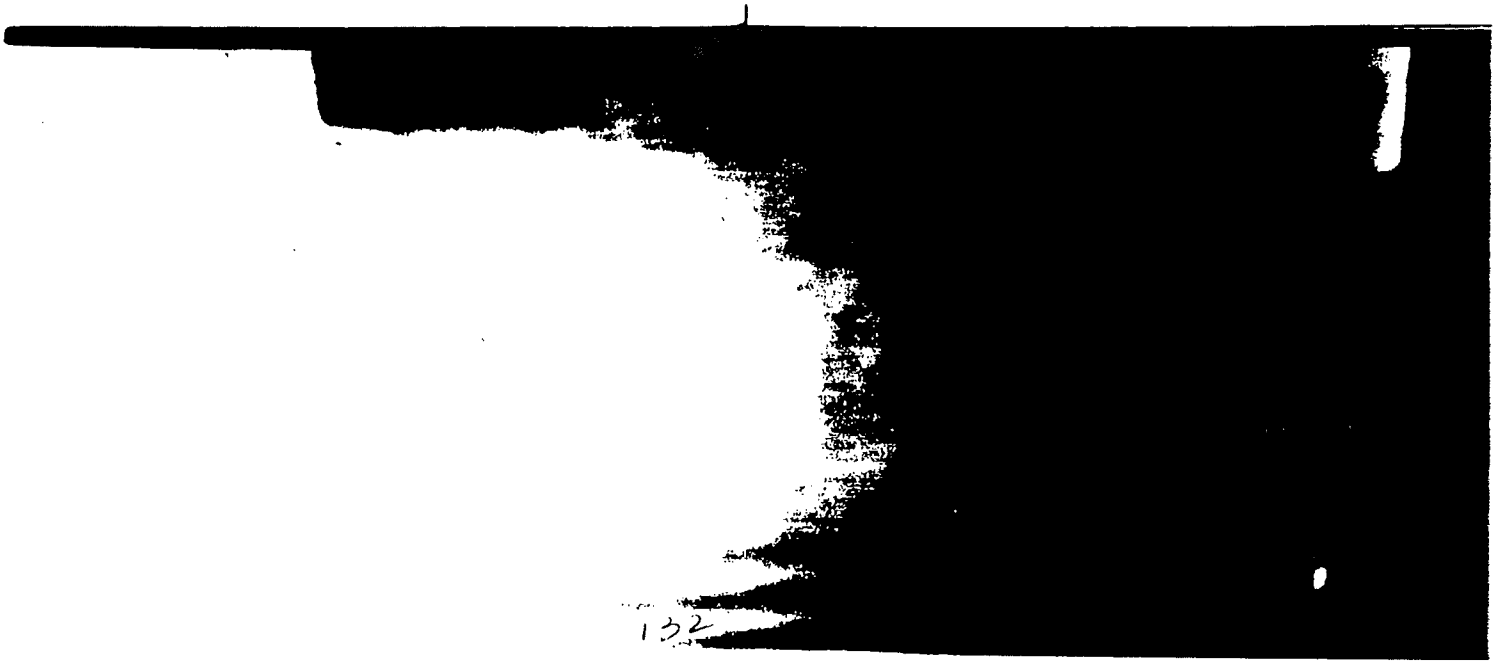
2. Whether a question shall be referred to committee, and if so, to what committee, are usually decided by unanimous consent.

Sec. 390. Reconsideration and Renewal of Motion to Refer

1. The motion to refer may be renewed after intervening business except that a motion to refer a bill to committee may not be renewed at the same stage of the bill.

Section 388—Continued
Paragraph 4—
Cushing, Sec. 70a; Sturgis, p. 190.
Paragraph 5—
Hughes, Sec. 330; Sturgis, pp. 190, 203.
Paragraph 6—
Jefferson, Sec. XXXIII; Sturgis, pp. 190, 203; Hughes, Sec. 330.

Section 389—
Paragraph 1—
Hughes, Sec. 330; Sturgis, p. 190.



2. The motion to refer to committee may not be reconsidered but the matter referred to committee may be withdrawn.

Sec. 391. Withdrawing Questions From Committee

See Sec. 491, Withdrawing Bills From Committee.

1. When it is desired to withdraw a question from committee, a motion to that effect can be made and, if carried, brings the question back before the body. A motion to withdraw a question from committee requires a majority vote.

2. A matter withdrawn from a committee may be acted upon by the body or referred to another committee.

Section 390—
Hughes, Secs. 330, 770; Sturgis, p. 190.
Section 391—
Sturgis, pp. 216-218.

CHAPTER 39

MOTION TO AMEND

See also Sec. 731, Amendment of Bills, and Sec. 687, Consideration of Committee Amendments.

Sec. 395. Test of Amendability of Question

1. The following is a convenient test to determine whether a motion or other proposition can be amended. If it could properly have been submitted in a different form it can be amended. If the proposition could not have been stated in a different form it cannot be amended. A motion for the previous question or to lay on the table or postpone indefinitely cannot be amended because there is no other proper form for these motions, but the motion to recess or to restrict debate or to postpone definitely can be amended because these have more than one proper form. A motion to recess for 10 minutes, for example, might have been made as a motion to recess for 30 minutes or for 5 minutes, and so can be amended.

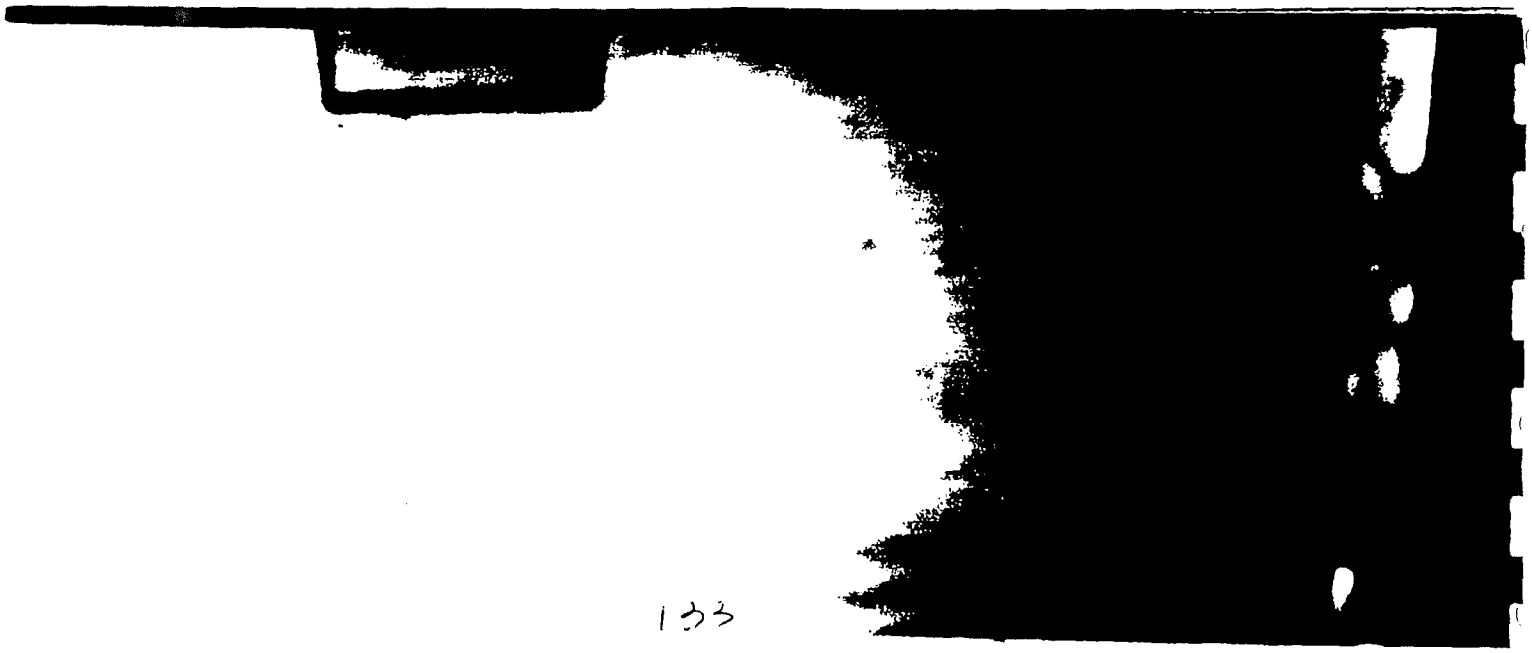
2. Certain questions are not of a type capable of amendment. Examples are: points of order, parliamentary inquiries, calls for division to verify a vote, requests of any kind, communications, and reports. None of these are proposals for action by the body.

Sec. 396. What Motions May Be Amended

1. Every original main motion may be amended, and all other motions may be amended, except those contained in the following list:

(a) To adjourn (except when it is qualified, or if made when there is no provision for a future meeting). *See Sec. 207.*

Section 396—
Paragraph 1—
Sturgis, p. 181.



(b) Appeals.
See Sec. 232.

(c) Points of order.
See Sec. 246.

(d) Call for the orders of the day.
See Sec. 259.

(e) To object to consideration of a question.
See Sec. 298.

(f) Demand for a division of a question.
See Sec. 314.

(g) To grant leave to withdraw a motion.
See Sec. 275.

(h) A parliamentary inquiry or request of any kind.
See Secs. 252, 254.

(i) To take up a question out of its regular order.
See Sec. 713. See also Chapter 29, Secs. 279-287, Suspension of the Rules and Chapter 31, Secs. 302-304, Order and Manner of Considering Questions.

(j) To suspend the rules.
See Sec. 283.

(k) To lay on the table.
See Sec. 335.

(*l*) To take from the table.
See Sec. 492.

(m) The previous question.
See Sec. 349.

(n) To amend an amendment.
See Sec. 409.

(o) To fill a blank.
See Sec. 418.

(p) To postpone indefinitely.
See Sec. 434.

(q) Call for division of the house.
See Sec. 533.

Section 396—
Paragraph 1—
With reference to the right of amendment see Cushing's Legislative Assemblies, Secs. 1311-1321.

(r) To reconsider.
See Sec. 472.

(s) A notice of any kind.

(t) Communications to the body.
See Sec. 148.

(u) Reports to the body.
See Chapter 64, Secs. 272-689, Committee Reports.

2. An amendment to anything already adopted is not a subsidiary motion. Such a proposition is a main motion subject to amendments of the first and second degrees.

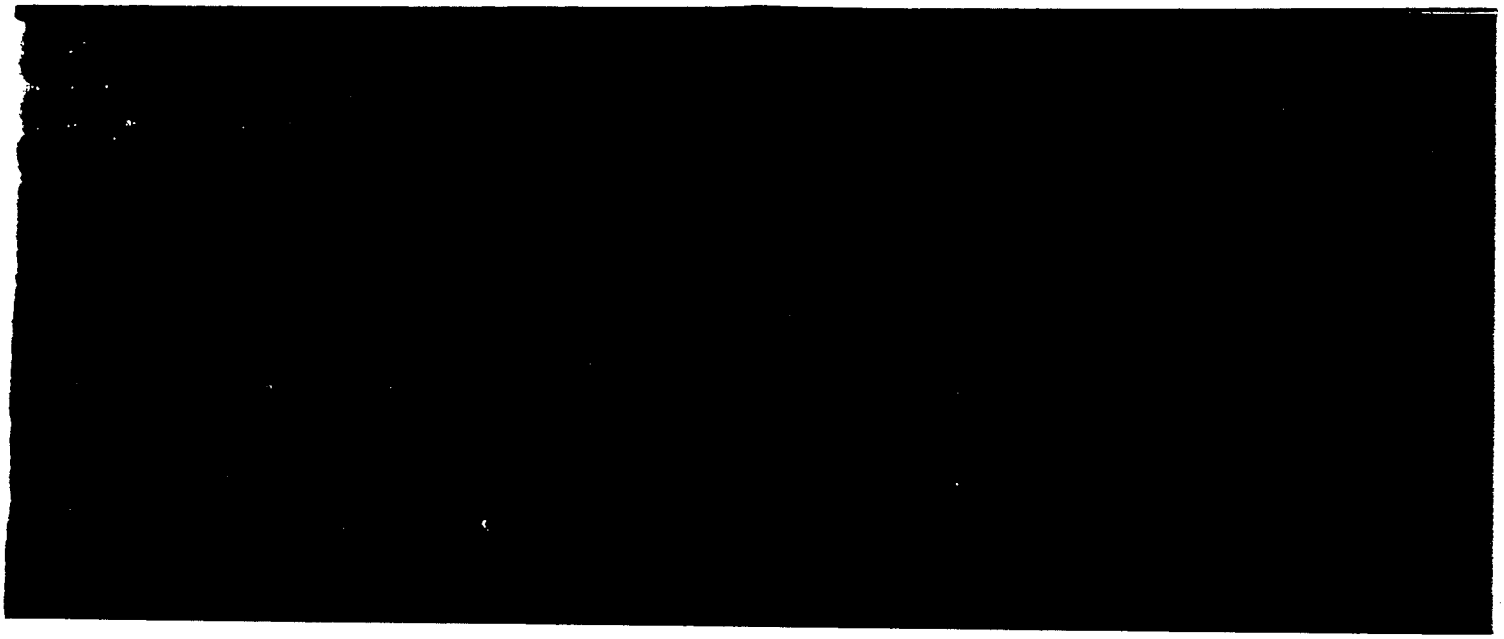
Sec. 397. Precedence of Motion to Amend and of Amendments

1. A motion to amend takes precedence of the motion to postpone indefinitely, and of main motions, and yields to all other subsidiary, and to privileged and incidental motions.

2. An amendment takes precedence over the original motion out of which it arises and must be voted upon before the original motion.

3. A measure should be considered in a progressive order, and amendments should be proposed in the order that they would occur in the amended measure. An exception to this occurs when a group of amendments are necessary to accomplish a general purpose. They may be proposed and voted upon as a group.

Section 397—
Paragraph 1—
Sturgis, p. 187.
Paragraph 2—
Casler v. Tanzer (1929), 234 N. Y. Supp. 571.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1305; Hughes, Sec. 373.



4. When a question is not being considered seriatim the first amendment proposed will be the first amendment considered.

5. A motion to amend a paragraph takes precedence over a motion to approve, to insert or to strike out the paragraph, and a motion to amend a section takes precedence over a motion to approve, to insert or strike out a section.

6. It is a matter of practice to consider committee amendments before amendments from the floor are considered.

Sec. 398. Decision on Amendment Is Final

See also Chapter 42, Secs. 450-473, Motion to Reconsider.

1. An amendment, once adopted, may not thereafter be changed or modified, except by reconsideration of the vote by which it was adopted.

2. When a proposed amendment has been defeated, the same amendment may not be proposed again without first reconsidering the vote by which the amendment lost. It is, therefore, important that every amendment be in final form before being voted upon.

Section 397—Continued
Paragraph 4—
Cushing's Legislative Assemblies, Sec. 1331.
Paragraph 5—
Jefferson, Sec. XXXV; Hughes, Sec. 401; N. Y. Manual, p. 471.
Paragraph 6—
Hughes, Sec. 394.
Section 398—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1307; Sturgis, p. 186; Hughes, Sec. 375; Cushing, Secs. 98, 251.
Paragraph 2—
Cushing, Sec. 1308; Sturgis, p. 186; Hughes, Secs. 376, 381.

3. If an amendment, inconsistent with one already agreed to, is proposed, it is a ground for rejection by the body. The presiding officer cannot rule it out of order however, without submitting the decision to the body. Whether a proposed amendment is inconsistent with one already adopted, is a matter for decision by the body.

Sec. 399. Laying Motion to Amend on the Table

1. It is not in order to lay an amendment on the table. Under the practice of some bodies, however, a motion to lay an amendment on the table is permitted since it has the effect of laying the principal motion, with all adhering motions, including the proposed amendment, on the table.

2. Some legislative bodies provide, by rule, that an amendment may be laid on the table without affecting the main question. The purpose of such a rule is to provide a simple means of disposing of proposed amendments without debate.

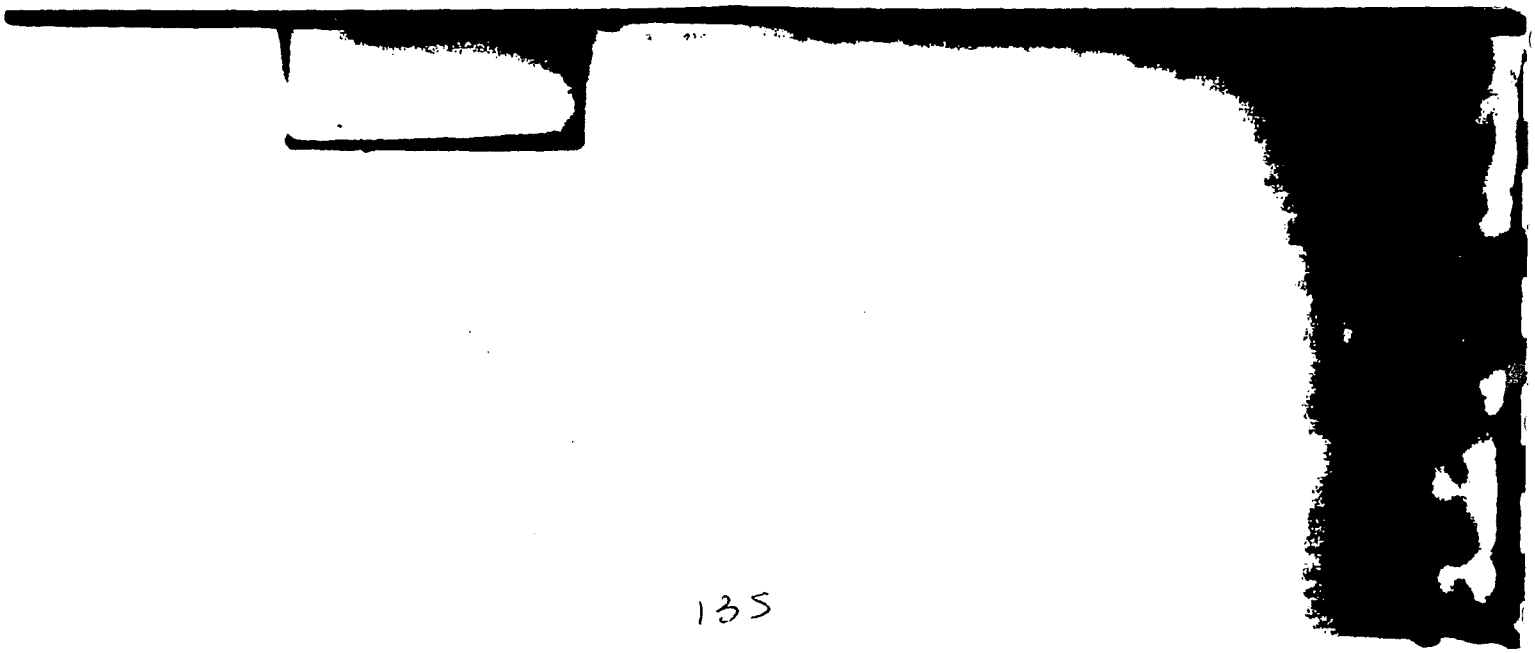
Sec. 400. Form of Amendments

1. Great latitude in the form of amendments must be permitted. It is necessary that the amendments be intelligible and it is desirable that they should be incapable of misinterpretation.

2. In form, amendments may be divided into the following elements:

(a) To add (that is to place at the end.)

Section 398—Continued
Paragraph 3—
Jefferson, Sec. XXXV; N. Y. Manual, p. 406; Hughes, Sec. 402.
Section 399—
Hughes, Sec. 361; N. Y. Manual, p. 408.



(b) To insert.

(c) To strike out.

(d) To strike out and insert, or to substitute.

3. The last form is a combination of the previous two and cannot be divided, because the striking out and inserting represent one act only—to substitute.

4. Amendments to bills are usually submitted in writing. Several amendments may be submitted on the same paper. When so submitted, amendments are usually given a title, as, for example, "Senate amendments to House Bill No. _____." The following are examples of the form of individual amendments:

(a) On page _____, line _____, of the printed bill, after the words _____, insert the words _____.

(b) On page _____, line _____, of the printed bill, after the words _____, strike out the words _____, and insert the following: _____.

(c) On page _____, line _____, of the printed bill as amended on _____, strike out lines _____ to _____, inclusive, and insert in place thereof the following: _____.

5. Amendments to resolutions are usually less formal. An amendment may be in the following form: "I move that the resolution be amended (or to amend the resolution) by inserting the word _____ after the word _____ in the first line of the second paragraph," or, particularly in brief motions, it may be simplified to "I move to insert _____ after _____." A motion to insert, or to strike out, should always specify the word before or after which

Section 400—
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1304; Sturgis, p. 180; Reed, Sec. 132; Cushing, Sec. 94.

the insertion is to be made, or otherwise definitely indicate the place.

6. Amendments to motions may be still more informal. When, for example, a motion to recess for 10 minutes is pending a member may properly say: "I move that the motion be amended to 'recess for 30 minutes' instead of '10 minutes'."

7. Amendments offered from the floor to any written proposal must be in writing if required by the presiding officer or any member.

8. When written amendments are submitted, it is proper to submit a whole series of amendments at the same time and on the same paper, a member having the right to demand a separate vote on certain or on any of the amendments or groups of amendments which relate to different subjects.

See Chapter 23, Secs. 220-226, Division of Questions.

Sec. 401. Frivolous and Improper Amendments

1. An amendment which is frivolous or absurd is not in order, and the presiding officer may refuse to state amendments which, in his opinion, are frivolous or absurd.

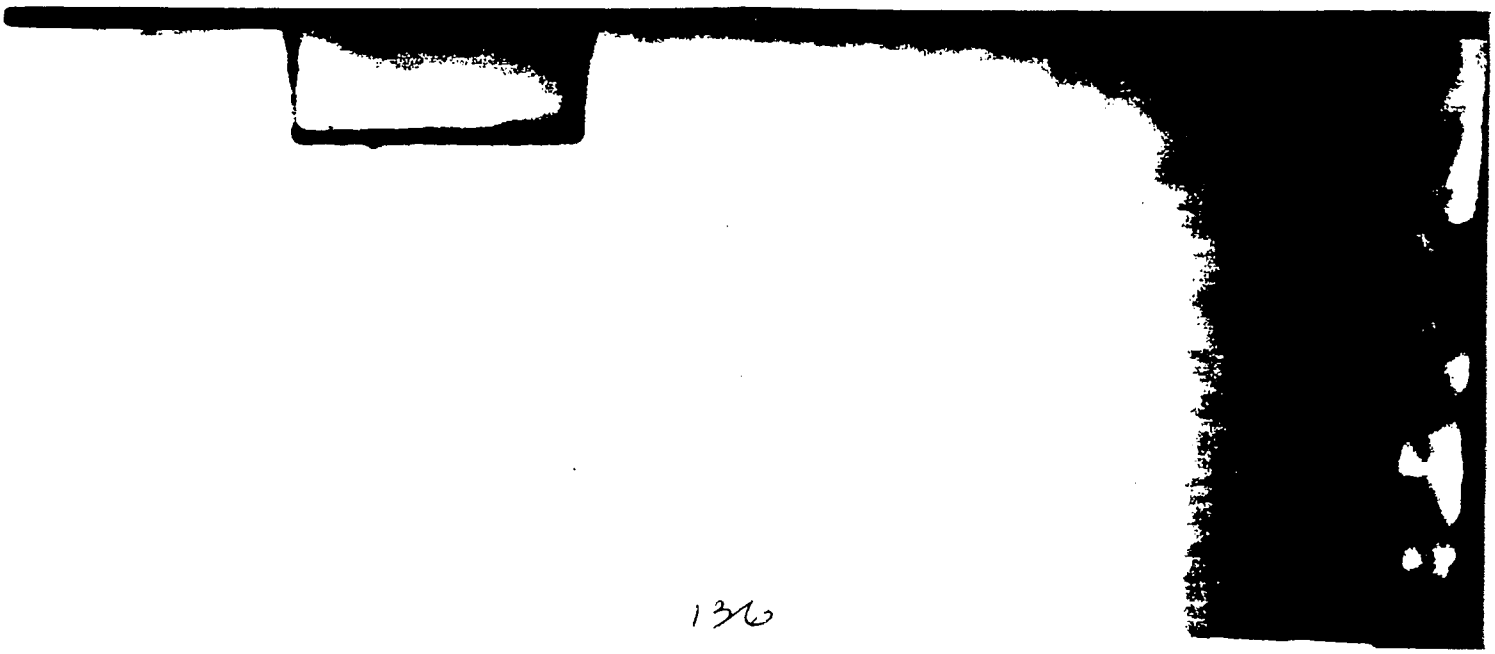
2. A motion is not in order which would change one kind of motion into another kind or which would substitute one kind for another kind.

3. A motion striking out the enacting or resolving clause, or so changing the proposition that no rational proposition would be left before the house, is not in order.

Section 400—Continued
Paragraph 7—
Hughes, Sec. 361.

Section 401—
Paragraph 1—
Hughes, Sec. 429.

Paragraph 3—
Reed, Sec. 157.



This is, however, a procedure used for defeating bills in some state legislatures. A bill loses its character as such when the enacting clause is stricken out and is "dead."

4. An amendment which would put before the house a question identical with one previously decided by the house during the session, whether in an affirmative or in a negative form, is not in order.

See Sec. 398, Decision on Amendment Is Final.

5. The presiding officer should never rule an amendment out of order unless he is certain that it is. In case of doubt he should entertain the amendment, subject to the right of a member to raise a point of order, or he should submit to the house the question of whether the amendment is in order.

See Sec. 242, Limitation on Use of Points of Order.

Sec. 402. Amendments Must Be Germane

1. Every amendment proposed must be germane to the subject of the proposition or to the section or paragraph to be amended, and an amendment is not in order which is not germane to the question to be amended. This is, basically, a phase of the rule that each proposition have but one subject and that members have the right to vote separately on each question.

2. To determine whether an amendment is germane, the question to be answered is whether the question is relevant,

Section 401—Continued
Paragraph 4—
Sturgis, p. 186.
Section 402—
Paragraph 1—
Sturgis, p. 182; Hughes, Sec. 380; N. Y. Manual, p. 405; Reed, Sec. 160; Cooley, Constitutional Limitations, p. 169; Heron v. Riley (1930), 209 Cal. 507, 289 Pac. 160.
Paragraph 2—
Hughes, Sec. 411.

appropriate, and in a natural and logical sequence to the subject matter of the original proposal.

3. To be germane, the amendment is required only to relate to the same subject. It may entirely change the effect of the motion or measure and still be germane to the subject.

4. An entirely new proposal may be substituted by amendment so long as it is germane to the main purpose of the original proposal.

5. An amendment to an amendment must be germane to the subject of the amendment as well as to the main question.

6. No independent new question can be introduced under cover of an amendment. But an amendment may be in conflict with the spirit of the original motion, and still be germane and, therefore, in order.

7. The admissibility of an amendment should be judged from the provisions of the text, rather than from the purpose which circumstances may suggest.

8. Whether a proposed amendment is consistent with the measure, motion or question proposed to be amended,

Section 402—Continued
Paragraph 3—
Jefferson, Sec. XXXV; Cushing, Secs. 1302, 1317, 1363.
Paragraph 4—
Hood v. City of Wheeling (1920), 85 W. Va. 578, 102 S.E. 259; State v. Cox (1920), 105 Neb. 175, 178 N.W. 913.
Paragraph 5—
Hughes, Sec. 361.
Paragraph 6—
Sturgis, p. 183; Cushing, Sec. 129; Tilson, p. 71; Reed, Sec. 159.
Paragraph 7—
Hughes, Sec. 402.
Paragraph 8—
Jefferson, Sec. XXXV; Hughes, Sec. 402; N. Y. Manual, p. 406.

is a question to be decided by the body and not by the presiding officer.

Sec. 403. Withdrawing Amendments and Accepting Modifications

See also Chapter 28, Secs. 272-276, Withdrawal of Motions.

1. Either original or substitute amendments may be withdrawn as of right before being stated by the presiding officer, and may be withdrawn after being stated, with the consent of the body.

2. A member has the right to modify a motion or resolution submitted by him at any time before it is stated by the presiding officer, but after it is stated, it is in the possession of the body, and can be modified only with the consent of the body.

3. A request of a member for permission to modify his motion may be granted by unanimous consent, or upon motion if there is objection. The presiding officer may, to expedite business, put the question on granting consent without waiting for a motion.

4. When the mover of a main motion wishes to accept an amendment that has been offered he may say (without obtaining the floor), "Mr. President (or Mr. Speaker or Mr. Chairman), I accept the amendment." If no objection is made the presiding officer announces the question as amended. If anyone objects, the presiding officer states the

Section 403—
Paragraph 1—
Sturgis, p. 217; Hughes, Sec. 394; Reed, Sec. 150.
Paragraph 2—
Sturgis, p. 217; Reed, Sec. 150.
Paragraph 3—
Sturgis, p. 217; Cushing, Secs. 92, 93.
Paragraph 4—
Sturgis, p. 216.

question on the amendment, for it can only be accepted by unanimous consent or upon a majority vote.

5. A request for leave to withdraw amendments is treated the same as a motion to grant the leave, except that the request must be made by the member who proposed the amendments while the motion to grant the leave to withdraw may be made by any member.

6. A motion may be withdrawn and another motion substituted by unanimous consent, in order to express the views of the body as indicated in debate.

7. A person who has proposed an amendment may accept modifications to the amendment, but such acceptance is not binding on the body.

Sec. 404. Amendments Proposed by Committees

1. A committee cannot amend a bill, that power is vested in the body alone, and a committee merely proposes amendments to the body.

2. Committee amendments must be relevant to the general subject matter of the bill referred to the committee in order to be received.

3. When a measure with amendments pending is referred to a committee, it may be reported back with a substitute for the measure. In this case, the presiding

Section 403—Continued
Paragraph 5—
Sturgis, p. 218.
Paragraph 6—
Hughes, Sec. 199; Sturgis, p. 185.
Paragraph 7—
Hughes, Sec. 392; Cushing, Sec. 92; Reed, Sec. 150.
Section 404—
Paragraph 1—
N. Y. Manual, p. 405.
Paragraph 2—
Hughes, Sec. 423.

officer should first put the question on the amendments which were pending when the measure was committed, and then on the substitute recommended by the committee.

Sec. 405. Correction of Section Numbers and Marginal Notes

1. The early rule was that the number prefixed to the section of a bill and the numbers prefixed to paragraphs and other divisions, being merely marginal indications and no part of the text of the bill or other proposition, might be corrected by the secretary or clerk, when necessary, without a motion to amend being adopted by the house. The modern practice, and the only safe one, is that no legislative proposal be changed in any way except by action of the body.

Sec. 406. Correction of Minutes

See also Sec. 695, Manner of Correcting Minutes.

1. Minutes are usually corrected (amended) informally, the presiding officer directing the correction to be made when suggested, but, if objection is made, a formal vote is necessary for the amendment.

2. The minutes may be corrected whenever the error is noticed, regardless of the time which has elapsed, and only a majority vote is required for the adoption of the corrections or amendments, even though the minutes have previously been approved and it is too late to reconsider the vote.

Section 405—
Jefferson, Sec. XXXV; Cushing, Sec. 91; Reed, Sec. 155; Cushing's Legislative Assemblies, Sec. 1361.

Section 406—
Paragraph 1—
Sturgis, p. 100.

Sec. 407. Amendments to Titles of Bills

See also Sec. 751, Amendment of Bills.

1. When a bill is debated and amended on the floor of the house, it is the practice for the presiding officer, immediately following the passage of a bill, to ask if there are amendments to the title. If none are proposed, the bill is ordered transmitted to the other house. If amendments are proposed, they may be adopted, and then the bill ordered transmitted to the other house. When a committee presents amendments to a bill any necessary amendment to the title should be presented with the other amendments. A motion to amend a title of a bill is not debatable.

Sec. 408. Amendments of Rules

See also Chapter 29, Secs. 279-287, Suspension of the Rules.

1. The amendment of rules usually requires notice and a two-thirds vote, and there are sometimes other or further restrictions than on the amendment of bills, resolutions, or motions. The procedure for the amendment of the rules of a house is usually provided in the rules themselves. When such provision is made the procedure there given must be followed. A majority vote only is required to amend rules unless the rules require a higher vote.

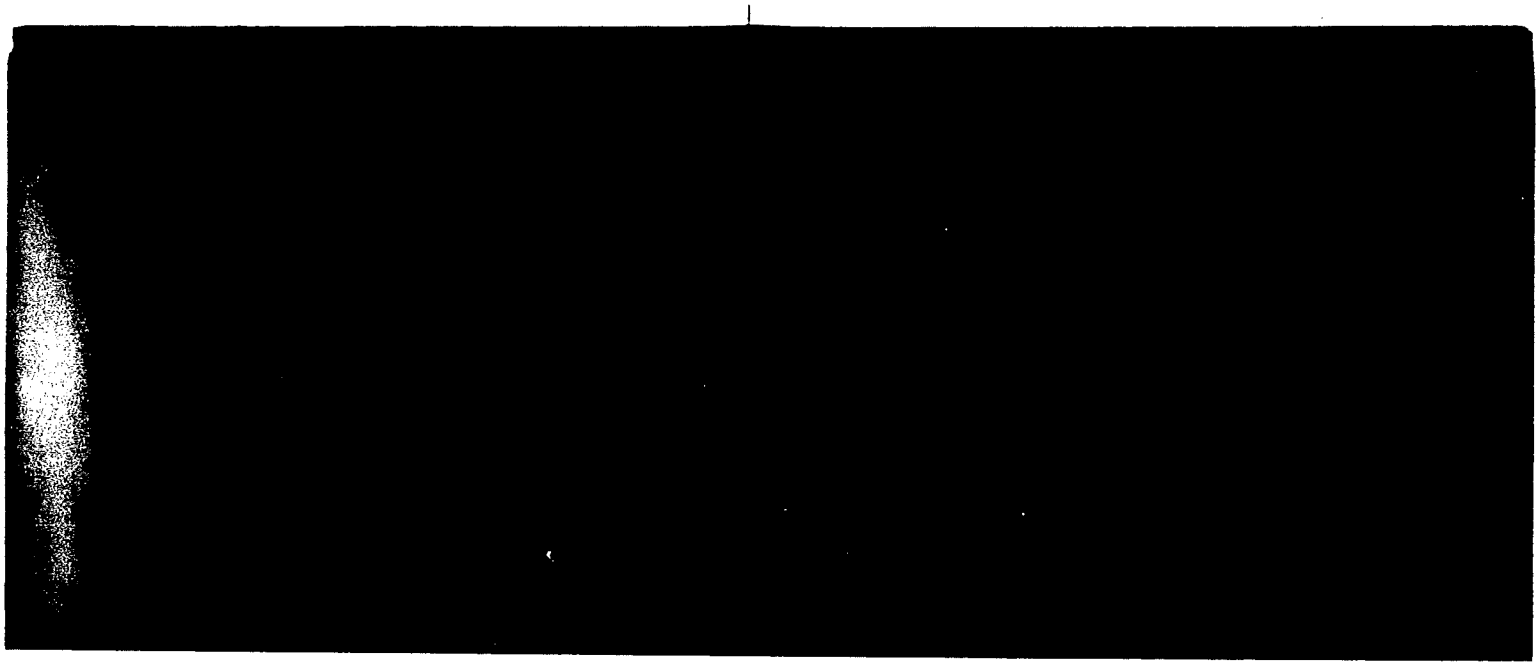
Sec. 409. Amendment of Amendments

1. An amendment may be amended but an amendment to an amendment may not be amended.

Section 407—
Jefferson, Sec. XLII; Hughes, Secs. 935, 936.

Section 408—
Sturgis, p. 95.

Section 409—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1306; Hughes, Sec. 367; Reed, Sec. 133; Sturgis, p. 183; Cushing, Sec. 96.



2. Only one amendment to a proposition (known as an amendment of the first degree), is permitted at a time, and one amendment to that amendment (or an amendment of the second degree), is permitted at one time. An amendment of the third degree would be too complicated and is not in order, because it would lead to too much confusion.

3. While an amendment to an amendment may not be amended, it is proper to adopt a substitute for the amendment and the substitute may be amended. Further amendment may be accomplished by withdrawing the first amendment to an amendment, and substituting another in a modified form.

4. While there can be only one amendment of each degree pending at the same time, any number of amendments may be offered in succession. When an amendment has been offered to an amendment and a member desires to propose a further amendment, it is proper for him to state that, if the pending amendment to the amendment be voted down, he will offer his particular amendment to the amendment.

5. An amendment of one house to an amendment adopted in the other house is only an amendment in the first degree.

Section 409—Continued
Paragraph 2—
Jefferson, Sec. XXXIII; Hughes, Secs. 377, 378; Cushing, Secs. 96, 165; Reed, Secs. 133, 134, 165; Sturgis, p. 183.
Paragraph 3—
Hughes, Secs. 379, 394; Reed, Sec. 150.
Paragraph 4—
Sturgis, p. 184; Reed, Sec. 134.
Paragraph 5—
Hughes, Sec. 431.

Sec. 410. Division of Amendments

See also Chapter 33, Secs. 310-316, Division of Questions.

1. Where the rule is established that a question containing two distinct and separable subjects may be divided upon the demand of a single member, the same rule should be applied to amendments containing more than one subject.

2. A motion to strike out and insert words, both relating to the same subject and together accomplishing a single change in meaning, is indivisible.

Sec. 411. Transposition of Provisions by Amendment

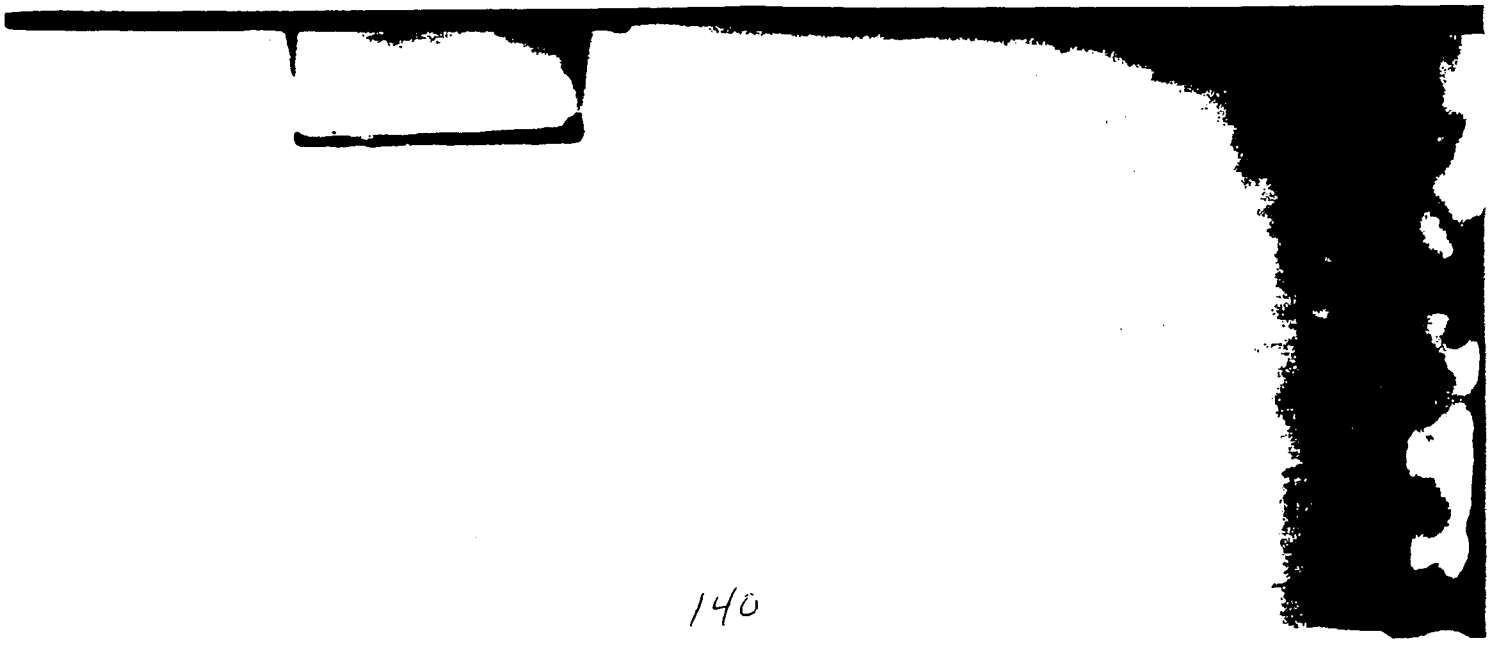
1. In transposing parts of a proposition, the better practice is to strike out the words or provisions at one point and to insert them at the other.

2. If a section is to be transposed from one place to another in the same act, the question may be put on striking it out where it stands, and a separate question put on inserting it in the place desired. The modern legislative practice is to submit both proposals as one amendment since both are required to accomplish the single transposition.

Sec. 412. Amendment by Inserting Words

1. When a motion to insert words is lost, it does not preclude another motion to insert these words, together

Section 410—
Jefferson, Sec. XXXV; Sturgis, p. 186; Hughes, Secs. 382, 403-405; Reed, Secs. 141, 142; N. Y. Manual, p. 471; Tilson, p. 70.
Section 411—
Jefferson, Sec. XXXV; Cushing's Legislative Assemblies, Sec. 1360; Reed, Sec. 155; Cushing, Sec. 90.
Section 412—
Cushing's Legislative Assemblies, Sec. 1332; Sturgis, p. 180; Reed, Sec. 136.



with other words, or in place of other words, provided the new motion presents essentially a new question.

2. When the words are inserted in the place previously occupied by the words struck out, they may differ materially from the latter, provided they are germane to the subject.

3. A motion to strike out words in one place and to insert words to a different effect in another place is not in order, because it constitutes two amendments which should be submitted separately.

Sec. 413. Amendment by Striking Out Words

1. A motion to strike out certain words can be applied only to consecutive words. If it is desired to strike out separated words, it is necessary to strike out by separate motions, or a motion may be made to strike out the entire clause or line containing the words to be struck out, and to insert a new clause or line as desired.

2. If it be proposed to amend by leaving out certain words, it may be moved, as an amendment to this amendment, to leave out a part of the words of the amendment, which is equivalent to leaving them in the question or measure.

3. A motion to strike out certain words is in order after a motion to strike out the same words and insert others has been defeated, and the rejection of one proposition does not preclude the offering of a different one.

4. If the motion to strike out certain words is adopted, the same words cannot be again inserted unless the place

Section 413—
Cushing's Legislative Assemblies, Secs. 1327, 1328, 1330; Jefferson, Sec. XXXV; Cushing, Secs. 111, 113; Reed, Secs. 138, 139, 142; Tilson, p. 66; Hughes, Secs. 383, 384, 390.

or the wording is so changed as to make a new proposition. If the motion to strike out fails, it does not preclude a motion to strike out the same words and insert other words, nor to strike out a part of the words, nor to strike out a part and insert other words; nor to strike out these words with others, nor to do this and insert still other words if in each of these cases the new question is materially different from the old one.

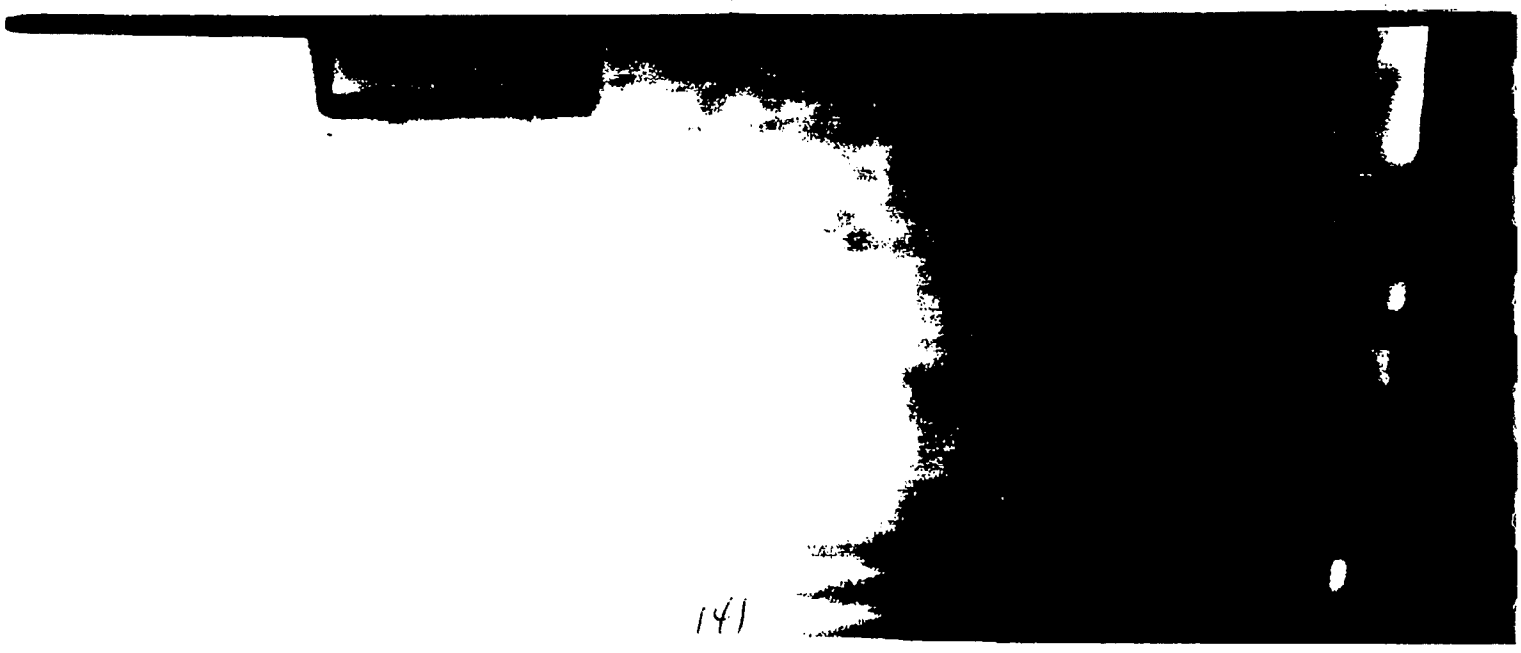
Sec. 414. Amendments Striking Out and Inserting Words

1. After a motion to strike out and insert has been adopted, the inserted words cannot be struck out, nor can the words struck out be inserted, unless the words or place are so changed as to make the question a new one. When such a motion is lost, it does not preclude either of the separate motions to strike out or to insert the same words, as this would simply be equivalent to division of the question; nor does it prevent another motion to strike out and insert, when there is a material change in either the words to be struck out or the words to be inserted, so that the question is not practically identical.

2. When an amendment to strike out or to insert words, or both, is not satisfactory, the proposed amendment should be amended to make a satisfactory amendment before voting on the adoption of the amendment.

3. For purposes of correction of a proposed amendment before voting upon it, it is resolved into its constituent elements, and the words to be struck out are first corrected, after which the words to be inserted are corrected.

Section 414—
Jefferson, Sec. XXXV; Cushing's Legislative Assemblies, Secs. 1335-1340; Sturgis, p. 180; Hughes, Secs. 376, 388; Reed, Secs. 138-140, 142; Cushing, Sec. 125; N. Y. Manual, p. 471; Tilson, p. 70.



After words have been inserted or added, they cannot be changed or struck out except by a motion to strike out the paragraph, or such a portion of it as shall make the question a different one from that of inserting the particular words, or by combining such a motion to strike out the paragraph, or a portion of it, with the motion to insert other words. The principle involved is that, when the body has voted that certain words shall form a part of a measure, it is not in order to make another motion that involves exactly the same question as the one it has decided. The only way to bring it up again is to move to reconsider the vote by which the words were inserted.

Sec. 415. Amendment by Striking Out or Inserting Paragraphs

1. A motion to insert or to strike out a paragraph is an amendment of the first degree, and, therefore, cannot be made when an amendment to strike out or insert words is pending.

2. After a paragraph has been inserted, it cannot be struck out except in connection with other paragraphs so as to make the question essentially a new one.

3. When a paragraph is struck out, it cannot be inserted afterwards, unless it is so changed in wording or place as to present an essentially new question. When a motion to insert or to strike out a paragraph is lost, it does not preclude another motion except one that presents essentially the same question.

4. Although a body has refused to strike out a paragraph, it is in order to strike out a part of the paragraph or otherwise to amend it.

Section 415—
Jefferson, Sec. XXXV; Cushing, Secs. 103, 105, 106; Sturgis, p. 181; Reed, Secs. 138, 143, 144, 148.

5. When it is proposed to insert a paragraph, or part of one, the members favorable to the paragraph may make it as nearly perfect as they can by amendments, before the question is put for inserting it. Also, when it is proposed to strike out a paragraph, the members favorable to the paragraph must first be permitted to make it as nearly perfect as they can by amendments, before the question is put on striking it out.

Sec. 416. Substitution of Paragraphs

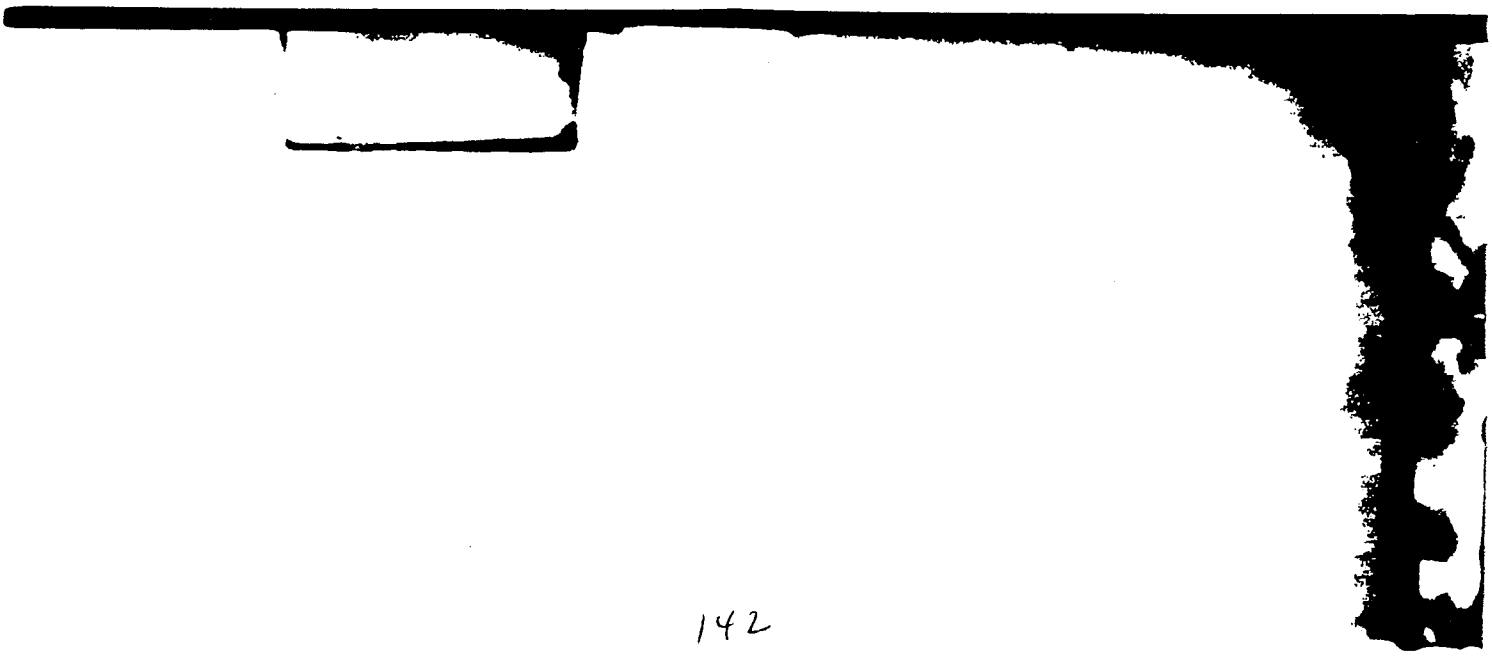
1. A motion to substitute one paragraph for another, after being stated by the presiding officer, is resolved into its two elements for the purpose of amendment, the presiding officer at first entertaining amendments only to the paragraph to be struck out, these amendments being of the second degree. After it is perfected by the members favoring it, the presiding officer should ask if there are amendments to the paragraph to be inserted. When both paragraphs have been perfected by amendments, the question is put on substituting one paragraph for the other.

2. When a motion to substitute is lost, the body has only decided that that particular paragraph shall not replace the one specified. It may be willing to substitute that paragraph for some other paragraph, or that the paragraph retained in the resolution be further amended, or even struck out. But no amendment is in order that presents a question substantially identical with one already decided.

Sec. 417. Consolidation and Substitution of Measures

1. When the matter contained in two propositions might be better put into one, the proper procedure is

Section 416—
Jefferson, Sec. XXXV; Cushing, Sec. 115; Reed, Sec. 145.



to reject one and to incorporate its provisions into the other by amendment. When the provisions would be better distributed into propositions, any part of the bill may be struck out by amendment, and put into a new proposition. When a measure is being considered by sections, a substitute for the entire measure cannot be moved until the sections have all been considered and the presiding officer has announced that the proposition is open to amendment. Even though an entire measure is substituted for another, it is necessary afterwards to vote on adopting the measure. Substitution is only a form of amendment and may be used, so long as germane, whenever amendments are in order.

2. An amendment, striking out the entire bill following the enacting clause and substituting a new bill, does not violate a constitutional provision that amendments may not change the original purpose of an act, unless the substitution changes the original purpose of the act.

3. The method of substituting an entirely new bill by amendment, when the changes by way of amendment are strictly germane to the original, is not unconstitutional, is in accord with universal legislative procedure, and it is not necessary that such a bill, which has been read a

Section 417—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1358; Sturgis, p. 185; Jefferson, Sec. XXXV; Cushing, Sec. 88; Reed, Sec. 155; N. Y. Manual, p. 408.

Paragraph 2—
Reitzammer v. Desha Road Improvement District No. 2 (1919), 139 Ark. 168; 213 S.W. 773; State v. Miller (1854), 3 Ohio St. 475; Nelson v. Haywood County (1892), 91 Tenn. 596, 20 S.W. 1; State v. Cox (1920), 105 Neb. 175, 178 N.W. 913; Brake v. Callison (1930), 122 Fed. 722.

Paragraph 3—
State v. Cox (1920), 105 Neb. 175, 178 N.W. 912; Hood v. City of Wheeling (1920), 85 W. Va. 578, 102 S.E. 259; Reed, Sec. 156.

first and second time before amendment, be again given first and second readings before passage.

See Sec. 722, Three Readings of Amended Bills.

Sec. 418. Alternative Propositions—Filling Blanks

A. Procedure on Filling Blanks

1. The method adopted in filling blanks has sometimes a great advantage over ordinary amendment. In amending, the last proposition made is the first one voted on; whereas, in filling blanks, the first proposition made, or name proposed, is voted on first, except where, from the nature of the case, another order is preferable, and then that order may be adopted.

2. When alternative propositions are submitted, they are treated, not as separate amendments, but as independent propositions, to be voted on successively.

B. Filling Blanks With Names

3. When a name is to be selected, the presiding officer repeats the names as they are proposed so all may hear them, and finally takes a vote on each name, beginning with the first proposed, until one receives a majority vote. When several names are to be selected, and no more names are suggested than required, the names may be inserted without a vote on each name. If more names are suggested than are required, a vote is taken on each name, beginning with the first proposed, until enough to fill the blanks have received a majority vote. If the number of names is not specified, a vote is taken on each name suggested, and all that receive a majority vote are inserted.

Section 418—
Cushing's Legislative Assemblies, Secs. 1354, 1355; Jefferson, Sec. XXXIII; Sturgis, p. 185; Cushing, Secs. 84-87; Hughes, Secs. 413, 414; Reed, Sec. 154; N. Y. Manual, p. 422.

4. Alternative propositions or the filling of blanks are also treated somewhat differently from other amendments, in that different names or numbers for filling the blanks may be proposed by any number of members, no one proposing more than one name or number for each place, except by general consent.

5. Filling blanks with names is like making nominations. Any number may be pending at the same time, not as amendments to each other, but as independent propositions, to be voted on in the order in which they were made until one of the number to be selected receives a majority vote.

C. Filling Blanks With Amounts or Time

6. When filling blanks with amounts or time, it should first be considered whether the greater includes the lesser, and when the greater does include the lesser, the question of the greatest number or longest time should be put first. When the greater does not include the lesser, the smallest number or shortest time should be put first. Thus, if the purchase of specific property is under consideration, the offer of a larger sum includes a smaller sum, for if a certain sum were offered, the offer of any smaller sum would be more acceptable. The question should first be put on largest sums proposed, otherwise there could be no agreement on the amount which would be offered, for the lowest sum would be most acceptable, and its approval would preclude further effort to reach a practical offer. If, however, the question were, for example, the price to be asked for property to be sold, the greater would not include the lesser, because if any specific amount would be acceptable, in this case, it would not mean that any lesser amount would be acceptable. In this case, the question

largest sum proposed would be most acceptable and would be approved, and it would be impossible to reach the concensus of the body as to the proper amount.

7. The more usual practice in Congress in filling blanks, where several amounts are submitted, is to propose an amendment to an amendment, and a substitute, and an amendment to the substitute, if as many as four separate propositions are submitted.

D. Blanks Should First Be Filled

8. When propositions containing blanks are introduced, these must be filled before other motions to amend are entertained.

Sec. 419. Debate on Amendments

1. The motion to amend a debatable question is debatable and subject to the previous question. An amendment to a question which is not debatable is not itself debatable.

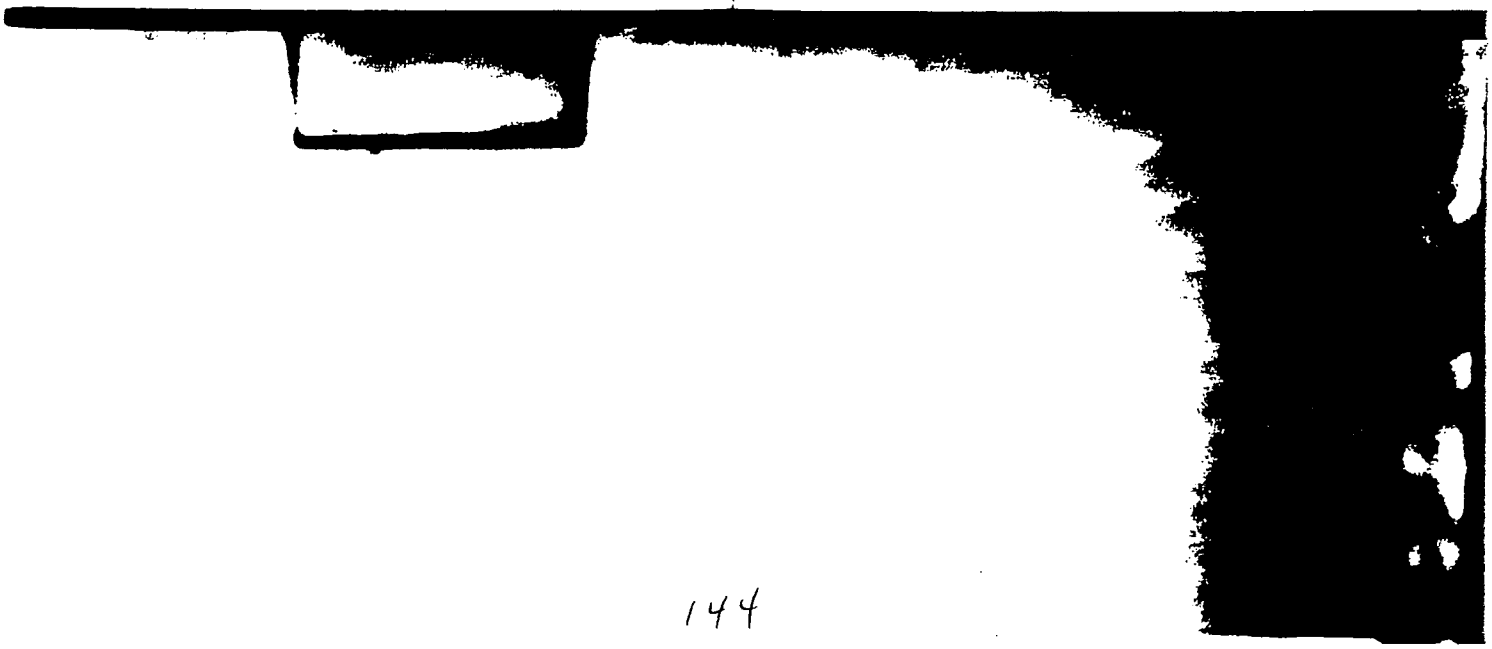
2. A member who has spoken on a main question may also speak on an amendment, because an amendment presents a new question.

3. The previous question, when qualifications are permitted, and motions to limit or extend the limits of debate may be applied to an amendment, or to only an amendment of an amendment, and in such case they do not affect the main question.

Sec. 420. Statement of Question on Amendments

1. When the presiding officer states the question on the amendment, he should repeat the motion, in detail, so that all may understand what modification is proposed.

Section 419—
Sturgis, p. 184; Hughes, Secs. 361, 431.



2. When amendments are submitted in writing they should be read as submitted.

3. When an amendment is difficult to understand or upon request of a member the provision to be amended may be read, then the words to be inserted may be read and then those to be stricken out and finally the provision is read as it would be if the amendment is adopted.

Sec. 421. Vote Required on Amendments

1. An amendment of a pending question requires only a majority vote for its adoption, even though the question may require a two-thirds, or other vote greater than a majority, for adoption. Thus, amendments proposed to the constitution or the rules may be amended by a majority vote, although the amendments require a two-thirds vote for adoption.

2. The failure of one house of a legislature to pass a bill on the first vote by the vote necessary to make certain of its provisions effective does not amount to an amendment striking out those provisions.

Sec. 422. Amendment After Governor's Certificate

1. When a certificate of necessity of immediate passage is required from the governor, in a particular case, a bill can be amended by either house after the certificate has been issued by the governor.

Section 420—
Cushing's Legislative Assemblies, Sec. 1341; Jefferson, Sec. XXXV; Sturgis, p. 180; Reed, Sec. 158.

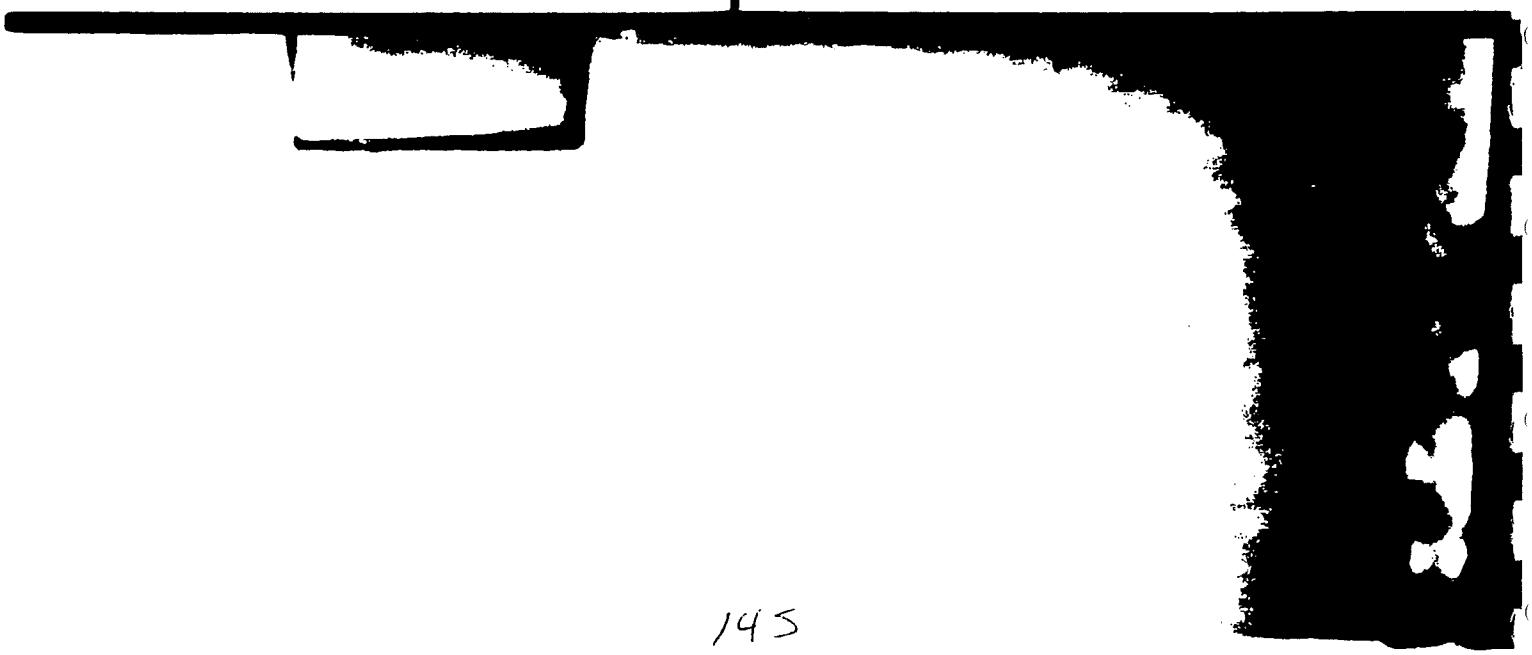
Section 421—
Paragraph 1—
Sturgis, p. 185; Hughes, Secs. 361, 401.
Paragraph 2—
State v. Steen (1927), 55 N. D. 239, 212 N.W. 843.

Section 422—
People ex rel. Kurham Realty Company v. La Fetra (1921), 185 N. Y. Supp. 638.

Sec. 423. Equivalent Amendments

1. Where questions are equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision on the one amendment necessarily precludes the other. Thus, the negative of striking out amounts to the affirmative of agreeing, and, therefore, to put a question on agreeing after one on striking out, would in effect be to put the same question twice. This rule does not apply to the question of amendments between the two houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative which is to adhere.

Section 423—
Jefferson, Sec. XXXVIII; Cushing, Sec. 251.



CHAPTER 40

MOTION TO POSTPONE INDEFINITELY

Sec. 430. Use of Motion to Postpone Indefinitely

1. The object of this motion is not to postpone, but to reject the main motion without incurring the risk of a direct vote on it, or to avoid a recorded vote on a measure. The motion is in effect a motion to reject the main question. This motion may be applied only to main motions.

2. When a motion to postpone a question indefinitely is adopted, the effect is to prevent any further discussion of the question during the session.

3. A further effect of making this motion is to enable members who have exhausted their right to debate on the main question to speak again, as, technically, the question before the house is different.

4. A motion to postpone a question beyond the time at which it can be considered, as beyond the adjournment of a town meeting, is equivalent to complete disapproval and should be treated as a motion to postpone indefinitely.

5. The motion to postpone indefinitely can be applied to nothing but main questions, which include questions of privilege and orders of the day after they are before the body for consideration.

Section 430—
Paragraph 1—
Sturgis, p. 176; Hughes, Secs. 325, 326; Tilson, p. 68; Cushing, Sec. 67; Reed, Sec. 121; Wood v. Milton (1908), 197 Mass. 531, 84 N.E. 332.
Paragraph 2—
Zeiler v. Central Ry. Co. (1896), 84 Md. 304, 35 Atl. 932; Hughes, Sec. 322; Cushing, Secs. 67, 180; Reed, Sec. 121; N. Y. Manual, 1948-49, p. 433; Tilson, p. 68.
Paragraph 4—
Wood v. Milton (1908), 197 Mass. 531, 84 N.E. 332.
Paragraph 5—
Sturgis, p. 178.

Sec. 431. Precedence of Motion to Postpone Indefinitely

1. The motion to postpone indefinitely takes precedence of nothing except the main motion to which it is applied, and yields to all privileged, incidental, and other subsidiary motions.

Sec. 432. Form of Motion to Postpone Indefinitely

1. The usual form of the motion to postpone is, "I move that consideration (or further consideration) of the question (further identifying it when necessary) be indefinitely postponed." Any amendment which would postpone a question beyond the session, or until too late to be considered at the session or until too late to be effective, is, in fact, a motion to postpone indefinitely. The presiding officer should state such motions in their proper form—as motions to postpone indefinitely.

Sec. 433. Motion to Postpone Indefinitely Opens Main Question to Debate

1. The motion to postpone indefinitely is debatable and opens the main question to debate. This is because any motion, which proposes to make a final disposition of a question, opens the merits of the question to debate.

Section 431—
Sturgis, p. 178; Hughes, Sec. 322; Cushing, Sec. 67a; Tilson, p. 67.
Section 432—
Sturgis, p. 176; Hughes, Sec. 322; Cushing, Sec. 70.
Section 433—
Sturgis, p. 177; Hughes, Sec. 322; N. Y. Manual, 1948-49, p. 442; Cushing, Sec. 67a; Reed, Sec. 122, 201; Tilson, p. 68.

Sec. 434. Application of Subsidiary Motions to Indefinite Postponement

1. The motion to postpone indefinitely cannot be amended nor have any other subsidiary motion applied to it, except the previous question and motions closing, limiting, or extending the limits of debate. The previous question, when applied to this motion, does not affect the main question or other pending motions.

2. The motion to postpone indefinitely states a simple proposition in its simplest form and it is, therefore, not amendable. To amend such a motion as to duration, to be of any effect, would change it from a motion to suppress into a motion to defer, which is not permitted.

3. When a measure is referred to committee while a motion to postpone indefinitely is pending, the motion is defeated, as the reference to committee is incompatible with indefinite postponement.

4. When a motion to postpone indefinitely is lost, the main question may be suppressed by the previous question, or may be committed, or amended, or have other like motions applied to it, as though the motion to postpone indefinitely had never been made.

Section 434—
Paragraph 1—
Sturgis, p. 178; Hughes, Sec. 322; Reed, Sec. 164. See also Cushing, Sec. 177.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1523; Cushing, Secs. 176-178; Sturgis, p. 177; Reed, Secs. 122, 201; N. Y. Manual, 1948-49, p. 433.
Paragraph 4—
Jefferson, Sec. XXXIII; Cushing, Sec. 180.

Sec. 435. Vote Required to Postpone Indefinitely

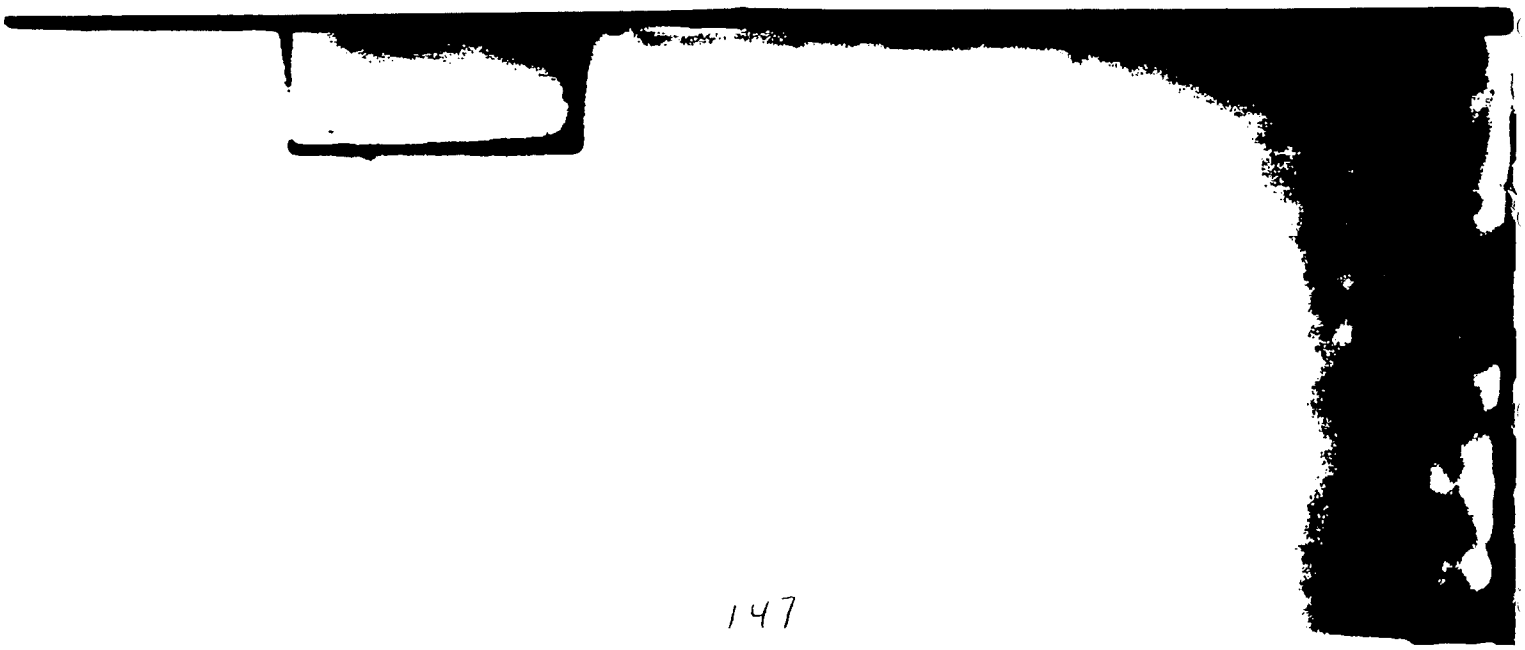
1. A majority vote of the members voting is required for the adoption of the motion to postpone indefinitely.

Sec. 436. Renewal and Reconsideration of Motion to Postpone Indefinitely

1. In legislative bodies where the motion to postpone indefinitely is used for the final disposition of legislation it is treated as a main motion. In such bodies the motion to postpone indefinitely may not be renewed, even though the motion has been amended since the indefinite postponement was previously moved.

2. The general practice in American legislative bodies appears to be to permit the motion to reconsider to be applied to a vote on the motion to postpone indefinitely. In Congress it was provided by rule that a question which has been indefinitely postponed could not be acted upon again at the same session and though that provision has been repealed the the same practice continues.

Section 435—
Sturgis, p. 178; Hughes, Sec. 322.
Section 436—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1447; Sturgis, p. 178, but see Hughes, Sec. 322.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 1447; See also Hughes, Secs. 322-325.



DIVISION 4

MAIN MOTIONS

CHAPTER 41

THE MAIN MOTION

Sec. 440. What Are Main Motions

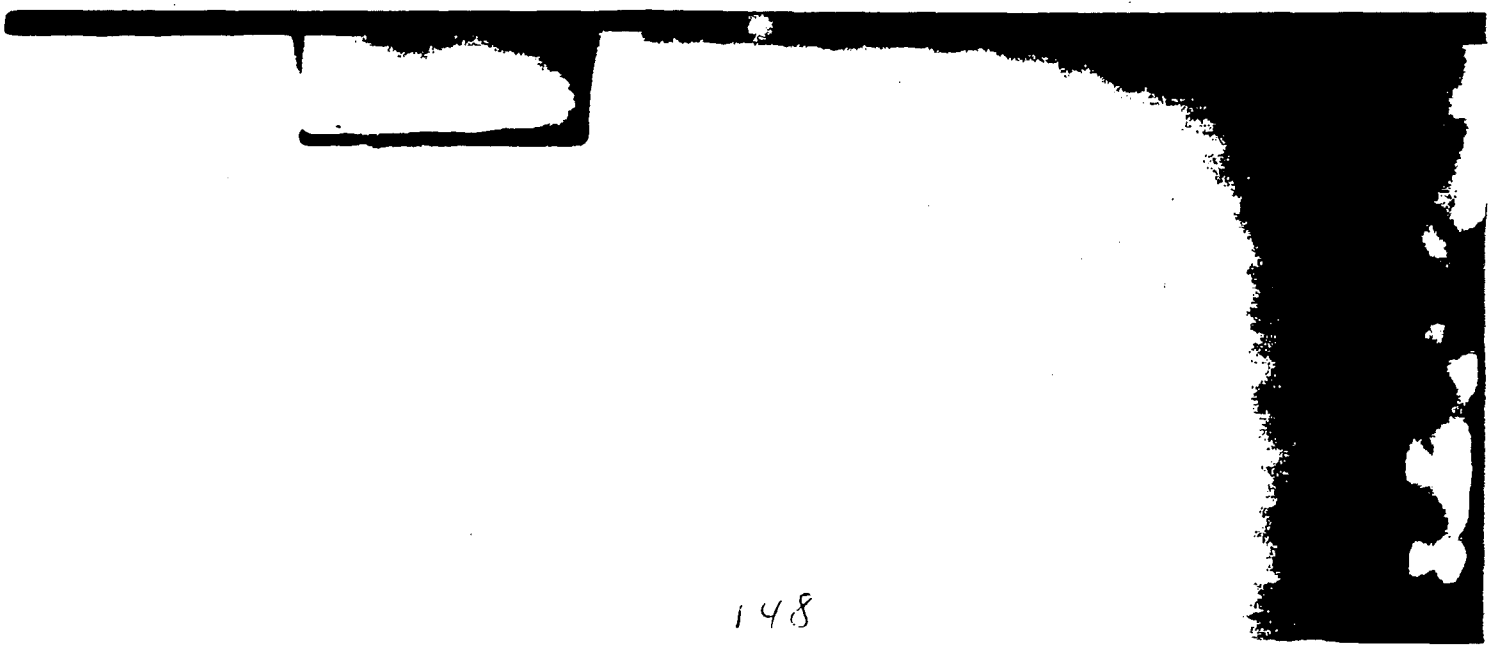
1. The term "main motion" is used in its broad sense to include any proposition or matter of business presented to the body for its consideration. As a convenience, the term "main motion" is applied to all propositions of this type, whether they be bills in a state legislature, ordinances, or orders in a local legislative body, or whether they be any question presented for the final determination of the body in any other form. A main motion presents an item of business to a deliberative body for its action or decision.

2. Main motions are distinguished from the many procedural motions like the motion to adjourn or to lay on the table or postpone, which relate to what the body will do or how it will proceed with its real business which is the consideration of main motions.

Sec. 441. Form of Presenting Main Motions

1. The main motion may be presented in any of several forms, the more usual being: to adopt, to pass, to approve, to ratify, to confirm, to concur, to appoint, to elect; or the main question may also be presented in such forms as: to reject, to repeal, to rescind, to annul, to remove from office, or to refuse to concur.

Section 441—
Cushing's Legislative Assemblies, Secs. 1279-1281; Sturgis, pp. 157, 158.



2. Main motions, for convenience in reference, are also occasionally classified into the ordinary main motion, which presents a direct item of business, and certain other forms of main motions which are so widely used that they have acquired a special name and, on occasion, special rules applicable to them. This latter group of motions is sometimes referred to as specific main motions because these motions have become differentiated from the regular type of main motion.

3. The most common types of specific main motions are the motions to reconsider, the motion to rescind, and the motion to take from the table (or to resume consideration).

4. There is another type of classification of main motions which is rather widely used and frequently is of convenience. This is the classification into main motions proper, which deals essentially with substantive matters, and incidental main motions, which are motions of a procedural nature and which are classified as main motions only because they take precedence as main motions. Motions of this type are to set a future date for adjournment, to create a special order involving a question not then under consideration, to provide for future recess, to withdraw bills from committee, to take from the table, to pass on calendar or file, to dispense with constitutional readings, and to suspend the rules for business not then pending.

5. These motions are procedural motions, but relate to questions of procedure not having a higher precedence than main motions; and so while they are, in fact, not main motions in the sense they present items of business, they are classified as main motions in any classification based upon precedence.

6. The motions to reconsider and to rescind, because of their complexity, require extensive treatment and are considered in separate chapters.

Sec. 442. Precedence of Main Motions

1. Main motions of all kinds, including incidental motions, take the lowest order of precedence. They are not in order when other business is pending. If offered out of order they need not be entertained by the presiding officer, and their consideration at that time is defeated by one objection. Any of these motions may, of course, be considered by unanimous consent when other business is pending, or they may be taken up at any time under suspension of the rules.

Sec. 443. Motion to Ratify

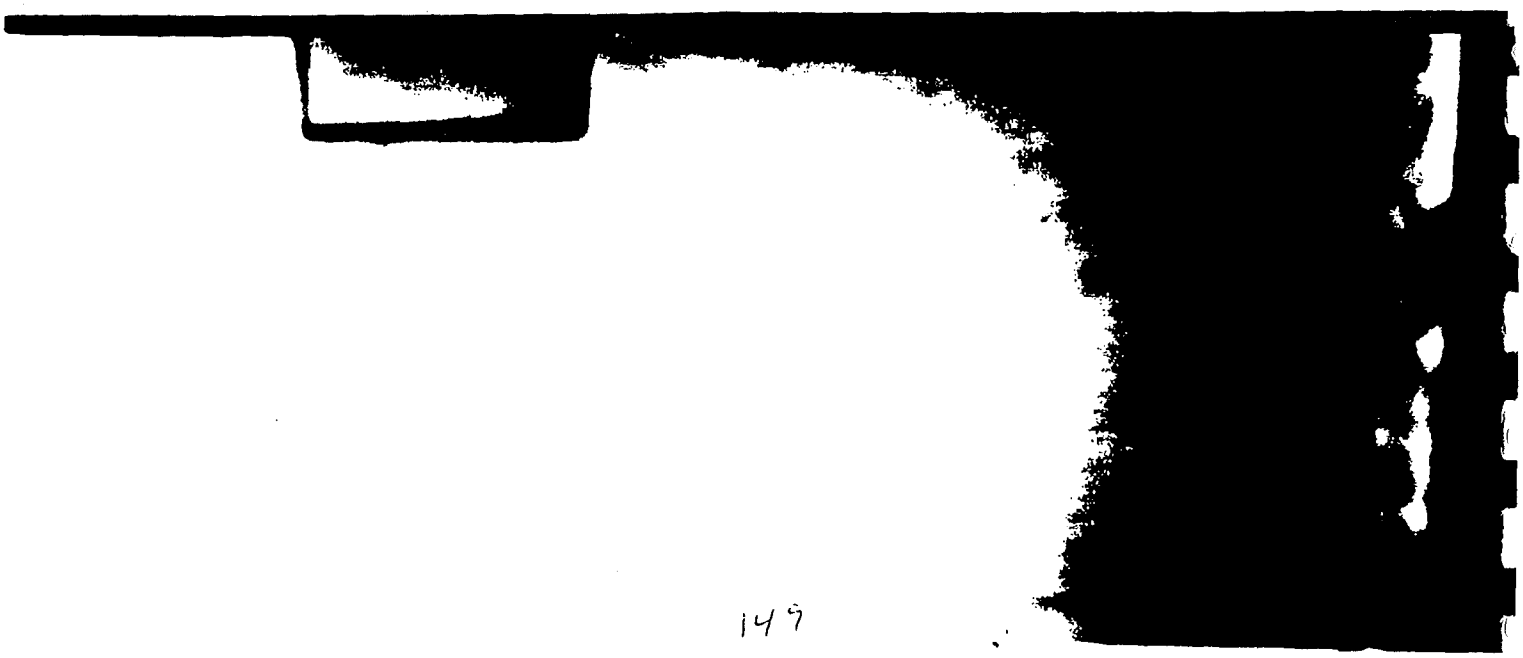
1. The motion to ratify is a main motion, and is used when it is desired to confirm or make valid some action which requires the approval of the body.

2. A legislative body can ratify only such actions of its officers, committees, or delegates, as it had the right to authorize in advance. It cannot ratify or make valid anything done in violation of the constitution.

3. This motion is debatable and opens the entire question to debate.

4. A motion to ratify may be amended by substituting a motion to disapprove or to censure, and vice versa, when the action has been taken by an officer or other representative of the body.

Section 442—
Hughes, Sec. 444; Sturgis, p. 160.



Sec. 444. Motion to Expunge

1. Where it is desired not only to rescind an action, but to express very strong disapproval, legislative bodies have voted to rescind the objectionable action and expunge it from the record. When a record has been expunged, the secretary or clerk should cross out the words, or draw a line around them, in the original minutes and write across them the words, "Expunged by order of the Senate (or House or Council)," giving the date of the order. This statement should be signed by the chief clerical officer. The words expunged must not be so blotted as not to be readable, as otherwise it would be impossible to determine whether more was expunged than ordered. When the minutes are printed or published the expunged portion is omitted.

2. This motion has no privileged status, but ranks as a main motion and follows the rules of a main motion.

Sec. 445. Motion to Adjourn Sine Die

1. When a state legislature is duly convened, it cannot be adjourned sine die nor be dissolved except in the regular legal manner, and an adjournment from day to day cannot have that effect.

2. A motion or resolution to adjourn sine die or to fix the time to adjourn sine die, or any motion to adjourn which would have the effect of dissolving a legislative body

Section 444—
Paragraph 1—
Sturgis, p. 168; Hughes, Sec. 474.
Section 445—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 254.
Paragraph 2—
Jefferson, Sec. LI; Reed, Sec. 170; Cushing, Secs. 137b, 139; Tilson, p. 57; N. Y. Manual, p. 403.

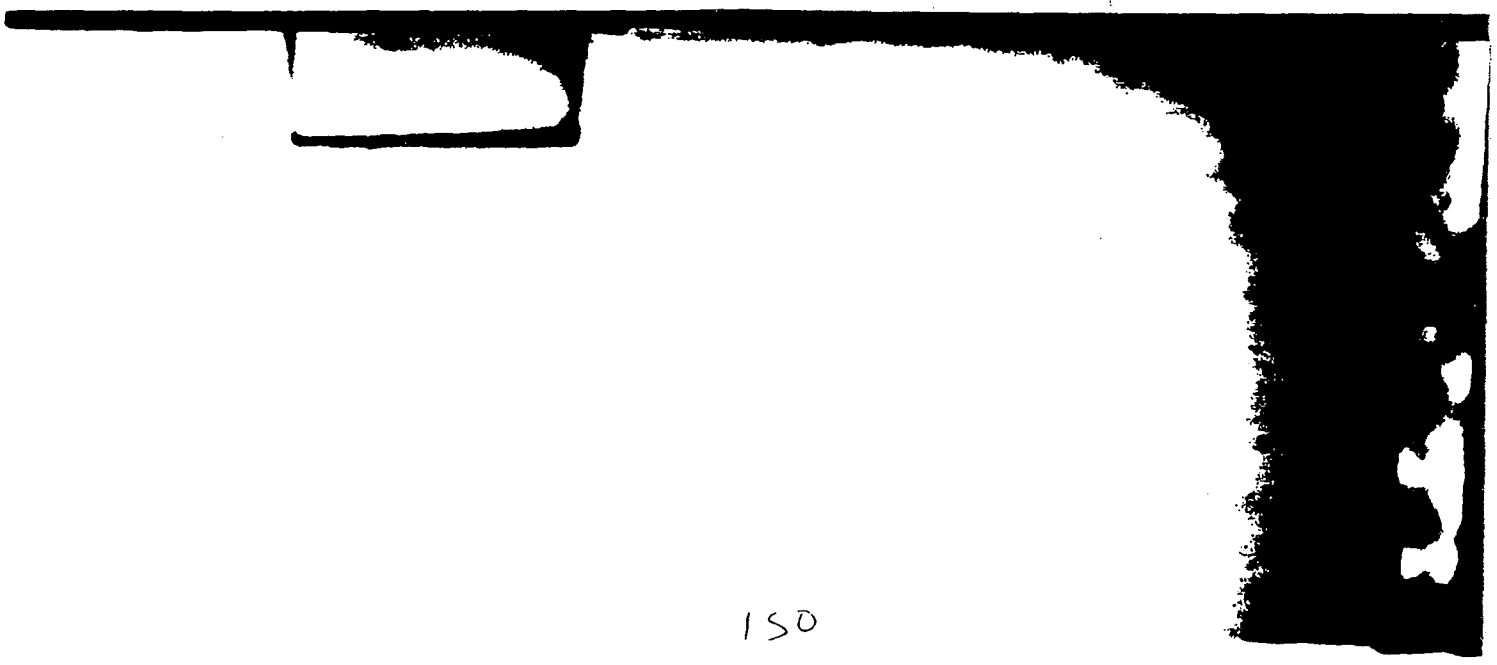
without provision for another meeting, presents a main question and is subject to debate, amendment, and all the subsidiary motions.

3. A motion to adjourn sine die has the effect of closing the session and terminating all unfinished business before the house, and all legislation pending upon adjournment sine die expires with the session, while a motion to adjourn from day to day does not destroy the continuity of a session and unfinished business simply takes its place on the calendar of the succeeding day.

4. The houses of a legislature may make their records show that all their business was transacted before the time fixed for final adjournment.

5. Committees, specially authorized, may sit after adjournment sine die.

Section 445—Continued
Paragraph 3—
Jefferson, Sec. LI; Cushing, Secs. 139, 140.
Paragraph 4—
Earnest v. Sargent (1915), 20 N. M. 427; 150 Pac. 1018.
Paragraph 5—
Jefferson, Sec. LI.



CHAPTER 42

MOTION TO RECONSIDER

Sec. 450. Right to Reconsider

1. Every legislative or administrative body has the inherent right to reconsider a vote on an action previously taken by it, with certain exceptions.

2. When not otherwise provided by law, all public bodies have a right during the session to reconsider action taken by them as they think proper and it is the final result only that is to be regarded as the thing done.

Section 450—
Paragraph 1—
Reiff v. Connor (1849), 10 Ark. 241; McConoughey v. Jackson (1864), 101 Cal. 265, 25 Pac. 863; Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963; Red v. Augusta (1858), 25 Ga. 386; People v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Greenwood v. State (1902), 159 Ind. 267, 64 N.E. 849; Wingert v. Snouffer (1906), 134 Iowa 97, 108 N.W. 1035; Higgins v. Curtis (1888), 39 Kan. 283, 18 Pac. 207; Bigelow v. Hillman (1854), 37 Me. 52; Baker v. Cushman (1879), 127 Mass. 105; Allen v. Taunten (1837), 19 Pick. (Mass.) 485; Naegely v. Saginaw (1894), 101 Mich. 532, 60 N.W. 46; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134; State v. Foster (1823), 7 N. J. L. 101; Whitney v. Van Buskirk (1878), 40 N. J. L. 463; Styles v. Lambertville (1905), 73 N. J. L. 90, 62 Atl. 288; Eiss v. Summers (1923), (N. Y.) 205 App. Div. 691, 199 N. Y. Supp. 544; Adkins v. Toledo (1905), 6 Ohio Cir. Ct. N. S. 433; Commonwealth v. Pittsburgh (1850), 14 Pa. 177; Estey v. Starr (1884), 56 Vt. 690; Tetley v. Vancouver (1897), 5 B. C. 276; Re De War (1905), 10 Ont. L. 463.

Paragraph 2—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963; State v. Foster (1823), 7 N. J. L. 101; People v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Neill v. Ward (1930), 163 Vt. 117, 153 Atl. 219; Gouldey v. City Council of Atlantic City (1899), 63 N. J. L. 537, 42 Atl. 852; State v. Van Buskirk (1878), 40 N. J. L. 463; Stiles v. Lambertville (1905), 73 N. J. L. 90, 62 Atl. 288.

3. The reconsideration of a negative vote on final action is as proper as a reconsideration of a favorable vote.

Sec. 451. What Actions Cannot Be Reconsidered

1. An action cannot be reconsidered when for any reason it is not possible to cancel, nullify or void the action previously taken. In general, the action cannot be canceled or made ineffective when vested rights have been acquired as a result of the action, or when rights cannot be constitutionally or legally taken away, or when the subject is beyond the control or out of reach of the body taking the original action, or when it may be inhibited from acting by the requirement of a notice.

2. The motion to reconsider is not applied to procedural motions as a more direct and simple procedure is available.

See Sec. 456, Procedural Motions Are Not Subject to Reconsideration, and Sec. 457, Substantive Motions Are Subject to Reconsideration.

Sec. 452. Vested Rights Cannot Be Affected by Reconsideration—Contracts

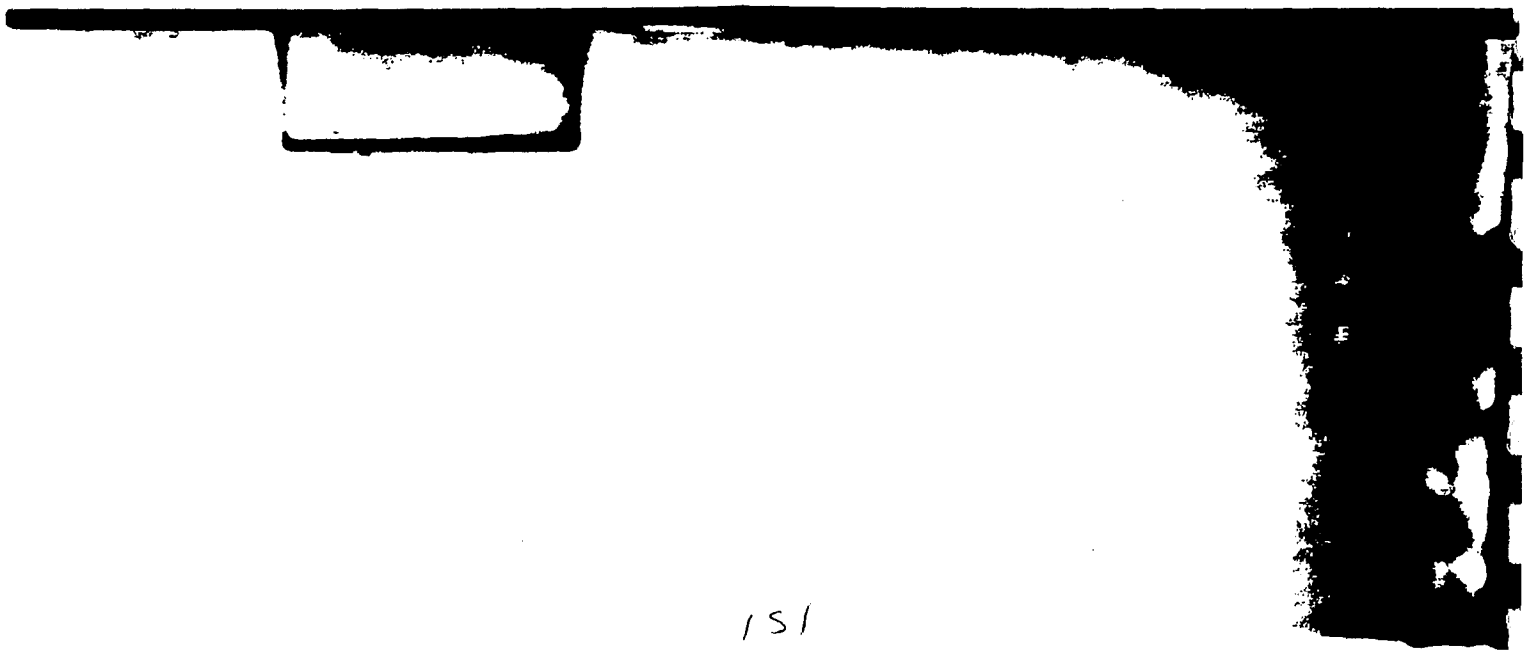
1. A motion to reconsider is not in order when reconsideration cannot be made effective. The following are examples of decisions of courts on the right to reconsider.

2. When an affirmative vote of a deliberative body is in the nature of a contract or has the effect of ratifying a contract, and the other party to the contract has been

Section 450—Continued
Paragraph 3—
Kay Jewelry Co. v. Board (1940), 305 Mass. 581, 27 N.E. 2d 1.

Section 451—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1276; Sturgis, p. 162; Reed, Sec. 204.

Section 452—
Paragraph 2—
Brown v. Wintersport (1887), 79 Me. 305, 9 Atl. 844.



notified of the vote or the contract has become effective, the vote cannot thereafter be canceled or voided by reconsideration.

3. When a valid claim has been properly presented to a board of trustees of a municipal corporation and allowed and approved, and their action has been accepted by the claimant, it becomes a valid and binding contract which cannot be rescinded or voided except for such causes as invalidate other contracts.

4. When a municipality or one of its bodies or departments has lawfully adopted a policy or has resolved to proceed in a certain way, and that policy or action has been carried out, it cannot be rescinded or changed though a different policy or action might originally have been equally valid. This statement was made with reference to procedure for issuance of bonds.

5. A vote of a town which resulted in a contract cannot afterward be rescinded or reconsidered.

6. A town, like an individual, may change its purposes and may express that change by its vote and, unless some right in another has been acquired or has vested under its action, no one can complain of the change.

7. A town can rescind a vote taken at a previous meeting when no rights of third parties have vested and

Section 452—Continued
Paragraph 3—
McConoughey v. Jackson (1894), 101 Cal. 265, 25 Pac. 863.
Paragraph 4—
Schieffelin v. Hylan (1919), 174 N. Y. Supp. 506.
Paragraph 5—
Cox v. Town of Mount Tabor (1868), 41 Vt. 28.
Paragraph 6—
Stoddard v. Gilman (1850), 22 Vt. 568; Cox v. Town of Mount Tabor (1868), 41 Vt. 28; Estey v. Starr (1884), 56 Vt. 690; Neill v. Ward (1930), 163 Vt. 117, 153 Atl. 219.
Paragraph 7—
Estey v. Starr (1884), 56 Vt. 690.

nothing has been done under the vote (subscription o railway stock).

8. The general rule is that the governing body of a municipal corporation has the power, if vested rights are not thereby interfered with and the rights of third parties have not intervened, to rescind action previously taken. Formal consideration and recision are generally unnecessary where the course afterwards pursued is inconsistent with that formerly adopted.

9. Generally, where no rights of third persons have attached, a municipal corporation has power to reconsider or rescind any action previously taken.

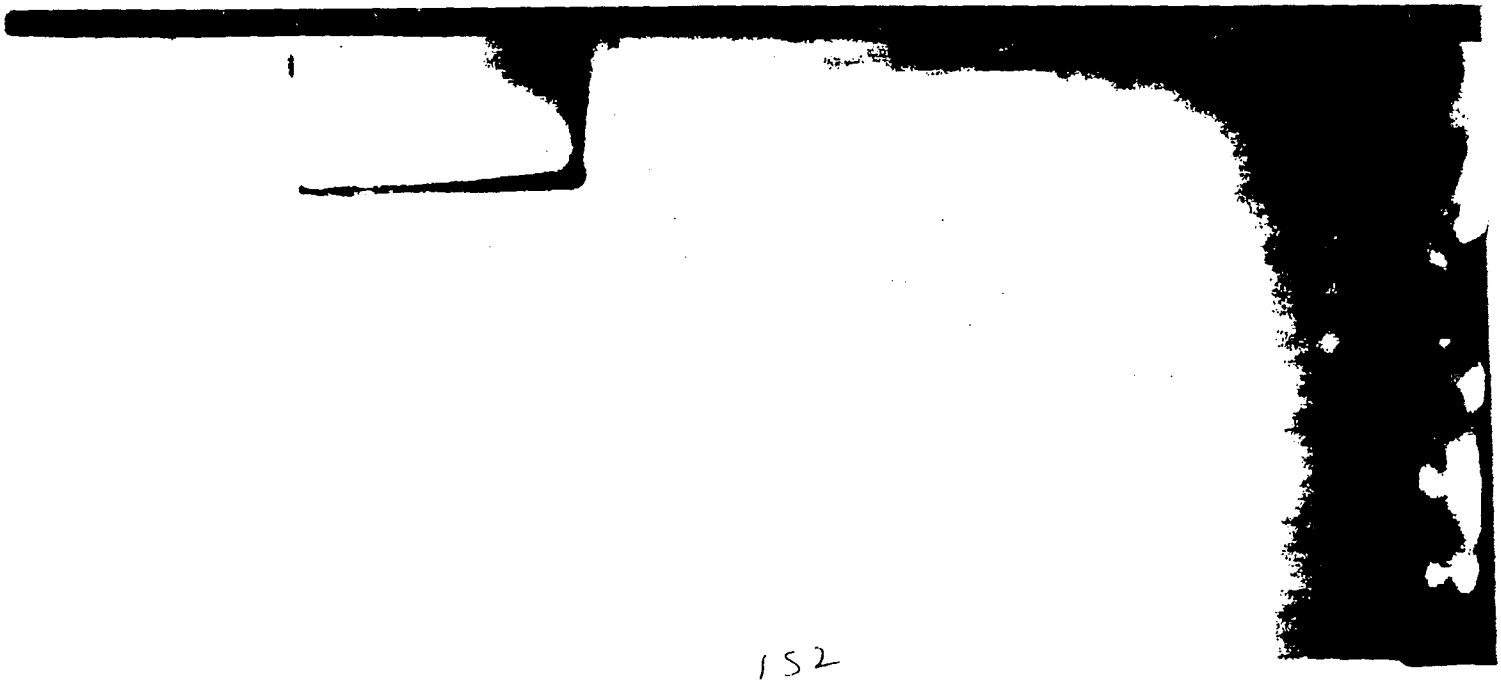
10. Any legislative body may reconsider and rescind a proposition once adopted if no vested interest is affected thereby and where the legislative power resides in the inhabitants of a village, they may take such action.

11. A vote upon a reconsideration need not be taken either at the same or the next succeeding meeting, but may be taken at any time before the rights have intervened in pursuance of the vote taken or before the status quo has been changed.

Sec. 453. Election or Confirmation of Officers

1. No vote on the election of an officer can be reconsidered after the acceptance and qualification of the

Section 452—Continued
Paragraph 8—
Greenwood v. State, (1902), 159 Ind. 267, 64 N.E. 849.
Paragraph 9—
Frost v. Hoar (1932), 85 N. H. 442, 160 Atl. 51.
Paragraph 10—
In re Eiff (1923), 199 N. Y. Supp. 544.
Paragraph 11—
Adkins v. Toledo (1905), 6 Ohio Cir. Ct. N. S. 433.
Section 453—
Paragraph 1—
State v. Tyrrell (1914), 158 Wis. 425, 149 N.W. 280; State v. Miller (1900), 62 Ohio St. 436, 57 N.E. 227; Regina v. Donoghue (1858), 15 Upp. Can. Q. B. 454.



officer. The following are instances of court decisions involving the election or confirmation of officers.

2. When a person has been elected to membership or office, if the member or officer is present and does not decline, or if absent and has learned of his election in the usual way and has not declined, it is too late to reconsider.

3. An appointment or confirmation to office is complete on performance of the act required of the person or body vested with appointing power. But before any action is taken under a vote to confirm or elect, the vote can be reconsidered.

4. A state senate may reconsider an affirmative vote confirming or approving an appointment to office provided the motion was made at the proper time.

5. A joint meeting of delegates representing different groups can reconsider a vote on election of an officer at the same or at an adjourned meeting provided no right had vested.

6. A vote on an election is subject to reconsideration at any time before the close of the meeting at which taken.

Section 453—Continued
Paragraph 2—
Wood v. Cutter (1884), 138 Mass. 140.
Paragraph 3—
Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134; Attorney General v. Oakman (1921), 126 Mich. 717, 86 N.W. 151.
Paragraph 4—
Attorney General v. Oakman (1901), (also cited as Dust v. Oakman), 126 Mich. 717, 86 N.W. 151; People v. Davis (1918), 284 Ill. 439, 120 N.E. 326; State v. Foster (1823), 7 N. J. L. 101; Whitney v. Van Buskirk (1878), 40 N. J. L. 467; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.
Paragraph 5—
Baker v. Cushman (1879), 127 Mass. 105; Reed v. Deerfield (1900), 176 Mass. 473, 57 N.E. 961.
Paragraph 6—
Allen v. Morton (1910), 94 Ark. 405, 127 S.W. 450.

7. Where an election is not complete until a certificate of election is issued a vote on the election can be reconsidered until the issuance of the certificate.

8. When the rules provide specifically a time during which a motion to reconsider may be made, the confirmation does not become final and a motion to reconsider may be made until that time has passed.

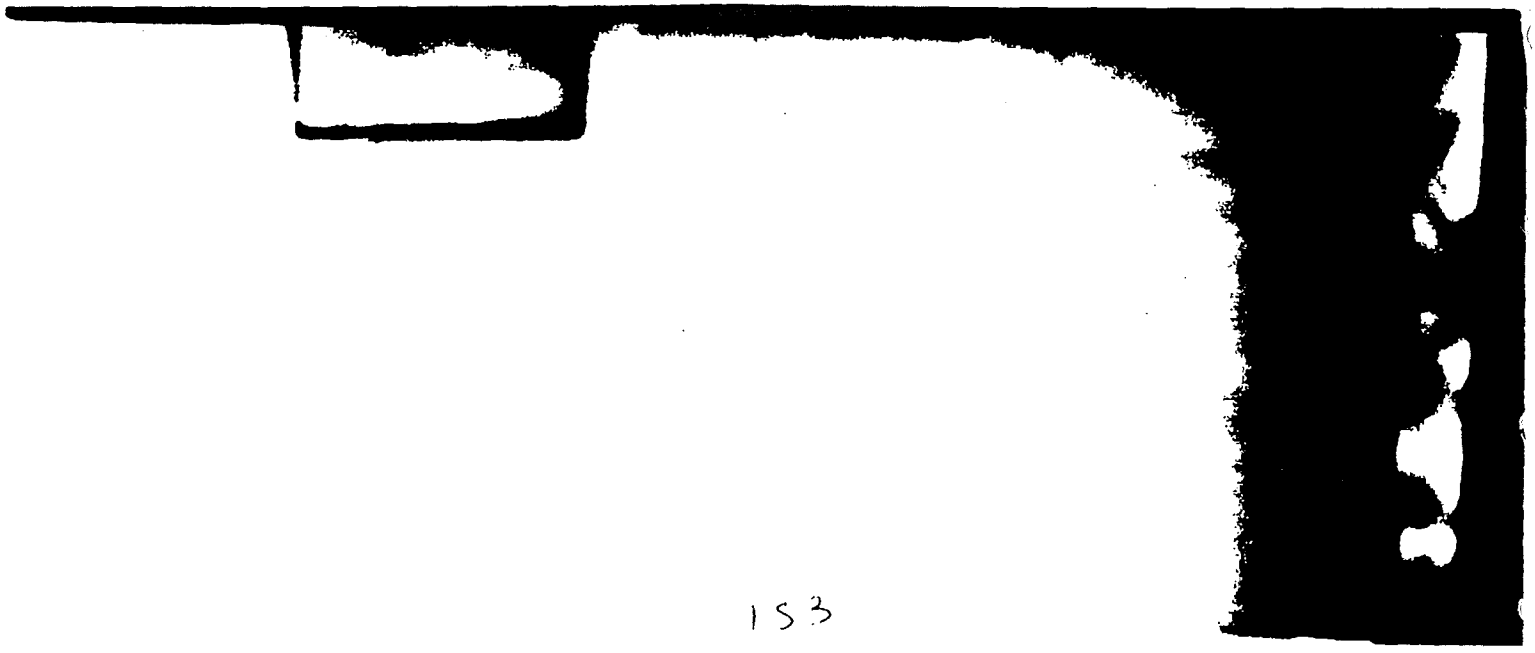
9. A motion to reconsider a vote by which a nomination was confirmed is not in order after the nomination affected has passed out of the possession of the house.

10. When the appointing power (whether an executive, a board, a court or legislative body) has the power of removal it may reconsider an appointment at any time and appoint a successor to the office.

Sec. 454. Subject of Reconsideration Must Be Within Control of Body

1. A measure may not be reconsidered unless it is in the possession of the body. In a bicameral legislative body a measure which has been sent to the other house must be returned before a reconsideration can be effective.

Section 453—Continued
Paragraph 7—
Conger v. Gilmer (1867), 32 Cal. 75.
Paragraph 8—
Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.
Paragraph 9—
N. Y. Manual, 1946-47, p. 693.
Paragraph 10—
State v. Starr (1906), 78 Conn. 636, 63 Atl. 512.
Section 454—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1274.



2. A vote refusing to confirm an appointment by the executive cannot be reconsidered after notice of the action has been transmitted to the executive.

3. After a bill has passed a legislative body and has become a law it is contrary to all parliamentary law and precedent for such body to attempt to reconsider such final action as shown by adjournment of the body and the promulgation of its act.

Sec. 455. Reconsideration Cannot Be Used to Defeat Requirement of Notice

1. When notice is required for amendment of the rules, though amendments have been made pursuant to legal notice, the body at a subsequent meeting cannot reconsider its action and take other action without complying with the rules requiring notice.

2. When a notice is required for an election, a deliberative body cannot, by reconsideration, bring the question again before itself and proceed with the election without giving the required notice.

3. When notice or petition is required for making changes in roads, a county court, which has regularly vacated an old road and established a new highway in lieu thereof, cannot, at a subsequent term, vacate the

Section 454—Continued
Paragraph 2—
N. Y. Manual, 1946-47, p. 693.
Paragraph 3—
Ashton v. City of Rochester (1891), 60 Hun. (N. Y.) 372, 14 N. Y. Supp. 855, affirmed 1892, 133 N. Y. 187, 31 N.E. 344; State v. Van Buskirk (1878), 40 N. J. L. 463.
Section 455—
Paragraph 2—
People v. Batchelor (1860), 22 N. Y. 128, 28 Barb. 310.
Paragraph 3—
Reiff v. Conner (1849), 10 Ark. 241.

order and re-establish the old road without giving the notice required in such cases.

Sec. 456. Procedural Motions Are Not Subject to Reconsideration

1. Under the rules of parliamentary law, the procedural motions such as: to recess, to lay on the table, and to refer to committee are not subject to reconsideration. The reason is that, where reconsideration would otherwise be justified, there is a more simple, direct way of accomplishing the purpose of reconsideration. Generally, when procedural motions are not adopted, they may be renewed whenever there has been intervening business or the situation is so changed that the body might reasonably reach a different decision; and, when the motions have carried changed conditions may be met by appropriate new motions. When, for example, a motion has been laid on the table, it can, at a proper time, be taken from the table and when a motion has been referred to committee it can be withdrawn.

Sec. 457. Substantive Propositions Are Subject to Reconsideration

1. Main motions, amendments to main motions, privileged motions, when involving substantive questions and appeals are subject to reconsideration. These all involve questions more basic than the simple procedural motions. The questions presented for determination by these motions usually require decisions of a more permanent nature. It is essential that the bodies be able to make final decisions on these questions, otherwise it would be possible for a minority to obstruct execution of the

Section 456—
Cushing, Sec. 253; Sturgis, p. 162.

will of the majority. But, lest the action might have been taken inadvertently, without adequate information, or without mature consideration, the vote on these propositions is subject for a limited time to reconsideration.

2. To prevent abuse of the motion to reconsider, the same question cannot be reconsidered a second time. When a motion has been so changed as to present a substantially different proposition, it can be reconsidered again in the new form.

Sec. 458. Consideration of Measures Returned by Executive Veto

1. When an executive returns a bill or ordinance to a legislative body with his objections (veto), the further consideration of the measure is not itself a reconsideration in the parliamentary sense. A vote taken on further consideration of the measure, whether in the affirmative or negative, can be reconsidered.

Sec. 459. Reconsideration in Relation to Actions of the Other House

1. In a two-house legislative body, either house has the right to reconsider its own actions provided that no rights have vested in pursuance of the first action.

2. A rule of one house of a legislature relating to reconsideration of a measure once acted upon by that house

Section 458—
Nevins v. Springfield (1917), 227 Mass. 538, 116 N.E. 881; Kay Jewelry Co. v. Board (1940), 305 Mass. 581, 27 N.E. 2d 1; State v. Lewis (1936), 181 S. C. 10, 186 S.E. 625.
Section 459—
Paragraph 1—
Adkins v. Toledo (1905), 6 Ohio Cir. Ct. N. S. 433.
Paragraph 2—
Leser v. Garnett (1921), 139 Md. 46, 114 Atl. 840, affirmed 258 U. S. 130.

does not prevent reconsideration of the same subject matter when embodied in a bill or resolution coming from the other house.

3. Where a bill has been passed by both houses and returned to the house of its origin the other house cannot reconsider its vote passing the bill unless the bill is first returned to its control, as it has no possession or control over the bill, and if the house of origin refuses to return it, the vote to reconsider will not impair the validity of the act.

4. A defeat in one house of a proposition, notwithstanding the rule that a measure defeated and not reconsidered is final for the session, does not affect actions from the other house since the two proposals originating in different houses do not constitute one measure.

5. When two houses are meeting in a joint session, they have the right, so long as they are in session, to reconsider any question which they have had before them or any vote which they have taken.

Sec. 460. Regulation of Motion to Reconsider by Rules

1. The right of a legislative body to make rules to govern its own proceedings includes the right to prescribe the use of and regulate the procedure applicable to the motion

Section 459—Continued
Paragraph 3—
Smith v. Mitchell (1911), 69 W. Va. 481, 72 S.E. 755.
Paragraph 4—
Leser v. Garnett (1921), 139 Md. 46, 114 Atl. 840, affirmed 258 U. S. 130.
Paragraph 5—
State v. Foster (1832), 7 N. J. L. 101; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.
Section 460—
Paragraph 1—
Nevins v. Springfield (1917), 227 Mass. 538, 116 N.E. 881.

to reconsider. If the law does not forbid, a local legislative body may adopt its own rules of procedure governing the right of reconsideration.

2. A board of county commissioners has the power to make reasonable rules and regulations for the government of its proceedings and, in the absence of proof to the contrary, a reconsideration of its actions taken on a former day of the same session on any matter before the board will be presumed to have been in conformity with the rules and regulations.

3. When a state senate duly determines that the passage by it of a measure has been reconsidered, such determination is binding on the courts and such reconsideration nullifies the vote of adoption, and the measure has the status of a pending matter in the senate.

4. A motion to reconsider rests exclusively in the discretion of a body whose action it is proposed to reconsider and no other body or tribunal has a right to treat a reconsideration as void.

Sec. 461. When the Motion to Reconsider May Be Made

1. The motion to reconsider cannot be made after the matter is out of the control of the body or after the action

Section 460—Continued
Paragraph 2—
Higgins v. Curtis (1888), 39 Kan. 283, 18 Pac. 207.
Paragraph 3—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963.
Paragraph 4—
People v. Common Council, City of Rochester (1871), 5 Lans. (N. Y.) 11.
Section 461—
Paragraph 1—
Sturgis, p. 164; California Senate Rule No. 43; New York Senate Rule No. 30.

taken has gone into effect or after it is too late for any reason to reverse the action taken. It is also customary to further limit by rule the time within which the motion to reconsider can be made. This is sometimes limited to the day on which the action was taken. Most frequently it is limited to the day on which the action was taken or on the day following. Some legislative bodies allow the motion to be made until the second day following the vote and a few permit the motion to be made within the next three days after the vote was taken.

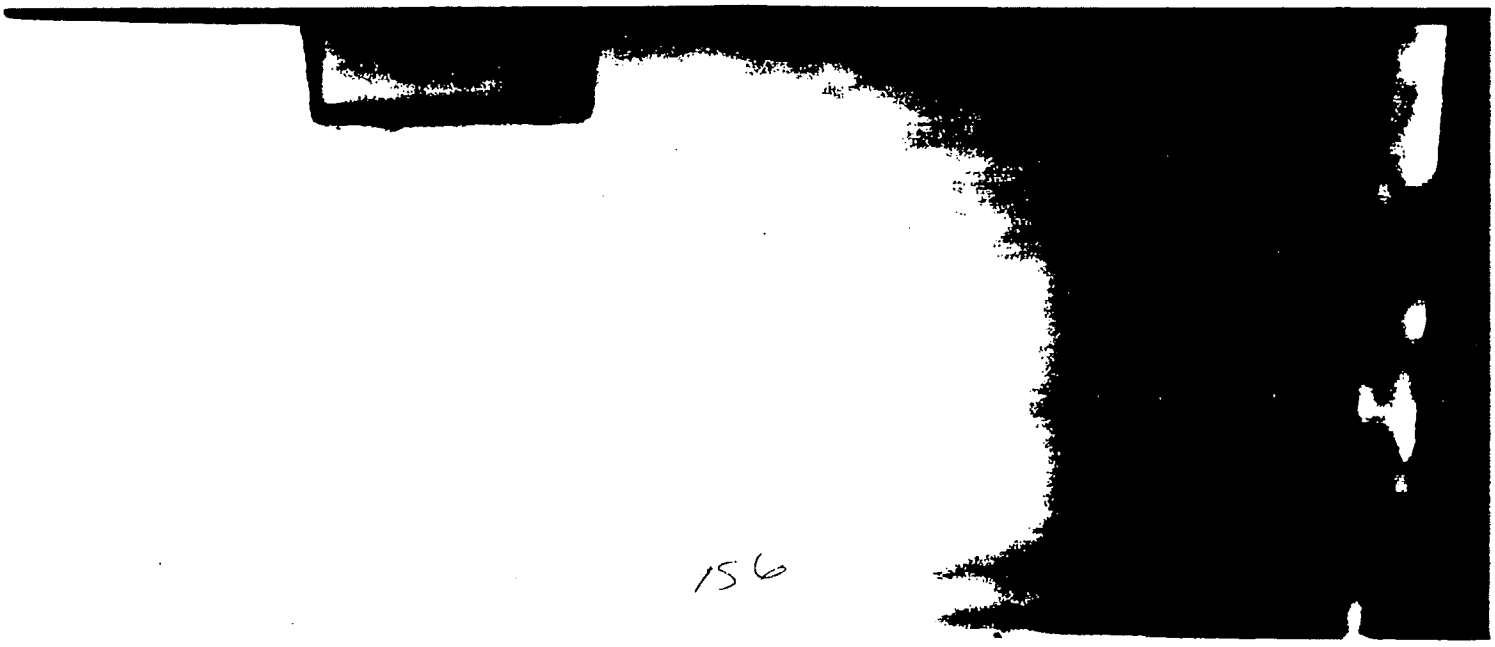
2. The courts do not support, at least insofar as it relates to official public bodies, the statement that as a rule of parliamentary law the motion to reconsider may be made only on the day the vote was taken or on the day following. If it is desired to restrict the time within which the motion may be made it should be done by rule. In practice the right is closely restricted in time because the motion cannot be made after the subject of the vote is out of the possession of the body.

3. The rules frequently prohibit the making of a motion to reconsider on the last day of a legislative session.

4. A motion or a notice of a motion to reconsider is sometimes permitted to interrupt a speaker.

5. When an appeal has been decided and the subject matter of the appeal disposed of, it is too late to move to reconsider the vote on the appeal.

Section 461—Continued
Paragraph 2—
Cushing, Sec. 255a.
Paragraph 4—
Reed, Sec. 205; Hughes, Sec. 711; Cushing, Sec. 257.
Paragraph 5—
N. Y. Manual, pp. 409, 476; Reed, Sec. 204.



Sec. 462. Precedence of Motion to Reconsider

1. The motion to reconsider is often given a high precedence by rule following the practice in Congress. When no precedence is fixed by rule it takes precedence as an incidental motion relating to the manner or order of considering questions. When a notice of the motion is required the notice has the same precedence as the making of the motion. In private associations the practice of giving high precedence to the motion to reconsider appears well established.

2. Where the motion to reconsider, the motion to reconsider and enter in the journal for later consideration (when that motion is allowed by a special rule), or the notice of the motion to reconsider on the next day, are in order, the motions take precedence in the order stated.

Sec. 463. When the Motion to Reconsider May Be Considered

See also Sec. 469.

1. Generally, a motion to reconsider may be brought up for consideration whenever the subject to which the motion relates may be considered. This is usually when new main motions may be considered. Sometimes motions to reconsider are treated as unfinished business and considered in that order of business.

2. The rules may require that a motion to reconsider be placed on calendar for the following day in order to give notice to the members.

3. A notice of one day of the making of a motion to reconsider is required by rule in some bodies. When this is the practice the notice of the motion holds up any further action as the result of the vote the same as though the motion to reconsider had been made.

Section 462—
Sturgis, p. 164; Cushing's Legislative Assemblies, Sec. 1266.
Section 463—
Sturgis, p. 166; N. Y. Manual, 1948-49, p. 451.

Sec. 464. Who May Move to Reconsider

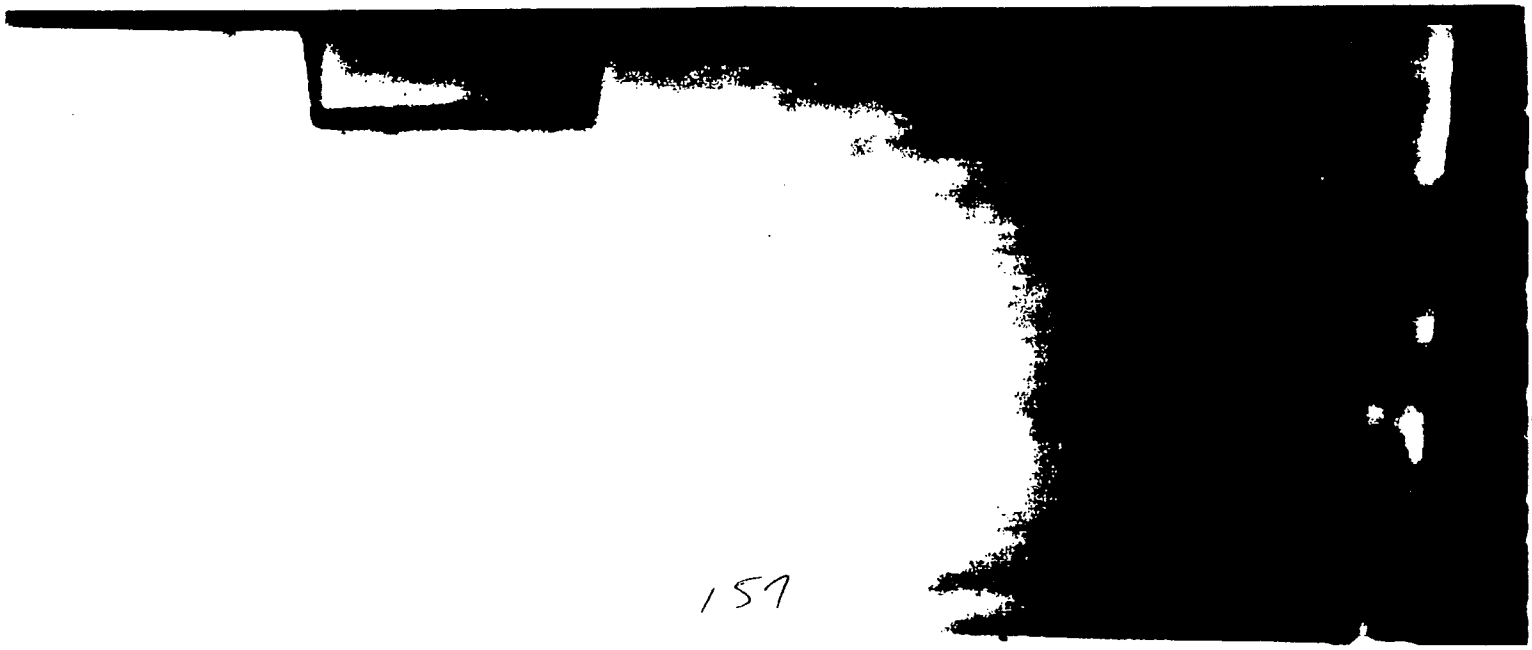
1. It is a common practice to provide by rule that a motion to reconsider can be made only by a member who voted on the prevailing side of the question. This is so frequently provided by rule that it is sometimes supposed to be a rule of parliamentary law. Where it is required by rule that the motion can be made only by a member who voted on the prevailing side the purpose of the rule is regularly defeated by a member of the minority voting on the prevailing side, or changing his vote to that side, in order to qualify him to move to reconsider. In any vote except a roll call vote it is impossible to determine how a member voted.

2. Some legislative bodies specifically provide by rule that the motion to reconsider may be made by any member.

3. Luther Cushing in his Law and Practice of Legislative Assemblies said: "Where there is no special rule on the subject, a motion to reconsider may be made • • • by any member, precisely like any other motion, and subject to no other rules."

4. Parliamentary law does not restrict the making of the motion to reconsider to a member who voted on the prevailing side of a question sought to be reconsidered.

Section 464—
Paragraph 1—
Sturgis, p. 163; Tilson, p. 84; N. Y. Manual, 1948-49, p. 451; Cushing's Legislative Assemblies, Sec. 1266.
Paragraph 2—
California Senate Rule No. 43; New York Senate Rule No. 30.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1266.
Paragraph 4—
Sturgis, p. 163.



5. The courts sustain reconsiderations made on the motion of a member who voted on the losing side.

Sec. 465. Form of Motion to Reconsider

1. Examples of forms of making this motion are as follows: "I move to reconsider the vote whereby House (or Senate) Bill No. ___ was this day passed (or refused passage)," or, when it is desired to reconsider the vote on an amendment to a measure which has been passed, "I move to reconsider the vote on the adoption of the resolution (describing when necessary) and on the amendment to strike out _____ and insert _____." When no business is before the house, it may proceed to the consideration of the motion. When other business is before the house, the presiding officer repeats the motion and it is recorded in the minutes, and the house proceeds to the business which was interrupted by the motion.

2. When the practice is to give notice of the motion to reconsider, the form of the notice may be "I give notice that on the next legislative day I will move to reconsider the vote whereby House (or Senate) Bill No. ____ was this day passed (or refused passage)."

3. Where the notice of motion is required, the actual motion to reconsider is made in the same form as in the other case, and the motion may be considered at the time when made, if no business having a higher precedence is under consideration. Where a notice of the motion is required, it is the practice to carry notices of motions to

Section 464—Continued
Paragraph 5—
Witherspoon v. State (1923), 138 Miss. 310, 103 So. 134; People v. Common Council City of Rochester (1871), 5 Lans. (N. Y.) 11.

Section 465—
Sturgis, p. 161.

reconsider on the calendar, and the motion may be made and considered at that place on calendar.

4. When a member desires to call up for consideration a motion to reconsider, which was previously made, he may obtain the floor at the appropriate order of business, and say "I call up (or desire to call up) for consideration the motion to reconsider the vote whereby House (or Senate) Bill No. ____ was passed (or refused passage)." When the motion is in order the presiding officer announces the question and says "Will the House (or Senate) reconsider the vote whereby House (or Senate) Bill No. ____ was passed (or refused passage)?"

Sec. 466. Withdrawing and Renewing Motion to Reconsider

1. The motion to reconsider cannot be withdrawn after it is too late to make the motion except by unanimous consent and if the motion to reconsider is lost it may be renewed only by unanimous consent.

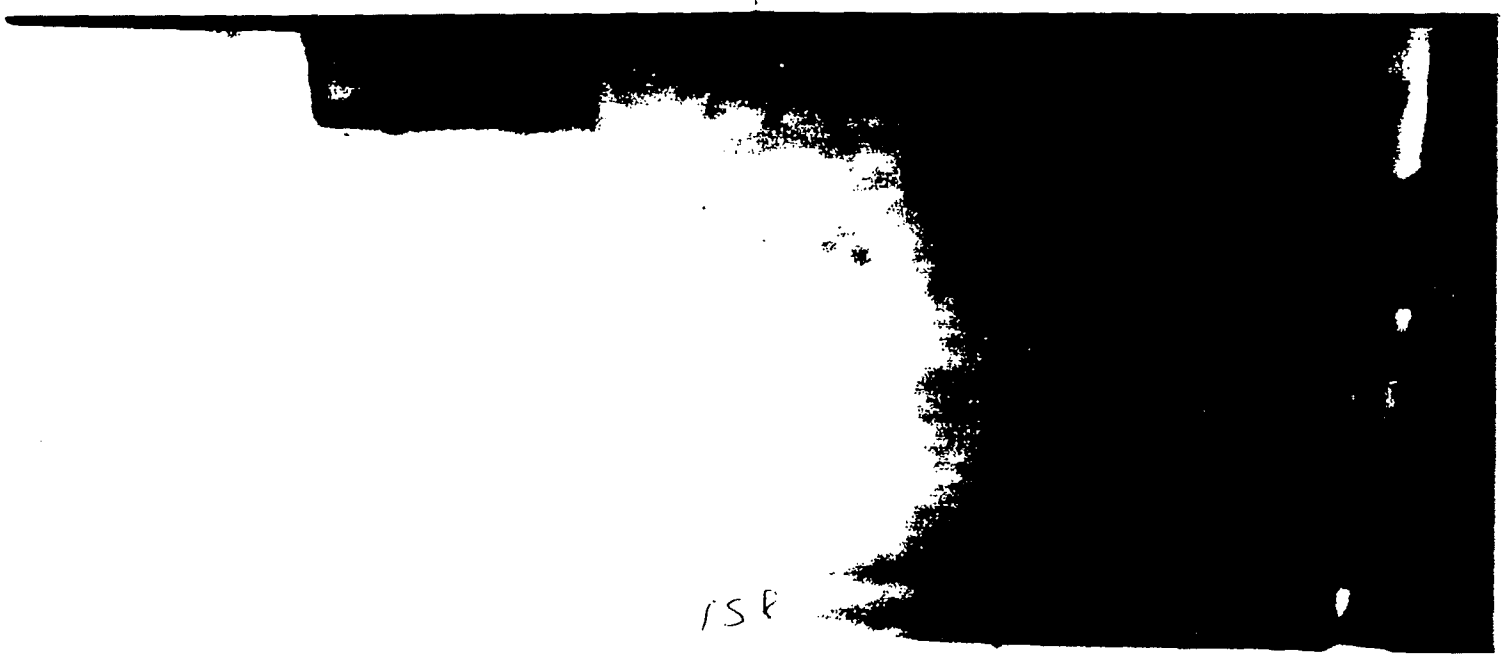
2. When a motion to reconsider is made, but its consideration is postponed, it may be called up for consideration by another member.

Sec. 467. Effect of Motion to Reconsider

1. The effect of making the motion to reconsider, or of giving notice of the motion where that is the procedure, is to suspend all action on the subject of the motion until the reconsideration is acted upon.

Section 466—
Reed, Sec. 205; Sturgis, p. 166.

Section 467—
Paragraph 1—
State v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Sturgis, p. 165.



2. When, for example, a motion to reconsider the vote on the approval of appointments was made at the same session at which it was taken and the question was then laid on the table to be taken up later at the convenience of the council in accordance with its rules, the question of reconsideration remained undetermined in the possession of the council awaiting its action.

3. If, however, the motion to reconsider is made and not considered, the effect terminates with the session, if not terminated earlier by waiver of the member giving the notice or making the motion, or by provisions of the rules.

4. If notice of the motion is given but the motion is not made, the effect of the notice terminates on the next legislative day.

5. As long as the motion or notice is in effect, any member may call up the motion to reconsider or make the motion and have it acted upon. But, as a matter of courtesy, no other member should call up a matter for reconsideration without the permission of the member making the motion or giving the notice, except in an emergency.

6. Where, under the rules, a vote can be reconsidered at the same meeting, an adjourned meeting will be considered the same meeting and a vote taken at the originally called meeting may be reconsidered at the adjourned meeting.

Section 467—Continued
Paragraph 2—
People v. Davis (1918), 284 Ill. 439, 120 N.E. 326.
Paragraph 3—
People v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Sturgis, p. 165.
Paragraph 6—
Delaware and Atlantic T. and T. Company v. City of Beverly (1914), 86 N. J. L. 677, 94 Atl. 310.

7. When the motion to reconsider and have entered in the minutes for later consideration is provided for by the rules but its use is not further regulated, such a motion cannot be considered the day it is made.

Sec. 468. Effect of Reconsideration

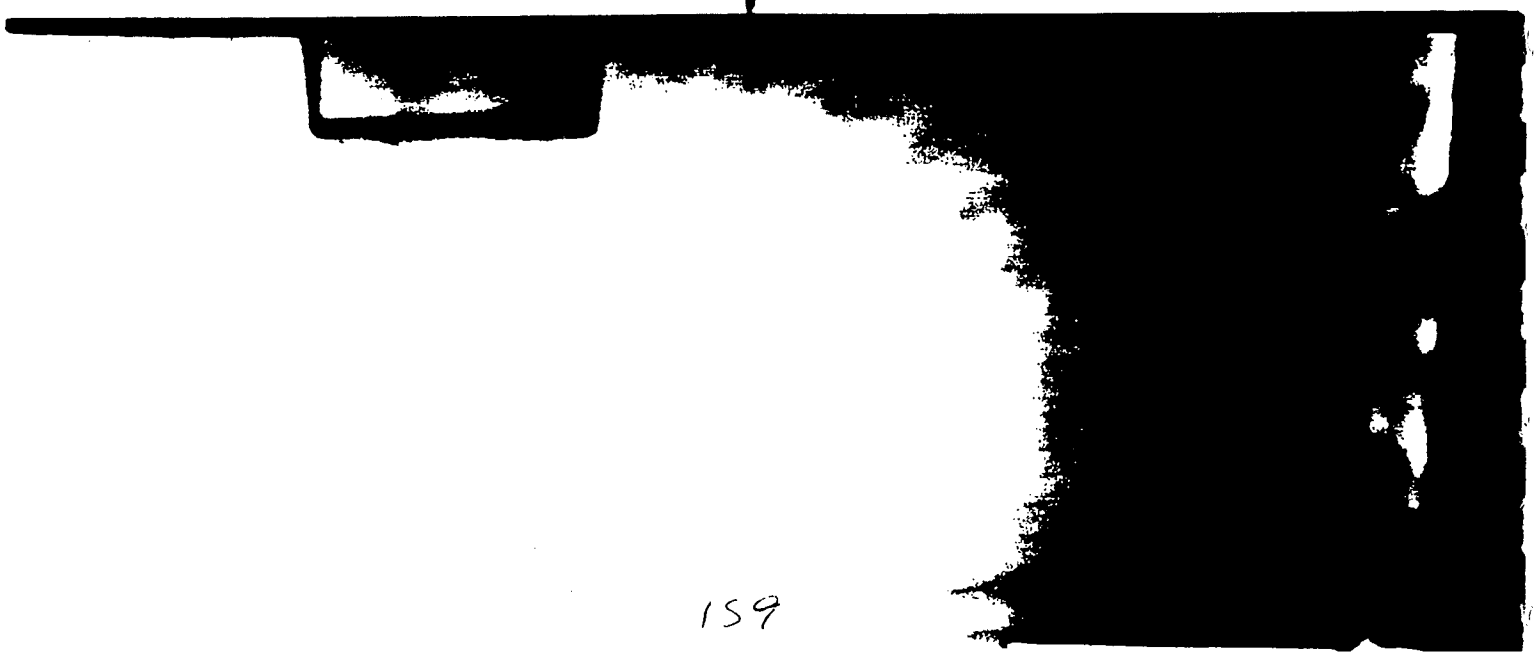
1. When a vote is reconsidered that vote is canceled as completely as though it had never been taken.

2. Where the original vote was to approve an appointment, the subsequent vote of reconsideration had the effect of disapproving the appointment.

3. Where a motion to reconsider has been passed the question immediately recurs upon the question reconsidered.

4. A legislative act is effective from the date the action is taken even though a motion to reconsider would still be in order at an adjourned meeting. Reconsideration, during

Section 467—Continued
Paragraph 7—
First Buckingham Community v. Malcolm (1941), 177 Va. 710, 15 S.E. 2d 54.
Section 468—
Paragraph 1—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963; State v. Davis (1918), 284 Ill. 439, 120 N.E. 326; Sturgis, p. 165; Cushing's Legislative Assemblies, Sec. 1277, 1278; Reed, Sec. 203; Cushing, Sec. 256.
Paragraph 2—
State v. Davis (1918), 284 Ill. 439, 120 N.E. 326.
Paragraph 3—
Ashton v. Rochester (1891), 14 N. Y. Supp. 855, 133 N. Y. 187, 30 N.E. 965, 31 N.E. 334.
Paragraph 4—
Bigelow v. Hillman (1864), 37 Me. 52.



the time a motion to reconsider may be made, is only a contingent right and does not postpone the effectiveness of the original action. Where a city council took an action which carried a penalty and adjourned the meeting to a later date, any person violating the act was subject to the penalty of the act even though the original act was still subject to reconsideration.

Sec. 469. Precedence of Consideration of Motion to Reconsider

1. This motion is unusual in that the making of the motion has a higher rank than its consideration, and the mere making of the motion prevents for a certain time anything being done as the result of the vote it is proposed to reconsider. While the making of the motion to reconsider has such high privilege, its consideration has only the rank of the motion to be reconsidered.

2. The motion to reconsider takes precedence over any new motion of equal rank, and has the further privilege that the reconsideration of a vote may be called up at any time in the appropriate order of business, when no question is pending, and this procedure is considered as in compliance with the general orders or calendar.

3. When the reconsideration is moved while another subject is before the house, it cannot interrupt the pending business, but as soon as that business has been disposed of, the reconsideration may be called up and it takes precedence over all other main motions and general orders.

4. When the motion to reconsider is made in the proper order of business and no business is before the house, the

Section 469—
Sturgis, p. 164-166; N. Y. Manual, 1948-49, pp. 451-453.

presiding officer may at once state the question on reconsideration and it is before the house for its consideration.

5. It is permissible, when a member moves a reconsideration, to have the matter set as a special order, or, unless the rules require the consideration of the motion within a limited time, he may have consideration of the motion postponed to a later date.

6. It is a usual practice to place pending motions to reconsider on the calendar under a special division ahead of the second and third reading of bills.

Sec. 470. Reconsideration of Amendments After Adoption of Measure

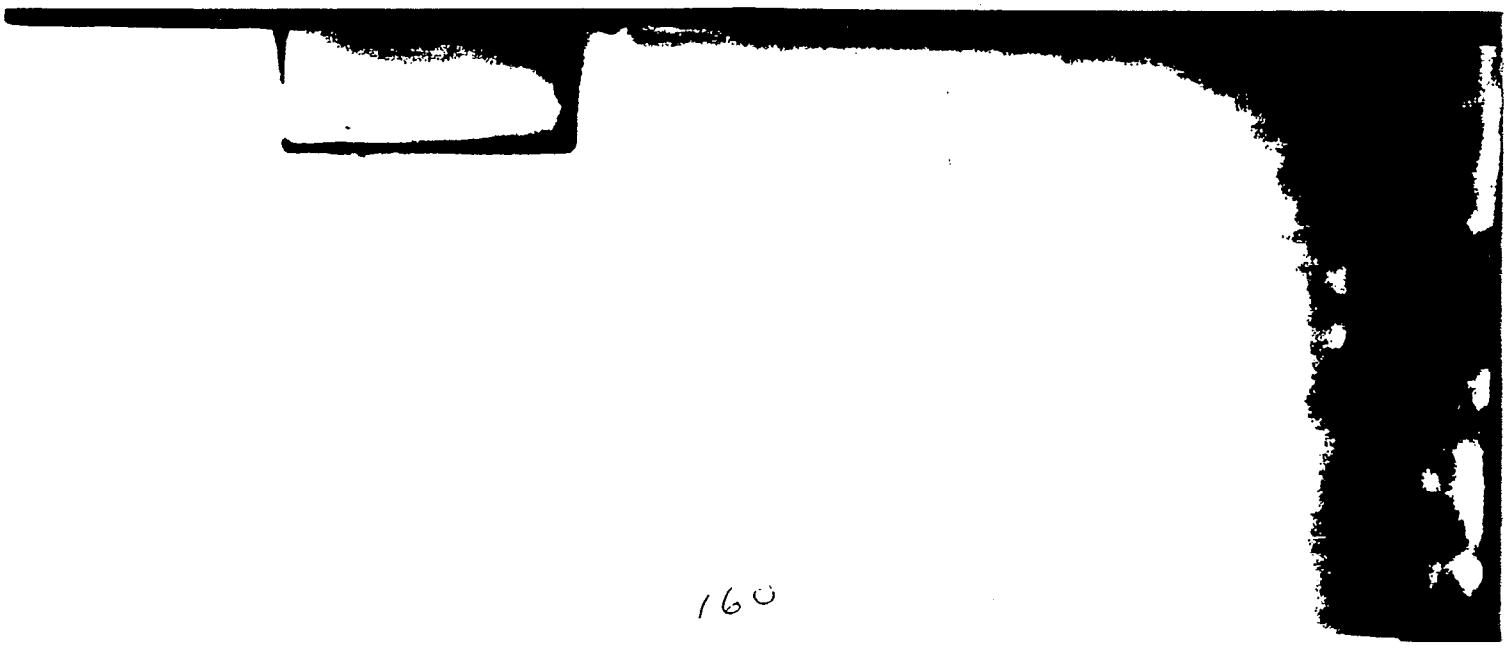
1. When it is desired to reconsider the vote on an amendment after the vote has been taken on the adoption of a main motion, it is necessary to reconsider the vote on the main question and on the amendment, or if it is desired to reconsider an amendment to an amendment after the latter has been adopted, both must be reconsidered in order to reach the amendment it is desired to reconsider. When it is thus necessary to reconsider two or three votes, one motion should be made to cover them all but debate is limited to the question first voted upon.

Sec. 471. Debate on Motion to Reconsider

1. The motion to reconsider is debatable except when the motion which it is proposed to reconsider is unde-

Section 470—
Cushing's Legislative Assemblies, Sec. 1275; Reed, Secs. 203, 204; Sturgis, p. 165.

Section 471—
Paragraph 1—
Sturgis, p. 165; Reed, Sec. 210.



batable. When the question to be reconsidered is debatable, the entire question is opened to debate by the motion to reconsider. But when the motion is made after the previous question is adopted, neither the motion nor the question is debatable.

2. The previous question and the motions closing, limiting or extending the limits of debate may be applied to the motion to reconsider when the matter to be reconsidered is debatable.

3. When the rules prohibit a member speaking more than once on a question on the same day, anyone who had exhausted his right to debate the question before the vote has the right to debate the question further on the motion to reconsider.

Sec. 472. Application of Subsidiary Motions to Motion to Reconsider

1. The motion to reconsider, since it is a single invariable proposition, cannot be amended.

2. When a motion to reconsider is laid on the table or postponed definitely, the question to be reconsidered and all adhering questions go with it.

Section 471—Continued
Paragraph 2—
Sturgis, p. 166.
Paragraph 3—
Sturgis, p. 166; Reed, Sec. 210.
Section 472—
Paragraph 1—
Sturgis, p. 166; N. Y. Manual, p. 476.
Paragraph 2—
Reed, Secs. 114, 166.

Sec. 473. Vote Required for Reconsideration

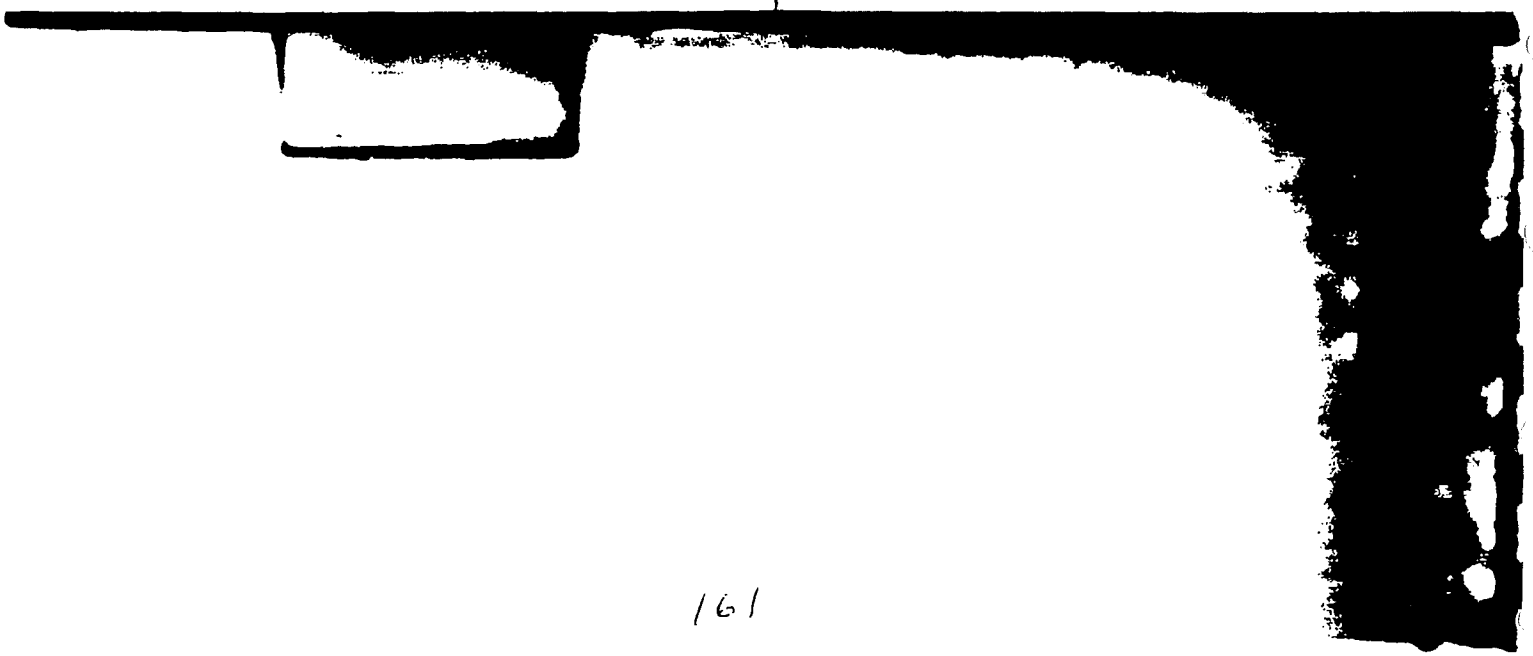
1. A majority vote of the members present and voting is necessary to reconsider an action.

2. When a measure requires more than a majority vote for passage it may still be reconsidered by a majority vote.

3. A body, under its rule-making power, can prescribe the vote required for reconsideration but, unless a different vote is prescribed, any vote can be reconsidered by a majority vote.

4. It was held in one early case that when a two-thirds vote of a city council is required to take any action, the same vote, in the absence of a special rule, is necessary for reconsideration of the action, but this is not the established rule. When, for example, a two-thirds vote is required to pass a measure, passage can be defeated by one more than one-third of the members, but, by the application of this rule, a full two-thirds would be required to reconsider and defeat the measure after the original vote had once been taken.

Section 473—
Paragraph 1—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963; Wingert v. Snauffer and Ford (1906), 134 Iowa 97, 108 N.W. 1035; Naegely v. Saginaw (1894), 101 Mich. 532, 60 N.W. 46; Stockdale v. School District (1881), 47 Mich. 226, 10 N.W. 349.
Paragraph 2—
Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963.
Paragraph 3—
Wingert v. Snauffer and Ford (1906), 134 Iowa 97, 108 N.W. 1035.
Paragraph 4—
Whitney v. Village of Hudson (1888), 69 Mich. 189, 37 N.W. 184.



CHAPTER 43

MOTION TO RESCIND

Sec. 480. Use of the Motion to Rescind

1. The motion to rescind has many of the same characteristics as the motion to reconsider and is used for much the same purpose. Many court decisions treat the two motions as one motion.

2. In use, the motion to rescind is ordinarily applied to actions which have been taken and are already in effect. It resembles, in many respects, the motion to repeal because it has the effect of making ineffective an action previously taken. It has also been described as being in the nature of a motion to amend by striking out the entire proposal and leaving nothing remaining.

3. A motion to rescind a vote on an action does not have the effect of suspending the action previously taken or staying it until final decision on the motion to rescind.

4. A motion to rescind is principally used to reverse a previous action after the time for consideration has passed. The motion to rescind is not in order when the question can be reached by a motion to reconsider.

Sec. 481. What Actions Can Be Rescinded

1. A legislative body can rescind an action previously taken so long as no vested rights have arisen from the original action. In this respect the motion to rescind is in effect the same as the motion to reconsider. Instances which have been decided by the courts are stated below.

2. A town meeting or other deliberative body can rescind an action taken at a previous meeting when no rights have intervened and may take such action without notice.

3. The motion to rescind may be made at any subsequent meeting so long as no rights have intervened and is not limited to any specific or particular time during which the motion can be made.

4. When an authorized act has been carried out the power to rescind does not exist.

5. Where a legislative body ratifies a contract the ratification completes the act and a subsequent meeting can not rescind the ratification.

Section 480—
Hughes, Sec. 469.

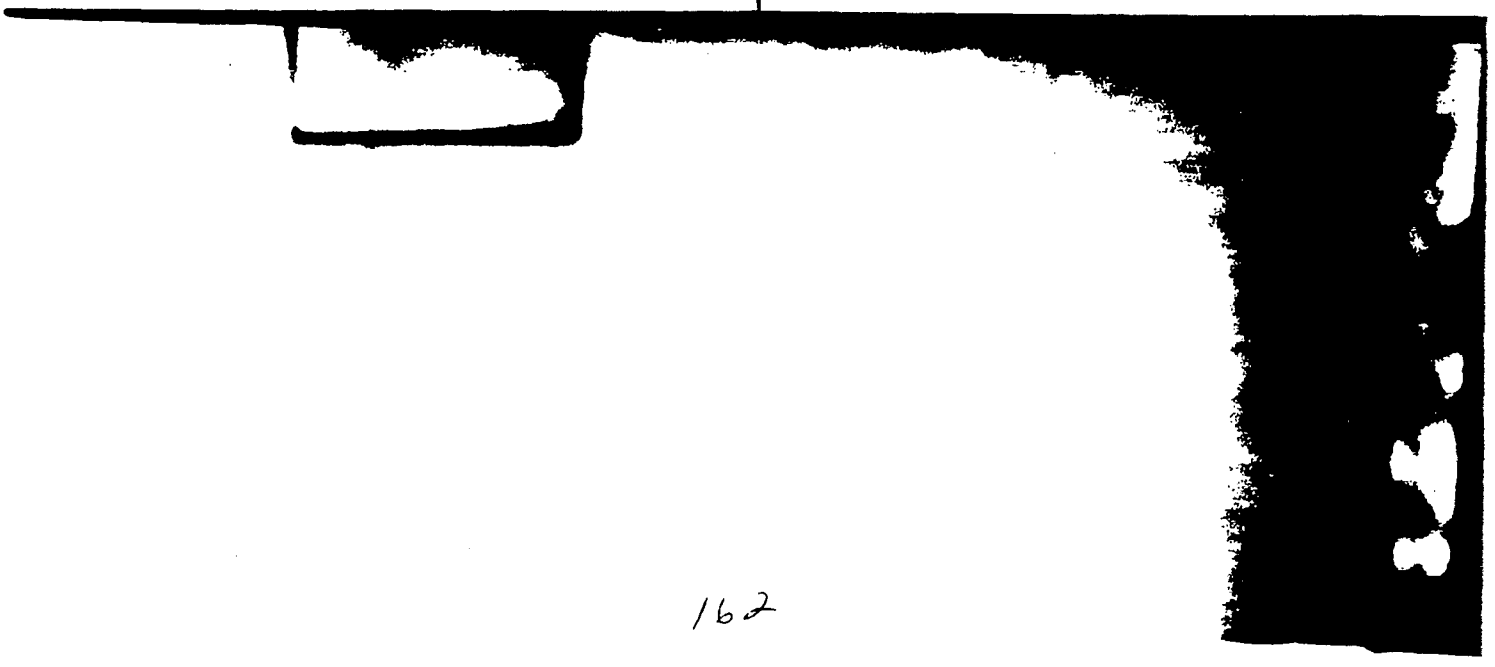
Sec. 482. Motion to Rescind

1. The motion to rescind may be made by any member whether he voted with the prevailing side or not. The motion is debatable and opens the entire question to debate.

2. The motion to rescind yields to all privileged and incidental motions and all subsidiary motions can be applied to it, the same as any other main motion.

3. Like other main motions, the motion to rescind may not be renewed during the same meeting or session, but also may be subject to reconsideration in the same manner as a main motion.

Section 481—
Paragraph 2—
Allen v. Taunton (1837), 19 Pick. (Mass.) 485; Estey v. Starr (1884), 56 Vt. 690; McConoughey v. Jackson (1884), 101 Cal. 265, 25 Pac. 863.
Paragraph 3—
McConoughey v. Jackson (1894), 101 Cal. 265, 25 Pac. 863; Stoddard v. Gilman (1850), 22 Vt. 568.
Paragraph 4—
Schiefelin v. Hylan (1919), 174 N. Y. Supp. 506.
Paragraph 5—
Brown v. Wintersport (1887), 79 Me. 305, 9 Atl. 844.



4. In the event of the expulsion of a member the only way to reverse the action afterward is to restore the person to membership which requires the same procedural steps as is required for election.

5. When an action such as the enactment of legislation has been taken, and notice or three readings or like procedure would be required to repeal the action, the action is not subject to the motion to rescind.

Sec. 483. Vote Required to Rescind

1. The motion to rescind requires the same vote as would be required to repeal the act which it is sought to rescind. In the absence of any special rule this is a majority vote. Neither a notice nor a two-thirds vote is necessary unless expressly required in the rules.

Section 482—
Paragraph 4—
U. S. House Rule, 71st Session, paragraphs 71, 712.
Section 483—
Tetley v. Vancouver (1897), 5 B. C. 276; Naegely v. Saginaw (1894), 101 Mich. 532, 60 N.W. 46; Stockdale v. School District (1881), 47 Mich. 226, 10 N.W. 349; Allen v. Taunton (1837), 19 Pick. (Mass.) 485; Estey v. Starr (1884), 56 Vt. 690; McConoughey v. Jackson (1894), 101 Cal. 265, 35 Pac. 863.

CHAPTER 44

PROCEDURAL MAIN MOTIONS

Sec. 488. Procedural Main Motions

1. In addition to main motions which are substantive propositions presented to a legislative body, there is a group of procedural motions which have the same precedence as main motions and, for that reason, are often classified with main motions.

2. These motions are often familiar types of procedural motions which differ from other procedural motions only in relating to future procedure. Motions to adjourn or to recess at some future time are examples of this class of motion.

3. Classified also with these motions are procedural motions which from their use have precedence only with main motions. Motions of this class are motions to take from the table, resume consideration, or pass on calendar.

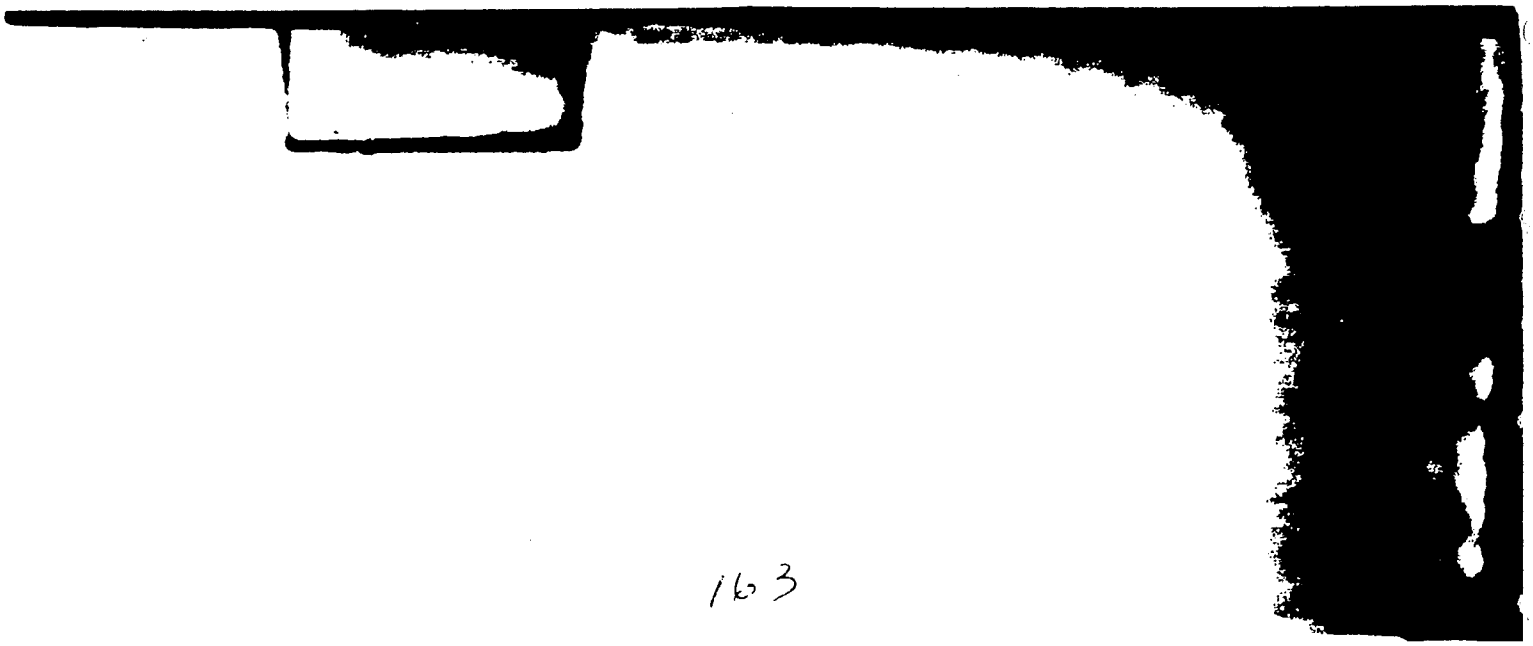
Sec. 489. Motions Relating to Future Procedure

1. Generally, motions relating to future procedure must compete with main motions for consideration, because there is no need for priority.

2. Because the urgency of immediate determination does not exist, this type of question is open to debate.

3. Motions relating to future procedure are subject to the motions to postpone, to refer to committee, or to lay on the table. They are subject to amendment and motions limiting debate. These motions may be renewed after a change in the parliamentary situations but may not be reconsidered.

Section 488—
Hughes, Secs. 433-452, 479-488.



4. Among the motions in this class are:

(a) Motions fixing a time, or a different time, at which or to which to adjourn.
(b) Motions fixing a time for a recess or other conditions relating to a recess.
(c) Motions fixing a time or other conditions relating to committee of the whole.
(d) Motions relating to the future consideration of some matter of business.
(e) Motions relating to future meetings, program, or procedure of any kind.

Sec. 490. Procedural Motions With Precedence of Main Motions

1. Deliberative bodies make frequent use of motions in conducting their business which rank in the class of main motions. Some of these motions, like the motion to take from the table, are in order whenever no business is pending. Others, like the motion to pass on calendar, may be applied to a pending main motion.

2. Generally, these motions are subject to the same rules as other simple procedural motions. They are not debatable, except sometimes limited debate is permitted on the motion to withdraw a bill from committee or discharge a committee. They are not subject to the subsidiary motions and can be renewed after a change in the parliamentary situation, but cannot be reconsidered. Unless some special rule has been adopted, they require a majority of the legal votes cast for adoption.

3. Among the more frequently used motions of this class are:

Section 490—
Hughes, Secs. 454-467.

(a) Motions to withdraw from committee or discharge a committee.
(b) Motions to take from the table or resume consideration.
(c) Motions to pass on calendar or file.
(d) Motions to lay on the desk or take from the desk (sometimes used when lay on the table is restricted by rule).
(e) Cloture or making special rules concerning debate on or consideration of some pending question.

4. The motions to withdraw from committee and take from the table are the only motions in this class which require further consideration.

Sec. 491. Withdrawing Bills From Committee

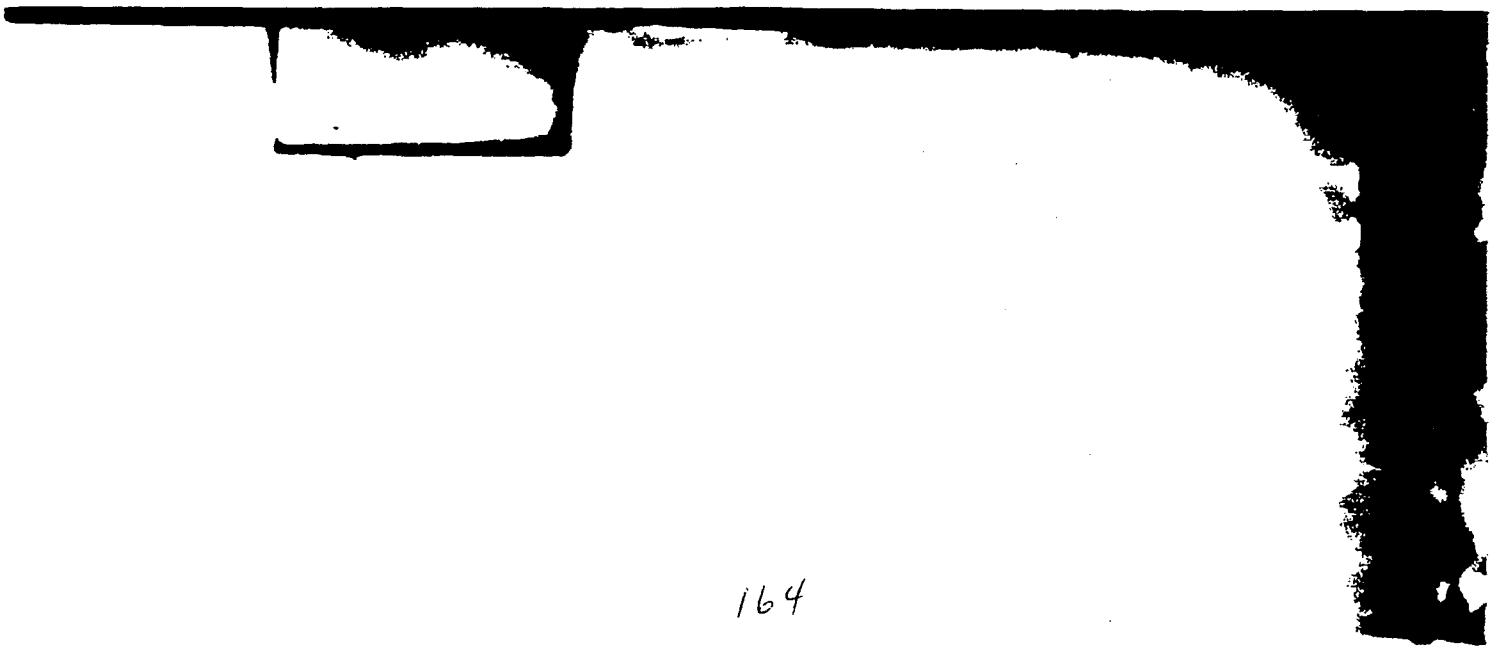
1. When a legislative body wishes to give consideration to or to act upon a bill or other matter which has been referred to a committee, a motion may be made to withdraw the matter from the committee, or to discharge the committee from further consideration of the matter referred to it.

2. The motion to withdraw a question or discharge a committee from further consideration is not a suspension of the rules, and may be made without previous notice.

3. The motion, in either form, takes precedence as a main motion. It is not subject to the motions to postpone, to refer to committee, to lay on the table, nor to amendment.

4. It is not in order to discuss the merits of a bill upon a motion to discharge a committee or withdraw the bill

Section 491—
Paragraph 2—
N. Y. Manual, p. 426.



from committee. Debate in such cases must be confined strictly to the purpose of the motion, for if this were not true, the merits of any question could be forced under discussion merely by such a motion.

5. A motion to discharge a committee or withdraw a bill requires a majority vote, or the action may be taken by unanimous consent.

6. A single motion to withdraw a bill from committee, amend the bill, reprint it and recommit it to the committee, is in order.

Sec. 492. Motion to Take From the Table

See also Chapter 34, Secs. 330-341, Motion to Lay on the Table.

A. Precedence of Motion

1. The motion to take from the table has no privileged status and is not in order when anything is before the body.

2. The motion to take from the table yields to all privileged motions and incidental motions but may be taken up in preference to main motions at a time when business of this class, or unfinished business, or new business, is in order unless it has a privileged status.

B. When Motion Is in Order

3. A question is, in theory, to be laid on the table only temporarily, with the expectation of its consideration

Section 491—Continued
Paragraph 4—
Hughes, Sec. 733.
Paragraph 5—
Hughes, Secs. 462, 463.
Paragraph 6—
N. Y. Manual, p. 411.
Section 492—
Paragraph 1—
Hughes, Secs. 454, 455; Reed, Sec. 114; N. Y. Manual, pp. 416, 453; U. S. House Rule XVI, note 784.

being resumed after the disposal of the interrupting question, or at a more convenient time. The motion to take from the table is not in order until after the intervening business, for which it was laid on the table, has been disposed of.

4. When the question laid on the table had a privileged status, a motion to take from the table is in order in the same order of business in which the matter affected was laid on the table. A motion to take from the table a motion to reconsider a vote by which a bill was defeated is in order on third reading.

C. Renewal and Reconsideration of Motion

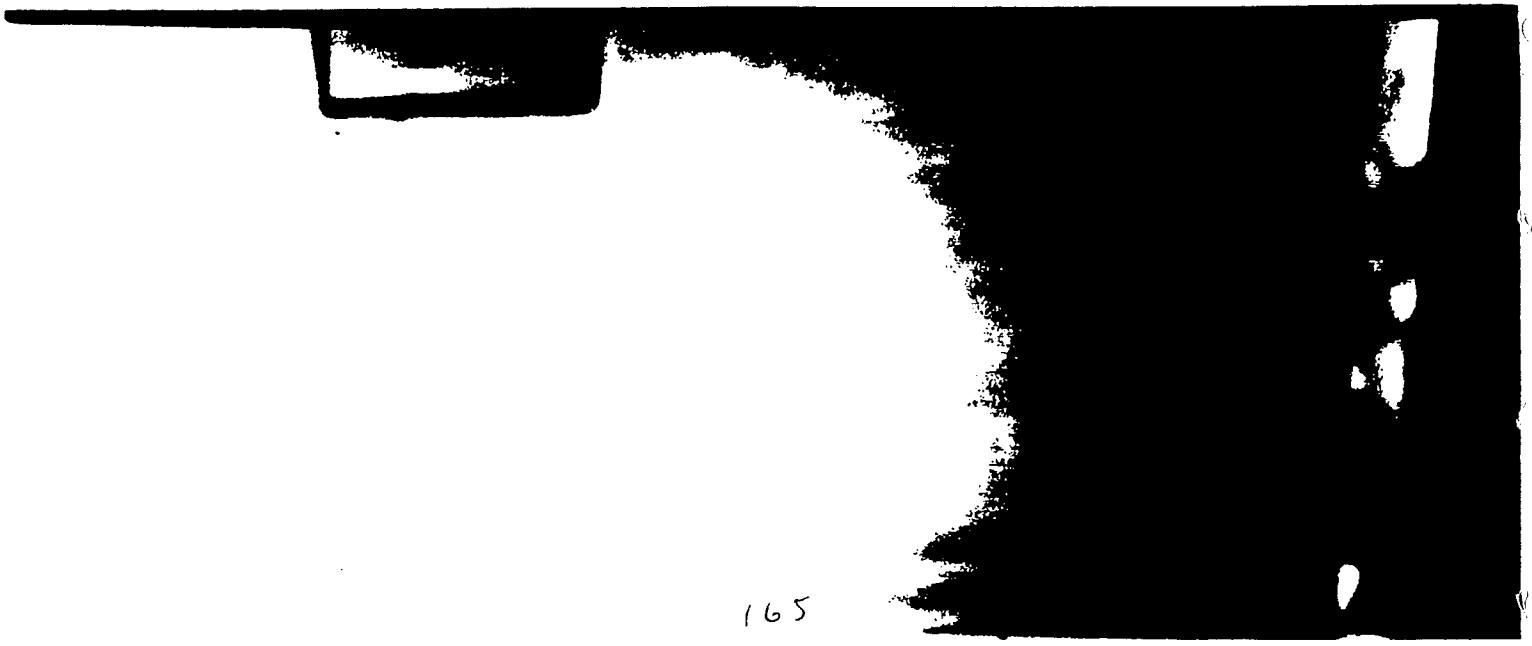
5. The motion to take from the table may not be reconsidered, as it can be renewed after intervening business. A motion may be laid on the table a second time and be again taken from the table.

D. Application of Other Motions. Debate. Vote

6. The motion to take from the table may not be laid on the table, postponed, committed, nor have any other subsidiary motion applied to it. It is not subject to debate. It requires for adoption a majority of the legal votes cast.

E. Effect on Adhering Motions

7. When taken from the table, the question, with everything adhering to it, is before the house exactly as when it was laid on the table. Thus, if a resolution had amendments and a motion to commit pending at the time it was laid on the table, when it is taken from the table, the question is first on the motion to commit and then on the amendments. If a motion to postpone to a certain time be pending when a question is laid on the table and it is taken from the table after that time, then the motion to postpone is ignored when the question is taken up.



8. If the question is taken up on the day it was laid on the table, members who have exhausted their right of debate cannot again speak on the question. But if taken up on another day, no notice is taken of speeches previously made. When the motion to lay on the table is permitted after the previous question is ordered, the previous question is not exhausted, even though the question is taken from the table on another day.

9. By a special rule the motion to lay on the table is sometimes converted into a motion to finally dispose of questions by providing that no question may be taken from the table. This is the practice in Congress where bills are taken from the table only by suspension of the rules.

Sec. 493. Motion to Take From Desk

1. When there are matters at the desk concerning which no action has been taken and which a member desires to have considered, a motion may be made for that purpose. The motion may not be made when other business is before the house. A majority vote only is required, and this motion is not subject to any subsidiary motion.

Sec. 494. Motion to Pass on Calendar or File

1. The effect of the motion to lay aside or informally pass is merely to pass the bill or measure, in the course of consideration of the calendar, without prejudice to the matter passed. Such a motion is not given any privilege by the rules. It is not subject to the subsidiary motions and is not debatable.

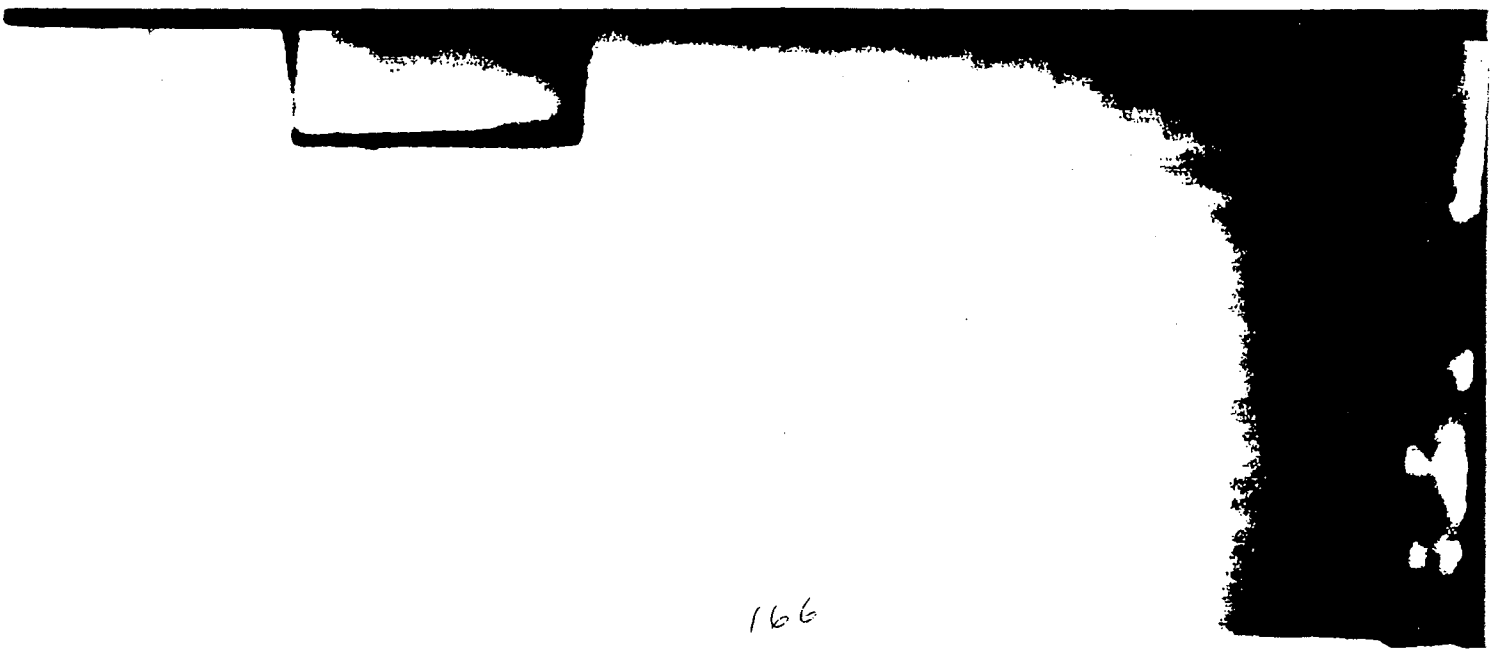
Section 493—
Hughes, Sec. 483.
Section 494—
Hughes, Secs. 479, 480, 481, 715,

Sec. 495. Motion to Dispense With Constitutional Readings

1. The motion to dispense with constitutional reading when permitted by the constitution, takes precedence no other motion than the main question on the bill f which the constitution provision is suspended.

2. Even when the constitution requires a separate vo on the passage of each bill, but the requirement of thr readings may be suspended, a motion to dispense with co stitutional readings may be applied to more than one bi

Section 495—
People v. County of Glenn (1893), 100 Cal. 419, 35 Pac. 30
Hughes, Sec. 482.



PART V

QUORUM, VOTING, ELECTIONS

CHAPTER 45

QUORUM

Sec. 500. Quorum Is a Majority

See also Sec. 615, Quorum of Committees.

1. A quorum of any deliberative body, whether a legislative body, an administrative board or a court, must be present in order to transact business, and to make its acts valid.

Section 500—

Paragraph 1—

Cushing's Legislative Assemblies, Sec. 247; Sturgis, p. 14-17; Reed, Sec. 9; Hughes, Sec. 644; Cushing, Sec. 17; Tilson, p. 27; Brown v. Dist. of Columbia (1888), 127 U. S. 579, 32 L. Ed. 262; Daniels v. Bayless Stores (1935), 46 Ariz. 442, 52 Pac. 2d 475; Downing v. Ruger (1899), 21 Wend. (N. Y.), 178; Moses v. Tompkins (1888), 84 Ala. 613, 4 So. 763; State v. Porter (1888), 113 Ind. 79, 14 N.E. 883; Logansport v. Legg (1863), 20 Ind. 315; Hamilton v. Grand Rapids, etc. R. Co. (1859), 13 Ind. 347; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Pierce v. New Orleans Building Co. (1836), 9 La. 397, 29 Am. Dec. 448; Ellsworth Woolen Mfg. Co. v. Founce (1887), 79 Me. 440, 10 Atl. 250; Heiskell v. Baltimore (1886), 65 Md. 125, 4 Atl. 116; Dingwell v. Detroit (1890), 82 Mich. 568, 46 N.W. 938; Morrill v. Little Falls Mfg. Co. (1893), 53 Minn. 371, 55 N.W. 547; Kay Jewelry Co. v. Board of Optometry (1940), 305 Mass. 581, 27 N.E. 2d 1; Kimball v. Marshall (1863), 44 N. H. 465; Doughty v. Scull (1915), 96 Atl. 564; State v. Wilkesville Tp. (1870), 20 Ohio St. 288; Commonwealth v. Garvey (1907), 217 Pa. 425, 66 Atl. 652; Lockwood v. Mechanics National Bank (1869), 9 R. I. 308, 11 Am. Rep. 253; Boggess v. Buxton (1910), 67 W. Va. 679, 69 S.E. 367; Sharp v. Dawes (1876), (Eng.) 2 Q. B. D. 26; Blacket v. Blizard (1829), 9 B and C 851, 109 Reprint 317.

2. The majority of the membership of a body constituted of a definite number of members, constitutes a quorum for the purpose of transacting business.

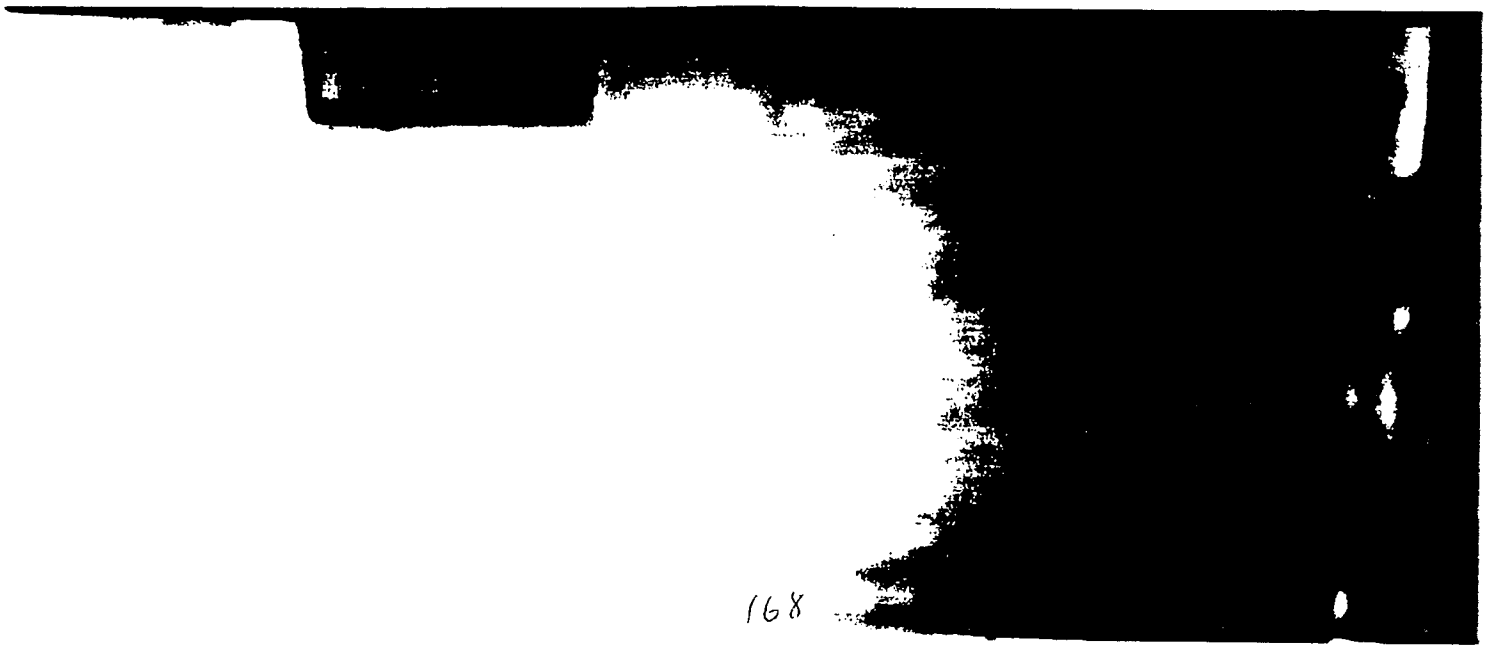
Section 500—Continued
Paragraph 2—
Cushing's Legislative Assemblies. Sec. 247; Sturgis, p. 14; Reed, Sec. 12; Hughes, Sec. 645; Cushing, Secs. 18-18e; Tilson, p. 27; U. S. v. Ballin (1892), 144 U. S. 1, 26 L. Ed. 321; Brown v. Dist. of Columbia (1888), 127 U. S. 579, 32 L. Ed. 262; State v. Chapman (1878), 44 Conn. 595; In re Opinion of Justices (1868), 12 Fla. 653; Price v. Grand Rapids etc. R. Co. (1859), 13 Ind. 58; Buell v. Buckingham (1864), 16 Iowa 284, 85 Am. Dec. 516; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Seiler v. O'Maley (1921), 190 Ky. 190, 227 S.W. 141; Warnock v. Lafayette (1849), 4 La. Ann. 419; Cram v. Bangor House Proprietary (1835), 12 Me. 354; Heiskell v. Baltimore, etc. (1886), 65 Me. 125, 4 Atl. 116; Williams v. Lunenburg School Dist. (1838), 21 Pick. (Mass.) 75, 32 Am. Dec. 243; In re Opinion of Justices (1877), 122 Mass. 594; Kay Jewelry Co. v. Board of Optometry (1940), 305 Mass. 581, 27 N.E. 2d 1; Baker v. Port Huron (1886), 62 Mich. 327, 28 N.W. 913; Cahill v. Kalamazoo Mut. Ins. Co. (1845), 2 Doug. (Mich.) 124, 43 Am. Dec. 457; State v. Chute (1885), 34 Minn. 135, 24 N.W. 353; State v. Kan. City (1925), 310 Mo. 542, 276 S.W. 389; Despatch Line, etc. v. Bellamy (1841), 12 N. H. 205. 37 Am. Dec. 203; Barnett v. Patterson (1886), 48 N. J. L. 395, 6 Atl. 15; Hutchinson v. Belmar (1898), 61 N. J. L. 443, 39 Atl. 643; People v. Walker (1856), 23 Barb. (N. Y.) 304; Coles v. Williamsburg (1833), 10 Wend. (N. Y.) 659; In re Brearton (1904), 89 N. Y. Supp. 893; Madison Ave. Baptist Church v. Oliver St. Baptist Church (1867), 29 N. Y. Super. 649; State v. Ellington (1895), 117 N. C. 158, 23 S.E. 250; Hill v. Ponder (1942), 221 N. C. 58, 19 S.E. 2d 5; Deglow v. Kruse (1898), 57 Ohio St. 434, 49 N.E. 477; Myers v. Phila. Union League (1908), 17 Pa. Dist. 301; State v. Huggins (1824), 16 S. C. L. 239, 12 Rich Law (S. C.) 402; State V. Delieseline (1821), 12 S. C. L. 52, 1 McCord (S. C.) 52; State v. Porter (1888), 113 Ind. 79, 14 N.E. 883; Cowan v. Murch (1896), 97 Tenn. 590, 37 S.W. 393; Limestone County Commissioners v. Garrett (1922) (Tex.), 236 S.W. 970; Leavitt v. Oxford, etc. Silver Mfg. Co. (1883), 3 Utah 265, 1 Pac. 356; Booker v. Young (1855), 53 Va. 303; State v. Farrar (1921), 89 W. Va. 232, 109 S.E. 240; Boggess v. Buxton (1910), 67 W. Va. 679, 695, 69 S.E. 367; Gosling v. Veley (1847), 7 Q. B. 406, 115 Reprint 542; Blacket v. Blizard (1829) (Eng.), 9 B and C 851, 109 Reprint 317.

Sec. 501. Computing a Quorum

1. The total membership of a body is to be taken as the basis for computing a quorum, but when there is a vacancy, unless a special provision is applicable, a quorum will consist of the majority of the members remaining qualified.

2. The authority which creates a body has the power to fix its quorum. The presence of all or of a certain number or proportion may be required. The body itself does not have the authority even to require the presence of

Section 501—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 246-253; Pimental v. San Francisco (1863), 21 Cal. 351; McCracken v. San Francisco (1860), 16 Cal. 591; Pollasky v. Schmid (1901), 128 Mich. 699, 87 N.W. 1030; McLean v. East St. Louis (1906), 222 Ill. 510, 78 N.E. 815; In re Opinion of Justices (1869), 12 Fla. 653; People v. Wright (1902), 30 Colo. 439, 71 Pac. 365; Evanston v. O'Leary (1897), 70 Ill. App. 124; State v. Porter (1888), 113 Ind. 79, 14 N.E. 883; State v. Dickie (1878), 47 Iowa 629; Barry v. New Haven (1915), 162 Ky. 60, 171 S.W. 1012; Pollard v. Gregg (1914), 77 N. H. 100, 90 Atl. 176; Warnock v. Lafayette (1849), 4 La. Ann. 419; People v. Harshaw (1886), 60 Mich. 200, 26 N.W. 879; State v. McBride (1836), 4 Mo. 303, 29 Am. Dec. 636; North Platte v. North Platte Water Wks. Co. (1898), 56 Neb. 403, 76 N.W. 906; Mueller v. Egg Harbor City (1893), 55 N. J. L. 245, 26 Atl. 89; State v. Orr (1899), 61 Ohio St. 384, 56 N.E. 14; State v. Delieseline (1821), 12 S. C. L. 52, 1 McCord (S. C.) 52; State v. Farrar (1921), 89 W. Va. 232, 109 S.E. 240; Fisher v. Harrisburg Gas Co. (1857), 1 Pears. (Pa.) 118; Rouleau v. St. Lambert (1895), 10 Que. Super. 69.
Paragraph 2—
Ex Parte Rogers (1821), 7 Cowp. (N. Y.) 526; U. S. v. Ballin (1892), 144 U. S. 1, 12 Sup. Ct. 507; Heiskell v. City of Baltimore (1886), 65 Md. 125, 4 Atl. 116; Barnett v. City of Patterson (1886), 48 N. J. L. 395, 6 Atl. 15; Cleveland Cotton Mills v. Cleveland County Commissioners (1891), 108 N. C. 678, 13 S.E. 271; Borough of Florham Park v. Dept. of Health (1929), 7 N. J. L. 549, 146 Atl. 354; Hill v. Ponder (1942), 221 N. C. 58, 19 S.E. 2d 5; Tinson v. Morrow (1920), 189 Ky. 291, 224 S.W. 879; Seiler v. O'Maley (1921), 190 Ky. 190, 227 S.W. 141.



more than a majority to enable it to act unless that authority was specifically granted to it.

Sec. 502. Who May Be Counted in Determining a Quorum

1. In determining a quorum, persons who are not at the particular time regularly qualified members of the body should not be counted.

2. Every member entitled to vote should be counted in determining whether a quorum is present, but members

Section 502—
Paragraph 1—
People v. Wright (1902), 30 Colo. 439, 71 Pac. 365; State v. Porter (1888), 113 Ind. 79, 14 N.E. 883; Swan v. Indianola (1909), 142 Iowa 731, 121 N. W. 547; Commissioners v. Wachovia L. & T. Co. (1906), 143 N. C. 110, 55 S.E. 442; State v. Orr (1899), 61 Ohio St. 384, 56 N.E. 14; State v. Huggins (1860), 12 Rich Law 402; Barry v. New Haven (1915), 162 Ky. 60, 171 S.W. 1012; North Platte v. North Platte Water Works (1898), 56 Neb. 413, 76 N.W. 906; Mueller v. Egg Harbor City (1893), 55 N. J. L. 245, 26 Atl. 89; State v. Farrar (1921), 89 W. Va. 232, 109 S.E. 240; Rouleau v. St. Lambert (1895), 10 Que. Super. 69.

Paragraph 2—
Cushing's Legislative Assemblies, Sec. 253; Enright v. Heckscher (1917), 240 Fed. 863, 153 C. C. A. 549; Curtin v. Salmon River Hdq. Mining, etc. Co. (1900), 130 Cal. 345, 62 Pac. 552; Smith v. L. A. Imm. Assoc. (1889), 78 Cal. 289, 20 Pac. 677; Steele v. Gold Fissure Gold, etc. Co. (1908), 42 Colo. 529, 95 Pac. 349; Federal Life Ins. Co. v. Griffin (1912), 173 Ill. App. 5; Jones v. Morrison (1883), 31 Minn. 140, 16 N.W. 854; Hill v. Rich Hill Coal Mining Co. (1893), 119 Me. 9, 24 S.W. 223; Metropolitan Tel., etc. Co. v. Domestic Tel., etc. Co. (1888), 44 N. J. Eq. 568, 14 Atl. 907; Butts v. Wood (1867), 37 N. Y. 317; Fields v. Victor Building, etc. Co. (1918), 73 Okla. 207, 175 Pac. 529; Burton v. Lithic Mfg. Co. (1914), 73 Ore. 605, 144 Pac. 1149; San Antonio St. R. Co. v. Adams (1894), 87 Tex. 125, 26 S.W. 1040; Triplett v. Fauver (1904), 103 Va. 123, 48 S.E. 875; Bassett v. Fairchild (1901), 132 Cal. 637, 64 Pac. 1082; Star Mills v. Bontey (1910), 140 Ky. 194, 130 S.W. 1077; Seiler v. O'Maley (1921), 190 Ky. 190, 227 S.W. 141; In re Greymouth Pt., etc. R. Co. (1904) (Eng. 1904), 1 Ch. 32; Rouleau v. St. Lambert (1895), 10 Que. Super. 69.

disqualified on account of interest from voting on any question cannot be counted for the purpose of making a quorum to act on that question.

3. Where the number required by statute or other rule to constitute a quorum is fixed at a definite number the diminution of the members of the body will not change the number necessary for a quorum.

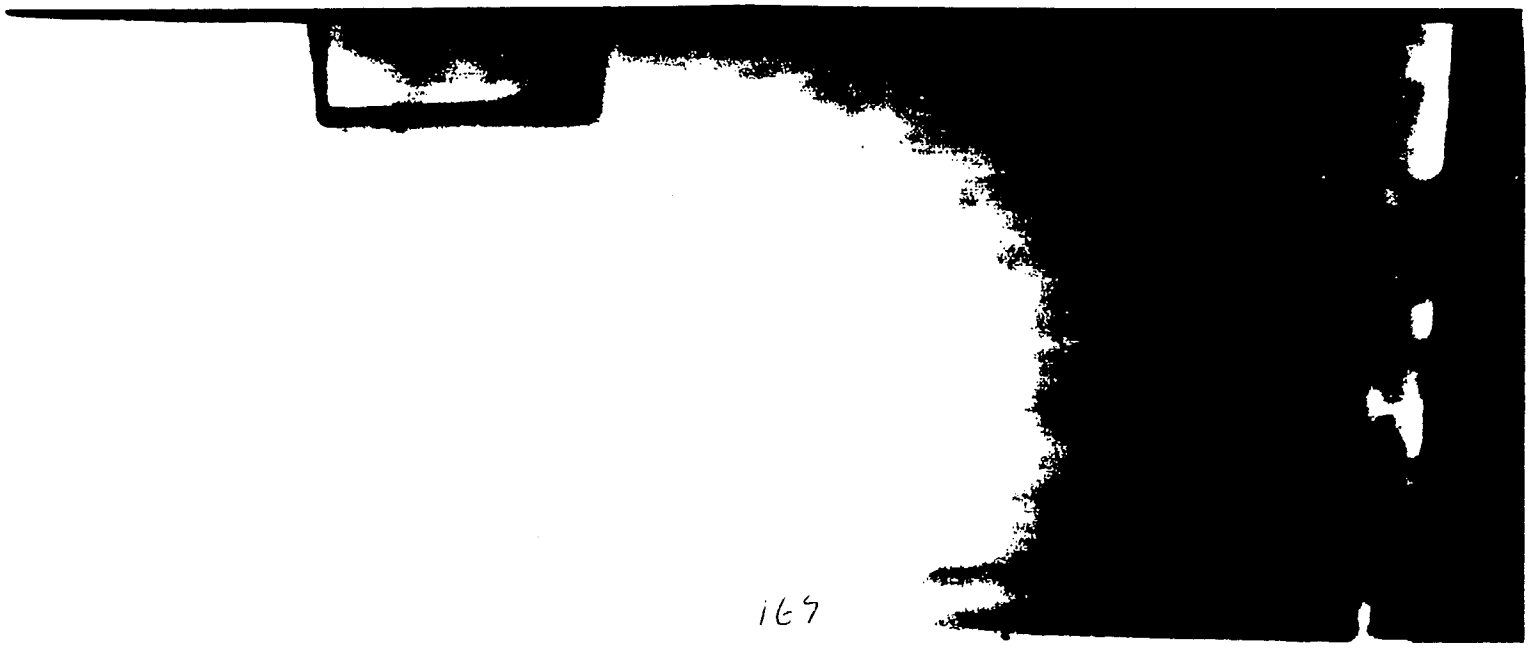
4. Where the presiding officer is a member of the body, he is to be counted in determining a quorum. When he is not a member he is not to be counted, even though he may vote in case of a tie.

5. In a joint meeting of legislative bodies, there being no rule to the contrary, a quorum of each branch of the body is necessary to make a quorum of the joint session. Less than a quorum of one branch acting with the majority of the other does not constitute a quorum of the

Section 502—Continued
Paragraph 3—
Fisher v. Harrisburg Gas Company (1857), 1 Pears. (Pa.) 118.

Paragraph 4—
Cushing's Legislative Assemblies, Sec. 253; State v. Porter (1888), 113 Ind. 79, 14 N.E. 883; Griffin v. Messenger (1901), 114 Iowa 99, 86 N.W. 219; Pinson v. Morrow (1920), 189 Ky. 291, 224 S.W. 879; Shugars v. Hamilton (1906), 122 Ky. 606, 92 S.W. 564; Somerset v. Smith (1899), 20 Ky. L. Rep. 488, 49 S.W. 456; Attorney Gen. v. Sheppard (1882), 62 N. H. 383, 13 Am. St. Rep. 576; People v. Harshaw (1886), 60 Mich. 200, 26 N.W. 879; McLean v. East St. Louis (1906), 222 Ill. 510, 78 N.E. 815; Reynolds County Tel. Co. v. Piedmont (1911), 152 Mo. App. 316, 133 S.W. 141; Cate v. Martin (1900), 70 N. H. 135, 46 Atl. 54.

Paragraph 5—
Guildersleeve v. Board of Education (1860), 17 Abb. Pr. (N. Y.) 201; Commonwealth v. Hargest (1889), 7 Pa. Co. Ct. 333; State v. Chapman (1878), 44 Conn. 595; King v. Buller (1807), 8 East. 389; Rex. v. Bellringer (1792) (Eng.), 4 Term Rep. 810; Willcock on Municipal Corporations, Secs. 52-54; Glover on Municipal Corporations, Sec. 148.



joint meeting though the number of members participating exceeds the majority of both houses in joint convention.

6. Committees are subject to the same rules concerning a quorum as are other bodies. A majority of a committee constitutes a quorum.

7. When an ex officio member of a body is a regular working member, he is to be considered in determining a quorum, but when an officer is incidentally a member of a body as where the president is an ex officio member of all committees, he is not to be so considered.

Sec. 503. Members Present Constitute the Quorum

1. A quorum is determined by the number of members present, not by the number voting. The fact of a quorum is not dependent upon the number who participate in the proceedings and vote. If the number necessary to make

Section 502—Continued
Paragraph 6—
Damon v. Grandy (1824), 10 Mass. (2 Pick.) 345; State v. Jersey City (1859), 27 N. J. L. 493; State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304; Jefferson, Sec. XXVI.
Paragraph 7—
Horton v. Garrison (1856), 23 Barb. (N. Y.) 176; Guildersleeve v. Board of Education (1863), 17 Abb. Pr. (N. Y.) 201; Seiler v. O'Maley (1921), 190 Ky. 190, 227 S.W. 141.
Section 503—
Paragraph 1—
Hughes, Sec. 670; N. Y. Manual, p. 498; Reed, Sec. 15; Launtz v. People (1885), 113 Ill. 137, 55 Am. Rep. 405; Rushville Gas Co. v. Rushville (1889), 120 Ind. 206, 23 N.E. 72; Meyers v. Philadelphia Union League (1908), 17 Pa. Dist. 301; State v. Yates (1897), 19 Mont. 237, 47 Pac. 1004; Atty. Gen. v. Sheppard (1882), 62 N. H. 383, 13 Am. St. Rep. 576; Atty. Gen. v. Remick (1902), 71 N. H. 480, 53 Atl. 308; In re Brearton (1904), 89 N. Y. Supp. 893; State v. Green (1881), 37 Ohio St. 227; Booker v. Young (1855), 12 Gratt. (Va.) 303; U. S. v. Ballin (1888), 144 U. S. 1, 12 Sup. Ct. 507, 36 L. Ed. 321.

a quorum is present, it makes no difference how many how few actually participate in the discussion.

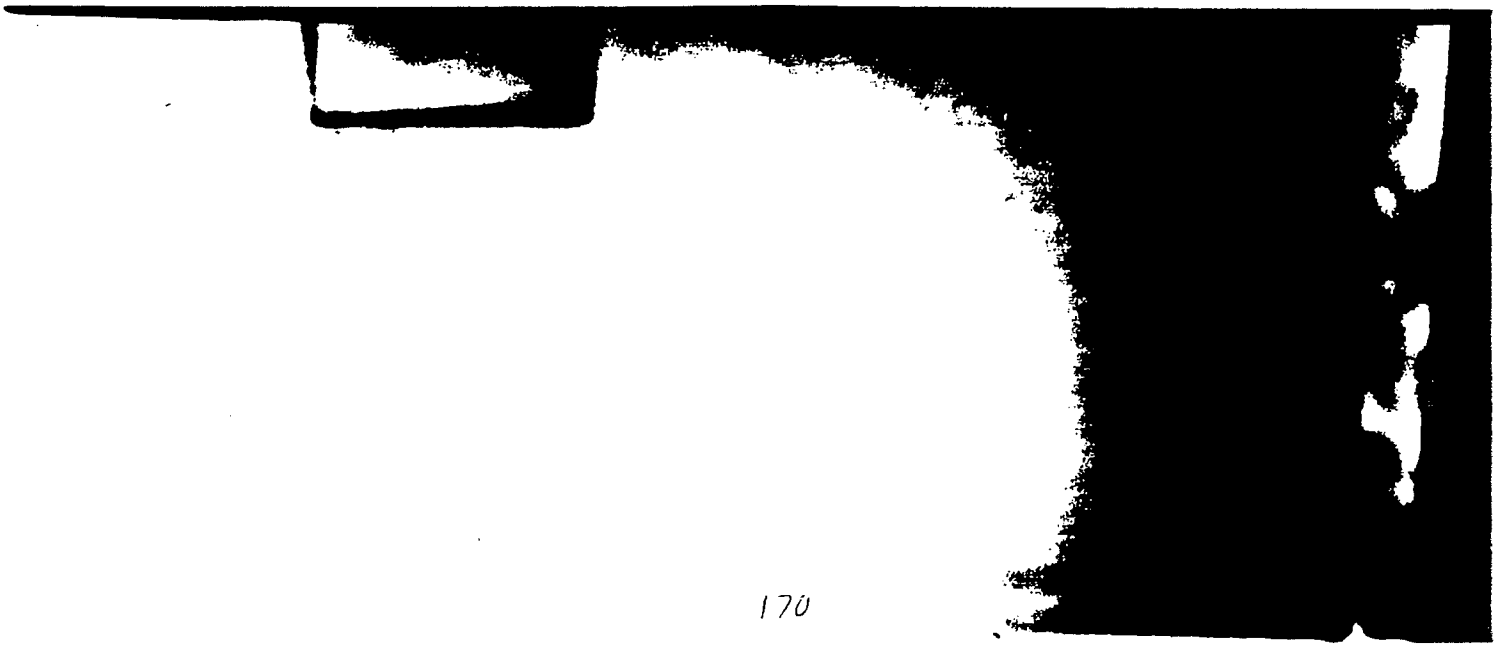
2. The presiding officer may count the members prese in order to determine a quorum and is not bound by t number voting. The fact that less than a quorum vo does not raise a presumption that no quorum is presen but a quorum is presumed to be present until the absen of a quorum is determined.

3. It has been ruled in Congress and in Parliament tha the presiding officer's count as to the number of membe present is final and may not be verified, but that a call the house on such an occasion would still be in order.

4. In the French Chamber of Deputies, where a majo ity is a quorum, it was decided in 1878 by President Grév that the presence only, and not the participation in th voting of a majority of the members, is necessary for th validity of a vote.

5. In Congress, on the demand of any member, or at th suggestion of the presiding officer, the names of member sufficient to make a quorum, who are in the house but wh did not vote, may be noted by the clerk, recorded in th journal, and be reported to the presiding officer with th names of the members voting, to be counted and announce in determining the presence of a quorum. This would seen

Section 503—Continued
Paragraph 2—
Hughes, Secs. 646, 649; Reed, Secs. 15, 19; Tilsou, pp. 17-20 27; Auditor General v. Board of Supervisors (1891), 8 Mich. 552, 51 N.W. 483; U. S. v. Ballin (1888), 144 U. S. 1 12 Sup. Ct. 507.
Paragraph 3—
Hughes, Sec. 649; Tilson, pp. 17, 20, 27.
Paragraph 4—
Meyers v. Phil. Union League (1908), 17 Pa. Dist. 301.
Paragraph 5—
U. S. House Rule XV, Sec. 3.



to be a proper practice in any legislative body in case the presence of a quorum is disputed.

6. Each house of the legislature has power to adopt a uniform method within proper limits for determining whether members present but not voting should be counted to determine the presence of a quorum.

7. When a quorum is present the general rule is that a proposition may be carried by a majority of those voting or by any number, greater than a majority, that may be required by law.

Sec. 504. Question of No Quorum

1. When a body has convened with a quorum present, it can continue to transact business as long as a quorum is present and it is presumed that the quorum continues to be present until the question of no quorum is raised or the lack of a quorum is disclosed by a vote.

2. Where a roll call shows that there was a quorum for the transaction of business but the roll call on a particular proposition discloses that less than a quorum voted, it will not be presumed that a quorum was not present at the

Section 503—Continued
Paragraph 6—
In re Opinion of Justices (1934), 228 Ala. 140, 152 So. 902.
Paragraph 7—
Warnock v. Lafayette (1849), 4 La. Ann. 419; Southworth v. Palmyra etc. R. Co. (1851), 2 Mich. 287; State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304.
Section 504—
Paragraph 1—
Hughes, Sec. 647; Reed, Secs. 15-17; Tilson, p. 28; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Pollard v. Gregg (1914), 77 N. H. 190, 90 Atl. 176; Rolls v. Wyand (1914), 40 Okla. 323, 138 Pac. 158; Auditor General v. Board of Supervisors (1891), 89 Mich. 551, 51 N.W. 483.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 369; State v. Ellington (1895), 117 N. C. 158, 23 S.E. 250; Hughes, Sec. 663.

time the vote was taken. When it appears that a quorum is present, and it does not appear from the records that a recess has taken place, it will be presumed that a quorum continued to be present.

3. Where the Constitution or other controlling provision has prescribed no method for the determination of a quorum, it is within the power of the body to prescribe any method which shall be reasonably appropriate to ascertain the fact.

4. Whenever it is observed that a quorum is not present, any member may call for the house to be counted and if found deficient, business will be suspended.

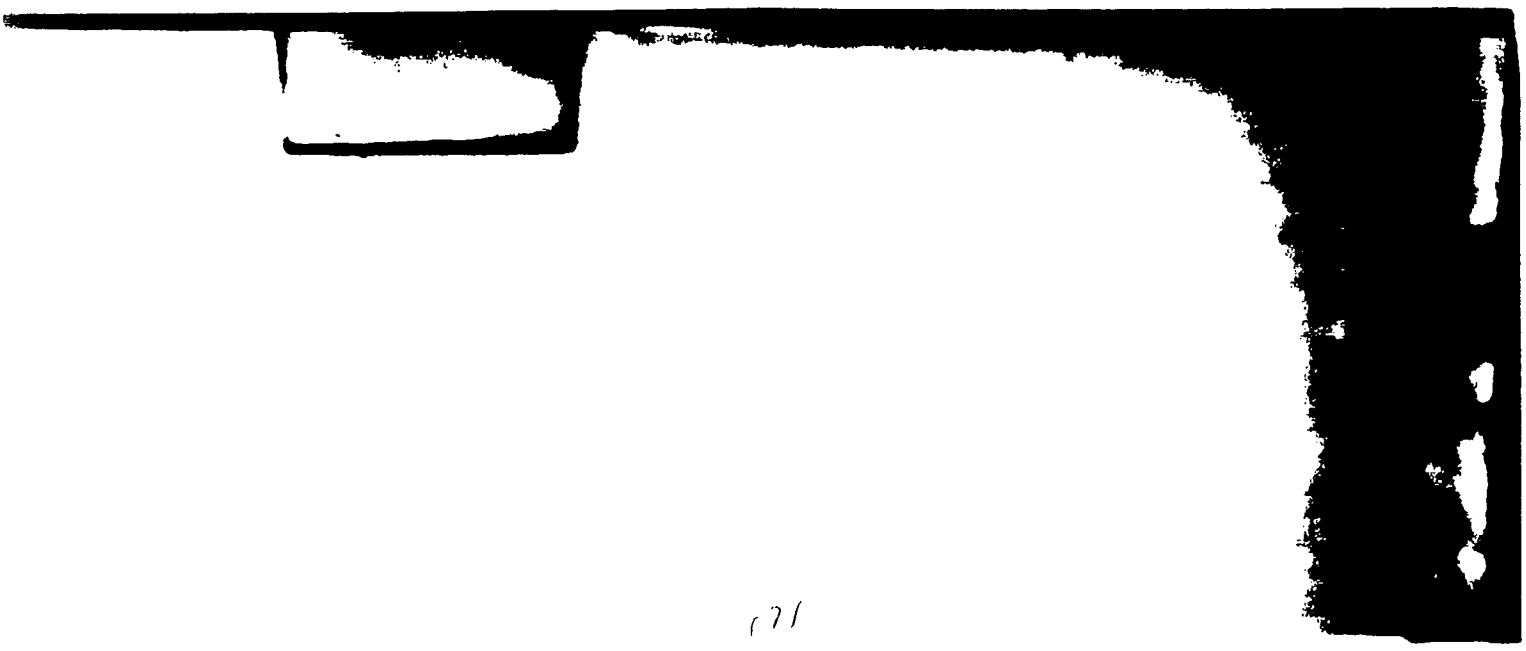
5. The suggestion of no quorum by a member is a question of order and is therefore in order at any time. The practice in govenmental bodies is to permit a question of no quorum to interrupt a speech.

6. When a member desires to call attention to the fact that no quorum is present, he should arise and address the presiding officer and without waiting to be recognized say, "I suggest the absence of a quorum." The presiding officer may then count the members or he may assume the responsibility of declaring a quorum present, or not present, without a count.

7. The question of no quorum is decided by the presiding officer as any other point of order, and is subject to appeal in the same manner.

See Chapter 25, Secs. 240-246, Points of Order.

Section 504—Continued
Paragraph 3—
U. S. v. Ballin (1888), 12 Sup. Ct. 507, 144 U. S. 1; Malloy v. Board of Education (1894), 102 Cal. 642, 36 Pac. 948.
Paragraph 4—
Kimball v. Marshall (1863) 44 N. H. 465.
Paragraph 5—
Reed, Sec. 17; Hughes, Sec. 669; Cushing, 19.
Paragraph 7—
Sturgis, p. 17; Hughes, Secs. 648, 669.



8. The point of order that no quorum is present may not be withdrawn after the absence of a quorum has been ascertained and announced by the presiding officer.

Sec. 505. Procedure on Absence of a Quorum

See also Chapter 20, Secs. 199-197, Call of the House; and Sec. 698, Reading of the Journal.

1. No question can be decided and no official action can be taken in the absence of a quorum, except to order a call or to adjourn. Even the reading of the journal of the previous day is not in order in the absence of a quorum.

2. When no quorum is present a call of the house can be ordered and the attendance of absent members compelled. The body can cancel all leaves of absence and require the attendance of all members.

3. In the absence of a quorum, two motions are in order: a call of the house to compel the attendance of absent members, and the motion to adjourn, although motions incidental to a call may be received.

4. When the fact that a quorum is not present has been disclosed upon a question of no quorum, by roll call, or otherwise, the body is not thereby adjourned because less than a quorum can compel the attendance of absent members, although no business of a legislative character can be conducted. When a quorum is secured by the arrival of absent members, the body may continue in session for the transaction of business.

Section 504—Continued
Paragraph 8—
Hughes, Sec. 660.
Section 505—
Paragraph 1—
Hughes, Secs. 663, 667.
Paragraph 2—
N. Y. Manual, p. 422; Hughes, Sec. 655.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 370; Hughes, Sec. 662; Reed, Sec. 21; N. Y. Manual, p. 422; Pollard v. Gregg (1914), 77 N. H. 190, 909 Atl. 176.
Paragraph 4—
Hughes, Sec. 671; Reed, Sec. 20; N. Y. Manual, p. 422.

5. When a roll call has been interrupted by the absence of a quorum, the first business, when the quorum is secured, is to proceed with the roll call which was interrupted by the lack of a quorum.

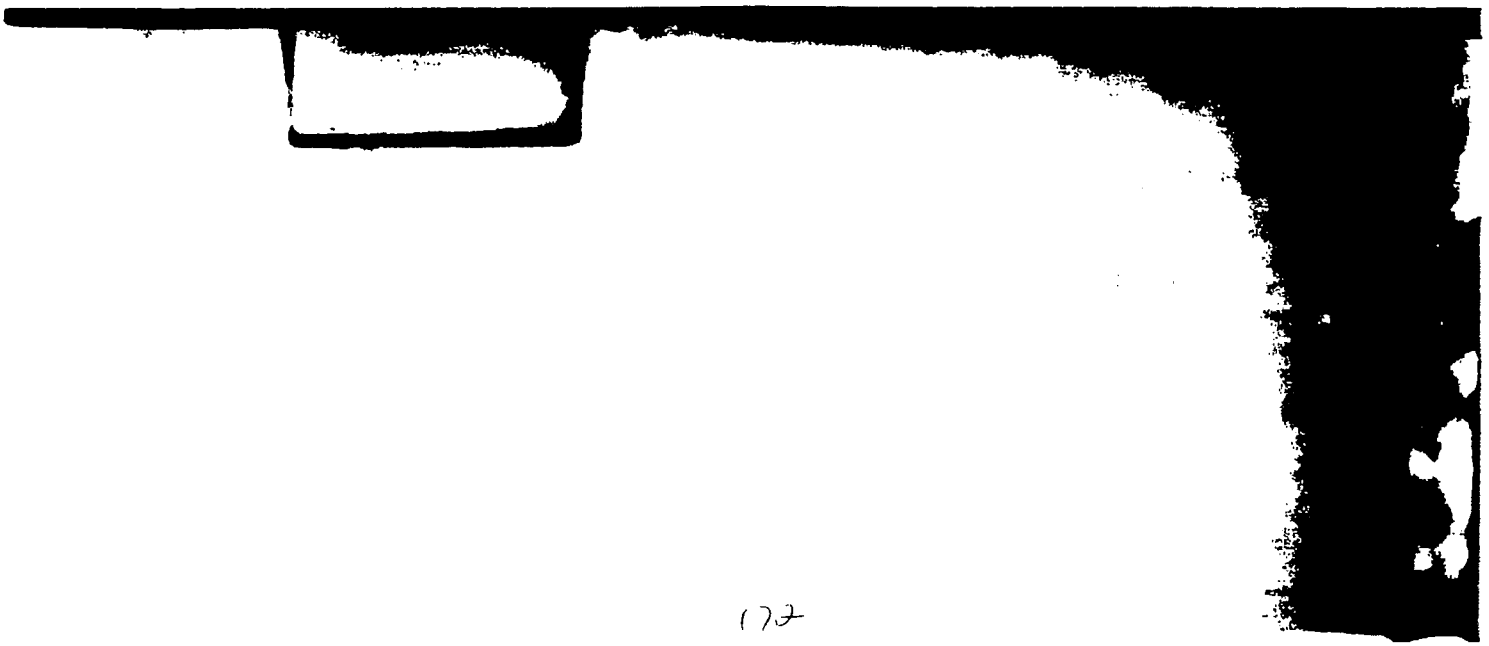
6. When a vote discloses that there is not a quorum present, the vote is of no effect and the subject of the vote remains exactly as though no vote had been taken.

7. When an action has been completed, it is too late to raise a point of order that no quorum was present when the action was taken, but when an action requiring a quorum is taken after the absence of a quorum has been ascertained, the action is null and void.

8. When the journal shows a quorum present, it will be presumed that a quorum continues to be present unless that presumption is contradicted by the journal itself.

9. Debate may continue in the absence of a quorum unless some member raises that point. A member speaking is entitled to insist on the presence of a quorum.

Section 505—Continued
Paragraph 5—
Hughes, Sec. 662.
Paragraph 6—
Jefferson, Sec. XLI; Cushing's Legislative Assemblies, Sec. 370; Cushing, Sec. 249; N. Y. Manual, 1948-49, p. 372; Mass. Manual, p. 630.
Paragraph 7—
Hughes, Sec. 663; Sturgis, p. 17.
Paragraph 8 —
Auditor General v. Board of Supervisors (1891), 89 Mich. 551, 51 N.W. 483.
Paragraph 9—
Reed, Sec. 15



10. In carrying on the proceedings of a deliberative body the chair is not to be taken until a quorum for business is present, unless, after due waiting, such a quorum is despaired of when the chair may be taken and the meeting adjourned.

Sec. 506. Less Than Quorum Can Adjourn

See also Sec. 191, Right of Less Than a Quorum to Compel Attendance, and Sec. 208, Vote Required for Adjournment.

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.

Sec. 507. Quorum of Bodies Having Indefinite Membership

1. There is a clear distinction, as to quorum, between the usual deliberative bodies with a definite membership and mass meetings and meetings of bodies without a definite membership. Under the common law a quorum of any

Section 505—Continued
Paragraph 10—
Kimball v. Marshall (1863), 44 N. H. 465.

Section 506—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 254, 255; Sturgis, p. 14; Shelby v. Burns (1929), 153 Miss. 392, 121 So. 113.

Paragraph 2—
Duniway v. City of Portland (1905), 47 Ore. 103, 81 Pac. 945; Rackliffe v. Duncan (1908), 130 Mo. App. 695, 108 S.W. 1110; Choate v. North Fork Highway Dist. (1924), 39 Idaho 483, 228 Pac. 885. But See Moore v. City Council of Perry (1903), 119 Iowa 423, 93 N.W. 510.

body of indefinite number for purposes of elections and voting on questions requiring member sanction consists of those assembling at any meeting regularly called and warned, though they may be a minority of the whole number; and the majority of those present may elect in the absence of a contrary statute.

2. In an assembly indefinite as to membership the majority of the members present constitute a quorum and may act no matter how small a proportion of the entire membership is present.

3. In a body composed of an indefinite number of members having no rule as to how many constitutes a quorum but which meets, pursuant to published notices and acts regardless of the number present, the members attending a meeting constitute a quorum.

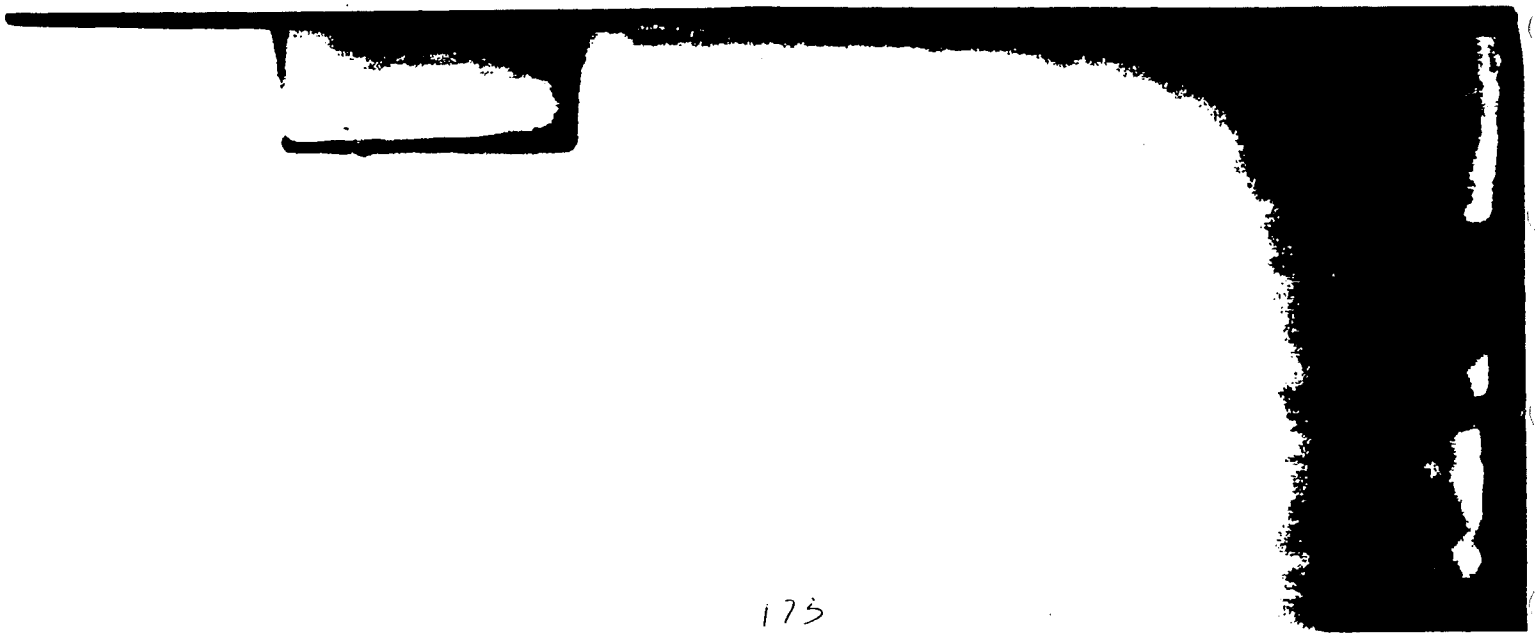
4. At a meeting duly convened the majority of the stockholders present, though a minority of the whole number, have power to transact business, but the board of directors, being a definite body, is required to have a majority present to act for the organization.

Section 507—
Paragraph 1—
Application of Havender (1943), 44 N. Y. Supp. 2d 213, Affirmed 47 N. Y. Supp. 2d 114; State v. Paterson (1871), 35 N. J. L. 190; Rex v. Bellringer (1792), 4 Term Reports (Dunford and Eastes) 810.

Paragraph 2—
Morrill v. Little Falls Mfg. Co. (1893), 53 Minn. 371, 55 N.W. 547; State v. Reichmann (1911), 293 Mo. 81, 142 S.W. 304; Kimball v. Marshall (1863), 44 N. H. 465; Madison Avenue Baptist Church v. Oliver Street Baptist Church (1867), 28 N. Y. Super. 649, 2 Abb. Pr. N. S. 254; Craig v. Pittsburgh First Presbyterian Church (1879), 88 Pa. St. 42, 32 Am. Rep. 417; Stone v. Small (1882), 54 Vt. 498.

Paragraph 3—
Ostrom v. Greene (1897), 45 N. Y. Supp. 852.

Paragraph 4—
Granger v. Grubb (1870), 7 Phila. (Pa.) 350.



CHAPTER 46

VOTE REQUIRED

Sec. 510. Majority of Legal Votes Is Required

1. A majority of the legal votes cast, a quorum being present, is sufficient to carry a proposition unless a larger vote is required by a constitution, charter, or controlling provision of law, and members present but not voting are disregarded in determining whether an action carried.

2. Where a majority or other proportion of votes is required without specifying whether the vote refers to the

Section 510—
Paragraph 1—
St. Joseph Township v. Rogers (1872), 83 U. S. 644, 21 L. Ed. 328; Cass County v. Johnson (1877), 95 U. S. 360, 24 L. Ed. 416; U. S. v. Ballin (1892), 144 U. S. 1, 26 L. Ed. 321; R. I. v. Palmer (National Prohibition Cases 1920), 253 U. S. 350; Hartford Accident and Indemnity Co. v. City of Sulpher (1941), 123 Fed. 2d 566; Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433; In re Opinion of Justices (1934), 228 Ala. 140, 152 So. 902; Batesville v. Ball (1911), 100 Ark. 496, 40 S.W. 712; Smith v. L. A. Imm. etc., Assoc. (1889), 78 Cal. 289, 20 Pac. 677; State v. Chapman (1878), 44 Conn. 595; Martin v. Townsend (1893), 32 Fla. 318, 13 So. 887; Launtz v. People (1885), 113 Ill. 137, 55 Am. Rep. 405; Carrollton v. Clark (1886), 21 Ill. App. 74; Kirkpatrick v. Van Cleave (1909), 44 Ind. App. 629, 89 N.E. 913; State v. Vanosdal (1892), 131 Ind. 388, 31 N.E. 79; Thurston v. Huston (1904), 123 Iowa 157, 98 N.W. 637; Wheeler v. Commonwealth (1895), 89 Ky. 59, 32 S.W. 259; Barry v. New Haven (1915), 162 Ky. 60, 171 S.W. 1012; Warnock v. Lafayette (1849), 4 La. Ann. 419; Cram v. Bangor House Proprietary (1835), 12 Me. 354; Murdock v. Strange (1904), 99 Md. 89, 57 Atl. 628; Tudbury v. Stearns (1838), 21 Pick. (Mass.) 148; Merrill v. City of Lowell (1920), 230 Mass. 436, 128 N.E. 862; Kay Jewelry Co. v. Board (1940), 305 Mass. 581, 27 N.E. 2d 1; Ten Eyck v. Pontiac etc., R. Co. (1889), 74 Mich. 226, 41 N.W. 905; State v. Chute (1885), 34 Minn. 135, 24 N.W. 353; Green v. Weller (1856), 32 Miss. 650; State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304; State v. Yates (1897), 19 Mont. 239, 47 Pac. 1004; In re State Treasury (1897), 51 Neb. 116, 70 N.W. 531; Atty. Gen. v. Sheppard (1882), 62 N. H. 383, 13 Am. St. Rep. 576; Edgerly v. Emerson (1851), 23 N. H. 555, 55 Am. Dec. 207; Attorney General v. Remick (1902), 71 N. H. 480, 53 Atl. 308; Attorney General v. Bickford (1914), 77 N. H. 433, 92 Atl. 835; Frost v. Hoar (1932), 85 N. H. 442, 160 Atl. 51; Mount v. Parker (1867), 32 N. J. L. (3 Vroom) 341; Hutchinson v. Belmar (1898), 61 N. J. L. 443, 39 Atl. 643; Ex Parte Willcock (1827), 7 Cowp. (N. Y.) 402, 17 Am. Dec. 525; Field v. Field (1832), 9 Wend. (N. Y.) 395; Houseman v. Earle (1923), 98 N. J. L. 379, 120 Atl. 738; Abels v.

Section 510—Continued
Paragraph 1—Continued
McKeen (1867), 13 N. J. Eq. 462; Morris v. Cashmore (1938), 3 N. Y. Supp. 2d 624; Cashmore v. Morris, 3 N. Y. Supp. 2d 633, 253 App. Div. 656, 278 N. Y. 730, 17 N.E. 2d 143; Madison Ave. Baptist Church v. Oliver St. Baptist Church (1867), 28 N. Y. Super. 649; In re Brearton (1904), 89 N. Y. Supp. 893; McFarland v. Crary (1830), 6 Wend. (N. Y.) 297; State v. Ellington (1895), 117 N. C. 158, 23 S.E. 250; State v. Archibald (1896), 5 N. D. 359, 66 N.W. 234; Thiel v. Ponder (1942), 221 N. C. 58, 19 S.E. 2d 5; State v. Green (1881), 37 Ohio St. 227; Carpenter v. Burden (1843), 2 Pars. Eq. Cas. (Pa.) 24; Fisher v. Harrisburg Gas Company (1857), 1 Pears. (Pa.) 118; Granger v. Grubb (1870), 7 Phila. (Pa.) 350; Commonwealth v. Fleming (1903), 23 Pa. Super. Ct. 404; Myers v. Union League (1908), 17 Pa. Dist. 301; Commonwealth v. Wickersham (1870), 66 Pa. 134; Lockwood v. Mechanics National Bank (1869), 9 R. I. 308, 11 Am. Rep. 253; State v. Delieseline (1821), 12 S. C. L. 52, 1 McCord (S. C.) 52; Webb v. Carter (1914), 129 Tenn. 182, 165 S.W. 426; Lawrence v. Ingersoll (1889), 88 Tenn. 52, 12 S.W. 422; Limestone County Commissioners v. Gerritt (1922), (Tex.) 236 S.W. 970; Leavitt v. Oxford and Geneva (1883), 3 Utah 265, 1 Pac. 356; State v. Bevins (1898), 70 Vt. 574, 41 Atl. 655; Booker v. Young (1855), 53 Va. 303; McMillen v. Neeley (1909), 66 W. Va. 496, 66 S.E. 635; State v. Tyrrell (1914), 158 Wis. 425, 149 N.W. 280; Strathcona v. Edmonton Land Syndicate (1910), 3 Alberta L. 259; Austin Mining Co. v. Gemmel (1886), 10 Ont. 696; Gosling v. Veley (1847), 7 Q. B. 406, 115 Reprint 542; Grindley v. Barker (1798), 1 B. and P. 229, 126 Reprint 875; Blacket v. Blizard (1829), (Eng.) 9 B. and C. 581, 109 Reprint 317; Aldknow v. Wainwright (1760), 2 Burr. (Eng.) 1017, 97 Reprint 683; Cushing's Legislative Assemblies, Sec. 412; Dillon on Municipal Corporations, 4th Ed., Sec. 283.
Paragraph 2—
State v. Dickie (1878), 47 Iowa 629; State v. McBride (1836), 4 Mo. 303; Whitney v. Hudson (1888), 69 Mich. 189, 37 N.W. 184; Green v. Weller (1856), 32 Miss. 650, 700; Morton v. Comptroller Gen. (1873), 4 S. C. 430, 463; Warnock v. Lafayette (1849), 4 La. Ann. 419; English v. State (1879), 7 Tex. App. 171; State v. Tyrell (1914), 158 Wis. 425, 149 N.W. 280.

entire membership or to the members present, or to the members present and voting, the general rule is that the proportion refers to the number present and voting.

3. A fractional preponderance only is required to constitute a majority. Where votes are divided into fractions and a vote is four and five-sevenths to four and two-sevenths the larger vote is sufficient to carry a motion or elect an officer.

4. A majority vote is required to take any action and a plurality never adopts a motion nor elects any one to office, unless by virtue of a special rule previously adopted.

See also Sec. 553, Majority Vote Required for Election.

Sec. 511. More Than Majority of Legal Votes Cast May Be Required

1. Where a constitution, charter, or controlling provision of law requires a majority vote of the entire membership or of all members present or any other number or proportion to take a particular action, that vote must be obtained, and a vote of less than that number, although a majority of those present and voting, a quorum being present, is not sufficient.

Section 510—Continued

Paragraph 3—

Reed v. Deerfield (1900), 176 Mass. 473, 57 N.E. 961.

Paragraph 4—

Cushing, Sec. 26; Reed, Sec. 25; Cushing's Legislative Assemblies, Sec. 298; Hughes, Sec. 99; Wilcock on Municipal Corporations, Sec. 546; Grant on Corporations, Sec. 71; Angel and Ames on Corporations, Secs. 126, 127; Booker v. Young (1855), 12 Gratt. (Va.) 303; U. S. v. Ballin (1888), 144 U. S. 1, 12 Sup. Ct. 507, 36 L. Ed. 321; Cadmus v. Farr (1885), 47 N. J. L. 208.

Section 511—

Paragraph 1—

Pimental v. San Francisco (1863), 21 Cal. 351; McCracken v. San Francisco (1860), 16 Cal. 591; People v. Wright (1902), 30 Colo. 439, 71 Pac. 365; State v. Fagan (1875), 42 Con. 32; Anniston v. Davis (1893), 98 Ala. 629, 13 So. 331; Evan-

2. The constitutions of many of the states require an affirmative vote of a majority of the members elected to each house of the legislature for the passage of bills.

3. Constitutional provisions as to the number of votes required for the final passage of bills are mandatory.

Section 511—Continued

Paragraph 1—Continued

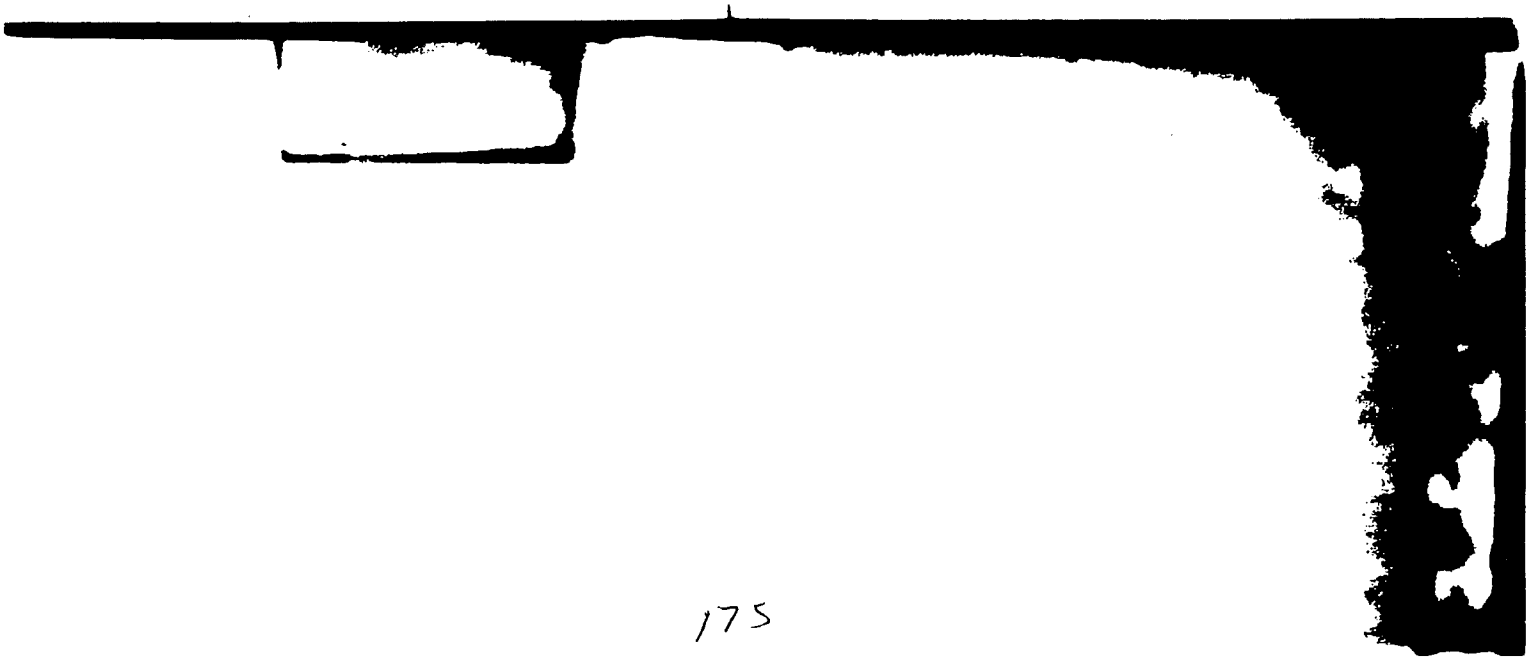
ston v. O'Leary (1897), 70 Ill. App. 124; McLean v. East St. Louis (1906), 222 Ill. 510, 78 N.E. 815; Logansport v. Legg (1863), 20 Ind. 315; Cascaden v. Waterloo (1898), 106 Iowa 673, 77 N.W. 333; Hansen v. Anthon (1919), 187 Iowa 51, 173 N.W. 939; Warnock v. Lafayette, 4 La. Ann. 419; Zieler v. Central Power Co. (1896), 84 Md. 304, 35 Atl. 932; Stockdale v. Wayland School Dist. (1881), 47 Mich. 226, 10 N.W. 349; Whitney v. Hudson (1888), 69 Mich. 189, 37 N.W. 184; State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304; Edgerly v. Emerson (1851), 23 N. H. 555, 55 Am. Dec. 207; Baker v. Police Com., Port Huron (1886), 62 Mich. 327, 28 N.W. 913; State v. Wilkesville Tp. (1870), 20 Ohio St. 288; Leavitt v. Oxford etc. Silver Mfg. Co. (1883), 3 Utah 265, 1 Pac. 356; State v. Bevins (1898), 70 Vt. 574, 41 Atl. 655; Grindley v. Barker (1798) (Eng.), 1 B. and P. 229, 126 Reprint 875; Blacket v. Blizard (1829), 9 B. and C. 851, 109 Reprint 317.

Paragraph 2—

People v. De Wolf (1871), 62 Ill. 253; Comm. of Wash. Co. v. Baker (1922), 141 Md. 623, 119 Atl. 461; Kelley v. Sec. of State (1907), 149 Mich. 343, 112 N.W. 978; State v. Gould (1883), 31 Minn. 189, 17 N.W. 276; State v. Mason (1900), 155 Mo. 486, 55 S.W. 636; Hull v. Miller (1876), 4 Neb. 503. And see Ala. IV, 61, 63; Ariz. IV, pt. 2, 12; Ark. V, 21, 22; Cal. IV, 15; Colo. V, 17, 22; Del. II, 10; Fla. III, 17; Ga. III, Sec. VII, 7; Idaho III, 15; Ill. IV, 13; Ind. IV, 1, 18; Iowa III, 15; Kan. II, 15, 20; Ky. 46; La. III, 24; Me. IV, Pt. III, 9; Md. III, 27, 29; Mass. Pt. II, Ch. 1, 1, 2; Mich. V, 23, 29; Minn. IV, 20; Miss. IV, 59, 60; Mo. IV, 25, 26; Mont. V, 19; Neb. III, 14, 15; Nev. IV, 18, 20; N. J. IV, Sec. IV, 6; N. M. IV, 15; N. Y. III, 14; N. C. II, 23; N. D. II, 58, 63; Ohio II, 16; Okla. V, 34; Ore. IV, 19; Pa. III, 1, 4; R. I. IV, 2; S. C. III, 18; S. D. III, 17; Tenn. II, 18; Tex. III, 30, 32; Utah VI, 22; Vt. II, 6; Va. IV, 50; Wash. II, 18; W. Va. VI, 29; Wis. IV, 17; Wyo. III, 20.

Paragraph 3—

Burlingham v. City of New Burn (1914), 213 Fed. 1014; Butler v. Board of Directors (1912), 103 Ark. 109, 146 S.W. 120; Rush v. Allen (1910), 24 Del. 444, 76 Atl. 370; Cohn v. Kingsley (1897), 5 Idaho 416, 49 Pac. 985; People v. DeWolf



4. In deliberative bodies a majority of a quorum is often required by constitution, charter, or controlling provision of law.

5. Ordinarily municipal charters specify the number of votes required to constitute a legal action in any given case.

Sec. 512. Two-thirds Vote

1. When a two-thirds vote is required for any purpose by a constitution or charter or controlling provision of law that vote must be obtained for the vote to be effective.

2. A two-thirds vote means that the affirmative vote must be equal to twice the negative vote. It is not necessary that it exceed a ratio of two to one. The following are examples of two-thirds votes:

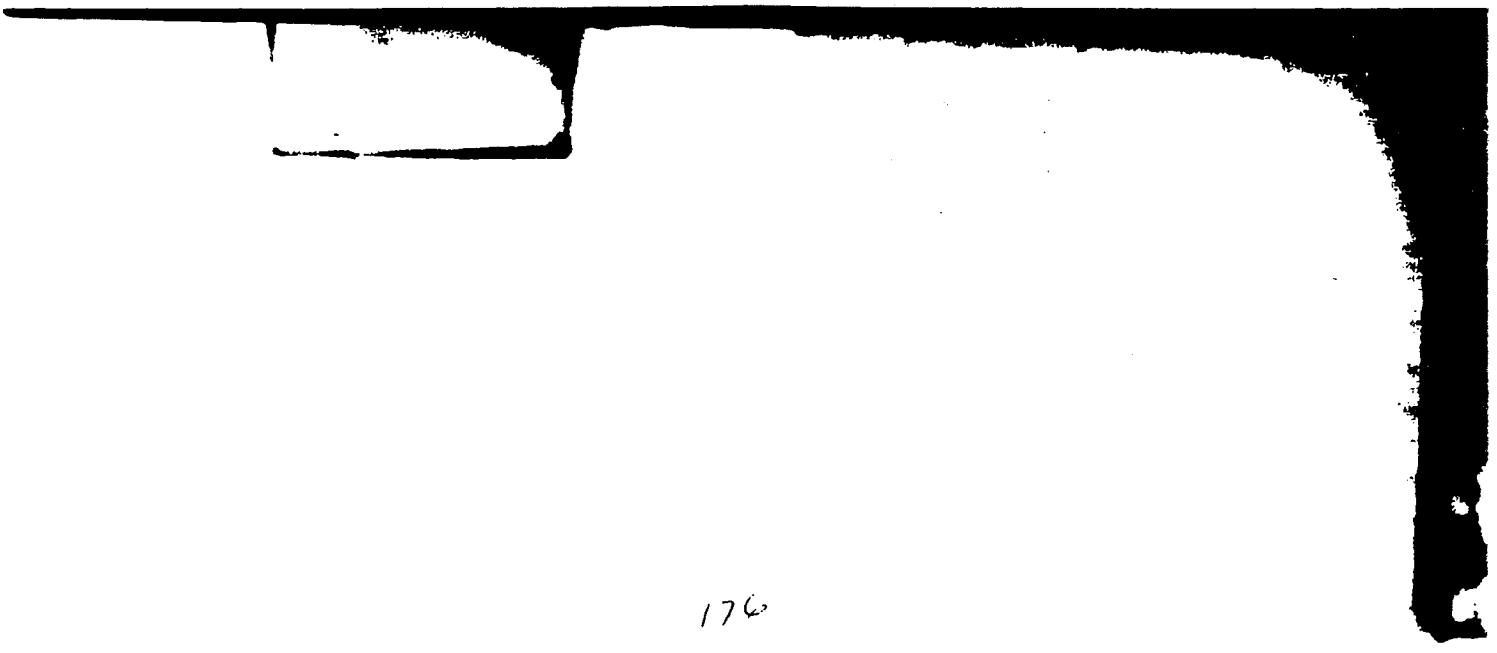
(a) Two to one.
(b) Four to two.
(c) Fourteen to six.
(d) Twenty-two to eleven.

3. The requirement of a two-thirds vote, unless otherwise specified, means two-thirds of the legal votes cast, not two-thirds of the members present, or two-thirds of all the members.

4. Where a constitution, charter, or controlling provision of law requires a two-thirds vote of all members, a vote of less than that number, although two-thirds of a quorum, is not sufficient. Even though there are vacan-

Section 511—Continued
Paragraph 3—Continued
(1871), 62 Ill. 253; McCulloch v. State (1858), 11 Ind. 424; Comm. of Wash. Co. v. Baker (1922), 141 Md. 623, 119 Atl. 461; State v. Gould (1883), 31 Minn. 189, 17 N.W. 276; State ex rel. Schmoll v. Drabelle (1914), 261 Mo. 515, 170 S.W. 465; State v. Davis (1902), 66 Neb. 333, 92 N.W. 740; People v. Devlin (1865), 33 N. Y. 269; State v. Schultz (1919), 44 N. D. 269, 174 N.W. 81.
Paragraph 4—
U. S. v. Ballin (1892), 144 U. S. 1, 26 L. Ed. 321; Rushville Gas Co. v. Rushville (1889), 120 Ind. 206, 32 N.E. 72; Wheeler v. Commonwealth (1895), 89 Ky. 59, 32 S.W. 259; In re Brearton (1904), 89 N. Y. Supp. 893; Francis v. Perry (1913), 144 N. Y. Supp. 167.
Paragraph 5—
Outwater v. Borough of Carlstadt (1901), 66 N. J. L. 510, 49 Atl. 533.
Section 512—
Paragraph 1—
See notes to Sec. 510, paragraph 2.
Paragraph 2—
(a) Daniels v. Bayless Stores, Inc. (1935), 46 Ariz. 442, 52 Pac. 2d 475, (b) Grindley v. Barker (1798), 1 B. and P. 229, 126 Reprint 875; North Platte v. North Platte Water Works (1898), 56 Neb. 403, 76 N.W. 906. (c) Zeller v. Central Railway Co. (1896), 84 Md. 304, 35 Atl. 932. (d) In re Opinion of Justices (1934), 228 Ala. 140, 152 So. 902.

Section 512—Continued
Paragraph 3—
Rhode Island v. Palmer (National Prohibition Cases) (1920), 253 U. S. 350; In re Opinion of Justices (1934), 228 Ala. 140, 152 So. 902; Warnock v. City of Lafayette (1849), 4 La. Annotated 419; Zeiler v. Central Railway Co. (1896), 84 Md. 304, 35 Atl. 932; Kay Jewelry Co. v. Board (1940), 305 Mass. 581, 27 N.E. 2d 1; Southworth v. Palmyra etc. Railway (1851), 2 Mich. 287; State v. Gould (1883), 31 Minn. 189, 17 N.W. 276; Green v. Weller (1856), 32 Miss. 650; State v. McBride (1836), 4 Mo. 303; North Platte v. North Platte Water Works (1898), 56 Neb. 403, 76 N.W. 906; English v. State (1879), 7 Tex. App. 171; U. S. House Rules and Manual (1947), Art. 1, Sec. 7, note 106 and Art. 5, Sec. 1, note 224.
Paragraph 4—
Logansport v. Legg (1863), 20 Ind. 315; Griffin v. Messenger (1901), 114 Iowa 99, 86 N.W. 219; Buffington Wheel Co. v. Burnham (1883), 60 Iowa 493, 15 N.W. 282; Speed v. Crawford (1860), 60 Ky. 207; Blood v. Beal (1905), 100 Me. 39, 60 Atl. 427; Whitney v. Hudson (1888), 69 Mich. 189, 37 N.W. 184; Stockdale v. Wayland School District (1881), 47 Mich. 226, 10 N.W. 349; Pollasky v. Schmid (1901), 128 Mich. 699, 87 N.W. 1030; State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749; Cleveland Cotton Mills v. Cleveland County Commissioners, 108 N. C. 678, 13 S.E. 271; State v. McBride (1835), 4 Mo. 303, 29 Am. Dec. 636.



cies, a vote equal to two-thirds of the total membership is required.

5. A constitutional provision providing that a certain action requires a two-thirds vote of both houses means a two-thirds vote of each house and not merely an aggregate two-thirds of the members of both houses.

6. A deliberative body, whether a state legislature, city council, or administrative board, cannot by its own act or rule require a two-thirds vote to take any action where the constitution or controlling authority requires only a majority vote. Duties and responsibilities imposed on a public body are, of necessity, to be exercised by a majority of that body unless otherwise provided by the power establishing the body. To require a two-thirds vote, for example, to take any action would be to give to one-third of the members the power to defeat the action and amount to a delegation of the powers of the body to a minority.

See also Secs. 51 and 519.

7. When a constitutional provision requires more than a majority vote for the passage of certain types of bills, such bills can be amended by a majority vote and an amendment to such a bill by the other house, not involving any question itself requiring more than a majority

Section 512—Continued
Paragraph 5—
Morton v. Comptroller General (1873), 4 S. C. 430; Belote v. Coffman (1915), 117 Ark. 352, 175 S.W. 37.
Paragraph 6—
Tayloe v. Davis (1924), 212 Ala. 282, 102 So. 433; State v. Borough of Carlstadt (1901), 66 N. J. L. 510, 49 Atl. 533.
Paragraph 7—
Wagstaff v. Central Highway Commission (1917), 174 N. C. 377, 93 S.E. 908; State v. Boyer (1917), 84 Ore. 513, 165 Pac. 587; U. S. House Manual, Art. V of the Constitution. and note 224.

vote, requires only a majority vote for concurrence; but it has been held in Congress that a two-thirds vote is necessary to agree on a conference report on a proposed amendment to the constitution.

8. An action requiring a two-thirds vote for passage can be repealed by a majority vote and the general rule is that an act requiring a two-thirds vote for passage can be reconsidered or rescinded by a majority vote.

See also Sec. 473, Vote Required for Reconsideration.

9. There is no rule of parliamentary law enforced by the courts or generally accepted in practice by which a two-thirds vote is required in legislative bodies or administrative boards for procedural questions such as: to limit debate, to make special orders, to take up a question out of order, or even to suspend their rules. It is not unusual for such bodies, in certain cases, to provide for a two-thirds vote or other vote of more than a majority or to require notice, in certain instances, by their rules but such rules are not imposed upon them by parliamentary law.

Sec. 513. Tie Votes and Casting Votes

1. When the vote for and the vote against any proposition are equal there is a tie vote. A tie vote decides nothing but leaves the situation unchanged. The voice of the majority decides, for the *lex majoris partis* is the

Section 512—Continued
Paragraph 8—
Chariton v. Holliday (1883), 60 Iowa 391, 14 N.W. 775; Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963.
Paragraph 9—
Cushing's Legislative Assemblies, Sec. 1428; Waples, Sec. 134; N. Y. Manual, 1948-49, p. 465.
Section 513—
Paragraph 1—
Jefferson, Sec. XLI; Cushing's Legislative Assemblies, Sec. 412; Sturgis, pp. 56, 57.

law of all legislative bodies and elections where not otherwise expressly provided. But if the body be equally divided, *semper presumatur pro negante,* the former law is not changed because no affirmative action can be taken except by a majority. A decision of the presiding officer is not overruled on appeal by a tie vote.

2. It has been thought, in many instances, that some provision should be made to "break" a tie. This is accomplished by giving the presiding officer a vote in case of a tie. This vote is called a "casting" vote. Such a vote can be cast only when it will decide the tie. When, for example, a lieutenant governor with a casting vote presides over a senate with 40 members where 21 votes are necessary to pass a bill. The lieutenant governor would have a casting vote if the vote were 20 to 20 on a bill but not if the vote were 19 to 19 because the vote of the lieutenant governor would not decide the question.

3. The casting vote is usually given to a presiding officer, like a lieutenant governor or mayor, when he is not a regular member of the body and does not otherwise have a vote. It is occasionally given to a presiding officer who is a regular member and may first vote as a member and may vote again to break a tie.

Section 513—Continued
Paragraph 2—
Hansen v. Town of Anthon (1919), 187 Iowa 51, 173 N.W. 939; Merriam v. Chicago R. Company (1908), 130 Mo. App. 247, 111 S.W. 876; City of Croswell v. Helm (1938), 284 Mich. 404, 279 N.W. 879; State v. Cresswell (1918), 117 Miss. 795, 78 So. 770.
Paragraph 3—
State v. Chapman (1878), 44 Conn. 595; Launtz v. People (1885), 113 Ill. 137, 55 Am. Rep. 405; Carroll v. Wall (1868), 35 Kan. 36, 10 Pac. 1; Small v. Orne (1887), 79 Me. 78, 8 Atl. 152; People v. Church of the Atonement (1866), 48 Barb. (N. Y.) 603; Reeder v. Trotter (1919), 142 Tenn. 37, 215 S.W. 400.

4. In 37 states the lieutenant governor presides over the senate and he presides over the single house in Nebraska. In 31 states the lieutenant governor has a casting vote, in five he has no vote, and in Rhode Island he is a member and votes as a regular member.

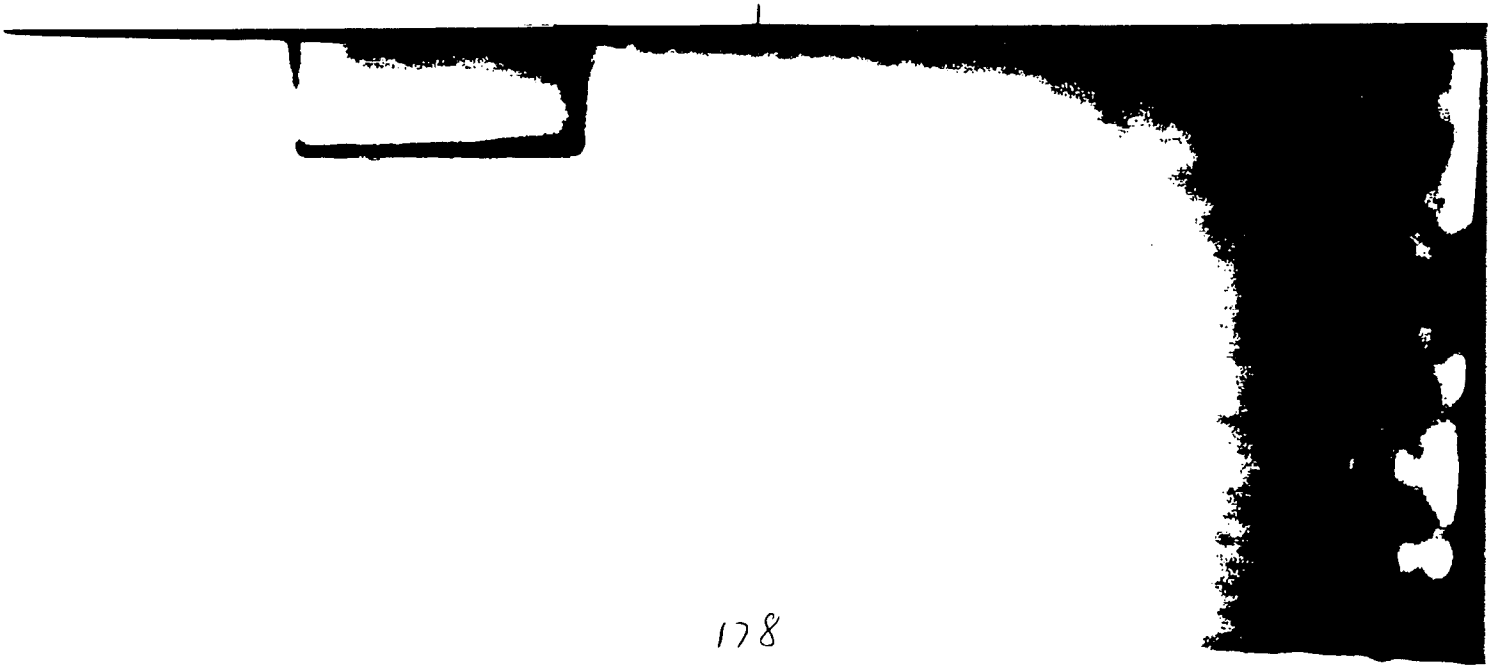
5. When the presiding officer is not a member of the organization he can cast a vote only when expressly authorized to do so.

6. By the common law a casting vote sometimes signifies a single vote of the person who never votes except in the case of an equality and sometimes a double vote of a person who votes first with the rest and then upon an equality creates a majority by casting a second vote. A presiding officer who is a member of the body and has already voted as such has no power to cast a second vote to break a tie unless such right is given by rule or statute expressly so providing.

Sec. 514. When a Casting Vote Is in Order

1. A casting vote is in order only when there is a tie vote as when the votes are equally divided between two

Section 513—Continued
Paragraph 4—
Book of the State, 1952, pp. 90, 100, 580, 581.
Paragraph 5—
Reeder v. Trotter (1919), 142 Tenn. 37, 215 S.W. 400; Carrollton v. Clark (1886), 21 Ill. App. 74; People v. Wright (1902), 30 Colo. 439, 71 Pac. 365.
Paragraph 6—
O'Neil v. O'Connell (1945), 300 Ky. 707, 189 S.W. 2d 965; People v. Church of the Atonement (1866), 48 Barb. (N. Y.) 603; Reeder v. Trotter (1919), 142 Tenn. 37, 215 S.W. 400.
Section 514—
Paragraph 1—
Wooster v. Mullins (1894), 164 Conn. 340, 30 Atl. 144, 25 L. R. A. 694; Gostin v. Brooks (1892), 89 Ga. 244, 15 S.E. 361; Carrollton v. Clark (1886), 21 Ill. App. 74; Beaver Creek



candidates or when there is an equal number for and against a proposition.

2. A casting vote is not in order in an election to give one candidate a majority where the other votes are scattered among other candidates. A casting vote would be in order where the vote was four to four but not where the vote was three for one candidate, two for another and one for a third. A casting vote is not in order to give one candidate a plurality where two or more have an equal number of votes.

3. When two candidates for election by a city council receive the same number of votes and there is a blank vote, there is not a tie which will permit the presiding officer to give a casting vote.

4. Where the presiding officer is a member of a body and as such member entitled to vote with the other members, the fact that he was chosen to act as presiding officer will not deprive him of the privilege of voting as a member but gives him a second vote as presiding officer in case of a tie.

Section 514—Continued
Paragraph 1—Continued
v. Hastings (1884), 52 Mich. 528, 18 N.W. 250; Kelley v. Secretary of State (1907), 149 Mich. 343, 112 N. W. 978; State ex rel. v. Guiney (1879), 26 Minn. 313, 3 N.W. 977; Rich v. McLaurin (1903), 83 Miss. 95, 35 So. 337; State v. Yates (1897), 19 Mont. 239, 47 Pac. 1004; Grant City v. Salmon (1926), 221 Mo. App. 853, 288 S.W. 88; McClain v. Church (1930), 76 Utah 170, 289 Pac. 88; State v. Mott (1901), 111 Wis. 19, 86 N.W. 569.
Paragraph 2—
State v. Yates (1897), 19 Mont. 239, 47 Pac. 1004; State v. Mott (1901), 111 Wis. 19, 86 N.W. 569; McCourt v. Beam (1902), 42 Ore. 41, 69 Pac. 990; City of Croswell v. Helm (1938), 284 Mich. 404, 279 N.W. 879.
Paragraph 3—
State v. Chapman (1878), 44 Conn. 595.
Paragraph 4—
Reeder v. Trotter (1919), 142 Tenn. 37, 215 S.W. 400.

5. Where the mayor is entitled only to a casting vote, a person serving as mayor pro tem, even though he is a member of the council presiding in the absence of the mayor, is not entitled to a casting vote in case of a tie.

6. When voting in case of a tie, the presiding officer may give his reasons for the vote and have them entered in the journal the same as a regular voting member.

7. Where the presiding officer gives a casting vote he should definitely cast his own vote. The mere announcing of the vote, adding his own, has been held sufficient in some cases but disputed in others.

8. When voting on an appeal, although the question is "Shall the decision of the president (or speaker or chairman) stand as the judgment of the senate (or house, or council)," the presiding officer, when a member, may vote, and a tie vote, even though his vote made it a tie, sustains the presiding officer upon the principle that the decision of the presiding officer can be reversed only by a majority.

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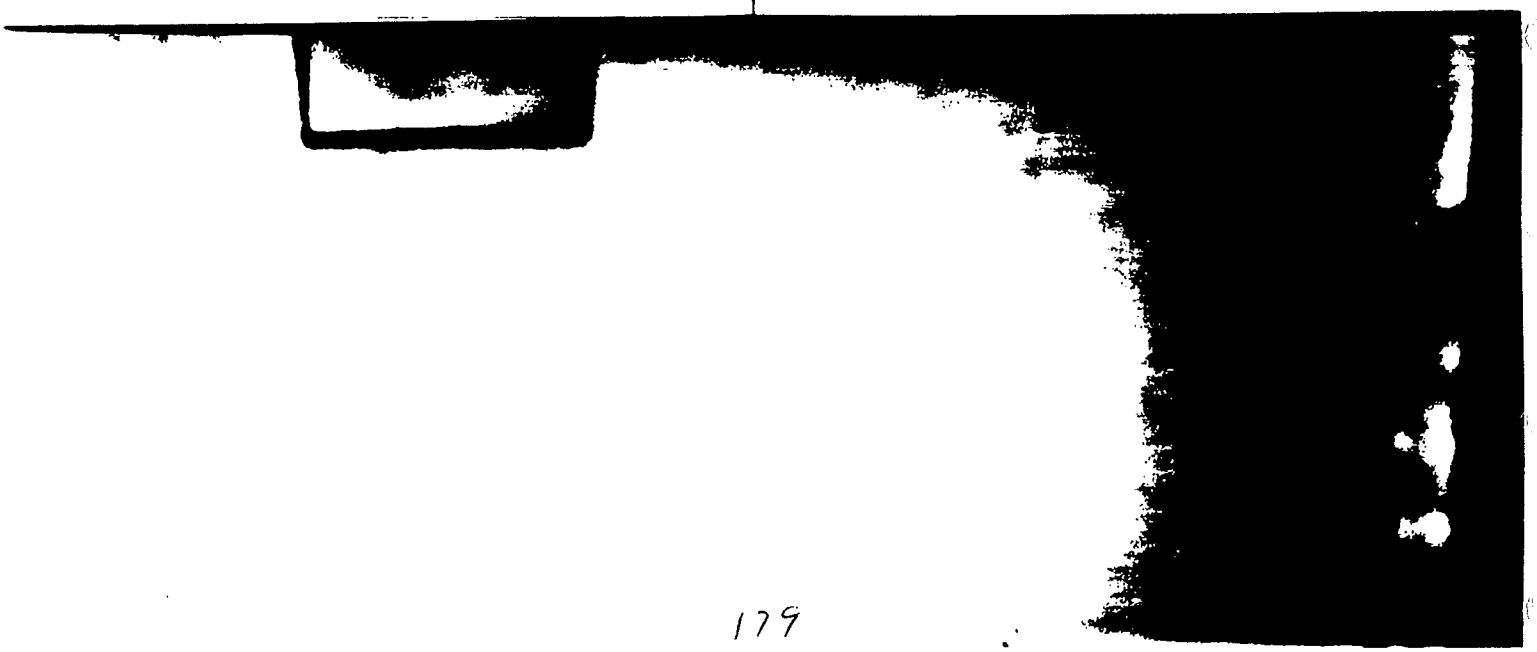
Paragraph 5—
Harris v. People (1912), 18 Cal. App. 160, 70 Pac. 699; Shugars v. Hamilton (1906), 122 Ky. 606; Freint v. Dumont (1931), 108 N. J. L. 245; Herring v. Mexia (Tex. Civ. App. 1926-27) 290 S.W. 792.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 311; N. Y. Manual, 1948-49, p. 443.
Paragraph 7—
Cases not requiring separate casting of vote are: Launtz v. People (1885), 113 Ill. 137, 55 Am. Rep. 405; Rushville Gas Co. v. Rushville (1889), 120 Ind. 206, 23 N.E. 72; Small v. Orne (1887), 79 Me. 78, 8 Atl. 152; State v. Armstrong (1893), 54 Minn. 457, 56 N.W. 97; People ex rel. v. Rector (1866), 48 Barb. (N. Y.) 603.
Cases requiring separate casting of vote are: Hornung v. State (1888), 116 Ind. 458, 19 N.E. 151; Lawrence v. Ingersoll (1889), 88 Tenn. 52, 12 S.W. 422; Casler v. Tanzer (1929), 234 N. Y. Supp. 571.



Sec. 515. Examples of Votes Required

1. When authority is conferred upon two persons nothing can be done without the consent of both.

2. Where three judges constitute a court two judges can act in case of one vacancy or in the absence of one judge.

3. Where the vote in a board of six was three to three and upon retaking the vote three refused to vote, the vote became three to nothing and the action is legally taken.

4. In a city council with six members when three vote for one candidate, two vote for another and there is one blank ballot, the blank ballot cannot be counted so the vote is three to two and the candidate with the three votes is elected.

5. When there were seven aldermen, four were a quorum. Six were present. Three voted for the adoption of the amendment, the other three refused to vote, but the amendment was adopted.

6. There was a board of seven directors. At an election there were seven present—five voted. Three voted for one person, two for another. The person receiving the three votes was elected.

7. Where there is a borough council of twelve members and ten members are present an election is held at which five votes are cast for one person and two for another, the other three not voting. The person who received the five votes was elected.

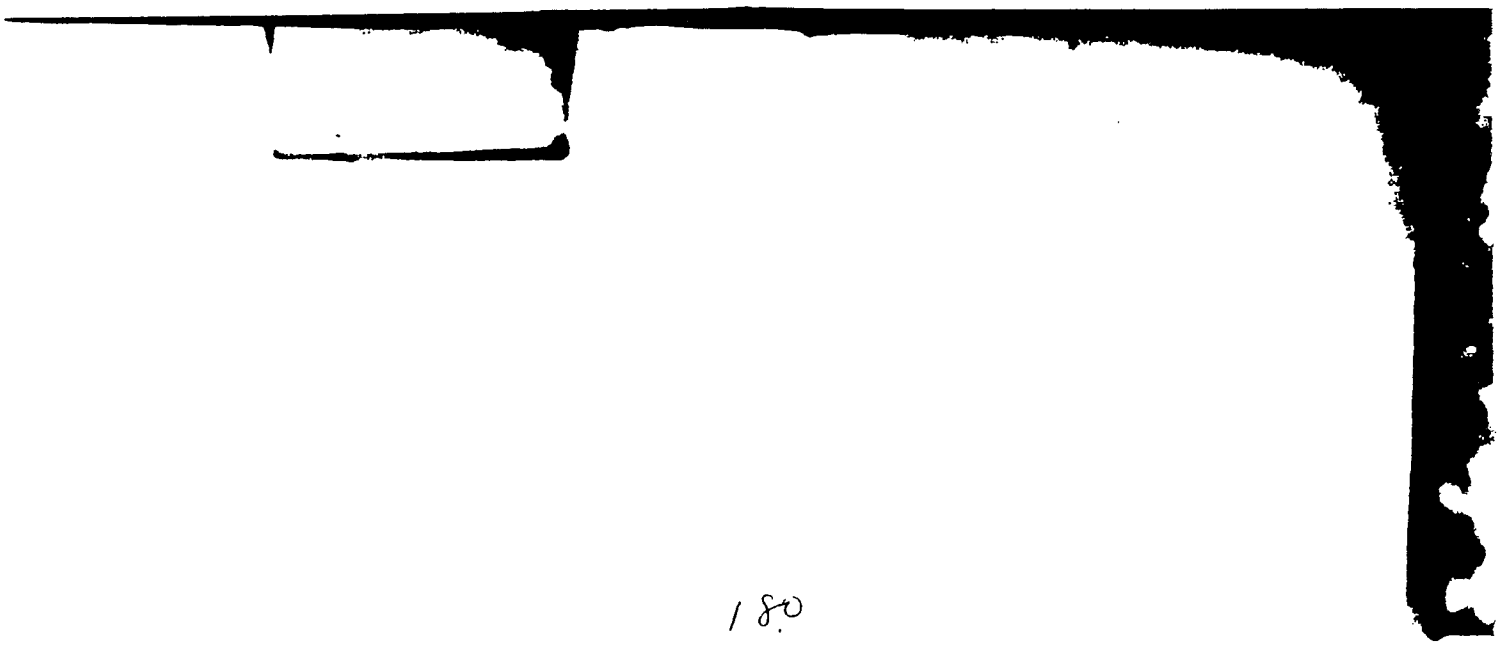
8. When in a city council of twelve members all members are present and there is a rule requiring a vote of a "majority of the members elected and voting," when six members voted for one candidate, three for another and three refused to vote, the candidate receiving the six votes was elected.

9. A new city charter is not invalid because it is reported by ten instead of all thirteen members of the charter commission since such commission is a deliberative body and the rules relating to a majority are applicable.

10. Where a city council consisted of fourteen members and a mayor to whom all legislative powers were given, a vacancy in the council did not reduce the membership to thirteen so that seven would be a majority and could pass an ordinance.

Section 515—
Paragraph 1—
Downing v. Ruger (1839), 21 Wend. (N. Y.) 178.
Paragraph 2—
Cowan v. Murch (1896), 97 Tenn. 590, 37 S.W. 393; Biglow v. Krust (1898), 57 Ohio St. 434, 49 N.E. 477.
Paragraph 3—
Rushville Gas Co. v. Rushville (1889), 120 Ind. 206, 23 N.E. 72; State v. Vanosdal (1892), 131 Ind. 388, 31 N.E. 79.
Paragraph 4—
State v. Tyrell (1914), 158 Wis. 425, 149 N.W. 280.
Paragraph 5—
St. Joseph Township v. Rogers (1872), 83 U. S. 644, 21 L. Ed. 328; Attorney General v. Sheppard (1882), 62 N. H. 383, 13 Am. St. Rep. 576.

Section 515—Continued
Paragraph 6—
Booker v. Young (1855), 12 Gratt. 303.
Paragraph 7—
Commonwealth v. Fleming (1903), 23 Pa. Sup. Ct. 404.
Paragraph 8—
Morton v. Jungerman (1890), 89 Ky. 505, 12 S.W. 944.
Paragraph 9—
State v. Kansas City (1925), 310 Mo. 542, 276 S.W. 389.
Paragraph 10—
McLean v. East St. Louis (1906), 22 Ill. 510, 78 N.E. 815.



11. Where it is provided only that a majority of the members of the city council constitute a quorum, the passage of an ordinance requires an affirmative vote of a majority of the members. There were seventeen members, nine members constitute a quorum and a majority of that quorum can elect a clerk.

12. In the New York City council of twenty-six members, when twenty-five are present, thirteen are sufficient to elect, but when twenty-six are present and vote, thirteen are not enough to elect, since they are not a majority of those voting.

13. In an election by a county convention of school directors a majority vote of those present was required. There were 112 present, 56 voted for Swartz, 55 for Kast. One member refused to vote. Swartz was not elected as he did not receive a majority vote of the members present.

14. In an organization the by-laws required "a majority of the meeting" to take a particular action. The quorum was 200. 215 were present. 91 voted in the affirmative, 51 in the negative and 67 refrained from voting. A majority of the meeting meant the majority of those actually voting and the action had been legally taken.

15. In a public bond election all qualified voters who absent themselves from an election, held pursuant to

Section 515—Continued
Paragraph 11—
In re Brearton (1904), 89 N. Y. Supp. 893.
Paragraph 12—
Morris v. Cashmore (1938), 3 N. Y. Supp. 2d 624.
Paragraph 13—
Commonwealth v. Wickersham (1870), 66 Pa. 134.
Paragraph 14—
Myers v. Union League (1908), 17 Pa. Dist. 301.
Paragraph 15—
County of Taft v. Johnson (1877), 95 U. S. 360, 24 L. Ed. 416.

public notice duly given, are presumed to assent to the rule of the majority of those voting unless the law providing for the election otherwise declares. Where a majority is required to authorize the bonds a majority of the legal votes cast carries the election.

Sec. 516. Presumptions as to Effect of Members Not Voting

1. There has been considerable discussion by the courts as to presumptions concerning the effect of members not voting. There appear to be two distinct situations:

(a) When only a majority of the legal votes cast is required, failure to vote or the casting of a blank ballot reduces the number of affirmative votes necessary to take an action. Under this situation a failure to vote has in part the same effect as a "yes" vote. The members not voting are sometimes said to be presumed to agree to abide by the decision of those voting.

(b) When a set number of votes or a majority or other proportion of the entire membership or of the members present is required, a failure to vote reduces by one the vote available to take the action and, therefore, has the same effect as a "no" vote. It would not seem to be proper to say that members not voting are presumed to be voting

Section 516—
Mount v. Parker (1867), 32 N. J. L. 341; State v. Green (1881), 37 Ohio St. 227; Martin v. Chute (1885), 34 Minn. 135, 24 N.W. 353; Wheeler v. Commonwealth (1895), 89 Ky. 59, 32 S.W. 259; Murdock v. Strange (1904), 99 Md. 89, 57 Atl. 628; Myers v. Union League (1908), 17 Pa. Dist. 301; Caffey v. Veale (1944), 193 Okla. 444, 145 Pac. 2d 961; State ex rel. Hayman v. State Election Board (1938), 181 Okla. 622, 75 Pac. 2d 861; Russell v. Murphy (1936), 177 Okla. 255, 58 Pac. 2d 560; Redmond v. Town of Sulpher (1912), 32 Okla. 201, 120 Pac. 262; Hartford Accident and Indemnity Company v. City of Sulpher (1942), 123 Fed. 2d 566.

in the negative though in this situation that is the effect of the failure to vote.

Sec. 517. Illegal Votes

1. When persons not entitled to vote have voted, or there are more ballots than persons entitled to vote, or it appears that there have been illegal votes cast, the vote should be declared void and a new vote taken.

2. When illegal votes have been cast but those votes could not have changed the result of the vote, as when two illegal votes were cast but the winning candidate won by eleven votes, an election or other vote is not invalidated by the illegal votes. When illegal votes may have changed the result of the vote, the vote is void.

3. When a majority or other proportion of the votes cast is required to take any action, the illegal votes and blank ballots are not considered in the computation. Thus when forty-eight votes were cast including three blank ballots and two ballots were illegal only forty-three legal ballots were cast and twenty-two votes were a majority and would elect a candidate or carry a motion.

Sec. 518. Action Must Be Within Power or Vote Is Ineffective

1. No motion or measure is in order that conflicts with the Constitution of the State or of the United States or

Section 517—
Paragraph 1—
Labourdette v. New Orleans (1847), 2 La. Ann. 527; Baker v. Cushman (1879), 127 Mass. 105; State v. Starr (1906), 78 Conn. 636, 63 Atl. 512; State v. Hutchens (1891), 33 Neb. 335, 15 N.W. 165.
Paragraph 2—
Commonwealth v. Green (1839), 4 Whart. (Pa.) 531, 603; Sudbury v. Stearns (1838), 21 (Pick.) Mass. 148.
Paragraph 3—
Murdock v. Strange (1904), 99 Md. 89, 57 Atl. 628.

with treaties of the United States, and if such a motion or measure be adopted, even by a unanimous vote, it is null and void.

2. No rule that conflicts with a rule of a higher order is of any authority, thus, a legislative rule providing for the suspension, by general consent, of an article of the Constitution would be null and void.

3. Legislative acts which are irregular or void may be ratified and confirmed subsequently, provided the body had the authority originally to take the action ratified, and the procedure and vote on ratification met all requirements.

Sec. 519. A Legislative Body Cannot Delegate Its Powers

See also Sec. 51, Delegation of Powers, and Sec. 512, paragraph 6.

1. The power of any legislative body to enact legislation or to do any act requiring the use of discretion can-

Section 518—
Paragraph 1—
Jefferson, Sec. XLI; Cushing's Legislative Assemblies, Sec. 370; Cushing, Sec. 249.
Paragraph 3—
Marion W. Co. v. Marion (1903), 121 Iowa 306, 96 N.W. 883; Hansen v. Anthon (1919), 187 Iowa 51, 173 N.W. 939; Orange v. Clement (1919), 41 Cal. App. 497, 183 Pac. 189; State v. Hennepin Co. (1885), 33 Minn. 235, 22 N.W. 625; Jordan v. School District (1854), 38 Me. 164; Curtin v. Gowan (1890), 34 Ill. App. 516; Wheat v. Van Tine (1907), 149 Mich. 314, 112 N.W. 933; Brown v. Wintersport (1887), 79 Me. 305, 9 Atl. 844.
Section 519—
Paragraph 1—
Ralls v. Wyand (1914), 40 Okla. 323, 138 Pac. 158; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Coffin v. Nantucket (1850), 59 Mass. 269; Board of Excise v. Sackrider (1866), 35 N. Y. 154; State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50.

not be delegated to a minority, to a committee, to officers or members or to another body.

2. A legislative body may assign ministerial or administrative duties to one of its committees to act in behalf of the body itself.

Section 519—Continued
Paragraph 2—
Gillett v. Logan County (1873), 67 Ill. 256; Dancer v. Mannington (1901), 50 W. Va. 322, 40 S.E. 475.

CHAPTER 47

RULES GOVERNING VOTING

Sec. 520. A Vote Is Required to Decide a Question

1. The decision of a deliberative body can be made only by the taking of a vote at a meeting. The fact that members have individually expressed opinions on a question is not a decision of the body and is of no effect.

Sec. 521. Members Must Vote Unless Excused

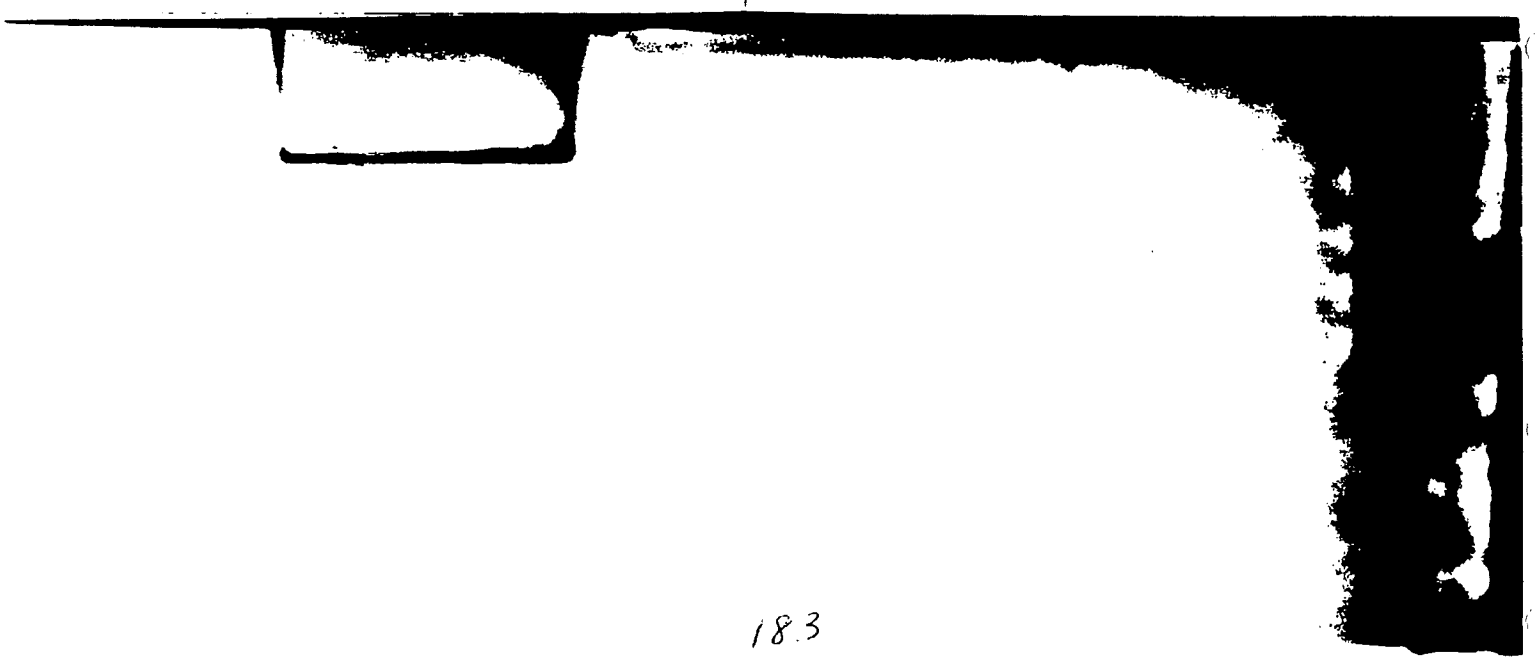
1. It is a general rule that a legislative body cannot only compel the attendance of its members but that it can also require them to vote unless excused by the body from voting.

2. The rule in the House of Commons was that every member was required to vote. This followed from the practice of division, no one being permitted to withdraw or enter after the question had been put.

3. Each house under its power to make rules for its own government has power to excuse members from voting.

4. It is the practice in the state legislatures to excuse a member from voting when he has a personal interest in

Section 520—
Landers v. Frank Street Methodist Episcopal Church (1889), 114 N. Y. 626, 21 N.E. 420; Mobile v. Kiernan (1910), 170 Ala. 449, 54 So. 102; Peirce v. New Orleans Building Co. (1836), 9 La. 397; Whitney v. City of New Haven (1890), 58 Conn. 450, 20 Atl. 666.
Section 521—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1795; Cushing, Sec. 244; N. Y. Manual, 1948-49, p. 371.
Paragraph 2—
Jefferson, Sec. XLI.
Paragraph 3—
Wise v. Bigger (1884), 79 Va. 269.



the matter voted upon or for other good cause. Ordinarily no question is raised when a member fails to vote, but, especially when a particular number of votes are required, or a certain proportion of the votes of members elected are required, one member may raise the question and insist that another member vote or state his reason for not voting and be excused.

Sec. 522. Members May Not Vote on Questions in Which They Have a Personal Interest

1. It is a general rule that no one can vote on a question in which he has a direct personal or pecuniary interest. The right of a member to represent his constituency, however, is of such major importance that a member should be barred from voting on matters of direct personal interest only in clear cases and when the matter is particularly personal. This rule is obviously not self-enforcing and unless the vote is challenged the member may vote as he chooses. A member may vote regarding a matter when other members are included with him in the motion, even though he has a personal or pecuniary interest in the result, as where charges are preferred against a group, or he may vote to increase salaries of all of the members.

Section 522—
Paragraph 1—
Sturgis, p. 58; Hughes, Sec. 569; Cushing, Sec. 41; Cushing's Legislative Assemblies, Sec. 1789; McQuillan on Municipal Corporations, Sec. 629; Mass. Manual, p. 652; Buffington etc. Co. v. Burnham (1883), 60 Iowa 493, 15 N.W. 282; Coles v. Williamsburgh (1833), 10 Wend. (N. Y.) 659; State v. Hoyt (1867), 2 Ore. 246; Aconts County v. Hall (also cited as Board of Supervisors v. Hall) (1879), 47 Wis. 207, 2 N.W. 291; People v. Kingston (1886), 101 N. Y. 82, 4 N.E. 348; Lonbat v. LeRoy (1884), 15 Alb. (N. Y.) 1.

2. A member may not vote for himself for a remunerative office such as a city marshal or a superintendent of schools, and if his own vote is necessary to his election the election is void. In private associations it is the accepted practice for members to vote for themselves for office when there is no compensation and the office represents an "honor" only.

3. A member may not vote to give money or any direct financial benefit to himself. A member may not vote to award a contract to himself, or renew a note in his favor, or vote a salary to himself as an officer, but may vote to approve a contract between a city and a corporation of which he is an employee where there is no direct financial benefit to him.

4. Where the personal interest of a member in a question has been called to the attention of the body, even after the vote was taken, the vote has been disallowed.

5. In Congress the rules provide that no member has a right to vote on any matter in which he is immediately or particularly interested, but the uniform present practice is to permit each member to be the judge of his personal interest.

Section 522—Continued
Paragraph 2—
State v. Hoyt (1867), 2 Ore. 246; Harmony v. State (1888), 116 Ind. 458, 19 N.E. 151; Sturgis, p. 58.
Paragraph 3—
Smith v. Los Angeles Imm. Assoc. (1889), 78 Cal. 289, 20 Pac. 677; Jones v. Morrison (1883), 31 Minn. 140, 16 N.W. 854; County Court v. City of Grafton (also cited as Taylor City v. Grafton) (1945), 77 W. Va. 84, 86 S.E. 924; Sturgis, p. 58; Mass. Manual, p. 609.
Paragraph 4—
Jefferson, Sec. XVII; Cushing's Legislative Assemblies, Sec. 1790.
Paragraph 5—
U. S. House Manual, Rule VIII, notes 658, 659.

Sec. 523. Bringing the Question to Vote

See also Chapter 15, Secs. 130-133, Closing Debate.

1. When a question is undebatable, or debate has been ordered closed, the presiding officer, immediately after stating the question, puts it to vote, only allowing time for members to rise if they wish to make motions of higher rank.

2. When the question is debatable, and no one rises to claim the floor after the question is stated by the presiding officer, he should inquire, "Are you ready for the question?" After a moment's pause, if no one rises, he should put the question to vote. When the question is debated or motions are made, the presiding officer should wait until the debate has apparently ceased, when he should again inquire, "Are you ready for the question?" Having given ample time for any one to rise and claim the floor, and no one having done so, he should put the question to vote.

Sec. 524. Points of Order During Voting

See also Chapter 25, Secs. 240-246, Points of Order.

1. When a point of order is raised during voting, affecting the voting and upon which an immediate decision is required, the presiding officer should decide the point and his decision is subject to appeal, except that if the vote is being taken by division and it would be impossible to debate the appeal because of the division, the presiding officer is not required to recognize the appeal but he is subject to the censure of the body if his decision should be

Section 523—
Sturgis, pp. 48, 61.
Section 524—
3 Hatsell 143; Jefferson, Sec. XLI; Reed, Sec. 235; Cushing, Sec. 248.

irregular. With the modern methods of voting this question rarely, if ever, arises.

Sec. 525. Announcing the Vote

1. In announcing the vote, the presiding officer should first state the vote and then announce the result and finally announce the next business.

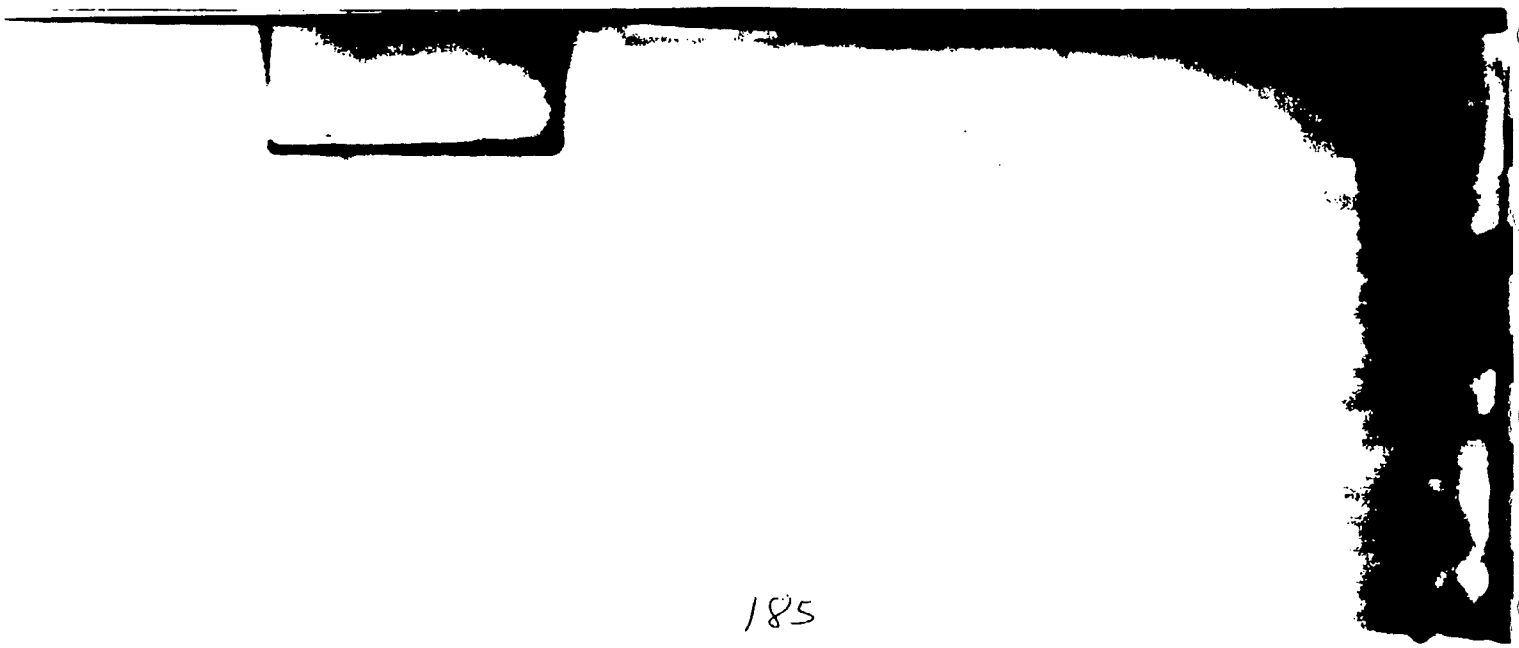
2. In announcing a vote taken *viva voce* or by rising without a count, the presiding officer may announce the result as, "The 'ayes' have it," or if the vote has been by count or on roll call, he should announce the vote as "ayes forty—noes none."

3. Immediately following the announcement of the vote the presiding officer should state the result as "The resolution is adopted," "The motion is carried," "The amendments are adopted," "The appointments are confirmed," "The bill is passed" or "Mr. _____ is elected."

4. One of the principal duties of the presiding officer is to keep the body advised of the business before it. The instant the business before the body is disposed of, the presiding officer should announce the next business. The announcement following a vote might be, for example, "ayes thirty—noes five, Senate Bill No. 65 is passed. The next bill on the calendar is Senate Bill No. 67, by Senator _____."

5. It is the duty of the presiding officer to announce the vote according to the fact. An incorrect announcement cannot nullify the effect of a vote nor can an officer be declared elected when he fails to receive the vote required by law.

Section 525—
Paragraph 5—
Charlton v. Holliday (1883), 60 Iowa 391, 14 N.W. 775; Dingwell v. Detroit (1890), 82 Mich. 568, 46 N.W. 938.



6. Since the declaration of the presiding officer respecting a vote does not involve the exercise of judgment and discretion it is not judicial in a character and, therefore, is subject to collateral attack.

7. When in a joint convention of two houses of a city council, a ballot is taken in the election of an officer and a clear majority for one officer resulted and the result is announced by the presiding officer, a resolution declaring the person elected is unnecessary.

Sec. 526. Recording the Vote

See also Secs. 694-697.

1. A constitutional provision or controlling provision of law concerning the manner of recording the vote must be complied with when constitutions require the vote of each member on the passage of bills to be recorded. The bill will not be held to be duly passed unless the vote is recorded as required.

Sec. 527. Correcting the Vote

See also Sec. 535, Par. 7, Verifying vote by roll call.

1. If a mistake has been made or fraud has occurred in taking or announcing a vote and the vote is immediately

Section 525—Continued
Paragraph 6—
State v. Fagan (1875), 42 Conn. 32.
Paragraph 7—
State v. Barbour (1885), 53 Conn. 76, 55 Am. Rep. 65.
Section 526—
State v. Martin (1909), 160 Ala. 181, 48 So. 846; Smithee v. Garth (1878), 33 Ark. 17; Neiberger v. McCullough (1912), 253 Ill. 312, 97 N.E. 660; State v. Mason (1900), 155 Mo. 486, 55 S.W. 636; McClelland v. Stein (1924), 229 Mich. 203, 20 N.W. 209.
Section 527—
Jefferson, Sec. XLI; Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315; Baker v. Cushman (1879), 127 Mass. 105; State v. Starr (1906), 78 Conn. 636, 63 Atl. 512.

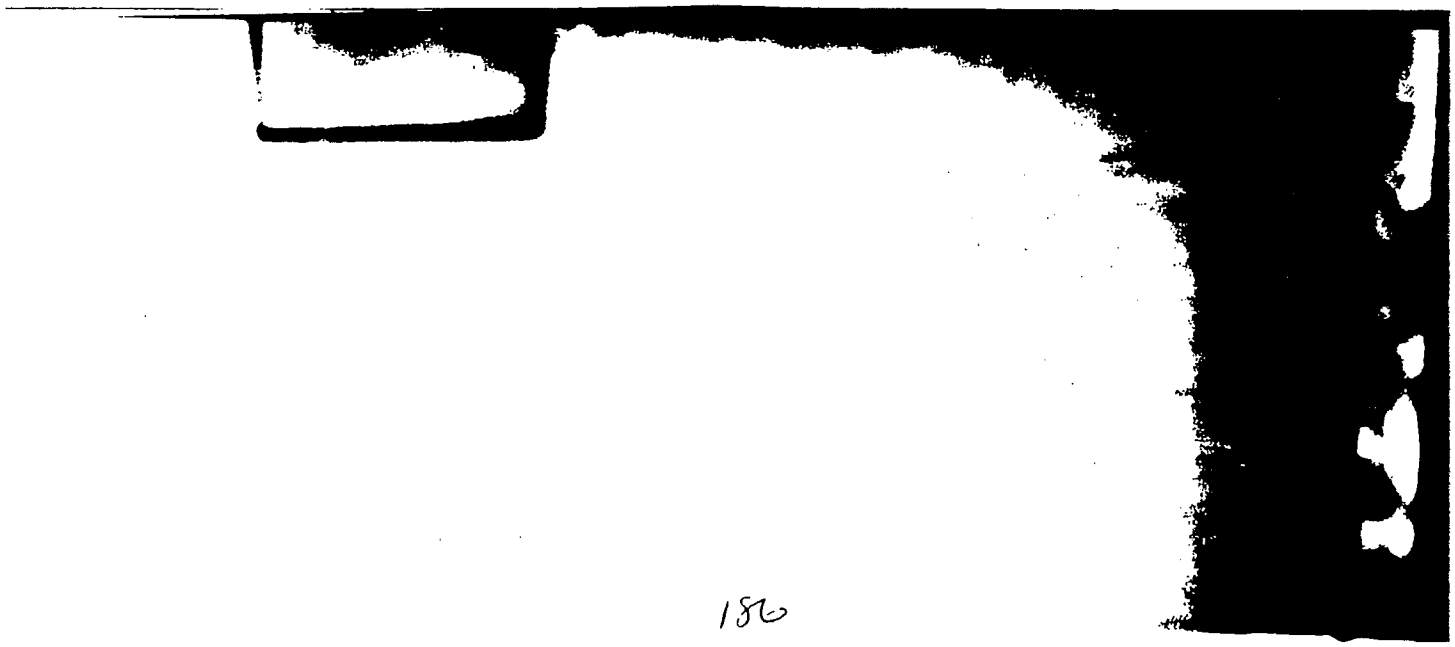
questioned, it may be treated as irregular and void and the vote may be retaken or it may be corrected, but a vote may not be retaken if there has been delay or other business has intervened. A legislative body always has authority to correct its records to make them state the truth.

Sec. 528. Explanation of Vote

1. Any member may, with the consent of the body, make an explanation of his vote on any question and have the explanation printed in the journal.

2. When the presiding officer votes in case of a tie vote, he has the same right as a member to explain his vote, and have the explanation printed in the journal.

Section 528—
Paragraph 1—
Cushing, Sec. 32.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 311; N. Y. Manual, p. 464.



CHAPTER 48

MANNER OF VOTING

Sec. 530. Manner in Which Votes May Be Taken

1. When the method of voting is not prescribed by controlling authority or in the rules, a vote may be taken in any of the modes by which questions are determined under the general rules of parliamentary law.

2. When a vote is required by a constitution, charter, or controlling statute to be taken in a particular manner, it must be taken in that manner.

3. Except as constitutional provisions may control, votes may be taken *viva voce,* by show of hands or by a rising vote, upon roll call, or by ballot, and when no provision is made in the constitution, charter, or controlling provision of law, the rules of each house will govern.

4. The state constitutions in most cases require the "ayes" and "noes" to be taken on the passage of bills. The "ayes" and "noes" are usually taken by roll call, but

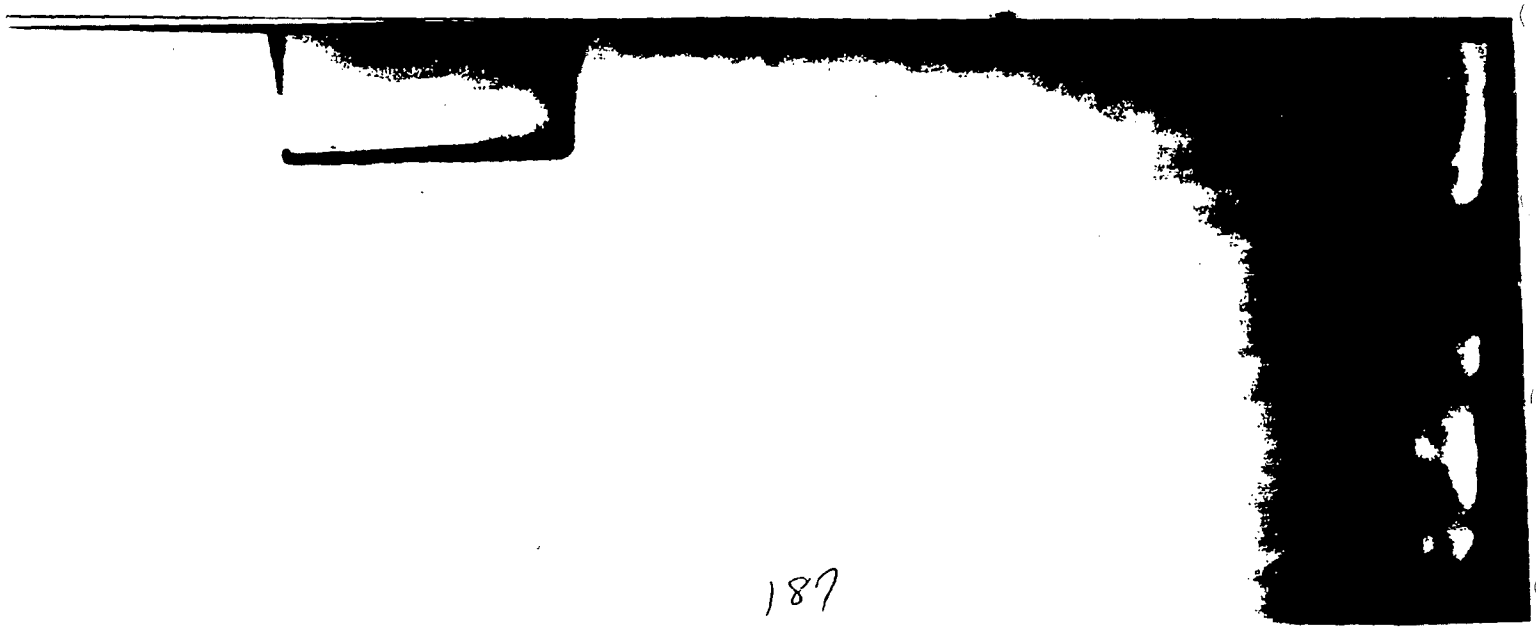
Section 530—
Paragraph 1—
Richardson v. Union Cong. Soc. of Francestown (1877), 58 N. H. 187.
Paragraph 2—
Hopkins v. Mayor of Swansea (1839), Eng. 4, N. & W. 621; Presbyterian Church v. N. Y. City (1826), 5 Cow. 538; Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 250; O'Neil v. Tyler (1892), 3 N. D. 47, 53 N.W. 434.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 1792; Reed, Sec. 229; Lincoln v. Haugen (1891), 45 Minn. 451, 48 N.W. 186; State v. Barbour (1885), 53 Conn. 76, 55 Am. Rep. 65.
Paragraph 4—
Ala. IV, 61, 63; Ariz. IV, Pt. II, 12; Ark. V, 21, 22; Cal. IV, 15; Colo. V, 17, 22; Del. II, 10; Fla. III, 17; Ga. III, Sec. VII, 7; Idaho III, 15; Ill. IV, 13; Ind. IV, 1, 18; Iowa III, 15; Kan. II, 15, 20; Ky. 46; La. III, 24;

in a few states mechanical voting methods have been installed. Voting by "ayes" and "noes" is sometimes required in elections by the legislature and in certain other cases.

5. The state constitutions also usually provide that a specified number or proportion of the Legislature less than a majority, and often one-fifth, can require the vote on any question to be taken by roll call and recorded in the journal.

6. A separate vote is usually required on each separate action taken by a legislative body.

Section 530—Continued
Paragraph 4—Continued
Me. IV, Pt. III, 9; Md. III, 27, 29; Mass. Pt. II, Chap. I, Sec. I, 2; Mich. V, 23, 29; Minn. IV, 20; Miss. IV, 59, 60; Mo. IV, 25, 26; Mont. V, 19; Neb. III, 13, 14; Nev. IV, 18, 23; N. J. IV, Sec. IV, 6; N. M. IV, 15; N. Y. III, 14; N. C. II, 23; N. D. II, 58, 63; Ohio II, 16; Okla. V, 34; Ore. IV, 19; Pa. III, 1, 4; R. I. IV, 2; S. C. III, 18; S. D. III, 17; Tenn. II, 18; Tex. III, 30, 32; Utah VI, 22; Vt. II, 6; Va. IV, 50; Wash. II, 18; W. Va. VI, 29; Wis. IV, 17; Wyo. III, 20.
Paragraph 5—
Reed, Sec. 232; Cushing's Legislative Assemblies, Sec. 405; Ala. IV, 55; Ariz. IV, 10; Ark. V, 12; Cal. IV, 10; Colo. V, 13; Conn. III, 9; Del. II, 10; Fla. III, 12; Ga. III, Sec. VII, 4; Idaho III, 13; Ill. IV, 10; Ind. IV, 12; Iowa III, 9; Kan. II, 10; Ky. 40; La. III, 15; Me. IV, Pt. III, 5; Md. III, 22; Mich. V, 16; Minn. IV, 5; Miss. IV, 55; Mo. IV, 42; Mont. V, 12; Neb. III, 11; Nev. IV, 14; N. H. II, 23; N. J. IV, Sec. IV, 4; N. M. IV, 12; N. Y. III, 15; N. C. II, 16; N. D. II, 49; Ohio II, 9; Okla. V, 30; Ore. IV, 13; Pa. II, 12; R. I. IV, 8; S. C. III, 22; S. D. III, 13; Tenn. II, 21; Tex. III, 12; Utah VI, 14; Vt. II, 9; Va. IV, 49; Wash. II, 11; W. Va. VI, 41; Wis. IV, 10; Wyo. III, 13.
Paragraph 6—
Parker v. Catholic Bishop (1893), 146 Ill. 158, 34 N.E. 473; Markham v. City of Anamosa (1904), 122 Iowa 687, 98 N.W. 493; Campbell v. Cincinnati (1892), 49 Ohio St. 463, 31 N.E. 606.



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7. Where the constitution provides that on the final passage of a bill the vote shall be by "ayes" and "noes," this provision is imperative and must be strictly followed.

Sec. 531. Determining Manner of Voting

See also Chapter 32, Secs. 306-308, Motions Relating to Voting, Nominations and Elections.

1. Where not required by the constitution or the rules, a majority vote is required to order the vote to be counted, except for verification, or to be taken by roll call or by ballot, as the usual method of voting is *viva voce*.

2. A motion to determine the manner of taking a vote on a question that is pending ranks as an incidental question, and yields only to privileged questions and other incidental questions except motions relating to nominations or elections. Such motions may be amended but are not debatable, and cannot have any subsidiary motions applied to them.

Section 530—Continued
Paragraph 7—
Burlingham v. City of New Burn (1914), 213 Fed. 1014; State v. Martin (1909), 160 Ala. 181, 48 So. 846; Mech. Bldg. and Loan Assoc. v. Coffman (1913), 110 Ark. 269, 162 S.W. 1090; Rash v. Allen (1910), 24 Del. 444, 76 Atl. 370; State v. Dillon (1900), 42 Fla. 95, 28 So. 781; Cohn v. Kingsley (1897), 5 Idaho 416, 49 Pac. 985; People v. Edmonds (1911), 252 Ill. 108, 96 N.E. 914; Com. of Wash. Co. v. Baker (1922), 141 Md. 623, 119 Atl. 461; Lincoln v. Haugen (1891), 45 Minn. 451, 48 N.W. 196; State ex rel. Schmoll v. Drabelle (1914), 261 Mo. 515, 170 S.W. 465; Hull v. Miller (1876), 4 Neb. 503; Debman v. Chitty (1902), 131 N. C. 657, 42 S.E. 3; State v. Schultz (1919), 44 N. D. 269, 174 N.W. 81.

Section 531—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1792; Sturgis, p. 26; Tilson, p. 163.

3. When different methods of voting are suggested, they should be treated as alternative propositions, the vote being taken first on the method taking the most time. In practice, the method of taking a vote is generally agreed upon without the formality of a vote.

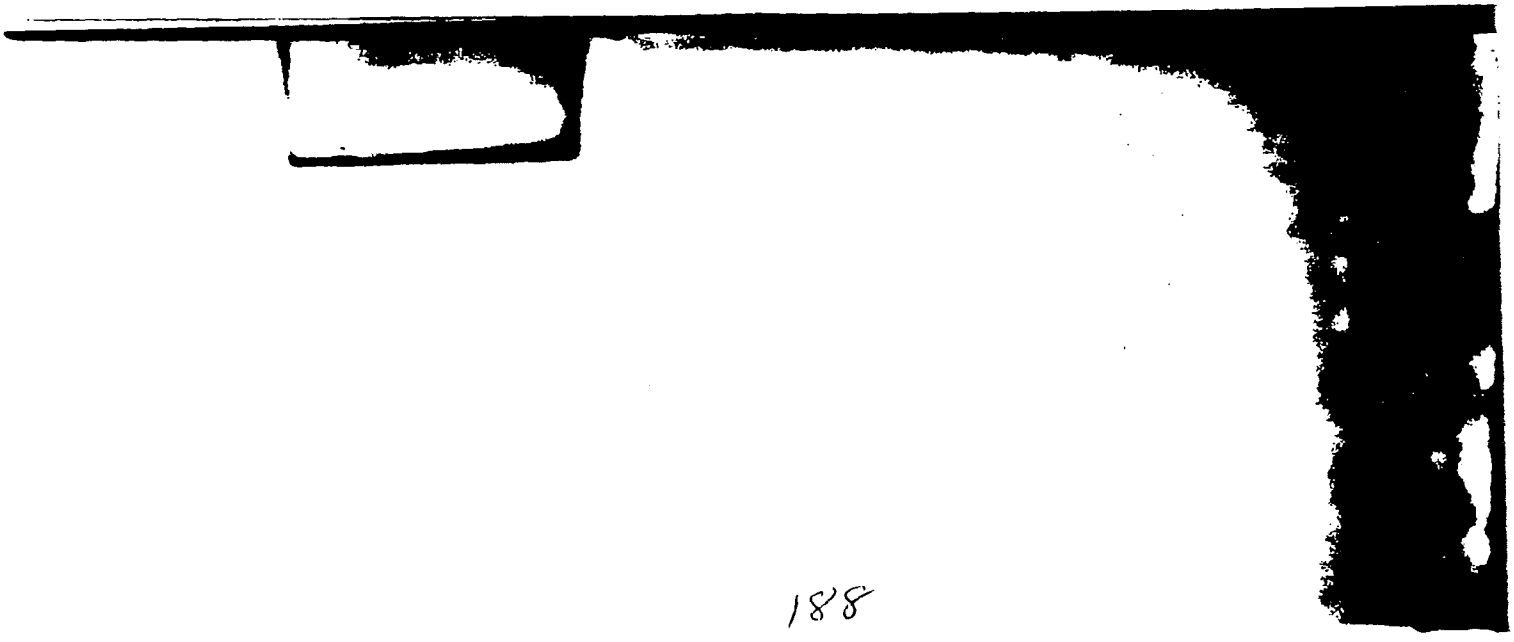
4. When more than a majority vote, or a majority vote of the entire membership is required, it would seem that it is necessary to vote by roll call or division, unless the action is taken by unanimous consent, in order to ascertain whether the necessary proportion or number of votes has been obtained; but this is not required in all cases in Congress, the presiding officer declaring on a *viva voce* vote, for example, that a two-thirds vote has been secured, subject, of course, to verification.

Sec. 532. Voice Vote or Viva Voce Vote

1. The usual manner of voting, except when the constitution or rules may require a roll call, as upon the passage of a bill, is for the presiding officer to call for the "ayes" and "noes" on a question and judge the vote by the sound. This is usually known as a *viva voce* vote. It is much the quickest and simplest manner of voting, but has the defect that if the vote is close it is difficult to determine the prevailing side. It usually serves, however, because on most questions there is a decided majority.

2. A question is put to a *viva voce* vote by the presiding officer after stating the question, saying, "As many as may be in favor of the motion (or other matter before the house)," or "as many as are of opinion that (stating the proposition) say 'aye'," and then immediately stat-

Section 532—
Paragraph 2—
Cushing, Sec. 238; Reed, Sec. 230; Cushing's Legislative Assemblies, Secs. 385, 403, 407; Tilson, p. 34; Sturgis, p. 60.



ing the negative by saying "As many as are opposed say 'no'." The question is often stated more briefly as "all in favor say 'aye'" and "contrary 'no'" or "opposed 'no'."

3. If the presiding officer is certain of the vote, he may immediately announce the result, but if he is not certain, he may say, "The 'ayes' seem to have it," or "The 'noes' seem to have it," in order to give any member an opportunity to request a verification, and if no member immediately requests a division or otherwise requests a further verification, he may announce the result.

4. If the presiding officer upon the taking of a *viva voce* vote is unable to determine which side has the majority, he may call for the "ayes" and "noes" a second or even a third time. If he considers it necessary to further verify the vote he may count hands, or have the members rise and be counted, or may have the vote taken by tellers, or have the roll called, depending upon his judgment and the practice of the body.

5. A member who doubts the accuracy of a *viva voce* or voice vote may demand a division or verification of the vote. A demand may be made as soon as the vote is

Section 532—Continued
Paragraph 3—
Sturgis, p. 62; Tilson, p. 34.
Paragraph 4—
State v. Ellington (1895), 117 N. C. 158, 23 S.E. 250; Kimball v. Lamprey (1848), 19 N. H. 215; Cushing's Legislative Assemblies, Secs. 403, 1794; Cushing, Secs. 193, 198; Reed, Sec. 231; Tilson, p. 35; Sturgis, p. 62.
Paragraph 5—
State v. Ellington (1895), 117 N. C. 158, 23 S.E. 250; Kimball v. Lamprey (1848), 19 N. H. 215; Gipson v. Morris (1903), 31 Tex. Civ. App. 645, 73 S.W. 85; Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 568; N. Y. Manual, 1948-49, p. 469; Cushing's Legislative Assemblies, Secs. 1795, 1797.

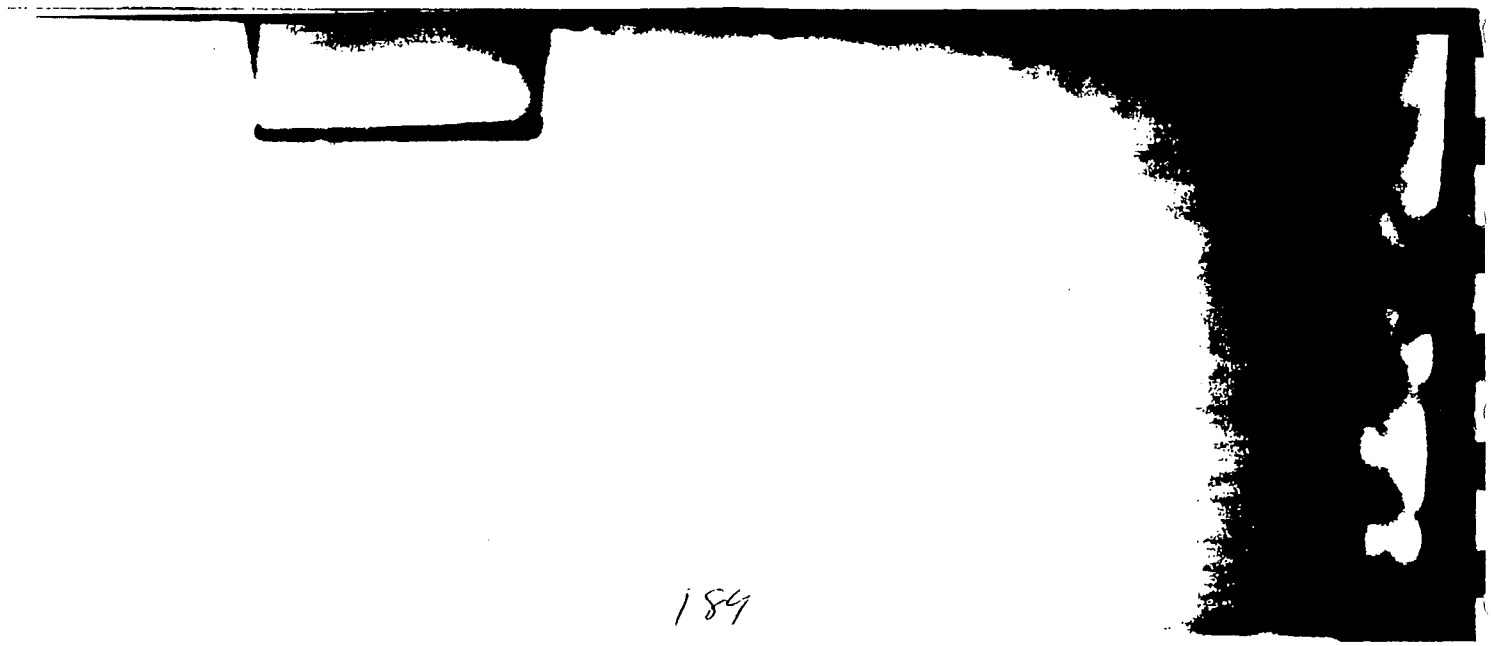
taken when the presiding officer indicates what his determination of the vote may be, as by saying "the ayes seem to have it" or after the announcement of the vote if the demand is made promptly and before other business is taken up.

6. This call or demand may be made without being recognized. It is made by saying, "I call for a division," or "I doubt the vote," or simply by calling out, "division." It does not require a second, even when seconds are required, and cannot be debated or amended, nor have any other subsidiary motion applied to it.

7. As soon as a division is called for, the presiding officer should proceed again to take the vote, by first having the members voting in the affirmative rise, and after they have been counted and are seated, by having the members voting in the negative rise and be counted as indicated under "voting by division," Sec. 533, below. Voters are sometimes verified by "show of hands" instead of rising or by roll call where voting on roll call is the usual method of voting.

8. While any member has the right to insist upon a rising vote, or a division, where there is any question as to the vote being a true expression of the will of the body, the presiding officer should not permit this privilege to be abused, to the annoyance of the body, by members constantly demanding a division where there is a full vote and there is no question as to which side is in the

Section 532—Continued
Paragraph 6—
Sturgis, p. 62; Cushing, Secs. 238, 240.
Paragraph 7—
Sturgis, pp. 62, 69; Cushing, Sec. 238.
Paragraph 8—
Sturgis, p. 62.



majority. A demand for a verification is not in order when all members vote one way.

Sec. 533. Voting by Division

1. Voting by division, that is by a rising vote or by counting hands, is a satisfactory manner of voting in most organizations. It is almost as fast as a voice vote and much more accurate. This method is advantageous, and sometimes necessary, when a certain number of votes is required or more than a majority vote is required, unless voting is done by roll call. It has the disadvantages for some purposes that it does not record the individual vote like a roll call vote, or that it is not secret, like a vote by ballot.

2. A vote by division is often used to verify a voice vote.

3. To take a vote by division the presiding officer may say: "Those in favor of the motion will rise," and then he may continue "Be seated—those opposed will rise." If this does not enable him to determine the prevailing side, he should say, "Those in favor of the motion (or, those in the affirmative) will rise and stand until counted." He then counts those standing, and says, "Be seated—those opposed (or, those in the negative) rise and stand until counted." After both sides are counted, the presiding officer announces the result. The secretary or clerk should also count, in order to verify the count of the presiding officer, if requested by him. In a small body a show of hands may be substituted for a rising vote.

Section 533—
Paragraph 3—
Jefferson, Sec. XLI; Sturgis, p. 62; Cushing, Secs. 238-242; Reed, Sec. 231; Tilson, p. 35.

Sec. 534. Voting by Tellers

1. The vote on the passage of measures in the British houses is taken by tellers, and the same method of voting is used for some purposes in the United States Congress and other legislative bodies.

2. As used in Congress, a vote by tellers may be demanded by one-fifth of a quorum, and when ordered, the Speaker appoints two tellers on each side and announces, "As many as are in favor of (stating the question) will pass between the tellers and be counted." The two tellers for the affirmative side take their position before the bar and count the members who pass between them. When the affirmative vote is taken, the speaker announces, "As many as are opposed will pass between the tellers and be counted." The negative vote is taken and announced in the same manner. Under the old British system, separate gates were used for the affirmative and the negative votes or either those voting in the affirmative or negative left the chamber and were counted as they re-entered.

Sec. 535. Voting on Roll Call

1. The method of voting upon roll call or by "ayes" and "noes," appears to be of American origin and to have arisen from the practice of voting by states under the Articles of Confederation. This is the method most often used in legislative bodies. It is the most accurate voting system and most easily verified. It has the further advantage of recording the individual votes of members,

Section 534—
Cushing's Legislative Assemblies, Secs. 404, 1801-1803; Tilson, p. 35; Cushing, Secs. 241, 242; Reed, Sec. 234.
Section 535—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 405; Sturgis, p. 63; Reed, Sec. 232; Cushing, Sec. 246.

and since members are voting in a representative capacity their constituents are entitled to know how their representatives voted.

2. As the secretary or clerk calls the roll, each member, as his name is called, answers "aye" or "no," and the clerk notes the answers in separate columns. If a member is present and does not wish to vote he may fail to answer or may answer "present." When voting on an election, the members answer with the name of the person for whom they are voting as their names are called.

3. When a vote is to be taken by roll call, the presiding officer may put the question in a form similar to the following: "The question is on the passage of Senate (or House) Bill No. _____ by Senator (or Mr.) _____. As many as are in favor of the passage of the bill will vote 'aye,' those opposed will vote 'no.' The secretary (or clerk) will call the roll." Or, in considering a series of measures, the following is a more usual form: "The question is on the passage of Senate (or House) Bill No. _____. The secretary (or clerk) will call the roll."

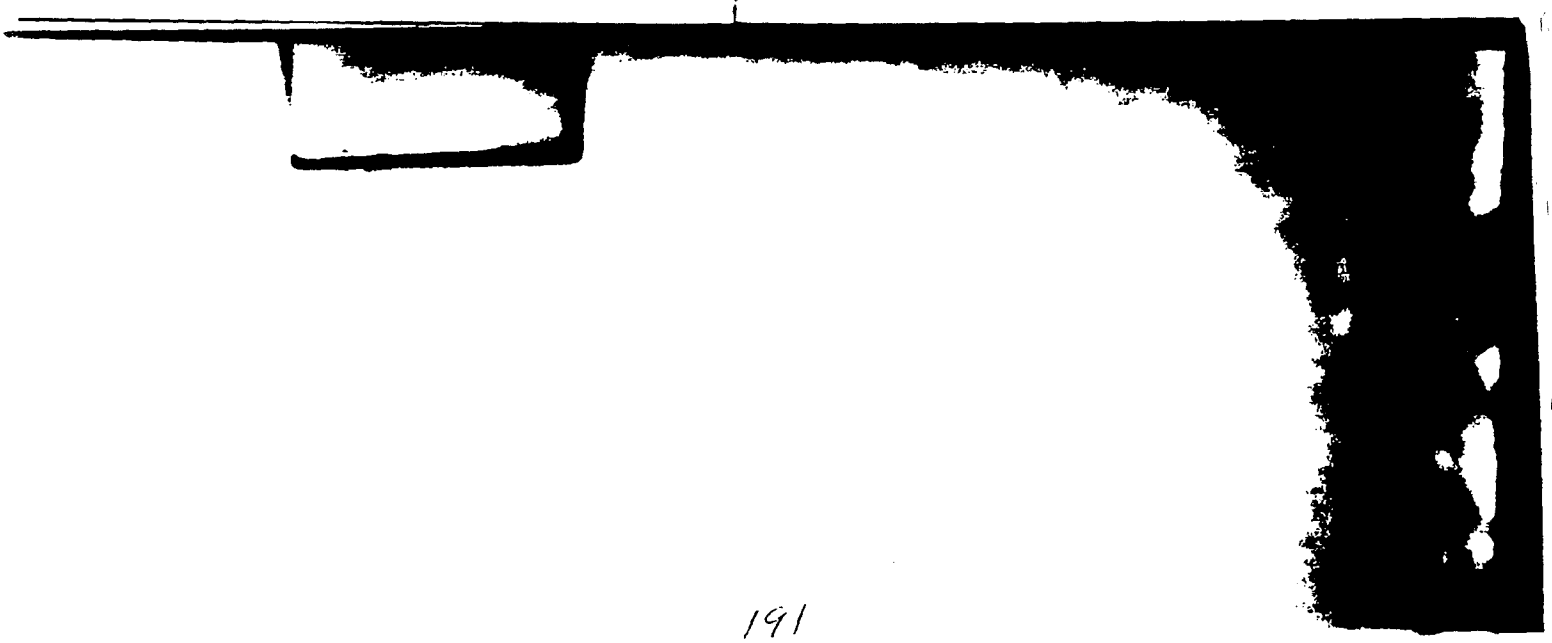
4. A convenient method of recording the vote upon roll call is for the secretary or clerk, as he calls the roll, to note the "aye," or "no" votes in separate columns by writing in each case the number of "aye" or "no" votes thus far received on the roll call. For example, the vote of the first member to vote "aye" will be recorded by writing "1" in the "aye" column opposite the member's name, and the vote of the sixth member to vote "no" will be recorded by writing "6" in the "no" column opposite his name. By recording the vote in this manner, the secretary or clerk can state the vote to the presiding officer immediately upon the completion of the roll call.

5. Any members who have entered during the roll call or who have not voted may arise and address the presiding officer immediately following the roll call and before the vote is announced, and vote as they are recognized or as their names are called by the presiding officer, the clerk repeating the name and the vote for the purpose of verification. It is not out of order for a member in this case to announce his vote without waiting to be recognized.

6. After the roll call has been completed, but before the vote is announced, a member may arise and address the presiding officer and, upon being recognized, may change his vote by saying, "aye to no" or the reverse, and the secretary or clerk, as he records the change, repeats back "Senator (or Mr.) _____ 'aye to no,'" or the reverse. It is not out of order for a member to change his vote without waiting to be recognized by the presiding officer, but the best practice is to secure recognition before changing the vote. After the vote has been announced it is too late to vote or to change a vote.

7. As the members vote, the clerk calls back the vote before calling the next name in order that any mistake may be corrected. Upon the completion of the roll call, if there have been numerous changes or if there appears to be need of further verification, the clerk may be directed to read the names of those who answered in the affirmative, and afterwards those in the negative, and then those who answered "present."

Section 535—Continued
Paragraph 6—
N. Y. Manual 1948-49, p. 469; Cushing, Sec. 247a; Mass. Manual, pp. 631, 652; Hughes, Sec. 860; State v. Miller (1900), 62 Ohio St. 436, 57 N.E. 227.



8. When the roll call has been completed, or verified when that has been required, the secretary or clerk then states the number voting on each side to the presiding officer who announces the result.

9. Upon the announcement of the vote by the presiding officer, the accuracy of the vote may be immediately questioned by a member, and the roll call verified, and any error in taking or announcing the vote may be corrected. This does not give a member the right to change his vote after the vote is announced. When the vote is unanimous, the decision may not be questioned.

10. An entry is usually made in the minutes by listing the names of all members voting in the affirmative, and of those in the negative, and the names of those who answered "present," or did not answer may also be entered. The roll upon which the vote was recorded becomes a part of the minutes.

Sec. 536. Voting by Ballot

1. Voting by ballot is rarely, if ever, used in legislative bodies, as the members vote in a representative capacity and their constituents are entitled to know how their representatives vote. In order to insure that right, constitutions usually require that all bills be passed by roll

Section 535—Continued
Paragraph 8—
Sturgis, pp. 63, 64.
Paragraph 9—
N. Y. Manual, p. 504; State v. Ellington (1895), 117 N.E. 158, 23 S.E. 250; Kimball v. Lamprey (1848), 19 N. H. 215.
Paragraph 10—
Sturgis, p. 63.
Section 536—
Paragraph 1—
Sturgis, pp. 64-67; Cushing's Legislative Assemblies, Secs. 103 to 114.

call and that the vote be recorded in the journal, and also that a small number can require a roll call on any question and have the vote recorded in the journal.

2. Where the constitution or rules do not prohibit a vote being taken by ballot, it can be ordered by a majority vote, or by general consent. When the appointment of an officer or any other action is directed to be made by a legislative body by ballot, that action must be taken by ballot, the manner of taking a ballot being within the discretion of the body; but where an election by ballot is required, having each member rise and announce his choice as his name is called is not a compliance with the requirement.

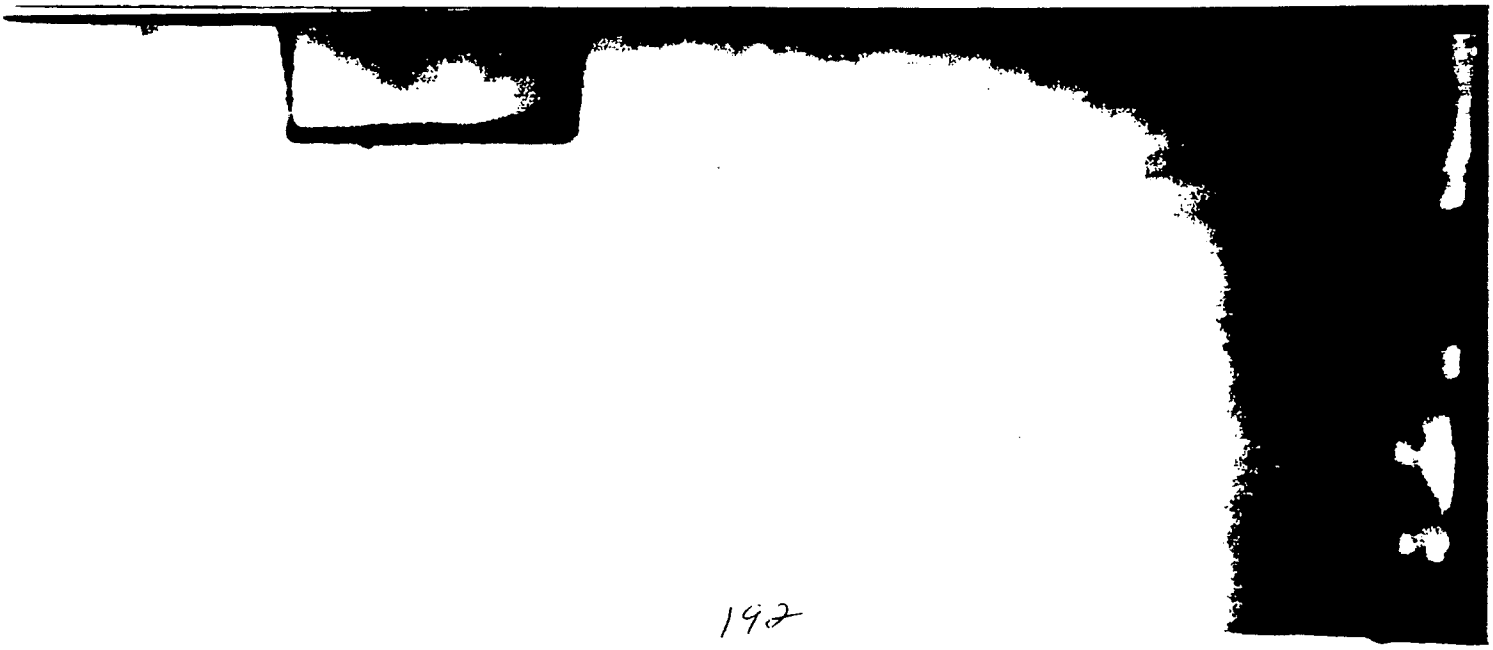
3. In an election by ballot a majority of the valid ballots cast is necessary. A blank ballot is of no effect except to indicate the number of members present. Where four ballots are cast for one candidate, three for another, and there is one blank ballot, the candidate receiving the four ballots is elected. If a greater number of ballots are cast than there are members present and entitled to vote, the vote should be retaken, and if there are enough such ballots to change the result of the election, the election is void.

See Sec. 517, Illegal Votes.

Sec. 537. Unanimous Consent

1. When there appears to be no opposition, the formality of voting, except where specifically required, can be

Section 536—Continued
Paragraph 2—
State v. Starr (1906), 78 Conn. 636, 63 Atl. 512; Mass. Manual, p. 600.
Paragraph 3—
Murdock v. Strange (1904), 99 Md. 89, 57 Atl. 628; State v. Fagan (1875), 42 Conn. 32; Labourdette v. New Orleans (1847), 2 La. Ann. 527.



avoided by the presiding officer asking if there is any objection to the proposed action, and if there be none, proceeding as though the requested action were approved. The action thus taken is said to be taken by general consent or by unanimous consent.

2. An action taken by unanimous consent is taken on the assumption that failure to object to the granting of a request amounts to consent or approval, but the question must be regularly presented and an opportunity to object given. Various members expressing approval and not dissenting does not constitute unanimous consent in the parliamentary sense.

3. A legislative body can take any action by unanimous consent which it is competent to take by vote, notwithstanding any rule of parliamentary law; but it would clearly be controlled by any constitutional charter or statutory provision governing the manner of taking or recording votes.

4. Objection made with reasonable promptness, even if the presiding officer has announced the action approved, defeats the request for unanimous consent and a regular vote is required. A single objection defeats a request for unanimous consent. Where the presiding officer is a member of the body, he retains the right to

Section 537—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1793; Sturgis, p. 67; Hughes, Sec. 615.
Paragraph 2—
Landers v. Frank Street Methodist Episcopal Church (1889), 114 N. Y. 626, 21 N.E. 420; Sturgis, p. 67; Hughes, Sec. 610; Cushing, Sec. 237.
Paragraph 3—
Reed, Sec. 24; Cushing, Sec. 237.
Paragraph 4—
Cushing's Legislative Assemblies, Sec. 1793; Cushing, Sec. 237; Sturgis, p. 68; Hughes, Sec. 611, 615, 617.

object the same as any other member, and may refuse to recognize a request for unanimous consent. It is also clearly within the right of the presiding officer to put the question to a vote of the body.

5. In the absence of any constitutional or other controlling provision for the protection of absentees, unanimous consent means the unanimous consent of the members present.

6. The granting of unanimous consent may not be reconsidered or withdrawn, but the regular manner of procedure may be insisted upon at any time before that which was to have been done by unanimous consent has been completed.

Sec. 538. Absentee Voting

1. In a legislative body it is a rule that no member can vote who is not present when the question is put, but "pairing," which is a type of absentee voting by which a member agrees with a member who would have voted opposite to him not to vote, has long been used in Congress and some of the states and has been recognized by the courts. Each house of the legislature, under the authority to make rules for its own government, has power to recognize what are called "pairs." In determining the vote necessary to pass legislation when a majority vote of those present is required the "paired" members may be treated as absent.

Section 537—Continued
Paragraph 5—
Atkins v. Phillips (1890), 26 Fla. 281, 8 So. 429; Zeiler v. Central R. R. Co. (1896), 84 Md. 304, 35 Atl. 932.
Paragraph 6—
Hughes, Sec. 616.
Section 538—
Wise v. Bigger (1884), 79 Va. 269; In re Opinion of Justices (1934), 228 Ala. 140, 150 So. 902.

CHAPTER 49

NOMINATIONS

See also Chapter 32, Secs. 306-308, Motions Relating to Voting, Nominations and Elections.

Sec. 545. Manner of Making Nominations and Motions Relating to Nominations

1. Nominations are a prerequisite to an election, unless an election is by ballot or by roll call, when each member may nominate his candidate as he votes for him.

2. Where no method of making nominations is designated by the rules, a motion may be made by any member describing the method of making nominations for any office to be filled. The motion may provide for nominations by the presiding officer, nominations from the floor, nominations by a nominating committee or for nominations to be made by ballot. When different methods of making nominations are proposed they are treated as alternative propositions and are put to vote in the following order:

(a) Nomination by ballot, if voting by ballot is permitted.
(b) Nomination from the floor.
(c) Nomination by committee.
(d) Appointment by resolution or on motion.
(e) Nomination by the presiding officer.
(f) Appointment by the presiding officer.

3. A motion to decide the manner of making nominations for a pending election is an incidental motion and takes precedence as such, but, when no election is immediately pending, a motion relating to nominations is a main question and takes precedence in that order. When a motion relates to nominations for an immediately pending election it is not debatable nor subject to any subsidiary motion except the motion to amend. When a motion relating to nominations is a main question it is subject to debate and other motions as is any main question.

Section 545—
Sturgis, pp. 71, 72.

Sec. 546. Nominations From the Floor

1. When nominations are made from the floor, any member is entitled to nominate one candidate for a position, but no person may nominate more than one candidate if objection is raised.

2. Nominations need not be seconded, although seconds to nominations may be permitted.

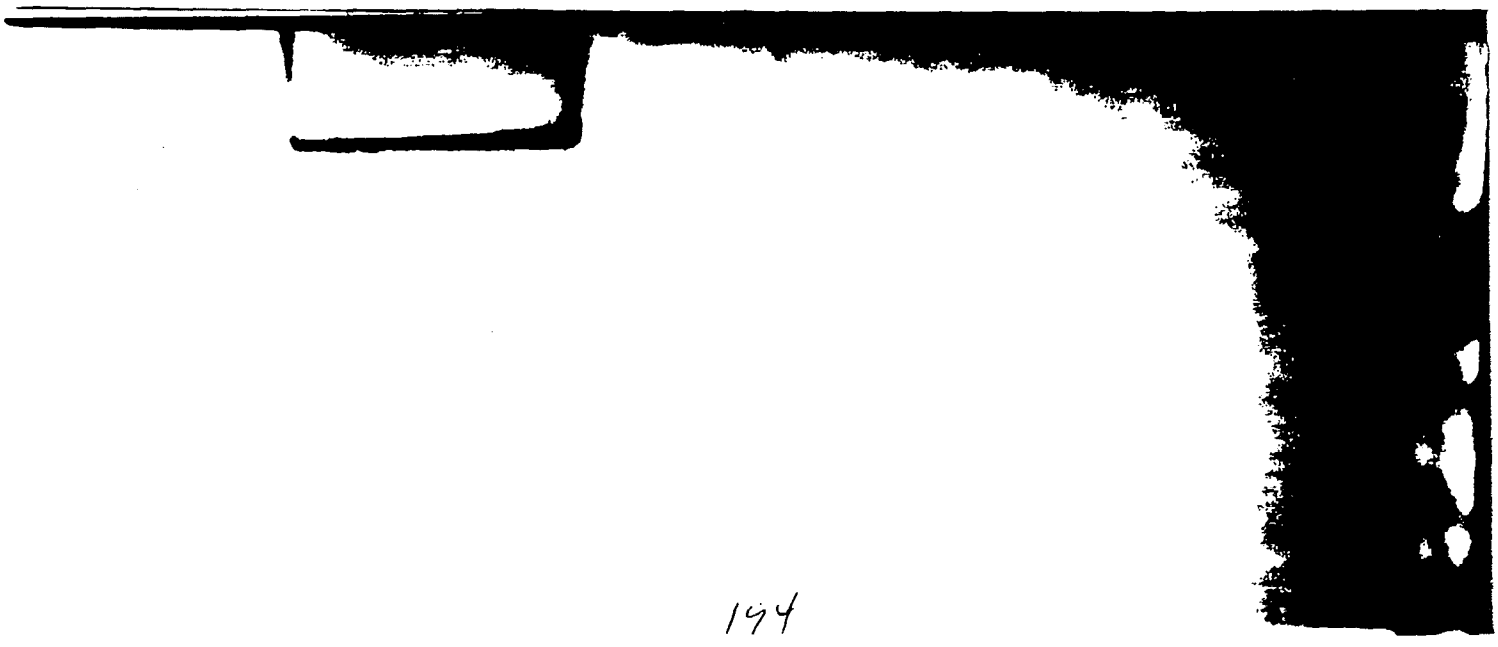
Sec. 547. Nominations by Committee

1. When nominations are to be made by a committee, this committee is appointed in the same manner as any other special committee, with instructions to make nominations for certain offices.

2. A nominating committee usually submits a single list of candidates to fill the offices provided for, but it is not improper or unusual for the committee to name more than one candidate for each office.

3. Unless a motion is made to add other candidates or to substitute candidates for those nominated by a committee, the committee's nominations are treated the same as nominations from the floor, no vote being taken to accept the persons nominated as candidates for the offices.

Section 546—
Sturgis, p. 72.
Section 547—
Sturgis, p. 72, 73.



Sec. 548. Nominations by the Presiding Officer

1. When nominations by the presiding officer have been provided for, or when proceeding informally, the presiding officer may nominate candidates for a position, and in such a case it is in order to move that names be substituted, or that names be stricken from the list nominated and that other names be added to the list. When nominations are acceptable to the body the nominations may be approved individually or as a group.

Sec. 549. Motion to Close Nominations

1. When a sufficient number of names are proposed to fill the positions, and after allowing a reasonable time for further nominations, it is in order to move that nominations be closed. A motion to close nominations is not in order so long as a member entitled to make a further nomination desires to do so, except that a member must be reasonably prompt in claiming his right.

2. A motion to close nominations takes precedence as an incidental motion, yielding, when nominations are in order, only to privileged motions. The motion can have no subsidiary motions applied to it. A motion to close nominations is not debatable.

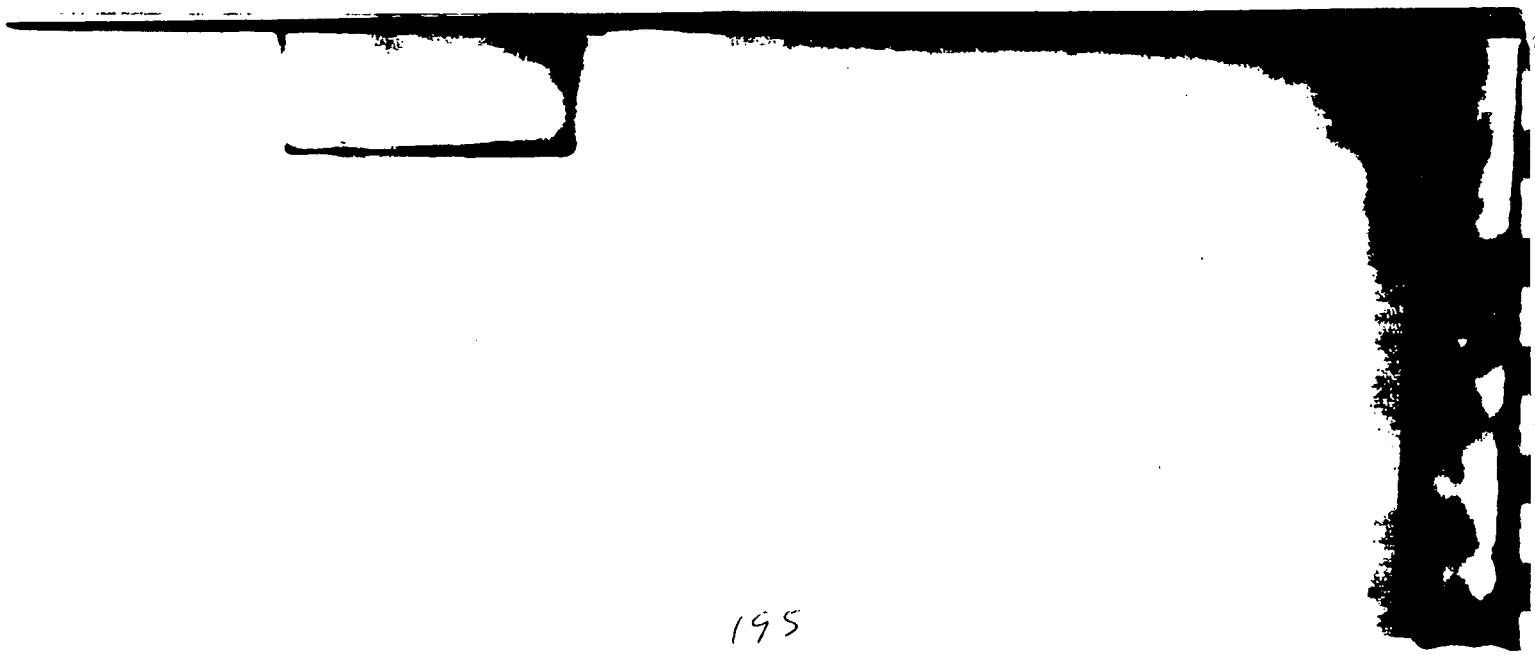
3. Before proceeding to an election, if nominations have been made from the floor or by a committee, the presiding officer should inquire if there are further nominations, and if there is no response, he may declare the nominations closed without a motion to that effect.

Sec. 550. Reopening Nominations

1. If, after nominations have been closed, it is desired to make further nominations, the nominations may be opened upon motion by a majority vote. A motion to reopen nominations is not debatable. It can be amended but cannot have any other subsidiary motion applied to it. This motion ranks as an incidental motion yielding only to privileged motions, and to incidental motions of a higher rank.

Section 549—
Sturgis, p. 73; Hughes, Sec. 97.

Section 550—
Paragraph 1—
Sturgis, p. 74.



CHAPTER 50

ELECTIONS

See also Chapter 32, Secs. 306-308, Motions Relating to Voting, Nominations and Elections.

Sec. 552. Manner of Voting in Elections

1. After nominations have been made, or in case the election is to be by roll call or ballot when nominations are not necessary, the election may be conducted in any manner provided by the rules, or if the rules do not specify the manner of election, election may be by any recognized means.

2. Where no method of election is provided, a motion specifying the manner is in order. This motion ranks as an incidental motion and when the next order of business is an election it yields only to privileged motions, and to incidental motions of a higher rank.

3. The constitutions of a large number of the states provide the manner of elections of legislative bodies, usually requiring that election be by roll call, and that the vote be printed in the journal.

4. When the vote is *viva voce* or by division, the candidates are to be treated in the same manner as alternative propositions and their names are to be submitted to vote in the order in which they were nominated, and when more than one person is to be elected, the names are put in the order of nomination until the requisite number receive a majority vote and are declared elected.

5. When a legislative body expresses its will by ballot, its act is not complete before the result of the ballot is ascertained and made known. When this is done and it appears clearly from the announcement of the state of the vote that the number of ballots requisite to an appointment has been lawfully given to one person, and no further action is taken, the will of the body is finally expressed and the appointment is complete. It is not lawful afterwards and without any reason to revoke such an appointment and appoint another person.

6. A presiding officer cannot declare an officer elected when he fails to receive the vote required by law.

Section 552—
Sturgis, pp. 71-76; Hughes, Secs. 87-101.
For citations to State Constitutions, see Mason, Constitution of California, Annotated, 1933, page 1863.

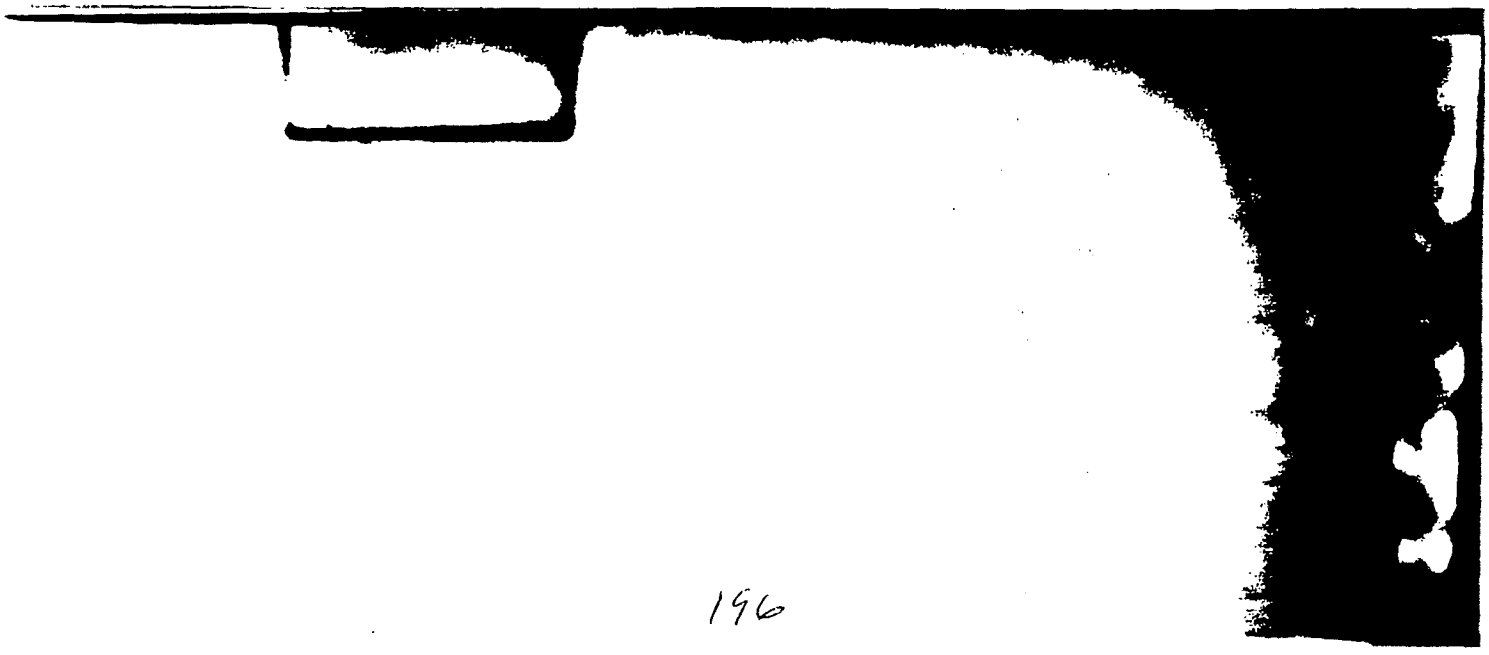
Sec. 553. Majority Vote Required for Election

1. In the absence of a special rule, a majority vote is necessary to elect officers and a plurality is not sufficient. A vote for the election of officers, when no candidate receives a majority vote, is of no effect and the situation remains exactly as though no vote had been taken.

2. When in an election a quorum is present and a candidate receives a majority of the votes cast, although a majority of the entire body fails to vote, the election is valid.

Section 552—Continued
Paragraph 5—
State v. Starr (1906), 78 Conn. 636, 63 Atl. 512.
Paragraph 6—
Dingwell v. Detroit (1890), 82 Mich. 568, 46 N.W. 938.

Section 553—
Paragraph 1—
Hughes, Sec. 99; Cushing's Legislative Assemblies, Secs. 118-128, 298; Sturgis, p. 75.
Paragraph 2—
Wilcock on Municipal Corporations, Sec. 546; Grant on Corporations, Sec. 71; Angel and Ames on Corporations, Secs. 126 and 127; Booker v. Young (1855), 12 Gratt. (Va.) 303; U. S. v. Ballin (1888), 144 U. S. 1, 12 Sup. Ct. 507, 36 L. Ed. 321.



3. When provision for election is made without specifying the proportion of the vote, a majority of a quorum duly convened is sufficient.

Sec. 554. Effective Date of Election

1. An election takes effect immediately:
   (a) If the candidate is present and does not decline the election.
   (b) If he is absent but has consented to his candidacy.

2. When the person elected is absent and has not consented to his candidacy, the election takes effect immediately on notification to him of his election, provided he does not immediately decline.

3. If a member does not immediately decline upon learning of his election to an office, by his silence he is deemed to accept the office and is under obligation to perform the duty until there has been a reasonable opportunity for his resignation to be accepted.

4. When an officer or member has been notified of his election and has not declined, the election has taken effect and it is too late to reconsider the vote on election.

5. An officer takes possession of his office immediately upon his election and acceptance, unless the law or rules specify a different time.

Section 553—Continued
Paragraph 3—
Cadmus v. Farr (1885), 47 N. J. L. 208.
Section 554—
Paragraphs 1, 2 and 3—
Sturgis, p. 76.
Paragraph 4—
State v. Tyrrell (1914), 158 Wis. 425, 149 N.W. 280; State v. Miller (1900), 62 Ohio St. 436, 57 N.E. 227; Regina v. Donoghue (1858), 15 Up. Can. Q. B. 454.
Paragraph 5—
Sturgis, p. 76.

6. The election of an officer by a legislative body by ballot is not complete until the result of the ballot is ascertained and announced, and where fraud or error occurs in the election, as where there are more ballots than members present and entitled to vote, the vote must be retaken.

See Sec. 517, Illegal Votes.

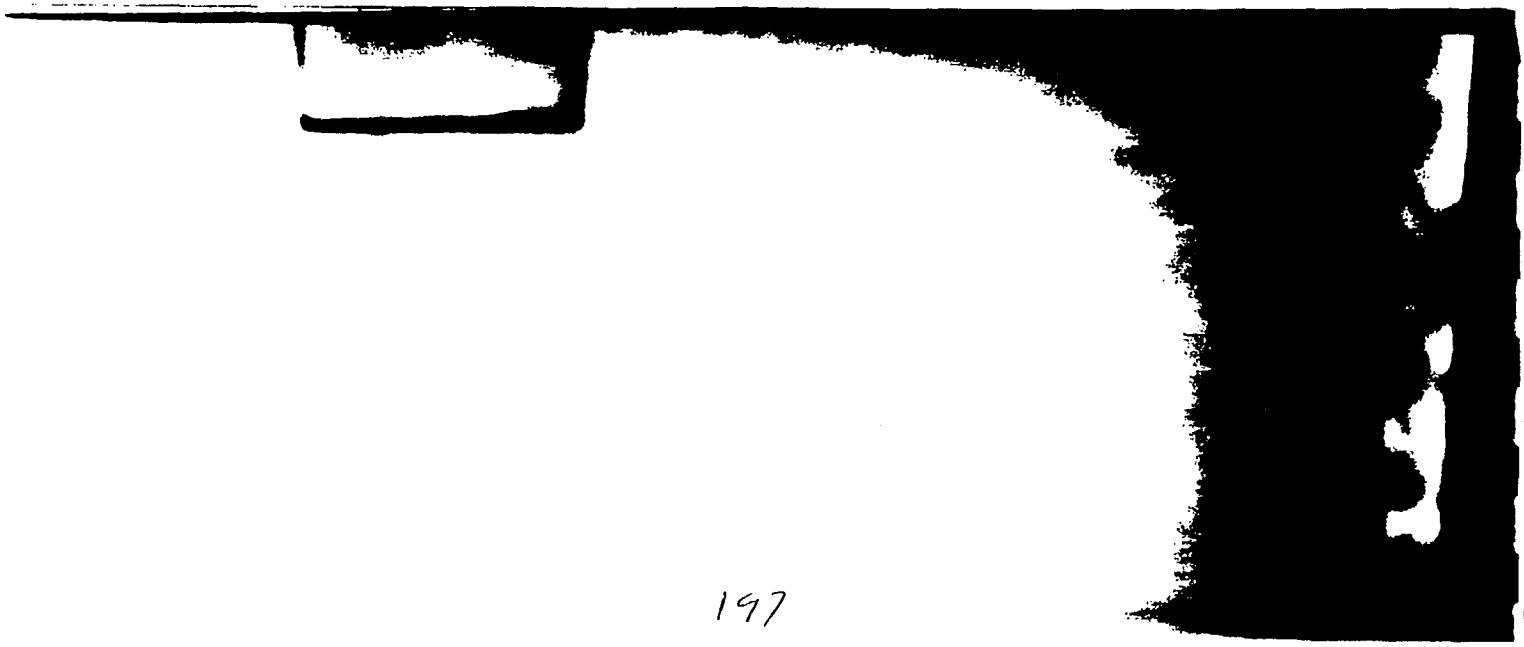
Sec. 555. Declining to Accept Elective Position

1. When a candidate for office is present at the election and declines the position, the vacancy is filled as if no election had taken place. When a person declines an office or appointment, no resignation and acceptance of the resignation are necessary unless the law or rules makes the performance of the duties of the office obligatory.

2. An office is vacated by the refusal of the person elected to accept it, communicated to the proper authorities.

3. When a person is not present at the election and his refusal to take office is announced by the presiding officer, the election to fill the vacancy may take place at once, unless some other provision to fill vacancies is provided by the rules.

Section 554—Continued
Paragraph 6—
State v. Starr (1906), 78 Conn. 636, 63 Atl. 512; Gouldey v. City Council of Atlantic City (1899), 63 N. J. L. 537, 42 Atl. 852.
Section 555—
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 471-478; State v. Farrar (1921), 89 W. Va. 232, 109 S.E. 240.
Paragraph 3—
Sturgis, p. 76.



4. Where the result of a ballot of a city council electing a person to a city office was declared and recorded, the person elected is not deprived of his office by the mayor's failure to declare him elected or by the failure of the city clerk to issue him a certificate.

Sec. 556. Vacancies in Office

1. Ordinarily a person having accepted an office of responsibility cannot immediately relieve himself of responsibility by resigning, and his responsibility continues until his resignation is accepted, or at least until there has been a reasonable time for its acceptance.

2. If a member is elected to office or appointed to a committee or has any other duty imposed upon him which he is unable or unwilling to accept, he should immediately decline the office or appointment if present, or if absent, he should notify the presiding officer or clerk immediately that he cannot accept the position or responsibility.

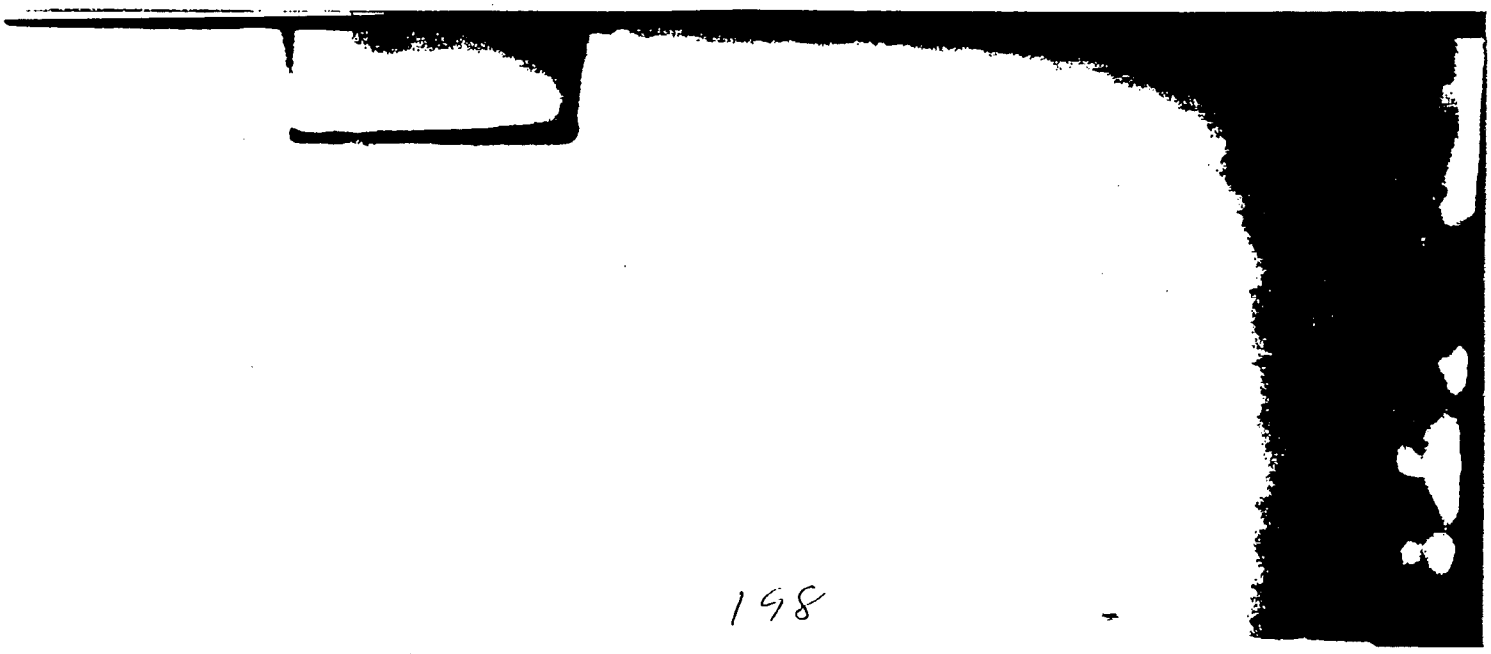
3. In case of a resignation presented to a legislative body, the presiding officer may immediately state the question on accepting it, or a motion may be made to that effect. A motion to accept is debatable, and may have any subsidiary motion applied to it. Such a motion yields to privileged and to other incidental motions.

4. The assumption that a member of the city council is no longer eligible to office by having removed from the city does not in itself create a vacancy and the majority of those in office at the time including such member is required to constitute a quorum. There is no vacancy until the fact of a disqualification of a member has been ascertained and determined and the vacancy declared.

5. Where offices are held without fixed terms, the electing authority can replace the office holders by a majority vote.

Section 555—Continued
Paragraph 4—
State v. Tyrell (1914), 158 Wis. 425, 149 N.W. 280.
Section 556—
Paragraph 2—
In re Opinion to Governor (1918), 41 R. I. 79, 102 Atl. 802.

Section 556—Continued
Paragraph 4—
State v. Farrar (1921), 89 W. Va. 232, 109 S.E. 240.
Paragraph 5—
State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304.



PART VI

LEGISLATIVE AND ADMINISTRATIVE BODIES

CHAPTER 51

ELECTION AND QUALIFICATION OF MEMBERS

Sec. 560. Each House of a Legislature Is the Judge of the Election and Qualification of Its Members

1. By constitutional provision, each house of the legislature is made the judge of the election, qualifications, and returns of its members.

2. Under constitutional provisions to the effect that each house shall have the power to judge of the qualifications and elections of its members, each branch of a state

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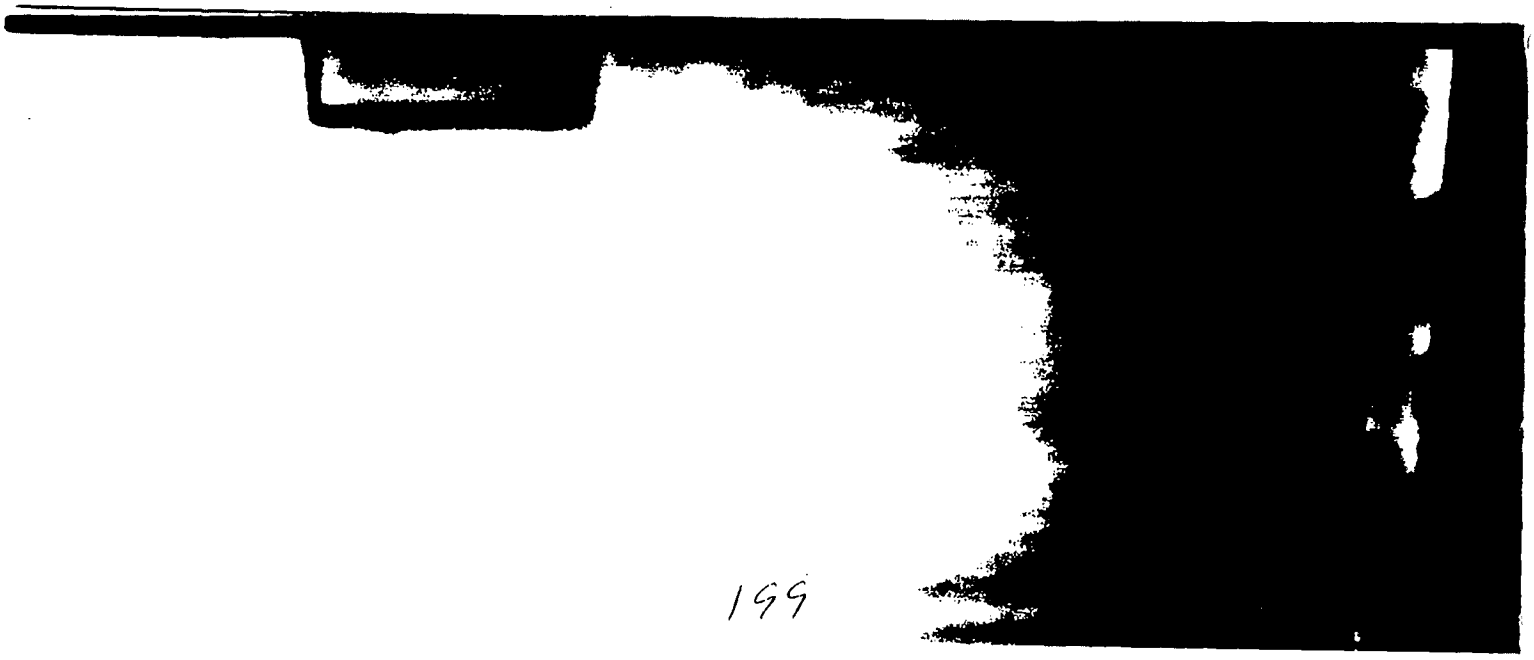
Section 560—

Paragraph 1—

Ala. IV, 51; Ariz. IV, Pt. II, 8; Ark. V, 11; Cal. IV, 7; Colo. V, 10; Conn. III, 7; Del. II, 7, 8; Fla. III, 6; Ga. III, Sec. VII, 1; Idaho II, 9; Ill. IV, 9; Ind. IV, 10; Iowa III, 7; Kan. II, 8; Ky. 34, 38; La. III, 4, 5; Me. IV, Pt. I, 7, Pt. II, 8, Pt. III, 3; Md. III, 19; Mass. Pt. II, Ch. I, Sec. II, 4, 7, Sec. III, 10; Mich. V, 15; Minn. IV, 3, 5; Miss. IV, 38; Mo. IV, 17; Mont. V, 9; Neb. III, 10; Nev. IV, 6; N. H. II, 21, 36; N. J. IV, Sec. IV, 2, 3; N. M. IV, 7, 9; N. Y. III, 10; N. C. II, 18, 22; N. D. II, 47; Ohio II, 86; Okla. V, 28, 30; Ore. IV, 11; Pa. II, 9; R. I. V, 2, IV, 6; S. C. III, 11, 12; S. D. III, 9; Tenn. II, 11; Tex. III, 8, 9; Utah VI, 10, 12; Vt. II, 14, 19; Va. IV, 47; Wash. II, 8, 10; W. Va. VI, 24; Wis. IV, 7, 9; Wyo. III, 10; Corbett v. Naylor (1904), 25 R. I. 550, 579 Atl. 303.

Paragraph 2—

Young v. Boles (1909), 92 Ark. 242, 122 S.W. 496; Allen v. Lelande (1912), 164 Cal. 56, 127 Pac. 643; Mills v. Newell (1902), 30 Colo. 377, 70 Pac. 405; Rainey v. Taylor (1928), 166 Ga. 476, 143 S.E. 383; State v. Tomlinson (1878), 20 Kan. 692; State v. Judges Civ. Dist. Ct. (1888), 40 La. Ann.



legislature has the sole and exclusive power to judge the election and qualifications of its own members.

3. When a legislative body is made the sole judge of the election and qualifications of its members, its determination is conducive and not subject to review even by the Supreme Court.

4. The provisions of the constitution relating to the eligibility of members of the legislature must, of course, be complied with.

5. The exclusive power to judge of the qualifications and elections of its members is fixed in each house and cannot by its own consent or by legislative action be vested in any other tribunal or office.

Section 560—Continued

Paragraph 2—Continued

598, 4 So. 482; Price v. Ashburn (1914), 122 Md. 514, 89 Atl. 410; Attorney General v. 7th Senatorial District Board (1908), 155 Mich. 44, 118 N.W. 584; State v. Peers (1885), 33 Minn. 81, 21 N.W. 860; State v. Porter (1919), 55 Mont. 471, 178 Pac. 832; Bingham v. Jewett (1891), 66 N. H. 382, 29 Atl. 694; Sherrill v. Pendleton (1907), 188 N. Y. 185, 81 N.E. 124; Petition of Knowles (1897), 25 R. I. 522, 57 Atl. 303; State v. Schnitger (1908), 16 Wyo. 479, 95 Pac. 698.

Paragraph 3—

Allen v. Lelande (1912), 164 Cal. 56, 127 Pac. 643; Corbett v. Naylor (1904), 25 R. I. 550, 579 Atl. 303; Reif v. Barrett (1934), 355 Ill. 104, 188 N.E. 889; Auditor General v. Board of Supervisors (1891), 89 Mich. 552, 51 N.W. 483; Rainey v. Taylor (1928), 166 Ga. 476, 143 S.E. 383.

Paragraph 4—

People v. Chicago Election Commissioners (1906), 221 Ill. 9, 77 N.E. 321; State v. Scott (1908), 105 Minn. 513, 117 N.W. 1044; People v. Markham (1892), 96 Cal. 262, 31 Pac. 102; Opinion of Justices (1877), 122 Mass. 594.

Paragraph 5—

State v. Gilmore (1878), 20 Kan. 551, 27 Am. Rep. 189; Watson v. Medical Society of New Jersey (1876), 38 N. J. L. 377; Bingham v. Jewett (1891), 66 N. H. 382, 29 Atl. 694.

6. The courts will not entertain a proceeding to determine the rights of one who has been seated by a legislative body.

7. When specifically authorized by statute, courts may take evidence in legislative election contests, but only so far as specifically authorized.

8. A legislative body which is the sole judge of the election of its members may, upon a contest respecting election of one of its members, appoint a committee to take testimony and report the facts and the evidence to the body.

9. A member of a legislature cannot be removed from office under a general law relating to the removal of "any officer." But a person who holds a seat in the legislature and thereafter accepts an appointment to an incompatible office, thereby vacates his seat in the legislature.

10. The authority of a house of a legislature to pass upon its membership is a continuing power and the question of the election and qualification of members is never finally decided, in the sense that a decision is conclusive upon the house, until final adjournment; and a member

Section 560—Continued

Paragraph 6—

State v. Cutts (1917), 53 Mont. 500, 163 Pac. 470.

Paragraph 7—

State v. Nelson (1919), 141 Minn. 499, 169 N.W. 788; State v. Peers (1885), 33 Minn. 81, 21 N.W. 860.

Paragraph 8—

State v. Haynes (1887), 50 N. J. L. 97, 11 Atl. 151.

Paragraph 9—

State v. Gilmore (1878), 20 Kan. 551, 27 Am. Rep. 189; State v. Parkhurst (1802), 9 N. J. L. 427.

Paragraph 10—

State v. Porter (1919), 55 Mont. 471, 178 Pac. 832; State v. Gilmore (1878), 20 Kan. 551, 27 Am. Rep. 189.

may at any time be seated or unseated upon the same facts.

11. A member of a legislature has the right to resign his office providing he adopts the proper procedure to that end, such procedure being, that his resignation should be tendered to the office or body having power to order a new election, the resignation becoming effective when his successor has been elected and qualified.

12. Unless the constitution so provides, when the president pro tempore of the senate becomes lieutenant governor by reason of the lieutenant governor becoming governor to fill a vacancy in that office the president pro tempore does not cease to be a senator.

13. Where, under a charter, a city council is made the judge of the election and qualifications of its members and the mayor is a member of the council, its determination as to the election and qualifications of the mayor is final.

Sec. 561. Power of Legislatures to Discipline Members

1. Whatever is spoken in the house is subject to the censure of the house; and offenses of this kind have been severely punished by calling the person to the bar to

Section 560—Continued
Paragraph 11—
In re Opinion to the Governor (1918), 41 R. I. 79, 102 Atl. 802; Bradden v. Three Point Coal Corp. (1941), 288 Ky. 734, 157 S.W. 2d 349.
Paragraph 12—
State v. Stearns (1898), 72 Minn. 200, 75 N.W. 210.
Paragraph 13—
Dafoe v. Harshaw (1886), 60 Mich. 200, 26 N.W. 879.
Section 561—
Paragraph 1—
Jefferson, Sec. III.

make submission, committing him to prison, expelling him from the house or inflicting other punishment.

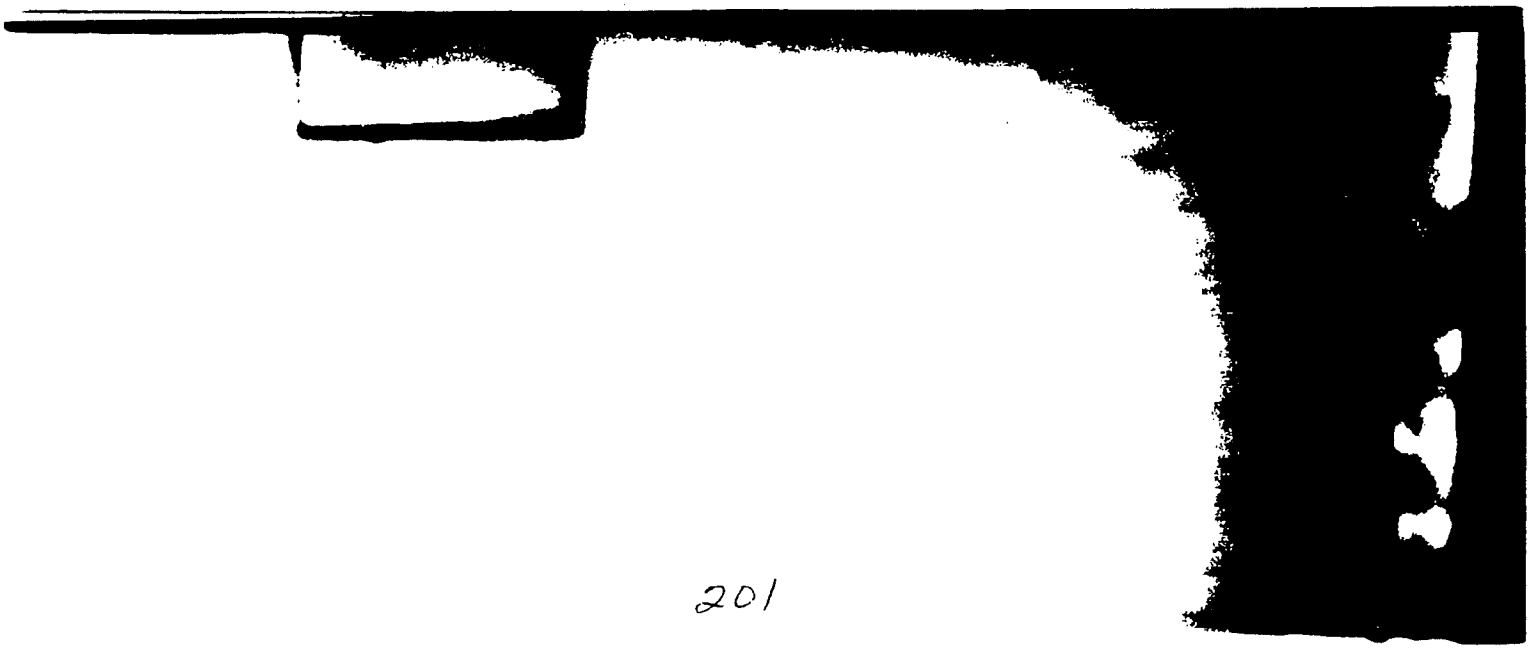
2. A member who is absent without leave of the house is in contempt and may be punished as the house may direct.

3. The right of a house to compel the attendance of absent members is usually guaranteed by the constitution. In order to compel attendance, members may be arrested and, when arrested, they continue in the custody of the arresting officer until discharged by the house.

4. The constitutional power of a house to arrest and compel the attendance of members is not confined to the time when a call is in effect nor to when there is no quorum. To deprive a house of its power to compel the attendance of any or all members would destroy its function as a legislative body. The majority of the members of a house may compel the presence of all members.

5. When a member is absent during the session, and a sufficient excuse is not rendered, those present may take steps necessary to secure his attendance and may suspend him from service of the house for a given period; they also may inflict such censure or pecuniary penalty as may be deemed to be just.

Section 561—Continued
Paragraph 2—
N. Y. Manual, p. 423.
Paragraph 3—
Hughes, Sec. 655.
Paragraph 4—
Hughes, Sec. 655.
Paragraph 5—
N. Y. Manual, 1948-49, p. 372.



Sec. 562. Right of Legislatures to Expel Members

1. Most state constitutions provide that each house may, with the concurrence of two-thirds of all the members elected, expel a member.

2. If these provisions were omitted, and there were no other constitutional limitations, the power would nevertheless exist and could be exercised by a majority. The only effect of the provisions is to make the concurrence of two-thirds of the members elected necessary to its exercise. In all other respects it is absolute.

3. The Supreme Court of Massachusetts, in discussing the power of a legislative body to expel members, says, in substance, that this power is inherent in every legislative body, that it is necessary to enable the body "to perform its high functions, and is necessary to the safety of the state," that it is a power of self-protection, and that the legislative body "must necessarily be the sole judge of the exigency which may justify and require its exercise." In most states this power does not depend on implication, but is expressly given.

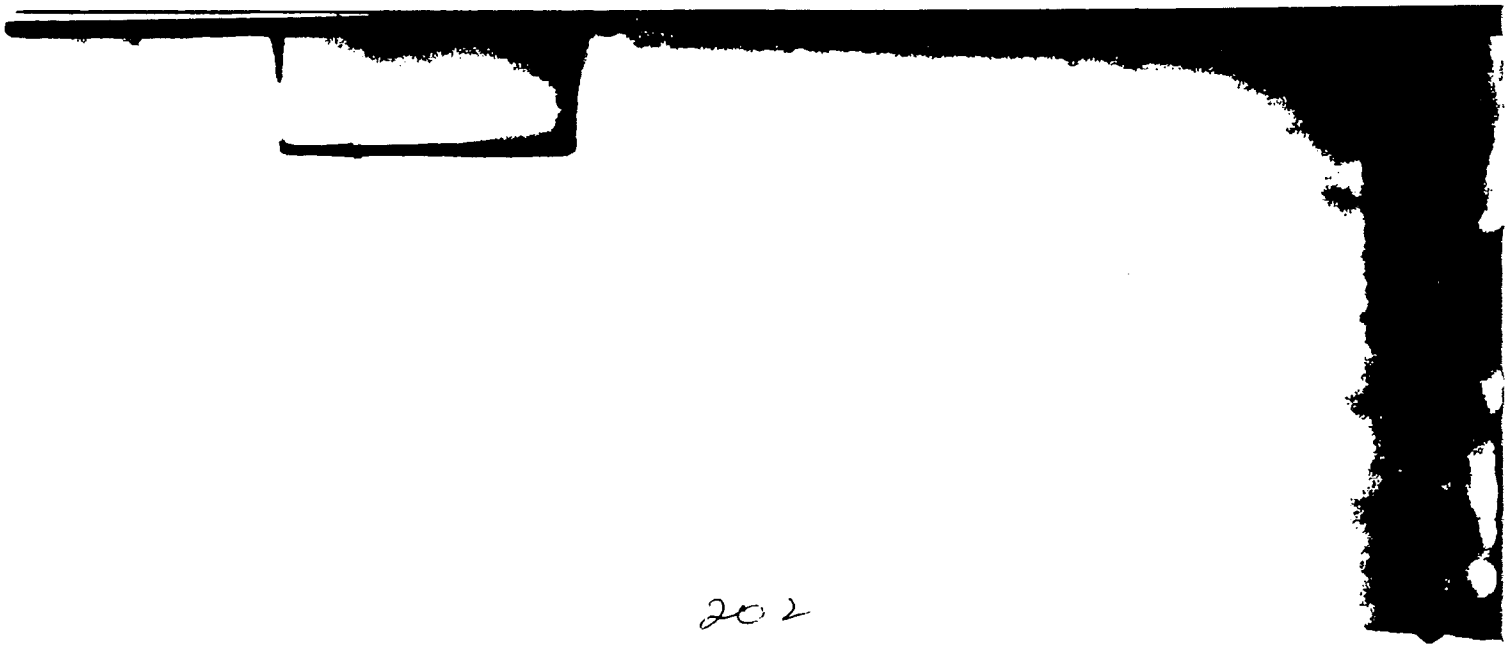
Section 562—
Paragraph 1—
Ala. IV, 53; Ariz. IV, 8; Ark. V, 12; Cal. IV, 9; Colo. V, 12; Conn. III, 8; Del. II, 9; Fla. III, 6; Ga. III, Sec. VII, 1; Idaho III, 9; Ill. IV, 10; Ind. IV, 10; Iowa III, 9; Kan. II, 8; Ky. 39; La. II, 10; Me. IV, Pt. III, 4; Md. III, 19; Mass. Pt. II, Ch. 1, Sec. II, 7, Sec. III, 10; Mich. V, 15; Minn. IV, 4; Miss. IV, 55; Mo. IV, 17; Mont. V, 11; Neb. III, 10; Nev. IV, 6; N. H. II, 21, 36; N. J. IV, Sec. IV, 3; N. M. IV, 11; N. Y. III, 10; N. D. II, 48; Ohio II, 8; Okla. V, 30; Ore. IV, 11; Pa. II, 10; R. I. IV, 7; S. C. III, 12; S. D. III, 9; Tenn. II, 12; Tex. III, 11; Utah VI, 12; Vt. II, 19; Va. IV, 47; Wash. II, 9; W. Va. VI, 24; Wis. IV, 8; Wyo. III, 12.
Paragraph 2—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.
Paragraph 3—
Hiss v. Bartlet (1855), 69 Mass. 473, 63 Am. Dec. 768, and note; French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.

4. A house, in passing upon the question of expelling a member, has power to adopt any procedure and to change it at any time and without notice. It cannot tie its own hands by establishing rules which, as a matter of power purely, it cannot at any time change or disregard. Its action in any given case is the only criterion by which to determine the rule of proceeding adopted for that case.

5. The oath of each individual member of a house, and his duty under it to act conscientiously for the general good, is the only safeguard to the fellow members against an unjust and causeless expulsion. This is the only practical rule that can be adopted as to those unrestricted governmental powers which are necessary to the exercise of governmental functions, and which must be lodged somewhere. Each department of the state is necessarily vested with some power which is beyond the supervision of any other department, and in such cases the only protection against abuse is the conscience of the individual in whom the power is vested.

6. A house having expelled members in the mode prescribed by the constitution, its action is not a deprivation of office without due process of law, within the meaning of the Fourteenth Amendment to the Federal Constitution. The sovereign power which created the office can prescribe the terms upon which it is to be held and the conditions under which it can be taken away.

Section 562—Continued
Paragraph 4—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.
Paragraph 5—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.
Paragraph 6—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.



7. The provision for the disfranchisement of a member upon conviction for crime has no effect upon the power to expel members nor does expulsion operate as a bill of attainder in violation of the state or federal constitutions.

Sec. 563. Courts Have No Power Concerning Expulsion of Members

1. The power conferred upon a house of the legislature by the constitution to determine the rule of its proceeding and, with the concurrence of two-thirds of all the members elected, to expel a member, is exclusive; and the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department taken in pursuance of the power committed exclusively thereto by the constitution.

2. There is no authority for courts to control, direct, supervise, or forbid the exercise by either house of the power to expel a member. These powers are functions of the legislative department, and therefore in the exercise of the power thus committed to it the house is supreme. An attempt by a court to direct or control the legislature, or either house thereof, in the exercise of the power, would be an attempt to exercise legislative functions, which it is expressly forbidden to do.

3. A legislative house, in a proceeding to expel a member, has power to adopt any procedure, and to change it

Section 562—Continued
Paragraph 7—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.
Section 563—
Paragraph 1—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.
Paragraph 2—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.

at any time without notice. There is no constitutional provision giving persons who have been expelled the right to have a trial and opportunity to be heard in the house other than that which is normally given in such a case.

4. The courts will not entertain a proceeding to determine the rights of one who has been unseated by a legislative body.

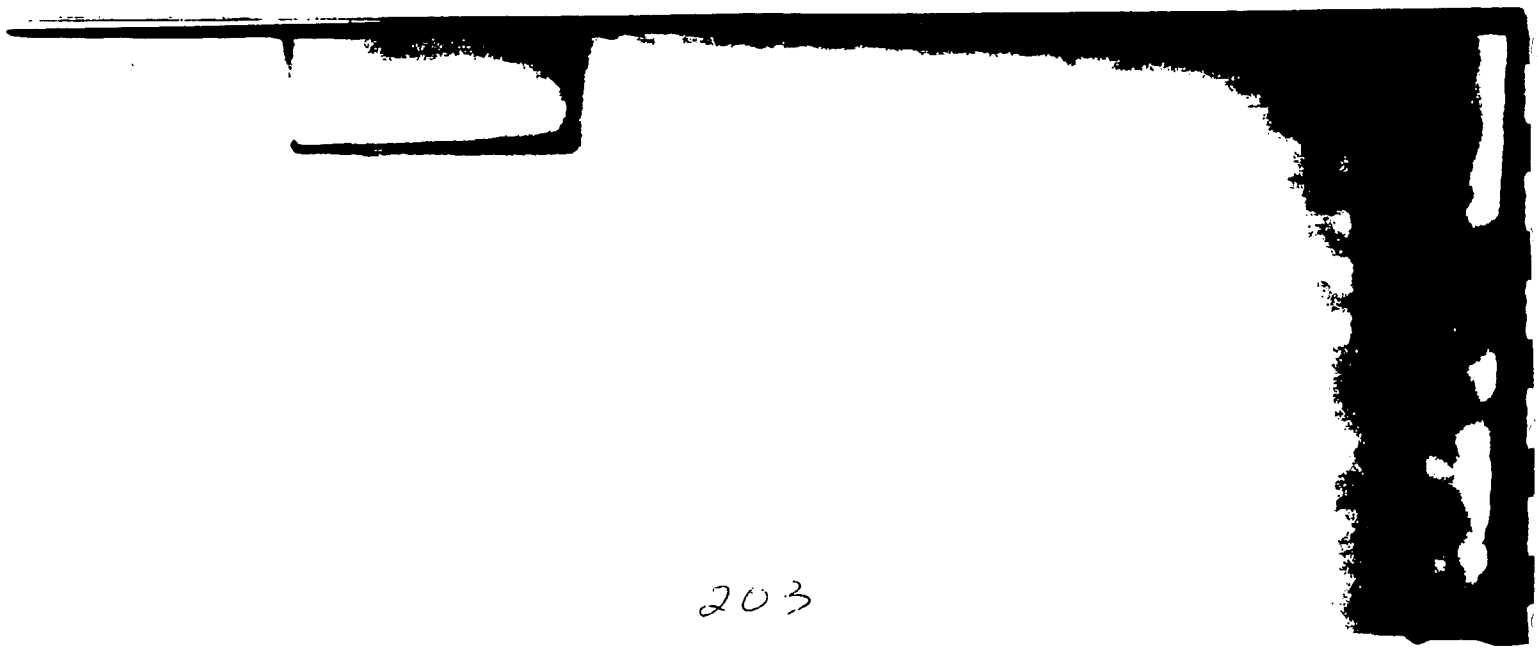
Sec. 564. Investigation of Charges Against Members

See also Sec. 796, Investigations Respecting Members.

1. When a charge of bribery or corruption is made against members of a house, the house has power to investigate the charge and to summon the person making the charge before its bar as a witness, and to commit him for contempt for refusing to testify without sufficient legal cause. This power does not admit of doubt, and a house in following this course in no respect exceeds its jurisdiction.

2. When charges of bribery are made by any person against members of either branch of the legislature, without giving their names, and a resolution is adopted by the branch to which the members accused are said to belong, reciting the charge, and resolving to investigate it, and witnesses are summoned before it, an issue is made within the meaning of the statute against perjury.

Section 563—Continued
Paragraph 3—
French v. Senate (1905), 146 Cal. 604, 80 Pac. 1031.
Paragraph 4—
State v. Cutts (1917), 53 Mont. 500, 163 Pac. 470.
Section 564—
Paragraph 1—
Ex parte McCarthy (1866), 29 Cal. 395.
Paragraph 2—
Ex parte McCarthy (1866), 29 Cal. 395.



3. The appointment of a committee by a house, with power to investigate charges of bribery made against members of that body, does not preclude the house from afterwards summoning the witnesses, and making the investigation before the bar of the house.

See also Sec. 799, Legislative Investigating Committees.

4. A common understanding or belief concerning improper conduct of a member is a sufficient ground for the house to proceed by inquiry concerning the member and even to make an accusation.

Section 564—Continued
Paragraph 3—
Ex parte McCarthy (1866), 29 Cal. 395.
Paragraph 4—
Jefferson, Sec. XIII.

CHAPTER 52

PRIVILEGE OF MEMBERS FROM ARREST

Sec. 568. Constitutional Basis of Privilege From Arrest

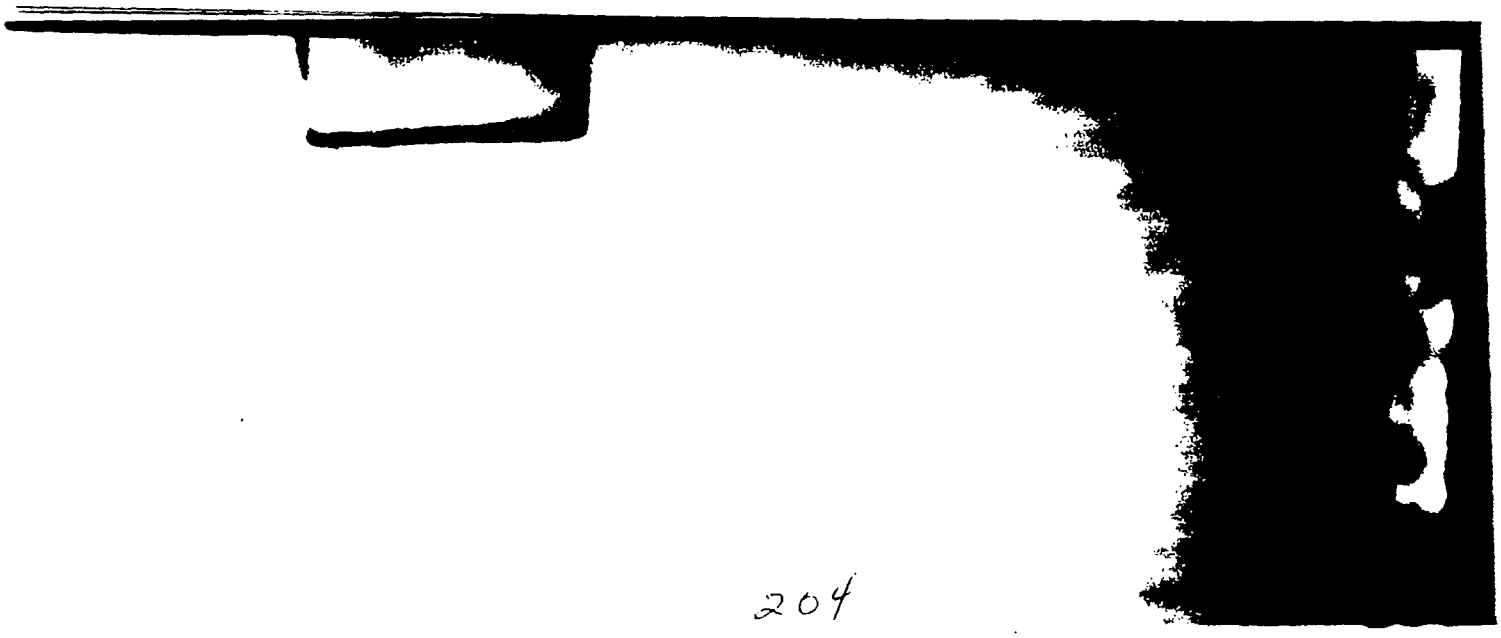
1. It was considered so necessary that the normal functioning of the legislative bodies should not be interfered with by charges against individual members, that the guarantee of freedom of members from arrest during and immediately before and following sessions was placed in almost all of the state constitutions.

Sec. 569. Early Rule Concerning Privilege From Arrest

1. In early times the privilege of members of a legislative body from arrest was jealously guarded. Every man was required at his peril to take notice who were members of either house returned of record. The privilege of a member was regarded as the privilege of the house and he could not waive the privilege of the house. If the member presumed to waive it without leave of the house, it was a ground for punishing him.

Section 568—
Ala. IV, 56; Ariz. IV, Pt. II, 6; Ark. V, 15; Cal. IV, 11; Colo. V, 16; Conn. III, 10; Del. II, 13; Ga. III, Sec. VII, 3; Idaho III, 7; Ill. IV, 14; Ind. IV, 8; Iowa III, 11; Kan. II, 22; Ky. 43; La. III, 13; Me. IV, Pt. III, 8; Mass. Pt. II, Chap. 1, Sec. III, 10; Mich. V, 8; Minn. IV, 8; Miss. IV, 48; Mo. XIV, 12; Mont. V, 15; Neb. III, 15; Nev. IV, 11; N. H. Pt. II, 20; N. J. IV, Sec. IV, 8; N. M. IV, 13; N. D. II, 42; Ohio II, 12; Okla. V, 22; Ore. IV, 9; Pa. II, 15; R. I. IV, 5; S. C. III, 14; S. D. III, 11; Tenn. II, 13; Tex. III, 14; Utah VI, 8; Va. IV, 48; Wash. II, 16; W. Va. VI, 17; Wis. IV, 15; Wyo. III, 16.

Section 569—
Jefferson, Sec. III.



Sec. 570. Present Rule Concerning Privilege From Arrest

1. It is true, however, that the courts by a series of decisions have explained away almost every essential feature of this privilege from arrest as it once existed. The usual exemption from arrest, granted a member of the legislature by the provisions of the constitutions, is now held to be a personal privilege which is waived unless claimed by plea or motion, and it is waived when one goes to trial upon the plea of not guilty of the offense charged.

2. The constitutional exemptions are now interpreted to relate only to civil process, and a member of the legislature is not entitled to exemption from arrest where he is charged with a traffic violation or other offense of a criminal nature.

3. Any arrest of a member of the legislature in violation of his constitutional privilege, is merely voidable and not void, and a member of the legislature has no right to physically resist an officer attempting to make such an arrest to the extent of assaulting such officer.

Sec. 571. When Privilege From Arrest Applies

1. Privilege from arrest, insofar as it still exists, takes effect by force of the election, as before a return is made a member elected may be named on a committee and is

Section 570—
Paragraph 1—
In re Emmett (1932), 120 Cal. App. 349, 7 Pac. 2d 1096; Kallock v. Elward (1919), 118 Me. 346, 108 Atl. 256, 8 A. L. R. 750; State v. Polacheck (1898), 101 Wis. 727, 77 N.W. 788; Johnson's Executors v. Johnson (1785), 7 Call. 38.
Paragraph 2—
In re Emmett (1932), 120 Cal. App. 349, 7 Pac. 2d 1096.
Paragraph 3—
In re Emmett (1932), 120 Cal. App. 349, 7 Pac. 2d 1096.

to every extent a member except that he cannot vote until he is sworn.

2. A member of a legislature is not privileged from arrest in a civil action after he has been been expelled from the house.

3. It was the rule that if an offense were committed by a member in the house, of which the house had cognizance, it was an infringement of their right for any person or court to take notice of it until the house had punished the offender or referred him to a due course.

4. The privilege from arrest by the ancient rule attaches to the member during the period while going to the session, while in attendance and while returning to his home. Most of the state constitutions now specify a period before and after the session, during which the privilege applies, this period usually being from 15 days before the session convenes until 15 days after adjournment.

Section 571—
Paragraph 1—
Jefferson, Sec. III.
Paragraph 2—
Hiss v. Bartlett (1855), 69 Mass. 468.
Paragraph 3—
Jefferson, Sec. III and notes in U. S. House manual.

CHAPTER 53

THE PRESIDING OFFICER

Sec. 575. Duties of Presiding Officer

See also Sec. 523, Bringing the Question to Vote.

1. The duties of the presiding officer of each house are, in general, as follows:

(a) To open the session at the time at which the body is to meet by taking the chair and calling the members to order.

(b) To announce the business before the body in the order in which it is to be acted upon.

(c) To recognize the members entitled to the floor.

(d) To state and put to vote all questions which are regularly moved or which necessarily arise in the course of the proceedings, and to announce the result of the vote.

(e) To preserve order and decorum.

(f) To restrain the members when engaged in debate within the rules of order.

(g) To decide all points of order, subject to appeal, unless when in doubt he prefers to submit the question to the decision of the body.

(h) To inform the body when necessary, or when any question is raised, on any point of order or practice pertinent to the pending business.

Section 575—
Paragraph 1—
In re Sawyer (1887), 124 U. S. 200, 31 L. Ed. 402; Cochran v. McCleary (1867), 22 Iowa 75; Reynolds v. Baldwin (1846), 1 La. Ann. 102; Rex v. Williams, 1 Burr (England) 402; Wilcox Municipal Corporation, Sec. 456; Sturgis, p. 105; Cushing's Legislative Assemblies, Sec. 291; Cushing, Sec. 27; Reed, Secs. 34, 221; Tilson, pp. 28-39; U. S. House Rule I, Pars. 1-6.

(i) To sign or authenticate all acts, proceedings or orders of the body.

(j) To receive all messages and communications and to announce them to the body.

(k) Generally to guide and direct the proceedings of the body, subject to the control and will of the body.

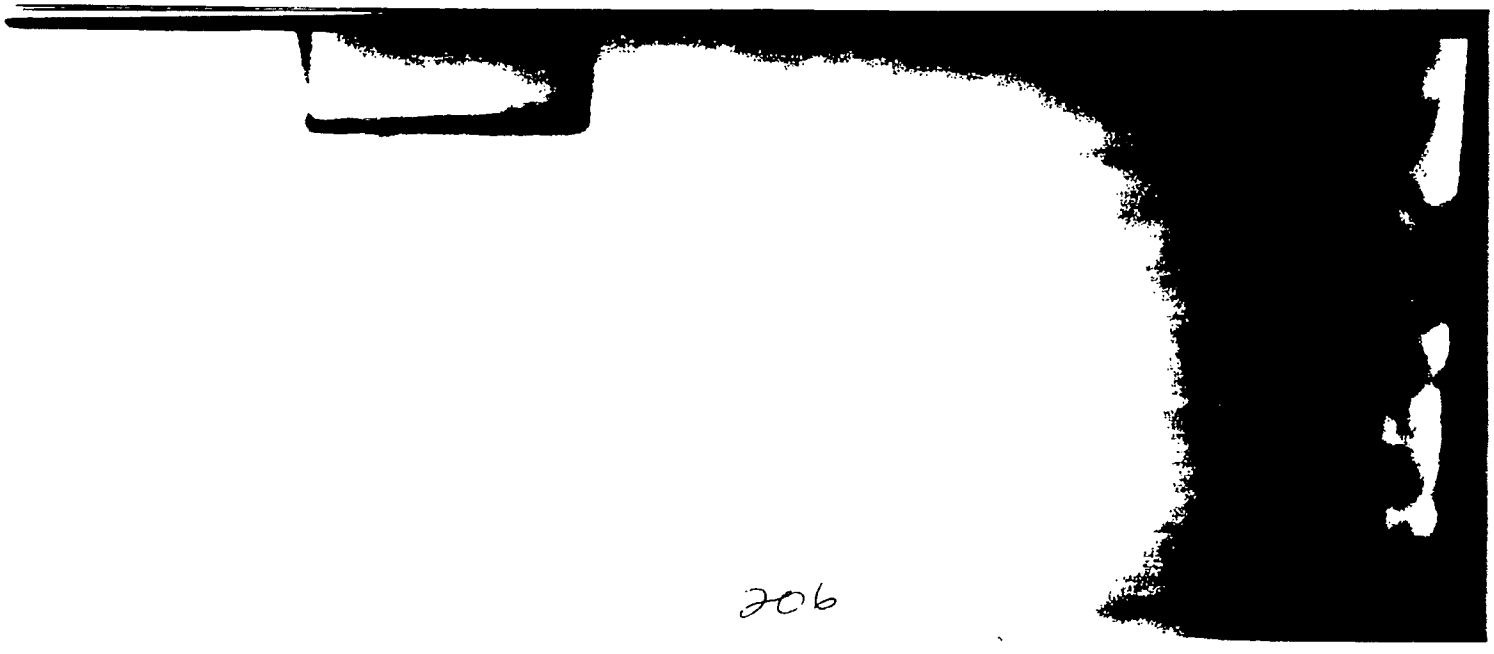
(l) To enforce all laws and regulations applicable to the body.

(m) To have general charge and supervision of the legislative chamber, galleries, committee rooms and adjoining and connecting hallways and passages.

2. It is in order for the presiding officer to suggest the proper form of propositions or motions and the proper course of procedure or order of business.

3. Where a presiding officer is required to sign a bill or ordinance to authenticate its passage, the act of signing is simply ministerial and not an exercise of legislative discretion therefore mandamus will lie to compel its performance. To hold otherwise would give the presiding officer, in effect, a veto upon the acts of the legislative body. But the courts should not require him to sign a legislative proposal which he had ruled had not passed because, in this instance, he was exercising discretion. Where he is required to certify as to the number of votes and that a quorum was present he can rely on his own observation or consult the records.

Section 575—Continued
Paragraph 2—
Sturgis, p. 22; N. Y. Manual, p. 443.
Paragraph 3—
Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315; State v. Bolte (1899), 151 Mo. 362, 52 S.W. 262; N. Y. Manual, 1948-49, p. 449.



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4. When there has been no provision for a clerk or secretary to keep the minutes of the proceedings the presiding officer may appoint someone to act as clerk or secretary. The fact that the person who presides at a meeting also acts as its clerk does not invalidate the proceedings.

Sec. 576. Refusal of Presiding Officer to Perform Duties

1. Whenever the presiding officer attempts to thwart the purpose of his office, the power resides in the assembly to pass him by and proceed to action otherwise. This right is but a branch of the power which assemblies exert in choosing temporary officers when the permanent officers are absent. It is not their absence which justifies the exercise of the power, but the fact they are not performing duties necessary to the proper fulfillment of the functions of the assembly. Inability or refusal to perform those duties has the same effect as actions in suspending the ordinary functions of the meeting and equally warrants the selection of the temporary chairman. The power is inherent or inseparably attached to the right of the body to convene and act.

2. When the presiding officer refuses to put a motion which is properly before the body, the proper procedure is to select, at once, a temporary presiding officer to put

Section 575—Continued
Paragraph 4—
Parsons v. Brainard (1837), 17 Wend. N. Y. 522; Budd v. Walla Walla Printing and Publishing Company (1885), 2 Wash. 347, 7 Pac. 896.
Section 576—
Paragraph 1—
Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 250; Similarly, State v. Lasher (1899), 171 Conn. 540, 42 Atl. 636.

the motion to vote. A vice chairman, the secretary, or some other member may be designated for this purpose. It is not legal or proper procedure for the member making the motion to put the motion to vote.

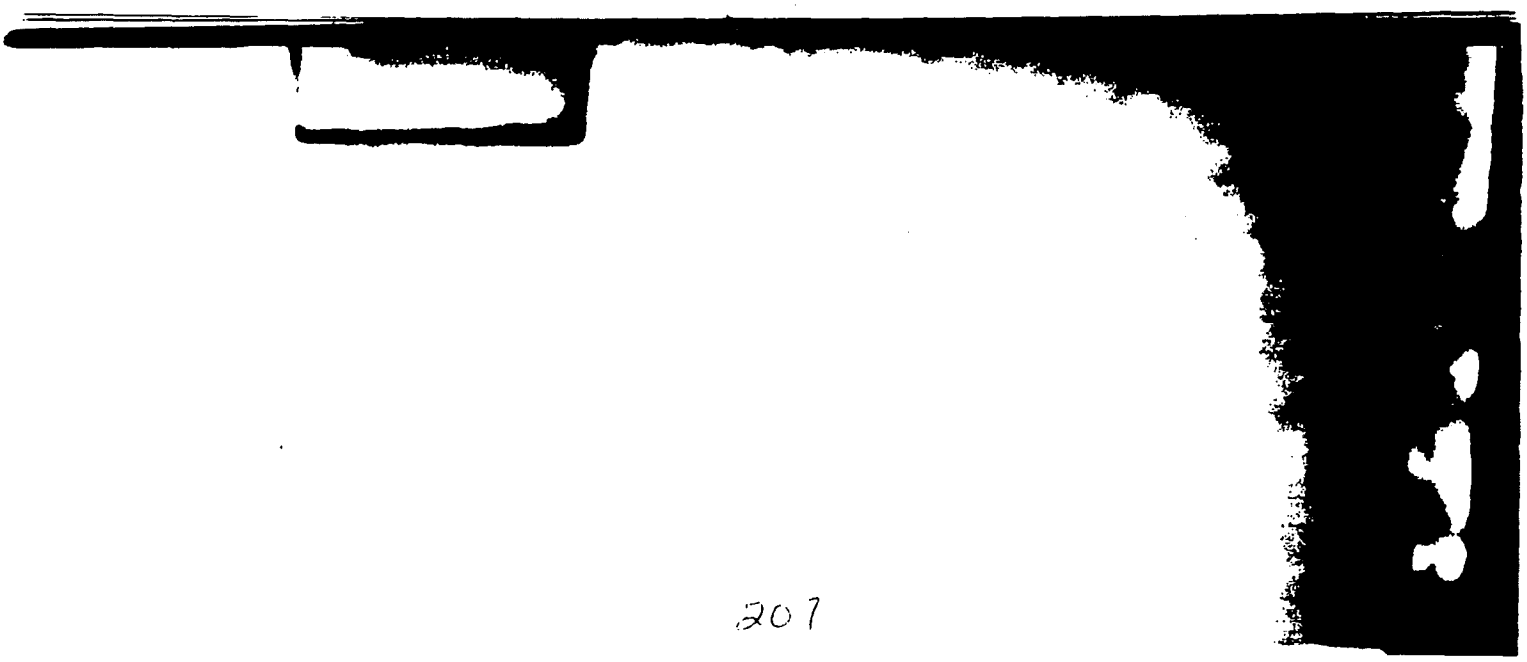
3. The presiding officer cannot prevent the transaction of business by leaving the chair or leaving the meeting. In either instance the members can elect a temporary presiding officer and proceed. If a member properly questions the presiding officer's ruling on a motion to adjourn, it is his duty to resolve the question or take a division before declaring an adjournment and, upon his failure to do so, a temporary presiding officer can be elected and the business can proceed in proper order.

Sec. 577. The Mayor as Presiding Officer

1. There is no uniform rule in this country as to whether the mayor is a member of the council or is a presiding officer, and each case must be determined upon the charter or law under which the corporation is organized.

2. The power and duties of the mayor depend almost entirely on the proper construction of the charter or laws governing the municipal corporation. The duties of the

Section 576—Continued
Paragraph 2—
State v. Lasher (1889), 71 Conn. 540, 42 Atl. 636; Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 250; Finley Coal Co. v. Proctor (1895), 98 Ky. 405, 33 S.W. 188; Ostrom v. Greene (1897), 45 N. Y. Supp. 852; State v. Archibald (1895), 5 N. D. 359, 66 N.W. 234.
Paragraph 3—
Ostrom v. Greene (1897), 45 N. Y. Supp. 852; Chariton v. Holiday (1883), 60 Iowa 391, 14 N.W. 775; Pevey v. Aylward (1910), 205 Mass. 102, 91 N.E. 315.
Section 577—
Paragraph 1—
Earlville v. Radley (1908), 237 Ill. 242, 86 N.E. 624.
Paragraph 2—
Allbright v. Fisher (1901), 164 Mo. 56, 64 S.W. 106.



mayor are properly and primarily executive and administrative and not judicial or legislative but other powers may be and often are conferred upon him.

3. A member of a council who is chosen to preside pro tempore does not lose his right to vote as a member while serving as such presiding officer, but cannot also vote as mayor though serving as mayor pro tempore.

Sec. 578. Emergency Power of Presiding Officer

1. In case of fire, riot or other great emergency, the presiding officer has the right, when, in his opinion, it is impractical or dangerous to delay action for a vote, to declare the body adjourned to some other time and, if necessary, to some other place. When, through some emergency or through inadvertance, the body is adjourned without provision for the next meeting, the presiding officer can issue a call specifying the time and, if an emergency requires, he may specify a different place. When conditions permit, however, the call should be issued only after consultation with available members. Such actions are to be taken only in real emergencies and become valid legal actions only upon acceptance and approval by the body.

Sec. 579. Limitations on Presiding Officer

1. Under ordinary conditions the authority of the presiding officer is derived wholly from the body itself. The

Section 577—Continued
Paragraph 3—
Blake v. Tout (1917), 127 Ark. 299, 192 S.W. 179.
Section 579—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 294; 2 Hatsell 242; Hicks v. Long Branch Commission (1903), 69 N. J. L. 300, 55 Atl. 250; Casler v. Tanzer (1929), 234 N. Y. Supp. 571.

presiding officer is the servant of the body to declare its will and to obey its commands.

2. The presiding officer may not refuse to put any motion which is in order.

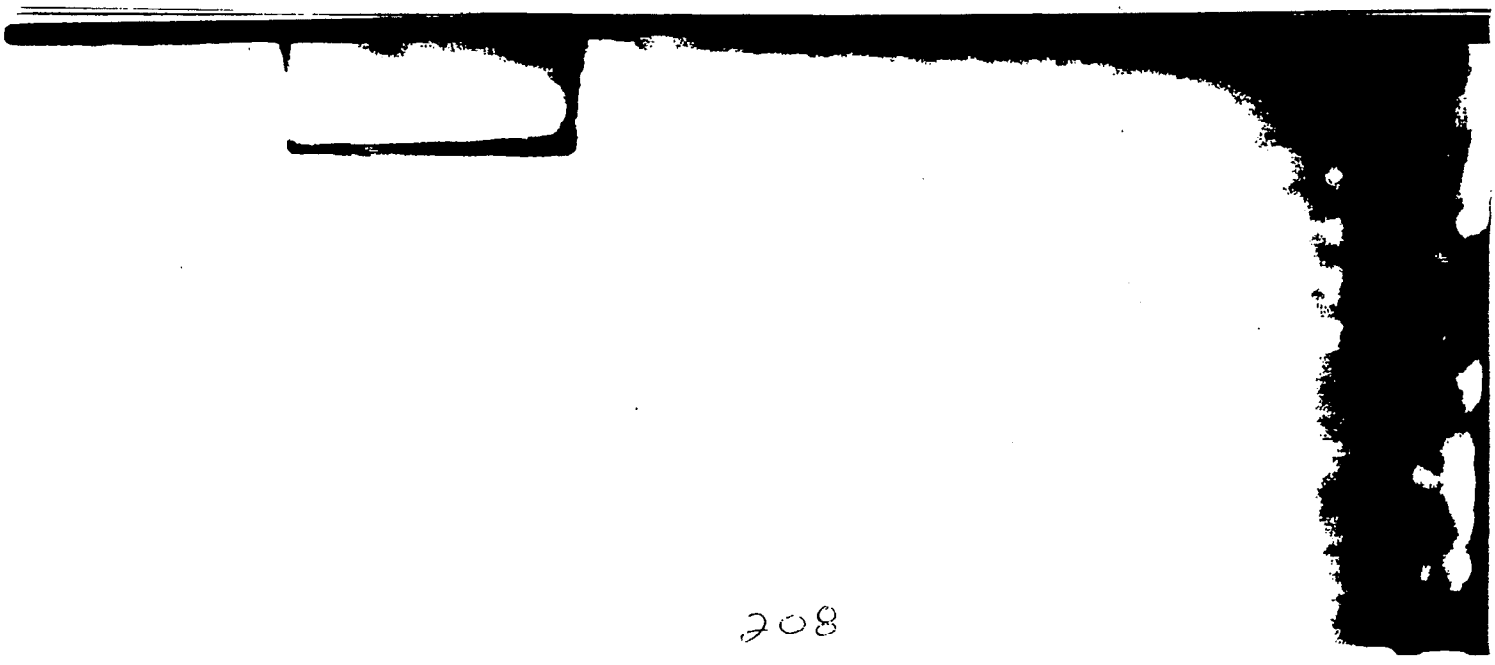
3. The presiding officer may not limit or close debate except as authorized by the rules, or as required by the previous question, or by a motion duly approved by the body.

4. The presiding officer may not prevent the making of any legitimate motions by hurrying through the proceedings or by other means. Members must be reasonably prompt in order to exercise their right to speak or to make motions, but if the presiding officer has hurriedly announced the vote while a member is arising to address the chair, the vote is null and void and the member must be recognized.

5. The presiding officer may not interrupt a member who has the floor, except for deciding points of order, considering questions of privilege or other matters requiring immediate attention, so long as the member does not transgress the rules.

6. It is not the right of the presiding officer to rule upon the constitutionality of bills as that authority belongs to the house.

Section 579—Continued
Paragraph 2—
Jefferson, Sec. III.
Paragraph 3—
Sturgis, pp. 43, 45, 47.
Paragraph 4—
Sturgis, p. 48.
Paragraph 6—
Hughes, Sec. 28; Congressional Record, 46th Congress, 2d Session, p. 1501; Cushing, Sec. 102.



Sec. 580. Selection of Presiding Officer

1. Under the constitutions of all of the states, each house has the right to choose its own presiding officer except in those cases where the presiding officer of the senate acts ex officio. In local legislative bodies the right to choose the presiding officer is usually given by statute or charter provisions.

2. Where the officer whose legal right and duty it is to preside over the meeting is necessarily or wilfully absent or no provision has been made for a presiding officer, the members at the meeting are of necessity authorized to elect a temporary presiding officer from their members to conduct the deliberations.

3. When it is necessary for the presiding officer to vacate the chair, the president pro tempore, or the speaker pro tempore, or the vice chairman, should take the chair, and in his absence the presiding officer next in order, if there be one.

4. Practice, based on convenience and courtesy, permits the presiding officer to appoint a presiding officer to act in his place when it is necessary for him to vacate the chair and there is no presiding officer pro tempore or vice chairman present. The body can at any time terminate such an appointment by electing a presiding officer

Section 580—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 283.
Paragraph 2—
Billings v. Fielder (1882), 44 N. J. L. 381; Commonwealth v. Vandegrift (1911), 232 Pa. 63, 81 Atl. 153; Woodruff v. Stewart (1879), 63 Ala. 206; Mills v. Gleason (1860), 11 Wis. 493; Cockran v. McCleary (1867), 22 Iowa 75; Ostrom v. Greene (1897), 45 N. Y. Supp. 852.
Paragraph 3—
Reed, Secs. 36, 37; Cushing, Sec. 28.

pro tempore. In any event, the right of a person so appointed to preside terminates with the next adjournment. Appointments for a longer period can, of course, be made with the approval of the body.

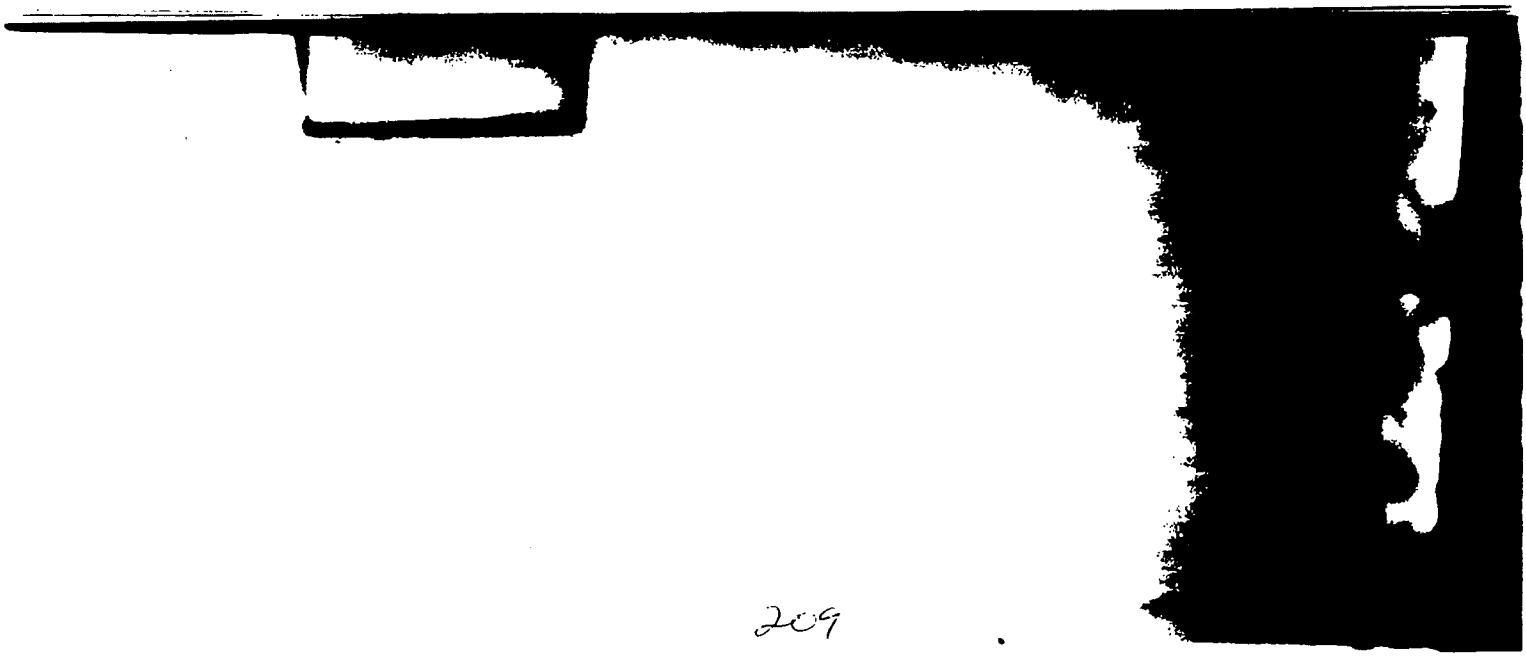
5. When no elected or appointed presiding officer is present at a meeting, the body should be called to order by the senior member present or other member, and a temporary presiding officer should be immediately elected. A presiding officer in such case may be elected by a majority vote.

6. In houses of the state legislatures where the presiding officer serves ex officio, the houses appear to have the right to elect a presiding officer pro tempore, and there can be no question as to this right when the presiding officer is elected by the house.

Sec. 581. Motions Affecting Presiding Officer

1. When a motion, which compliments the presiding officer with others, is made, it may, as a matter of courtesy, be put to vote by a vice chairman or a presiding officer pro tempore or by the secretary. The presiding officer should not hesitate to put a question or a motion to appoint a committee of which he is to be a member or any motion of like purpose.

Section 580—Continued
Paragraph 4—
Reed, Secs. 37-39.
Paragraph 5—
Sturgis, p. 107.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 314.
Section 581—
Paragraph 1—
Sturgis, pp. 107, 108.



2. The presiding officer should leave the chair during the discussion of any business concerning himself. When a member is censored for use of improper references to the presiding officer, the presiding officer should leave the chair and call another to preside until any action is taken against the offender.

3. Complaint of the conduct of the presiding officer should be presented directly for the action of the house and not by way of debate on other matters.

Sec. 582. Removal of Presiding Officer

1. A presiding officer who has been elected by the house may be removed by the house upon a majority vote of all the members elected, and a new presiding officer pro tempore elected.

2. Where there is no fixed term of office, an officer holds office at the pleasure of the organization or until a successor is elected.

3. At a town meeting after votes for town officers were cast but before the results were announced the presiding officer and clerk resigned, but this did not terminate the authority of the others to complete their duties in counting the votes and announcing the result.

Section 581—Continued
Paragraph 2—
Hughes, Secs. 74, 571.
Paragraph 3—
Jefferson, Sec. XVII.
Section 582—
Paragraph 1—
In re Speaker (1890), 15 Colo. 520, 25 Pac. 707; Jefferson, Sec. IX; Reed, Sec. 36.
Paragraph 2—
Ostrom v. Greene (1897), 45 N. Y. Supp. 852.
Paragraph 3—
Attorney General v. Crocker (1885), 138 Mass. 214.

Sec. 583. Rights of Presiding Officer to Debate, Vote and Introduce Business

1. The presiding officer may speak to a point of order in preference to members or to other members. He may also state facts, which are particularly within his knowledge, for the benefit of the body. He should be seated during debate and may read or state a question seated, but should rise to put a question to vote, to decide a point of order, when speaking on an appeal, or when otherwise addressing the body.

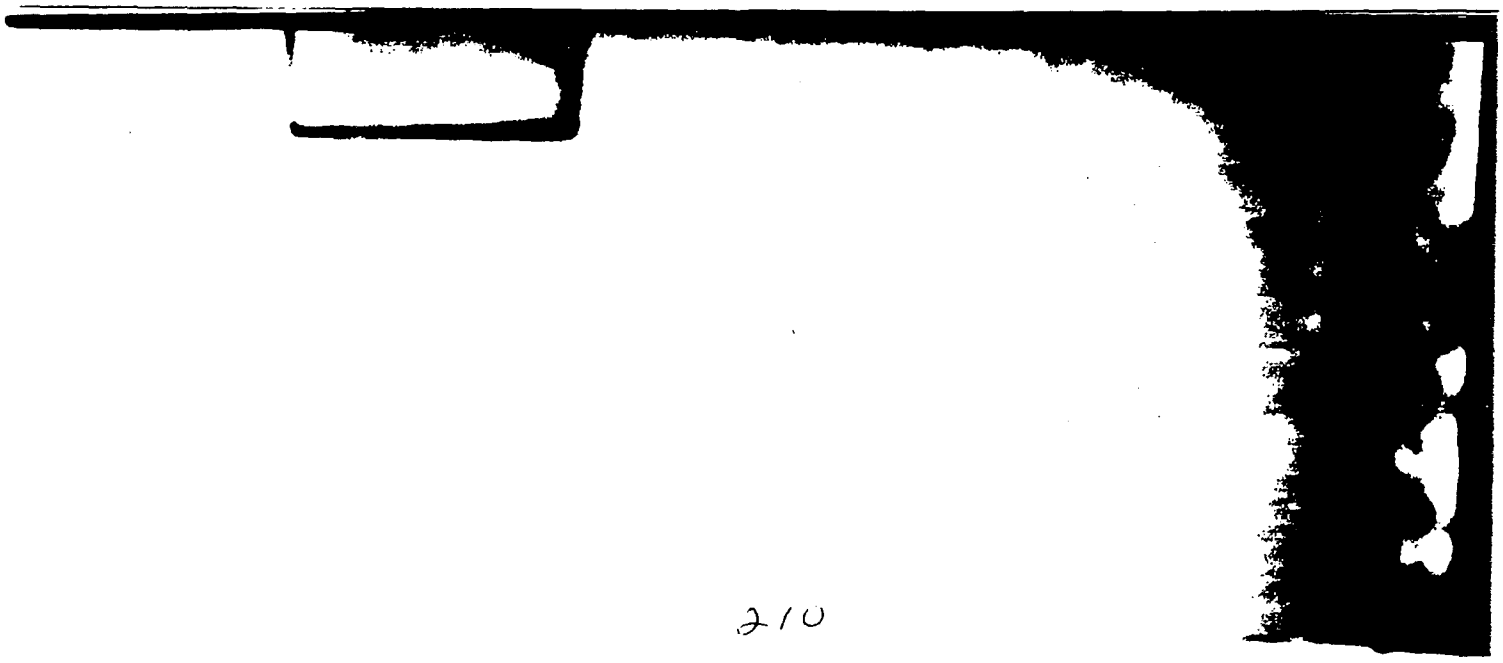
2. When the presiding officer is a member of the body, it is his privilege to call a member to the chair and participate in debate without requesting permission of the body to do so.

3. The presiding officer, when a member, has the same right to explain his vote as other members, and when he can vote only in case of a tie, he may still give the reasons for his vote.

4. When the presiding officer is a member of the house, he is entitled to vote the same as any other member and he may vote with the minority to produce a tie vote and thus defeat a motion.

5. When the presiding officer of a legislature is not a member, he may vote only as authorized by the constitution, which usually gives him a vote in case of a tie.

Section 583—
Paragraph 1—
Sturgis, pp. 105, 106; Tilson, p. 58; U. S. House Rule I, Par. 5; Cushing, Sec. 202.
Paragraph 2—
Hughes, Sec. 74; Reed, Sec. 40.
Paragraph 3—
N. Y. Manual, p. 464.
Paragraph 4—
Sturgis, p. 206; Cushing, Sec. 243.



In local legislative bodies the presiding officer may vote as authorized by law or charter provisions.

See Casting Vote under Secs. 513 and 514.

6. The presiding officer, when a member, retains the same rights as other members to introduce business but does not make motions from the chair.

Section 583—Continued
Paragraph 5—
Cushing, Sec. 243b; N. Y. Manual, p. 464.
Paragraph 6—
Hughes, Sec. 42.

CHAPTER 54

OTHER OFFICERS

Sec. 584. Chief Clerical Officer

A. General Duties

1. It is the duty of the secretary or chief clerk of a legislature:

(a) To keep, or supervise the keeping of, a correct journal and other records of the proceedings of the house.

(b) To call the roll.

(c) To read all bills, resolutions, amendments and other papers ordered read by the house or the presiding officer.

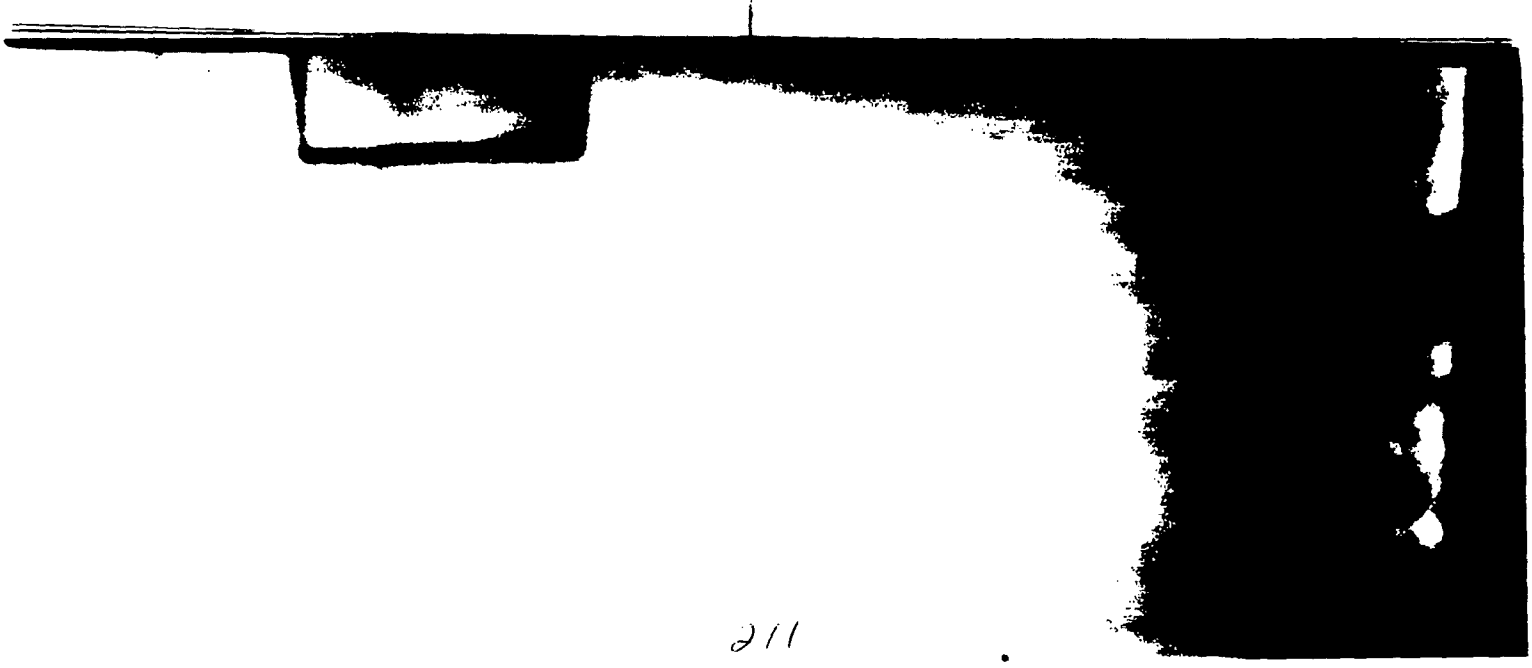
(d) To notify the other house of all acts of the house on all matters originating in the other house.

(e) To certify to and transmit to the other house all bills, resolutions and papers requiring the concurrence of the other house immediately upon their passage or adoption.

(f) To secure the proper authentication of bills of his house which have passed both houses and to see that they are transmitted to the executive.

(g) To have supervision over all clerical work to be done for the house and to supervise all employees and attaches subject to the direction of the presiding officer.

Section 584—
Paragraph 1—
Tandy v. Hopkinsville (1917), 174 Ky. 189, 192 S.W. 46; Rouleau v. St. Lambert (1895), 10 Quebec Supp. 69; Hill v. Goodwin (1876), 56 N. H. 441; Cushing, Secs. 31-35; Reed, Sec. 43.



2. The chief clerical officers of other legislative bodies have similar duties depending upon the circumstances in each case. Their principal duties are usually stated in the rules and they are always subject to the direction of the bodies they serve.

3. In the absence of the chief clerical officer, his duties devolve upon the clerical officer next in rank or, in case of more than one assistant of the same rank, then upon the assistant first selected.

B. Custody of Records

4. The chief clerical officer must not permit any records or papers to be taken from the desk or from his custody, except as required by the rules and except as such papers or records are necessary or appropriate to the work of a committee, in which case such papers may be placed in the custody of the chairman of the committee.

5. All records of the house are open to inspection by any member at all reasonable times and any records or papers necessary or useful to a committee in the performance of its duties, should be turned over to the chairman of the committee upon request.

6. When a committee is appointed, the chief clerical officer should give to the chairman of the committee or other of its members a list of the names of the members of the committee and all papers referred to it.

7. The chief clerical officer should receive and preserve reports of committees until they can be acted upon

Section 584—Continued
Paragraph 3—
Reed, Sec. 44.
Paragraph 4—
Jefferson, Sec. XVI; Cushing, Sec. 33.
Paragraph 6—
Sturgis, p. 110; Cushing, Sec. 272.

by the house, and it is not necessary to vote that a report be placed on file in order for reports of regular committees to be received by him.

C. Correction of Records

8. The rule that the same legislature may correct its journals so as to make them speak the truth, and that when corrected the journals will stand as if so originally made, is applicable to the amendment of legislative records.

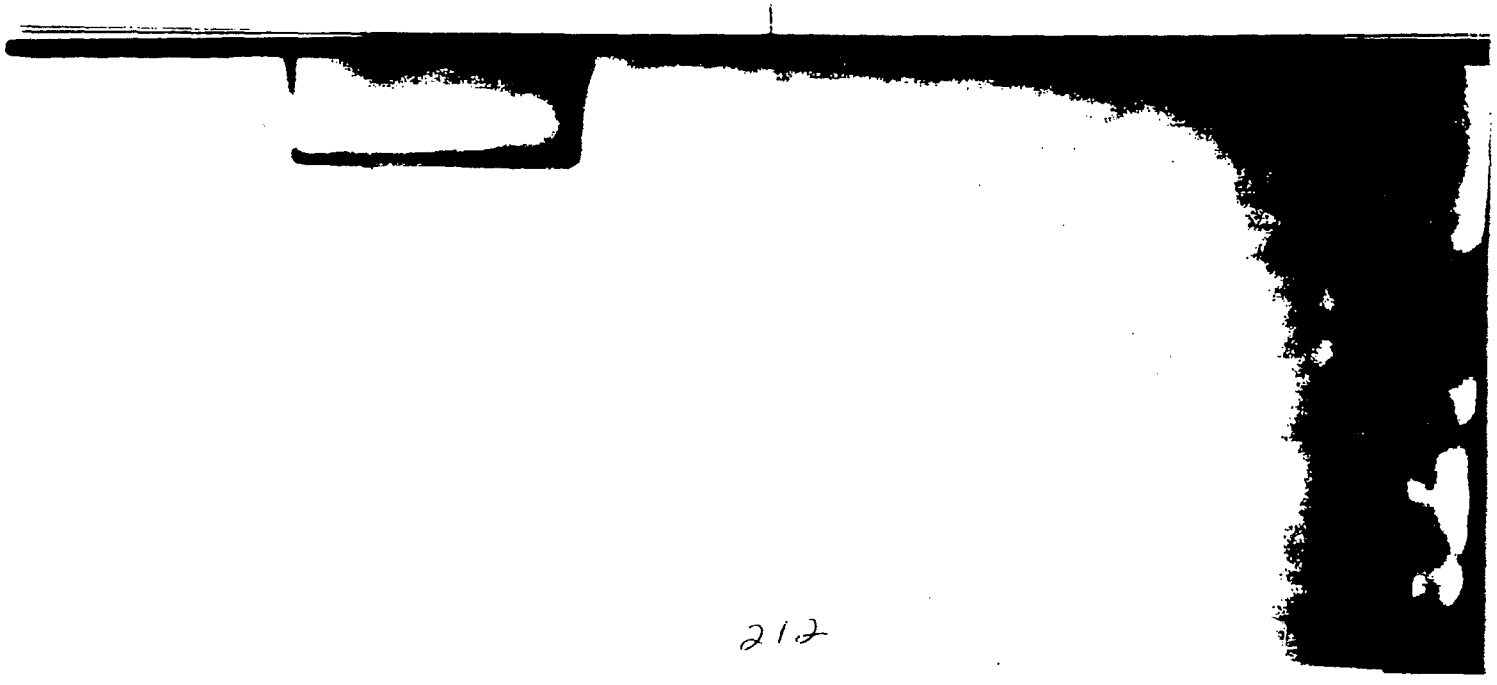
9. The right of legislative bodies to amend records does not depend on statutes, but is an inherent right.

10. It is the right of the secretary or chief clerk of the house, without direction from the house, to correct any errors which he may discover that have resulted from the work of his office, and this right extends even to papers which have been sent to the other house.

Sec. 585. Parliamentarian

1. Many of the larger deliberative bodies have a parliamentarian. It is particularly advisable to have a parliamentarian when the presiding officer is not trained in parliamentary law and experienced in presiding over the body.

Section 584—Continued
Paragraph 7—
Sturgis, p. 110.
Paragraph 8—
Richmond County Commissioners v. Farmers Bank (1910) 152 N. C. 387, 67 S.E. 969; Hughes, Sec. 82.
Paragraph 9—
People v. Chicago, etc., Railway (1927), 326 Ill. 179, 1· N.E. 200.
Paragraph 10—
Hughes, Sec. 82.
Section 585—
Sturgis, pp. 113, 114.



2. It is the duty of the parliamentarian to advise and assist the presiding officer. The relationship is similar to that of an attorney and his client. The parliamentarian should be thoroughly trained in parliamentary law and in the rules, precedents and practices of the body and be a ready source of accurate information and advice for the presiding officer.

3. The parliamentarian serves as the presiding officer's adviser on matters of procedure. His responsibility is to the presiding officer rather than to the body. He works under the direction of the presiding officer. He is an adviser only. His advice can be disregarded by the presiding officer and the body.

4. The parliamentarian should unobtrusively call the attention of the presiding officer to serious errors in procedure. As far as possible he should anticipate difficult parliamentary situations and keep the presiding officer advised of questions that may arise and of the rules and precedents or practices concerning those questions. He should be ready to give the presiding officer assistance in any matter requested by him. The parliamentarian can, for example, if the presiding officer wishes, keep him advised as to what committees are ready to report or what is the status of any particular business.

Sec. 586. Sergeant-at-arms and Other Officers

1. The sergeant-at-arms should be constantly in attendance during the sessions of the house except when absent in the discharge of his duty. The sergeant-at-arms must, under the direction of the presiding officer, maintain order on the floor of the house, in the lobby and

Paragraph 1—
U. S. House Rule IV, and Rule XIV, Par. 7; Reed, Sec. 47.

adjoining rooms and see that no person remains on the floor unless entitled to the privilege of the same.

2. It is the general practice in the houses of the state legislatures to select a chaplain who attends each day and offers prayer at the beginning of each day's session.

3. The larger legislative bodies elect a minute clerk, an engrossing clerk and other officers and assistants.

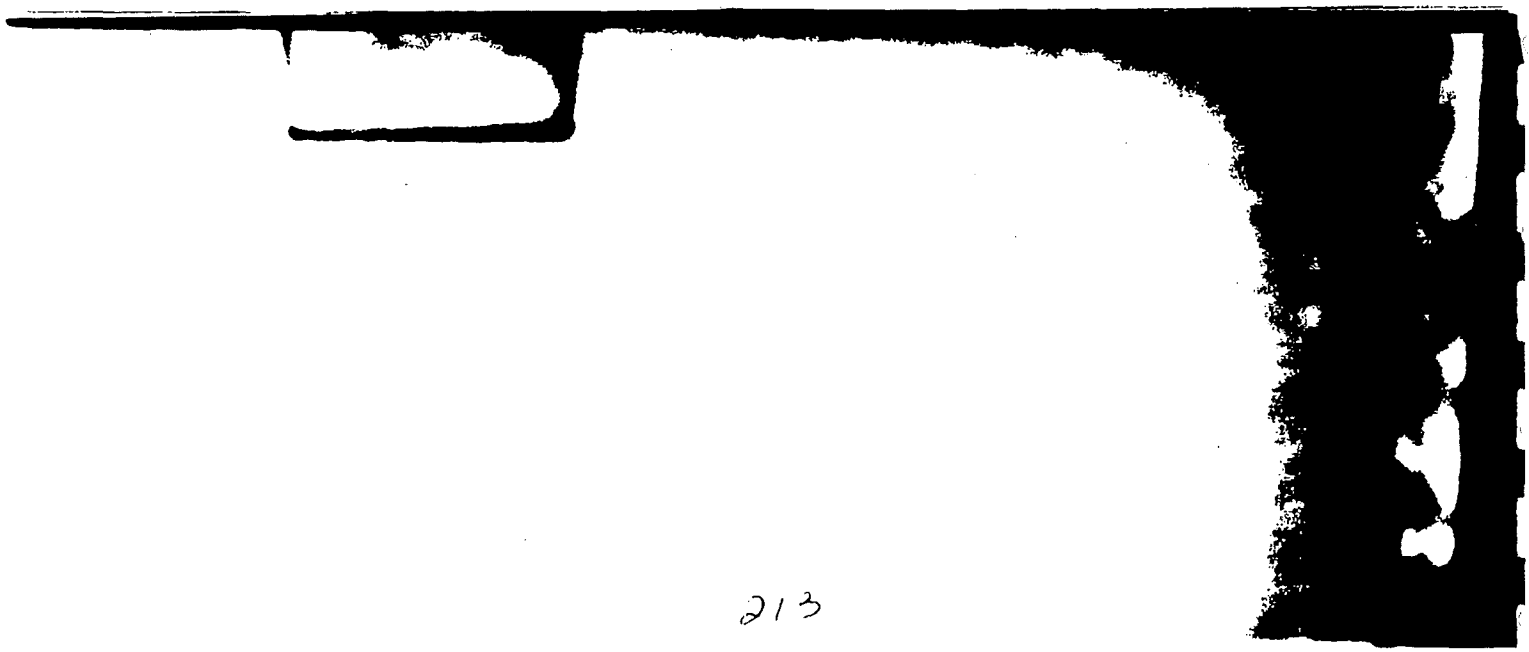
Sec. 587. Ex Officio Officers

1. An ex officio officer is one who holds a particular office by reason of holding another office. A charter may provide, for instance, that the mayor be ex officio a member of the city council, or that the president of the council be chairman of the finance committee. In such cases, whoever is elected as mayor automatically becomes a member of the city council, and whoever is selected as chairman is always, and without any further action, chairman of the finance committee.

2. It is a common practice, particularly in local governments, to tie different units of the government together by making certain officers ex officio members of boards, commissions or committees. Boards having important, but limited, duties are often composed of a group of officers serving ex officio as a board for some special purpose.

3. When an officer is an actual working member of a board or committee, he is in exactly the same position as if he were selected in some other manner except per-

Section 587—
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 339.
Paragraph 3—
Seller v. O'Maley (1921), 190 Ky. 190, 227 S.W. 141; State v. Kirk (1878), 46 Conn. 395.



haps that he gets no extra compensation for his ex officio duties. He is entitled to notice of all meetings, is counted in determining a quorum and vote necessary, and votes like any other member. But when an officer is only incidentally an ex officio member of a board or committee, as when a mayor or chairman is an ex officio member of all committees and boards and has been given no particular power or responsibility, he has the right to be present at all meetings and to take part in the deliberations, but is not to be counted in determining whether a quorum is present or the number of votes necessary to take an action.

Sec. 588. Selection of Officers

1. It is an almost invariable rule in legislative bodies of the United States that the bodies have full authority concerning the selection of their officers. They can select their officers in the manner they choose and remove them at any time without notice or hearing. The constitutions provide that state legislatures shall select their own officers, and the same authority is usually given to local legislative bodies although in some cases the city clerk is made clerk of the legislative body of the city and the county clerk is made clerk of the county legislative body.

2. Officers of legislative bodies are usually qualified by taking an oath of office.

3. The authority of legislative officers expires with the authority of those from whom the authority was derived.

Section 588—
Paragraph 1—
Cliff v. Parson (1894), 90 Iowa 665, 57 N.W. 599; Cushing's Legislative Assemblies, Sec. 331.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 331.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 331; Manual 80th Congress Rule III, Note 637.

It is usually required by statute or rules or precedent that the principal officers return at the next session and perform their duties until the houses are organized.

Sec. 589. Officers Are Responsible Only to Their House

See also Sec. 760, The Other House and Its Members.

1. The officers of a house are not officers of the members individually but of the entire house. They may be given orders only by the house through the presiding officer. The secretary or clerk and other officers are without authority to execute an order of an individual member that would in any way affect the entire house.

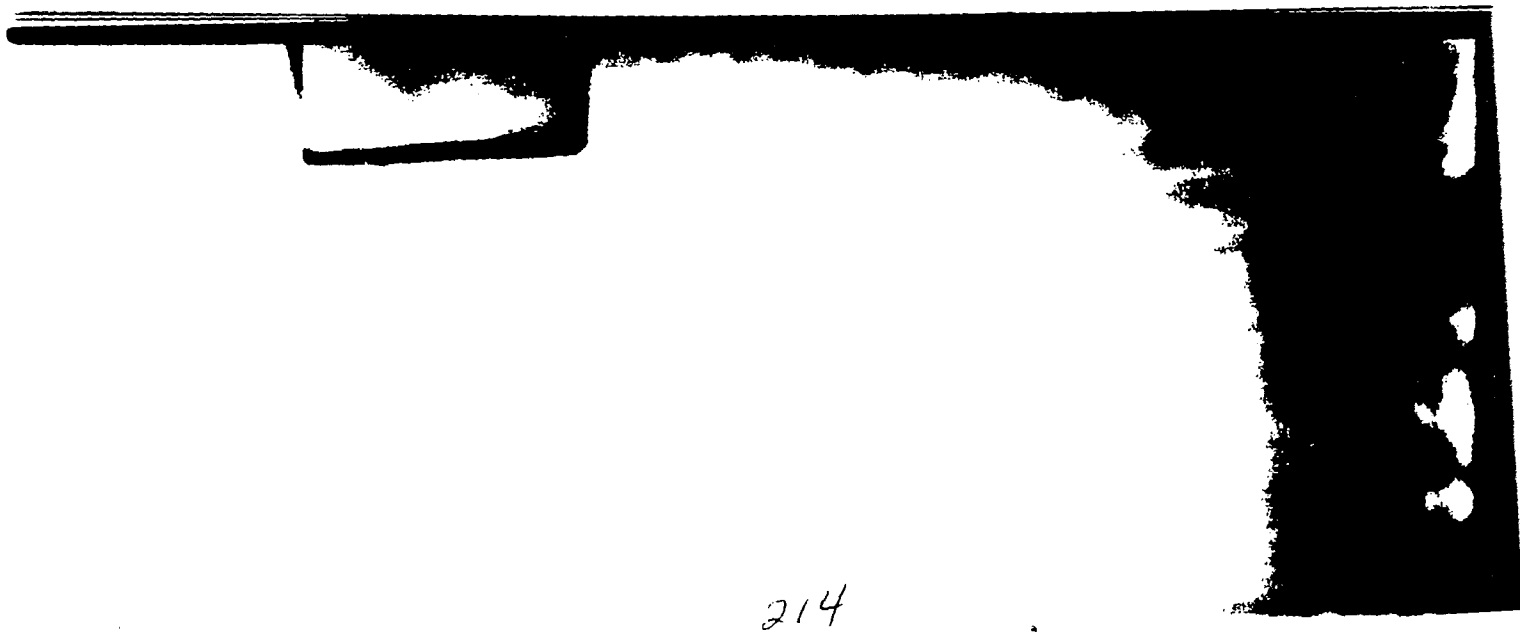
2. No officer has any right to interfere with the duties of another officer unless requested to do so by such officer or unless directed by a superior officer.

Sec. 590. Removal and Compensation of Officers

1. A house may remove a secretary or other officer elected by it at any time without notice or hearing.

2. An enrolling clerk of the house is an officer in a technical sense of the word, but he cannot be removed by the courts upon quo warranto. The remedy against such persons is for the house making the appointment to remove the person.

Section 589—
Paragraph 1—
Hughes, Sec. 83.
Paragraph 2—
Hughes, Sec. 84.
Section 590—
Paragraph 1—
Cliff v. Parson (1894), 90 Iowa 665, 57 N.W. 599.
Paragraph 2—
State v. Gardner (1869), 43 Ala. 234.



3. Where the compensation of legislative employees is fixed by statute, a resolution granting extra pay for night work is not in order, as the law recognizes no fractions of days in such cases.

Section 590—Continued
Paragraph 3—
First National Bank v. Holliday (1875), 61 Mo. 229.

CHAPTER 55

SELECTION OF COMMITTEES

See also Chapter 49, Secs. 545-550, Nominations, and Chapter 50, Secs. 552-556, Elections.

Sec. 600. Manner of Selecting Committees

1. In the absence of any controlling provision, committees may be selected in any manner the body may determine.

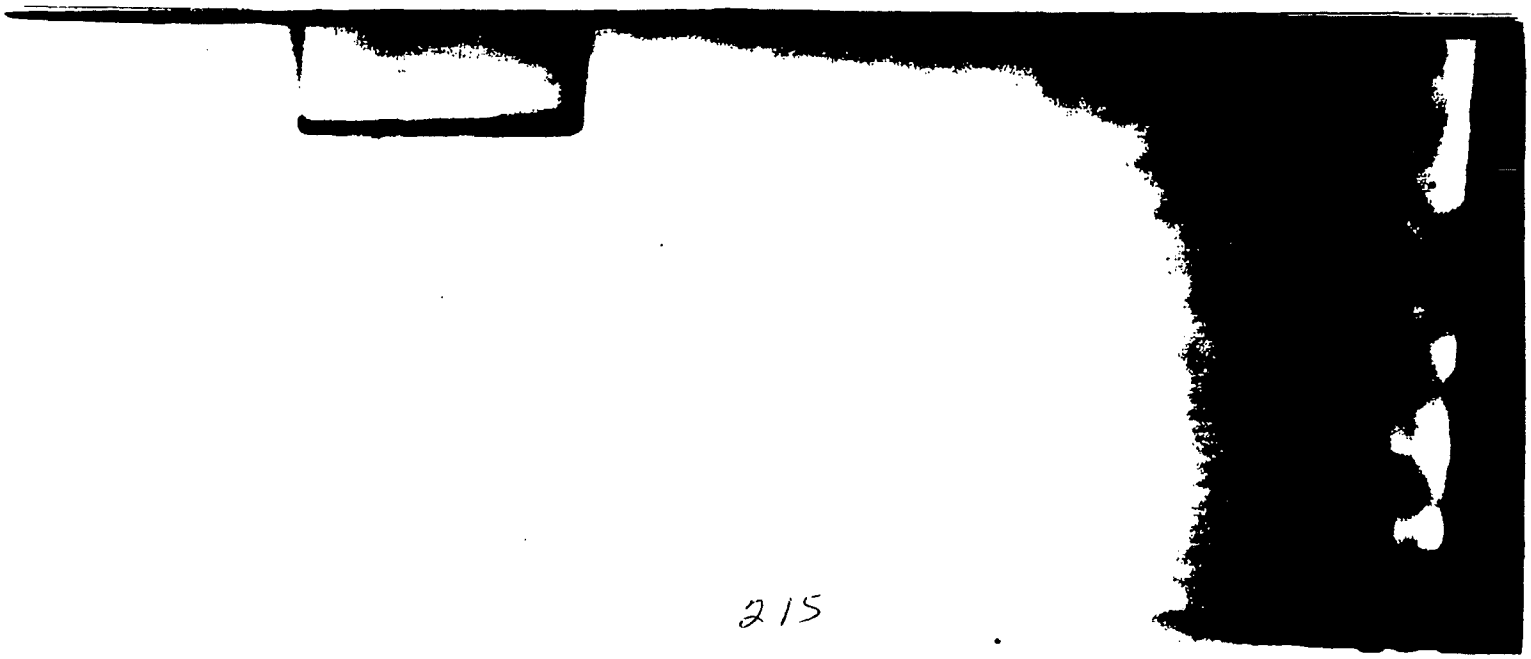
2. The rules usually provide for the appointment of standing committees by the presiding officer. The usual method of appointing special committees is for a motion to be adopted stating the purpose of the committee, the number of members, and directing the presiding officer to appoint the members.

3. A motion for the selection of a committee should always state the purpose of the committee, the number of members and the manner of their selection. When the motion does not specify the number of members, the number is left to the discretion of the presiding officer or persons selecting the members.

4. It is in order in a motion for a committee to name members proposed as the committee, and the adoption of such a motion constitutes the members named as the committee. A resolution of this type is subject to amendment.

5. Where different methods for the selection of a committee are proposed, the proposals are regarded as alternative propositions and put to vote in the following order:

Section 600—
Paragraph 2—
Hughes, Secs. 752, 754; Cushing, Sec. 266; Reed, Sec. 65.
Paragraph 3—
Hughes, Sec. 752.
Paragraph 4—
Reed, Secs. 64, 66; Hughes, Sec. 752.



(a) Nomination from floor and election.
(b) Nomination by committee and election.
(c) Nomination by presiding officer and election.
(d) Appointment by resolution.
(e) Appointment by presiding officer.

6. When different numbers of members of committees are proposed, the question should first be put to vote on the largest number, and then on the next largest until a particular number receives a majority vote.

7. When a committee is to be selected and no other method of selecting has been proposed, the body may proceed to nominate and elect the members, without a motion to that effect, in the same manner as any other election is conducted.

Sec. 601. Nomination of Members of Committees

See also Chapter 49, Secs. 545-550, Nominations, and Chapter 50, Secs. 552-556, Elections.

1. The members of a committee may be selected by nomination from the floor and formal election by the body in the same manner as any other election.

2. Another method of selecting a committee is for the presiding officer to suggest names, putting the question "Shall these members constitute the committee?" and

Section 600—Continued
Paragraph 5—
Hughes, Secs. 750-753; Sturgis, p. 118.
Paragraph 6—
Cushing, Sec. 264.
Paragraph 7—
Cushing, Sec. 265.
Section 601—
Paragraph 1—
Sturgis, p. 118; Reed, Sec. 67; Cushing, Sec. 268.
Paragraph 2—
Cushing, Sec. 268.

before a vote is taken on the group, it is in order to move to strike out names, and if any names are stricken out, to move the names of others to replace those so removed. This is in effect a confirmation of appointments by the presiding officer.

Sec. 602. Appointment by the Presiding Officer

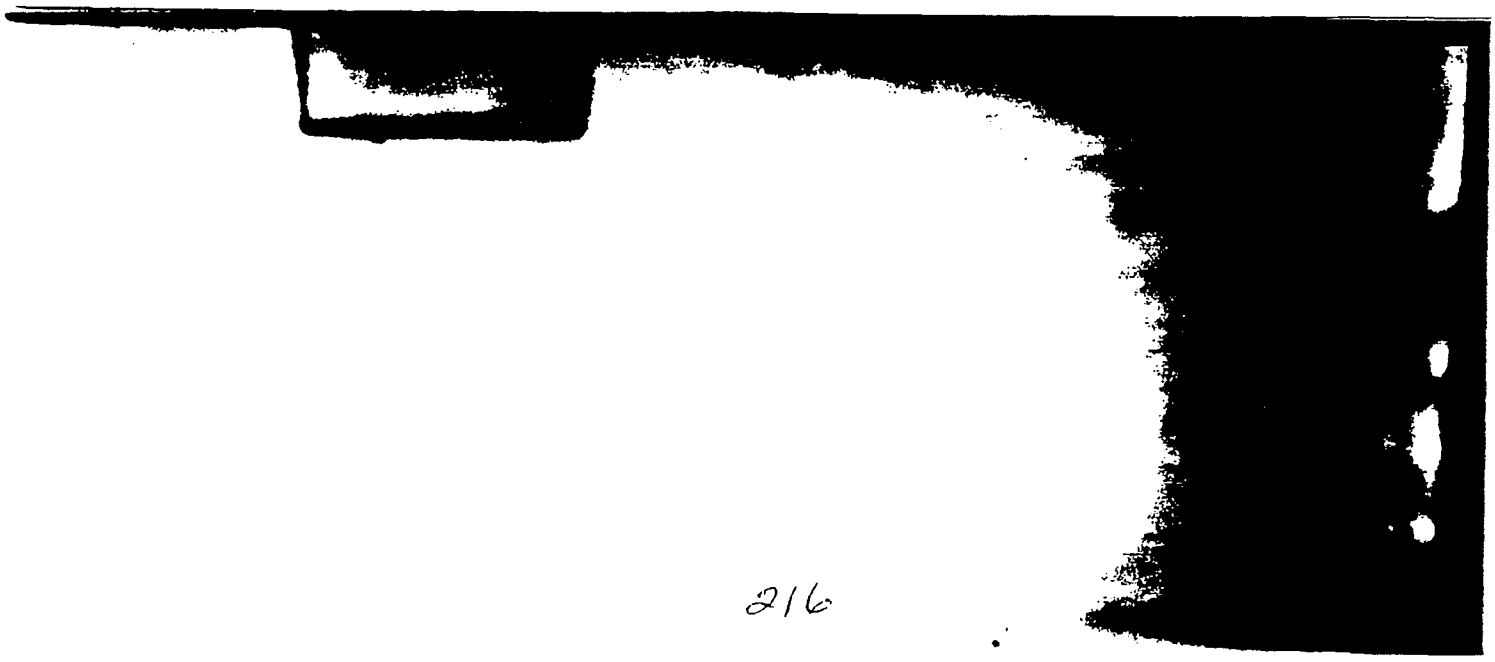
1. When the presiding officer has been authorized to appoint a committee, no confirmation of the appointment is required. The presiding officer may delay the announcement of the appointments until a later time to give him time to consider appointments and to consult with members if he wishes; but the names of the committee members must be officially announced, and until the announcement is made, the committee is not formally appointed.

2. When a motion for the appointment of a special committee does not state the number of members to be appointed to the committee, the presiding officer may use his discretion.

Sec. 603. Informal Selection

1. Where there is no objection, a committee may be appointed informally, the members being suggested by members of the body and repeated by the presiding officer until the prescribed number has been suggested, and if no others are suggested, the question is then put as to whether the members suggested shall constitute the committee. If more names are suggested than the number to constitute the committee, the presiding officer puts

Section 602—
Paragraph 1—
Sturgis, p. 118.
Paragraph 2—
Hughes, Sec. 752.



the names individually in the order suggested until enough are chosen to constitute the committee. The negative as well as the affirmative vote must be taken when voting viva voce, as a majority vote is required for the selection of any member of a committee.

Sec. 604. Appointment of Mover to Committee

1. It is a common practice in some bodies, based on courtesy, to appoint the person making the motion for the appointment of a committee as chairman of the committee if he will accept the appointment. This practice is based on courtesy only, and it is not even necessary that the person making the motion for the committee should be appointed a member.

Section 604—
Sturgis, p. 119; Hughes, Sec. 762; Reed, Sec. 64.

CHAPTER 56

OFFICERS AND QUORUM OF COMMITTEES

Sec. 608. Selection of Committee Chairman

1. It is the usual practice for the authority appointing a committee to designate the chairman. When a committee is elected it is the proper procedure following the election to designate the chairman by a motion.

2. The power to appoint a committee carries with it, if there is no rule to the contrary, the inherent power to appoint the chairman of the committee, and a chairman is usually designated by the appointing power.

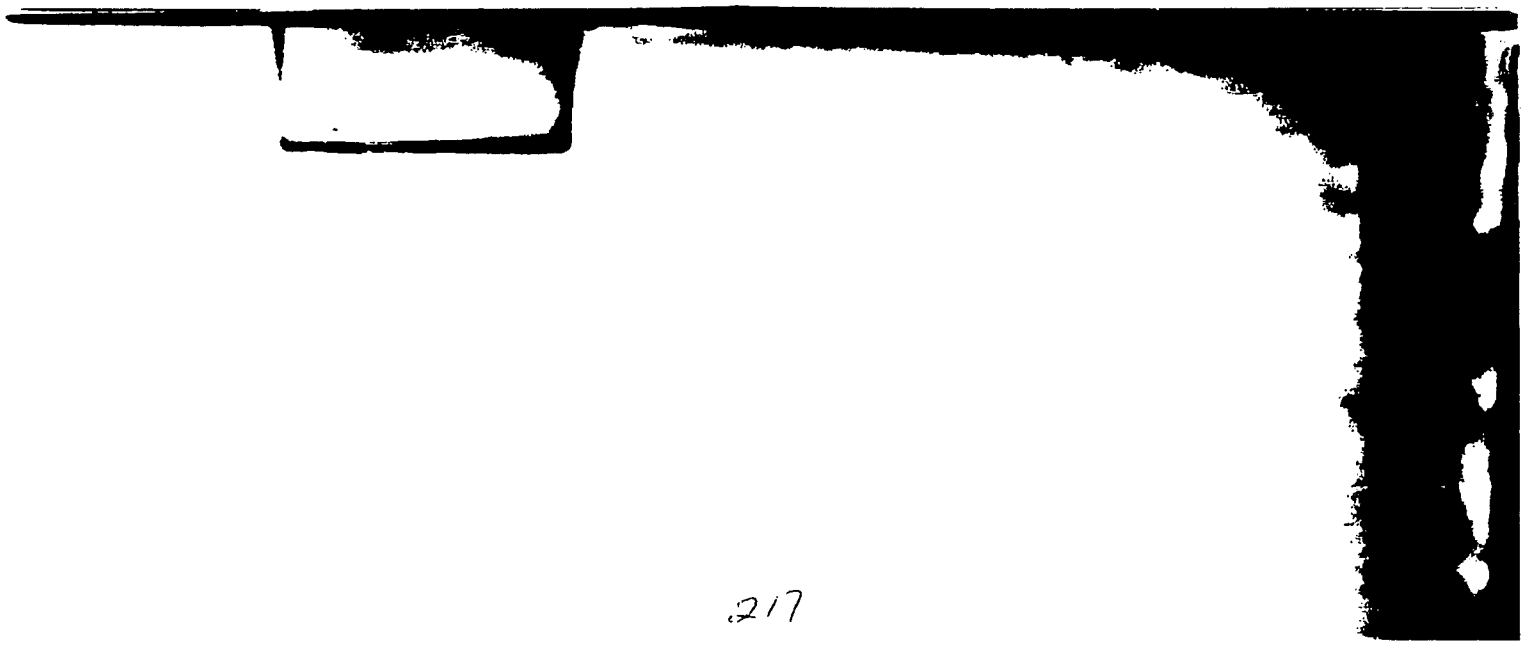
Sec. 609. Acting Chairman

See also Sec. 626, Calls for Committee Meetings.

1. When no chairman has been designated, the committee has the right to select one of its members to be chairman, but the first member appointed should in every case call the committee together and act until a chairman has been elected by the committee. He continues to act as chairman unless the committee chooses a different chairman. When the chairman is not designated by the appointing power, if the first person named fails or refuses to call the committee together, the second member appointed should act, and each member in succession may act in the absence, or refusal to act, of those appointed before.

Section 608—
Jefferson, Sec. XI, XII; Hughes, Sec. 761; N. Y. Manual, p. 325; Cushing, Sec. 273; Sturgis, p. 119; Cushing's Legislative Assemblies, Sec. 1910.

Section 609—
Jefferson, Sec. XI; Hughes, Sec. 763; Reed, Sec. 71.



Sec. 610. Resignation of Chairman

1. The chairman of a committee may resign his chairmanship with the consent of the body and still retain his membership in the committee. When the chairman resigns, the presiding officer, if he appointed the committee, may appoint another chairman, or the committee may make its own selection and notify the body of its action.

Sec. 611. Duties of Committee Chairmen

1. The principal duties of the chairman of a committee are:

(a) To call the committee together at the regular time and place of meetings if a regular time and place are provided, otherwise at such reasonable times and places as to enable the committee to properly perform its functions.

(b) To preside over meetings of the committee and to put all questions.

(c) To maintain order and decide all questions of order subject to appeal to the committee.

(d) To supervise and direct the clerical and other employees of the committee.

(e) To prepare, or supervise the preparation, of reports of the committee and submit the same to the body.

Section 610—
Hughes, Secs. 835, 845.
Section 611—
Paragraph 1—
(a) Reed, Sec. 73.
(b) Jefferson, Sec. XI; Hughes, Sec. 764; Reed, Sec. 73.
(c) Hughes, Sec. 764.
(d) Reed, Sec. 73.
(e) Jefferson, Sec. XI.

(f) To have custody of all papers referred to the committee, and to transmit them to the chief clerical officer of the house when the committee is through with them.

Sec. 612. Appointment of Other Committee Officers

1. A committee has the authority by a majority vote to elect a vice chairman, secretary and other committee officers.

2. In standing committees, it is customary to elect a secretary unless a regular secretary is employed for the committee. In a small committee, the chairman may act as secretary and keep the necessary records.

3. It is the duty of the secretary to keep a record of the actions of the committee for the use of the committee and to prepare such reports and to perform such other duties as shall be directed by the chairman or the committee.

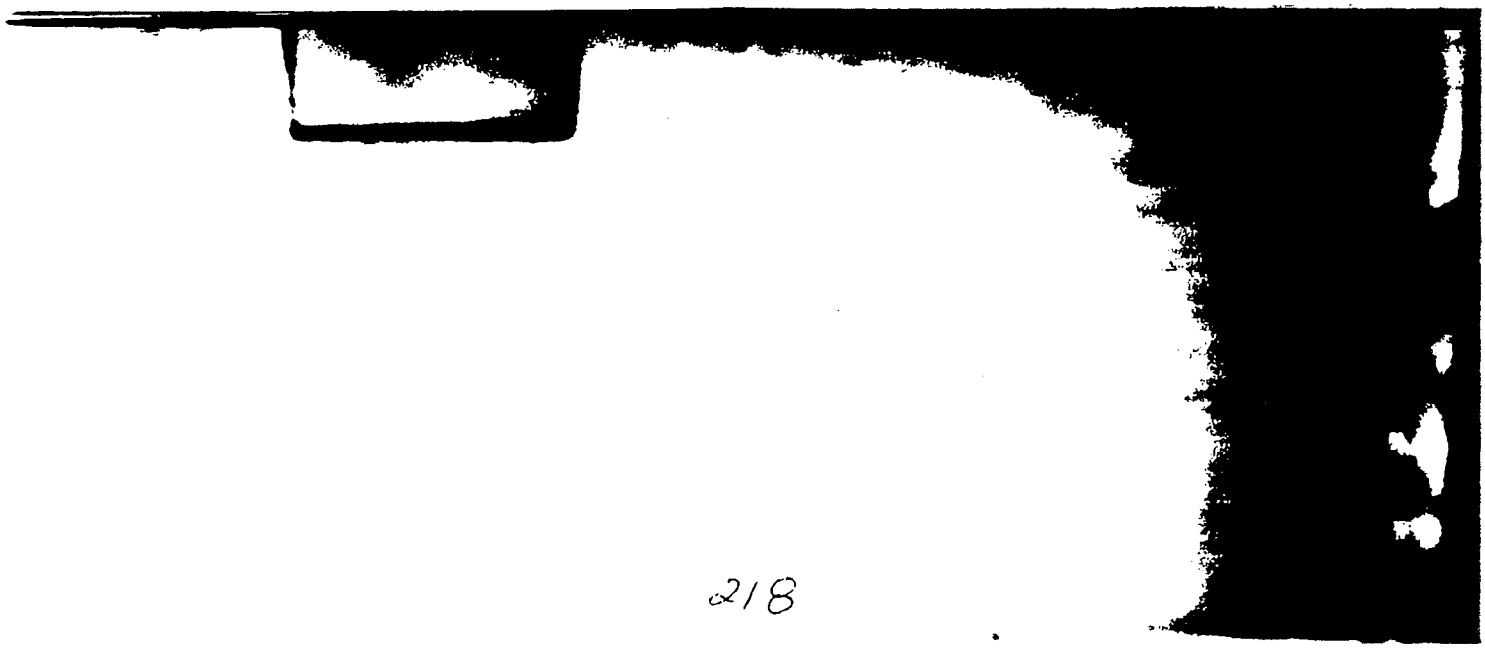
Sec. 613. Quorum of Committees

See Chapter 45, Secs. 500-507, Quorum.

.1. *Requirement of Quorum*

1. The presence of a quorum is required in order for a committee to act legally and officially. A committee

Section 611—Continued
Paragraph 1—Continued
(f) Reed, Sec. 73.
Section 612—
Paragraph 1—
Jefferson, Sec. XI.
Paragraph 2—
Reed, Sec. 71.
Paragraph 3—
Reed, Sec. 73.
Section 613—
Paragraph 1—
Jefferson, Sec. XXVI; Hughes, Sec. 765; Reed, Sec. 72; Cushing, Sec. 266; N. Y. Manual, p. 427.



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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.

B. What Constitutes a Quorum

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.

3. Since a committee is but an agency of the body, the body has authority to fix a quorum of the committee which may be more or less than a majority, or may fix the number necessary to take any official action.

Section 613—Continued
Paragraph 2—
Jefferson, Sec. XXVI; Sturgis, p. 15; Hughes, Secs. 754, 772, 806; Reed, Sec. 72; Damon v. Grandy (1824), 19 Mass. (2 Pick.) 345; State v. New Jersey (1859), 27 N. J. L. 493; State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304.

CHAPTER 57

POWERS OF LEGISLATIVE COMMITTEES

Sec. 615. Committees Are Agencies of the House

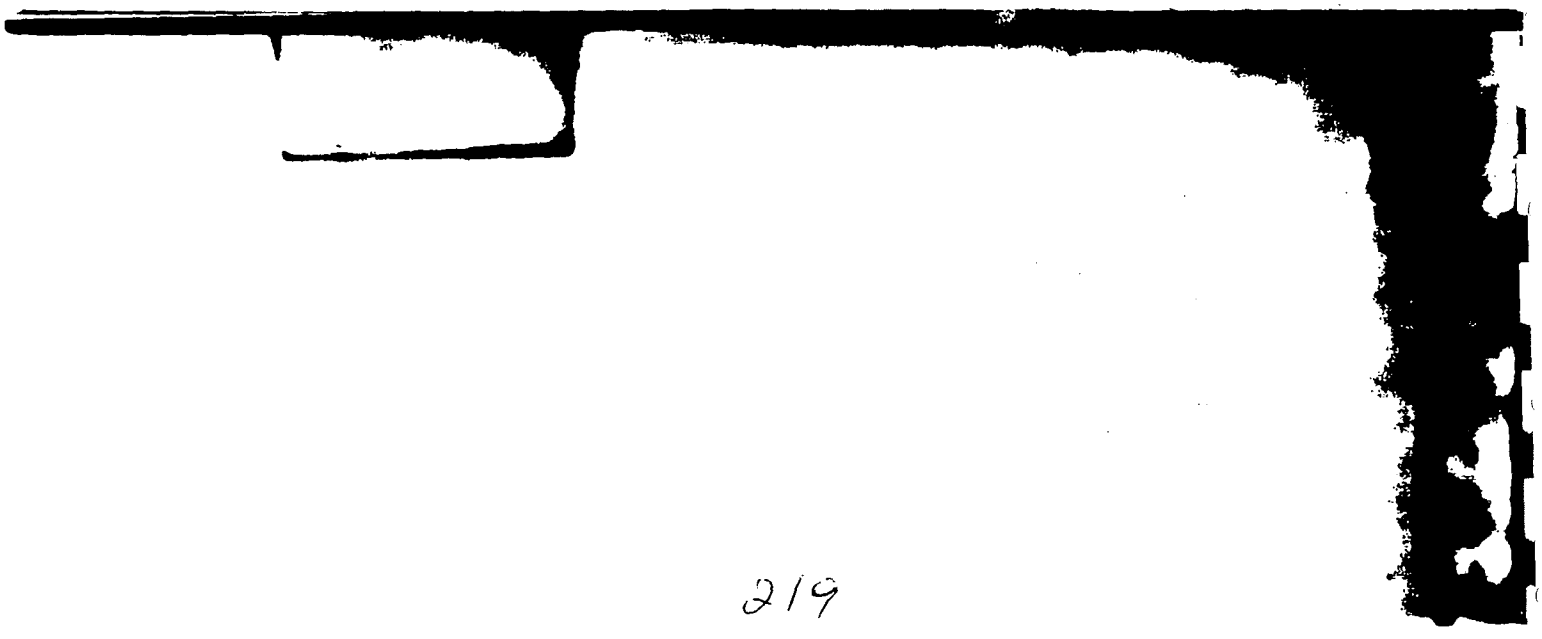
1. The method of performing a part of the work of a deliberative body through committees is not forbidden. It existed from the beginning and is sanctioned by judicial decisions.

2. A legislative body cannot delegate its powers to a committee, but when it ratifies the act of a committee in due form the act of the committee becomes the act of the body.

3. Committees are but instruments or agencies of the body appointing them, and their function is to carry out the will of that body.

4. The functions of a legislative committee are purely advisory. All its acts are subject to review by the body

Section 615—
Paragraph 1—
Whitney v. New Haven (1890), 58 Conn. 450, 20 Atl. 666; Holland v. State (1887), 23 Fla. 123, 1 So. 521; Gillett v. Logan County (1873), 67 Ill. 256; Duncan v. Lawrence City Comm. (1884), 101 Ind. 403; Stewart v. Council Bluffs (1882), 58 Iowa 624, 12 N.W. 718; Keys v. Westford (1835), 17 Pick. (Mass.) 273; In re Holman (1917), 270 Mo. 696, 195 S.W. 711; Burlington v. Denison (1880), 42 N. J. L. 165; Gilmore v. Utica (1892), 131 N. Y. 26, 29 N.E. 841; Comm. v. Pittsburgh (1850), 14 Pa. St. 127; Dancer v. Mannington (1901), 50 W. Va. 322, 40 S.E. 475; State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50; Bullitt County v. Washer (1889), 130 N. S. 142.
Paragraph 2—
Milford Sch. Tp. v. Powner (1891), 126 Ind. 528, 26 N.E. 484; Marion R. R. Co. v. Marion City (1865), 36 Mo. 294; Salmon v. Haynes (1887), 50 N. J. L. 97, 11 Atl. 151.
Paragraph 3—
Hughes, Sec. 751; Sturgis, p. 120.



and may be approved or rejected. Committee acts are recommendations only and except as especially authorized have no force until approved by the body.

5. A committee may make such a report concerning any bill before it as it sees fit, but the body is not limited by the report and can take such action as it chooses.

6. By authority from the legislature, a committee may employ all outside help or counsel needed to accomplish its lawful purpose.

Sec. 616. Proposing Amendments to Bills

See also Sec. 687, Consideration of Committee Amendments.

1. A committee can only propose amendments to the bills referred to it and cannot actually amend or modify them. The sole power of the committee is to make recommendations to the body, and no recommendation becomes effective until adopted by the body.

2. A committee should never alter a bill or other document referred to it, but should submit any proposed amendments to the body on a separate paper.

3. It is within the power of a committee to which a bill has been referred to report it back with or without amendments. There is no limit to the number of amendments which may be made to a bill so long as the

Section 615—Continued
Paragraph 4—
Hughes, Secs. 751, 755.
Paragraph 5—
N. Y. Manual, p. 431; Cushing, Sec. 276.
Paragraph 6—
Terrell v. King (1929), 118 Tex. 237, 14 S.W. 2d 786.
Section 616—
Paragraph 1—
N. Y. Manual, p. 405; Reed, Sec. 76; Jefferson, Sec. XXVI.
Paragraph 2—
Reed, Sec. 76; Cushing, Sec. 283.

amendments are germane to the original purpose of the bill. Amendments may be so numerous as to amount to a substitution of the bill.

4. A committee has full power with reference to proposing amendments to measures submitted to it, except that it cannot change the subject. All amendments must be germane to the subject of the measure. The body may refuse to receive or consider amendments proposed by a committee which are not relevant to the general subject of the bill. A committee may properly propose any amendments within the general scope of the bill, and in case amendments are numerous, the committee may offer a substitute for the bill instead of a series of amendments to it.

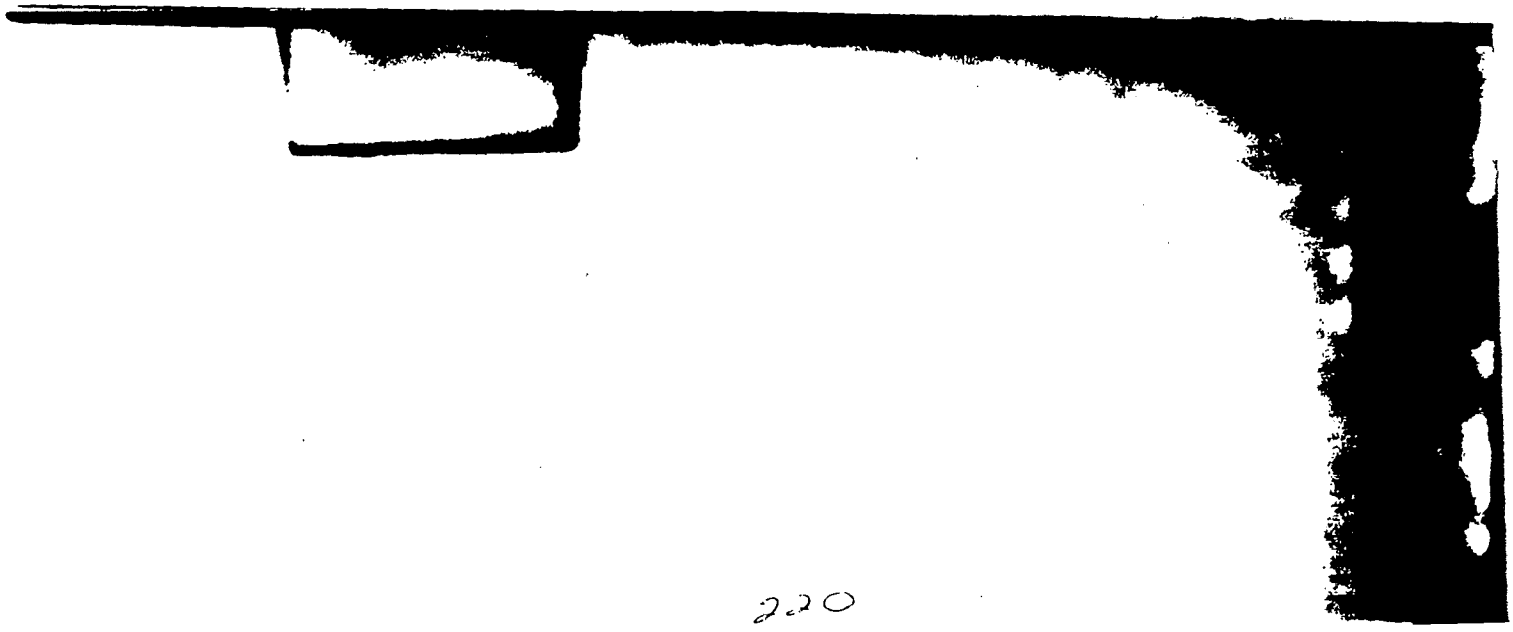
5. If amendments are pending on a measure when referred to a committee, the amendments go with the bill to the committee and the committee may recommend concerning the adoption or rejection of the amendments already proposed and make such further recommendations and propose such other amendments as they may choose.

Sec. 617. Substitute Bills

See also Sec. 417, Consolidation and Substitution of Measures.

1. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title

Section 616—Continued
Paragraph 3—
State v. Buckley (1875), 54 Ala. 599; Reitzammer v. Desha Road Imp. Dist. No. 2 (1919), 139 Ark. 168, 213 S.W. 773.
Paragraph 4—
Jefferson, Sec. XXVI; Hughes, Sec. 423; Reed, Sec. 77.
Paragraph 5—
Sturgis, p. 123.



and subject of the original bill. A substitute bill is considered as an amendment and not as a new bill.

2. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title.

Sec. 618. Introduction of Bills by Committee

1. Committees have authority to introduce bills respecting any matters referred to them and standing committees may introduce bills within their general scope.

2. Where the rules require that all bills be referred to committee, a bill which has been introduced by a committee is not required to be referred to a committee for further consideration.

Sec. 619. Committees Cannot Discipline Members

1. A committee has no power to punish its members for disorderly conduct, but may report any misconduct of its members to the body for its action.

2. The absence of members from committee meetings may be reported to the body for such action as the body may choose to take.

Section 617—
Paragraph 1—
Hughes, Sec. 877; Cushing, Sec. 284.
Paragraph 2—
Hughes, Sec. 870.
Section 618—
Paragraph 1—
Hughes, Sec. 853.
Paragraph 2—
N. Y. Manual, p. 416.
Section 619—
Paragraph 1—
Cushing, Sec. 278.
Paragraph 2—
Hughes, Sec. 702.

3. When a committee is charged with an inquiry and finds that one of its members is involved, it cannot take any action against him, but must make a special report to the body, which may take action concerning him or give special authority to the committee to investigate concerning the member.

Sec. 620. Instructions to Committees

1. When a question is referred to committee it may be referred with instructions or without. The committee may be left without restrictions or may be partly or completely restricted. The rules usually contain instructions governing the consideration of bills in committee and their return to the houses.

2. When a committee receives specific instructions, they must be accurately carried out.

3. A particular section of a bill may not be referred to a committee, but the entire bill may be referred to the committee with instructions confining the consideration of the committee to a particular section or paragraph. When a bill is referred to a committee with instructions relating to a part only of the bill, the committee may not recommend with reference to other parts.

4. A motion to refer a bill to committee may be amended by adding instructions, and such instructions may also be

Section 619—Continued
Paragraph 3—
Jefferson, Sec. XI.
Section 620—
Paragraph 1—
Cushing, Sec. 75.
Paragraph 2—
Hughes, Sec. 859.
Paragraph 3—
Hughes, Secs. 863, 882.

amended so long as they are germane to the subject of the bill, unless amendments or further amendments are prevented by the previous question.

5. A legislative body has no authority to commit a matter to a committee with instructions to report anything contrary to the facts.

Sec. 621. Papers and Information for Committees

1. The chief clerical officer should furnish the chairman of the committee, or in his absence some other member of the committee, with the notice of the appointment of the committee, the names of members, papers or other matters referred to it, and such instructions as may have been decided upon.

2. Bills may be delivered by the officers to any member of the committee, but it is usual to deliver them to the first named on a committee, if a chairman has not been designated or has not yet been elected by the committee.

3. All papers or books necessary for the information of a committee in the proper performance of its duties should be turned over to it by the legislative officers upon its request.

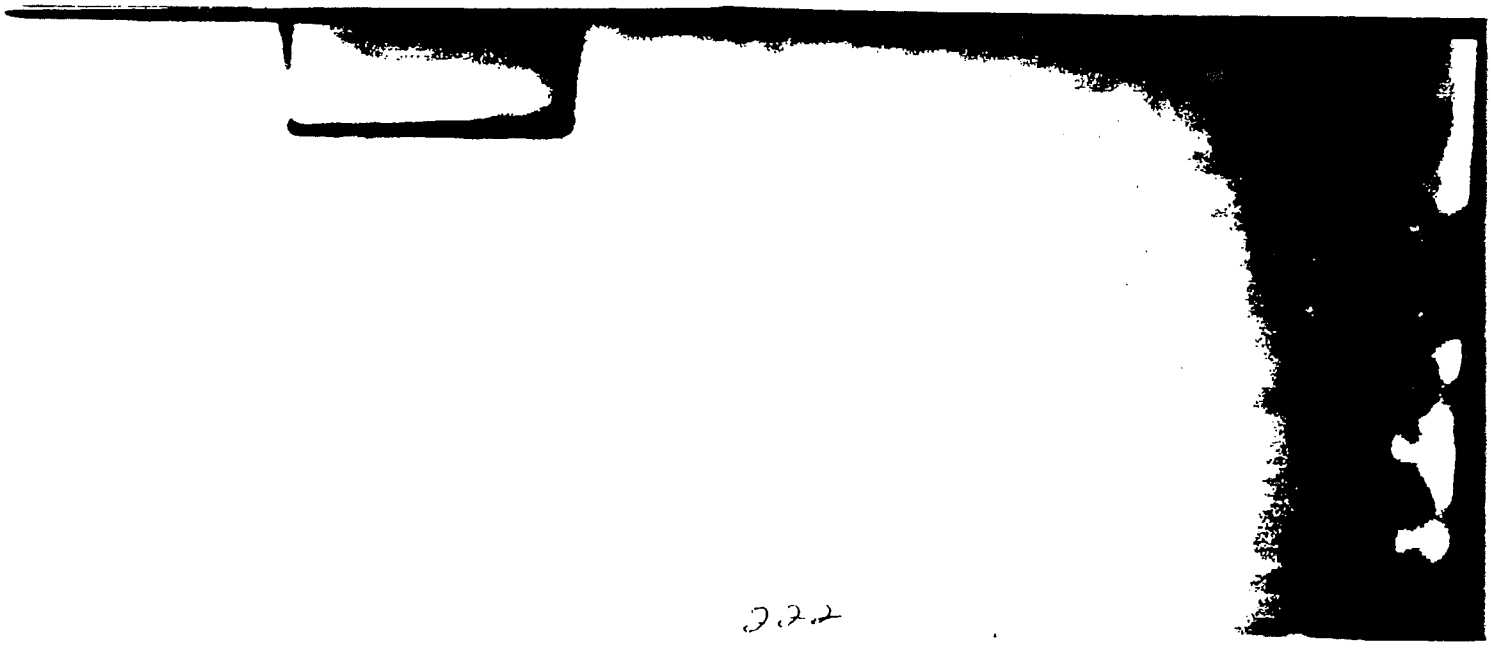
4. When the work of a committee has been completed, it is the duty of the chairman to return to the chief clerical officer all documents or papers which were referred to it.

Section 620—Continued
Paragraph 4—
Hughes, Secs. 857, 858.
Paragraph 5—
N. Y. Manual, p. 429.
Section 621—
Jefferson, Sec. XXIII; Sturgis, pp. 109, 110, 120.

Sec. 622. Committees Functioning During Recess or After Adjournment

1. Committees have no power to act as such after adjournment of the legislature unless they are specially authorized to do so. When there is no special authority for committees continuing to act after the adjournment of the current body, the committees still have authority to make a report following adjournment of the session at which they were appointed. The constitutional provision limiting pay of members to a certain period does not deprive the legislature of the power to appoint committees to serve after the expiration of the session, to complete its records.

Section 622—
Russell v. Cone (1925), 168 Ark. 989, 272 S.W. 678; Commercial and Farmers Bank v. Worth (1895), 117 N. C. 146, 23 S.E. 160; Marshall v. Harwood (1855), 7 Md. 466.



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CHAPTER 58

COMMITTEE MEETINGS

Sec. 625. Committees Can Act Only When Properly Assembled

1. A committee can act only at a meeting, and not by separate consultation and consent, and a committee has no authority to report anything not agreed upon when actually assembled. Everything done by a committee must have been submitted to the committee in actual session, and an opportunity must have been given for consideration and discussion. Any exception to this rule should not be recognized unless clearly authorized by the rules.

2. When no meeting of a committee has been held, a report of the committee cannot properly be presented to the body. It is irregular for a committee to report on any matter which has not been considered by it in a formal meeting and the report authorized. The presiding officer should reject any report which has not been considered in committee.

3. An action formally taken by a committee cannot be altered thereafter by a committee or its members except by further formal action of the committee.

Sec. 626. Calls for Committee Meetings

See also Sec. 609, Acting Chairman.

1. A committee should meet at the time and place officially set for its meetings when a time and place has been

Section 625—
Paragraph 1—
Jefferson, Sec. XXVI; Hughes, Sec. 765; N. Y. Manual, p. 427; Reed, Sec. 79; Cushing, Sec. 276.
Paragraph 2—
Hughes, Sec. 765; N. Y. Manual, p. 428.
Paragraph 3—
Jefferson, Sec. XXVI.

provided, but when no regular time or place has been provided, it may meet at such times and places as its members may decide.

2. When a regular time and place is fixed for a committee meeting, the chairman may, after consultation with and upon the consent of a majority of the members, change the time of the meeting in extraordinary cases.

3. It is the duty of the chairman to call the committee together, but if the chairman is absent or neglects or declines to call a meeting of the committee, it is the duty of the committee to meet on the call of any two of its members.

4. A special notice of an adjourned committee meeting is not necessary as the meeting will be, in fact, a continuation of the original meeting.

5. When committees adjourn without provision for future meetings, they adjourn subject to call of the chairman.

Sec. 627. Special Meetings

1. A special committee meeting is one called to transact definite specified business and in this particular differs from a regular or adjourned meeting.

Section 626—
Paragraph 1—
Jefferson, Sec. XXVI; N. Y. Manual, p. 427; Cushing, Secs. 274-277; Reed, Sec. 70.
Paragraph 2—
Hughes, Sec. 745.
Paragraph 3—
Hughes, Sec. 745.
Paragraph 4—
Hughes, Sec. 743.
Section 627—
Hughes, Sec. 744.

2. When a special committee meeting is called, notice of the meeting must be given to each member.

3. Business to be transacted at a special committee meeting must be set out in the call for the meeting and no business is in order except as specified in the call.

Sec. 628. Committee Meetings While House Is in Session

1. Committees, except conference committees, may not meet during the sessions of the house without the consent of the house. To secure consent, the chairman of the committee should present a motion giving the consent.

2. A motion requesting permission for a committee to meet during a session is only in order under the order of business of motions and resolutions.

3. Whenever the house goes into session, it is the duty of a committee, upon receiving notice, to immediately discontinue its meetings, and attend in the house. Committees may not continue in session when, at the hour of convening of the house, they are notified by the sergeant-at-arms, in the performance of his duty, that the time for convening of the house has arrived.

4. When the house is in session, the presiding officer may direct the sergeant-at-arms to call any committees that are sitting, and when the sergeant-at-arms announces

Section 628—
Paragraph 1—
Hughes, Sec. 817.
Paragraph 2—
Hughes, Sec. 817; N. Y. Manual, p. 427.
Paragraph 3—
Jefferson, Sec. XI; Hughes, Sec. 875; Reed, Sec. 70; Cushing, Sec. 275.
Paragraph 4—
Hughes, Sec. 874.

his instructions from the presiding officer to the committee, it is at once adjourned.

5. Legislative committees, in the absence of a special authority, can act only while the legislature is in session, but it is within the power of a legislature, in the absence of constitutional restrictions, to appoint committees to sit after adjournment.

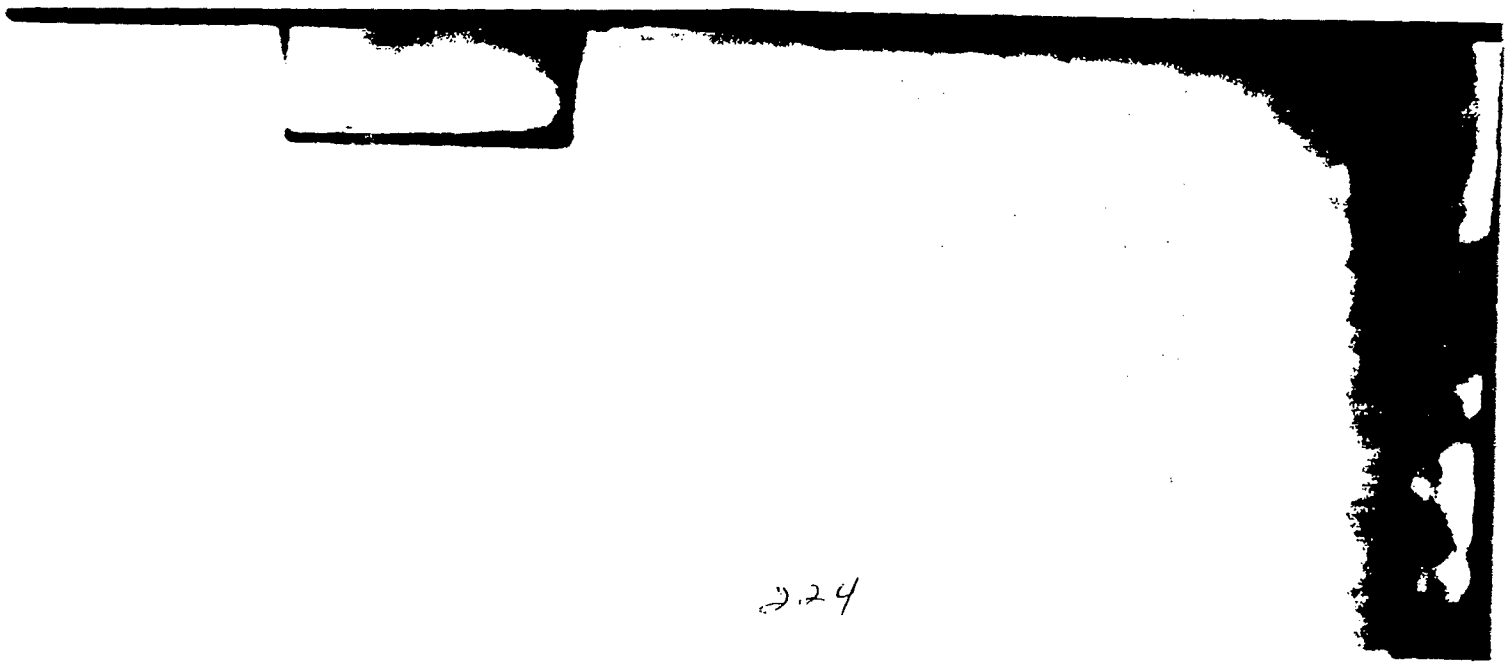
6. A committee may not occupy the legislative chambers for committee meetings without the consent of the house.

Sec. 629. Attendance of Members at Committee Meetings

1. Any member of a legislative body has the right, ordinarily, to be present at committee meetings and to express his opinion, but he cannot vote and must give way to any member of the committee. Committee meetings are generally open to persons who are interested in the business before the committee and to the press and the public in general.

2. The general rule is that a committee cannot exclude other members of the body from its deliberations. Unless

Section 628—Continued
Paragraph 5—
Russell v. Cone (1925), 168 Ark. 989, 727 S.W. 678; Fergus v. Russel (1915), 270 Ill. 304, 110 N.E. 130; Branham v. Lange (1861), 16 Ind. 497; Marshall v. Harwood (1855), 7 Md. 466; Commercial and Farmers Bank v. Worth (1895), 117 N. C. 146, 23 S.E. 160; Ex parte Caldwell (1906), 61 W. Va. 49, 55 S.E. 910.
Paragraph 6—
Hughes, Sec. 858.
Section 629—
Paragraph 1—
Jefferson, Sec. XXVI; Reed, Sec. 78; Hughes, Sec. 810.



the practice of committees to hold closed or secret sessions is clearly established, the committee should secure the definite authority from the legislative body whenever it desires to hold closed sessions.

Section 629—Continued
Paragraph 2—
Hughes, Sec. 846; May, p. 302; Sturgis, p. 123. Reed, Sec. 78, states that a committee has authority to exclude all but members of the committee.

CHAPTER 59

PROCEDURE IN COMMITTEES

Sec. 632. Committee Procedure Less Formal

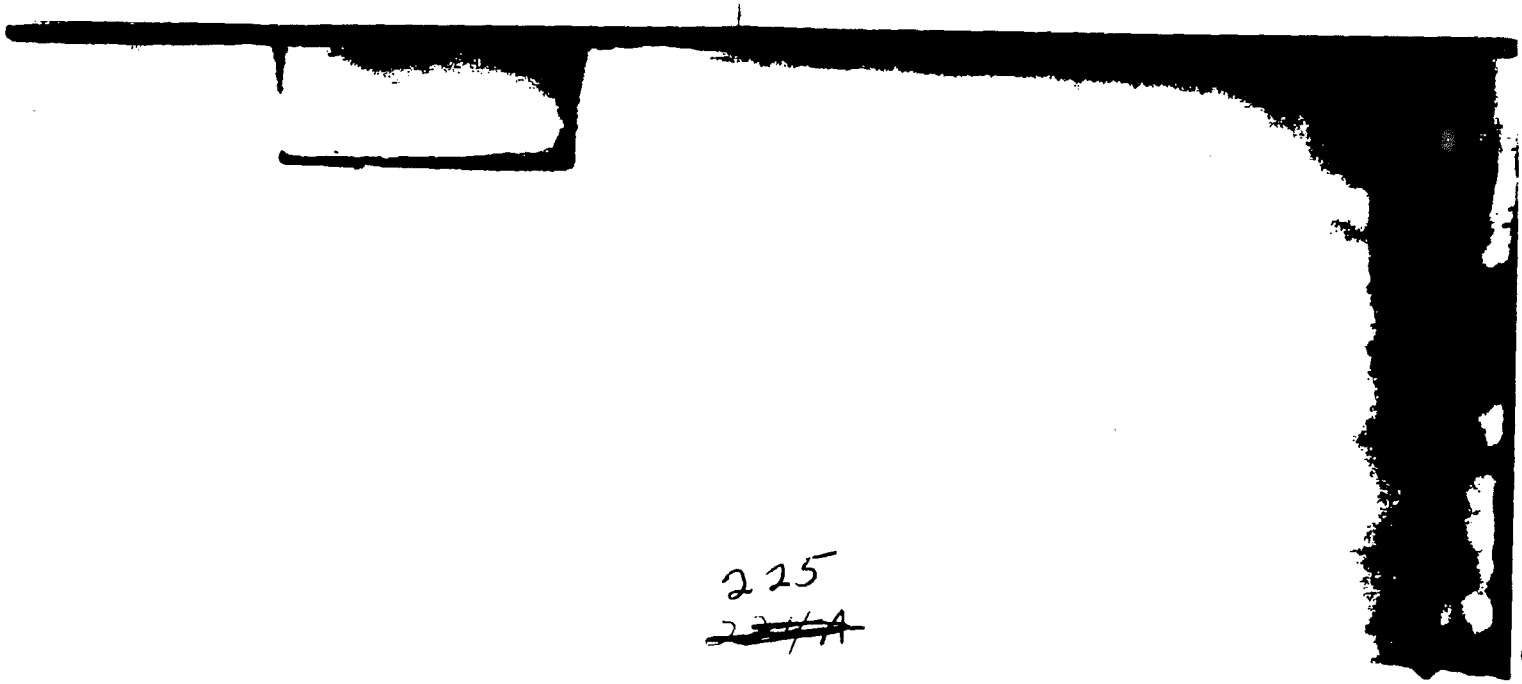
1. The rules of procedure in the committee are the same as the rules of the body insofar as such rules are applicable to committee procedure. But insofar as the conditions permit, the rules limiting debate should be relaxed in order to give free discussion and not to handicap the work of the committee. The principal rules which are thus not enforced in their full vigor are the following: That no motions to close or limit a debate are allowed, that it is not necessary to arise and address the body before making a motion, that the chairman does not rise to put a question, that he does not leave the chair to speak or to make motions, that motions are not required to be seconded even though this requirement may still be retained by the body, and that a member may speak more than once at the same stage of consideration of a question.

2. There can be no appeal to the presiding officer of the body from decisions on points of order made by committee chairmen.

Sec. 633. Order of Consideration of Measures

1. It is customary for a committee to take up business referred to it in the order in which it was referred unless

Section 632—
Paragraph 1—
Sturgis, p. 121; Hughes, Sec. 780; N. Y. Manual, p. 428; Reed, Sec. 74; Cushing, Sec. 279.
Paragraph 2—
Hughes, Sec. 764.
Section 633—
Hughes, Sec. 780.



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a schedule of hearings has been prepared, but measures may, upon motion or upon general consent, be taken up out of order.

2. The business of committees can be expedited by the chairman preparing a schedule of measures to be heard and giving notice some time in advance.

Sec. 634. Manner of Considering Measures

1. The usual manner of considering a paper of any kind in committee, when copies are not available for the members, is for the chairman to read the paper by sections or paragraphs and give opportunity for discussion and amendment of each section before proceeding to the next. When measures are considered in this manner, the question is not put on each section separately, but reserved until the paper is completed and the question is put on the whole document.

2. In a committee all questions must be put to a vote unless agreed to by general consent.

Sec. 635. Reconsideration by Committee

1. A standing or special committee has a right to reconsider any action taken by it so long as the subject matter remains in the possession of the committee.

2. Reconsideration in a committee is generally subject to the same rules as in the body. The principal variations are that even when there is a time limit on the motion to reconsider in the main body a reconsideration can be moved at any time while the matter still remains before

Section 634—
Paragraph 1—
Reed, Sec. 74.
Section 635—
Paragraph 1—
Hughes, Sec. 878.

the committee, and that a reconsideration may be moved by any member, even though he was absent when the vote was taken.

Sec. 636. Authority of Committee With Reference to Measures

1. Where a paper or document is referred to a committee, no action considering or proposing the whole need be taken, because the document already stands as a measure before the body. The sole authority of the committee with reference to such measures is to propose such changes as the committee desires to recommend, and to make its recommendation concerning the action to be taken on the measure by the body.

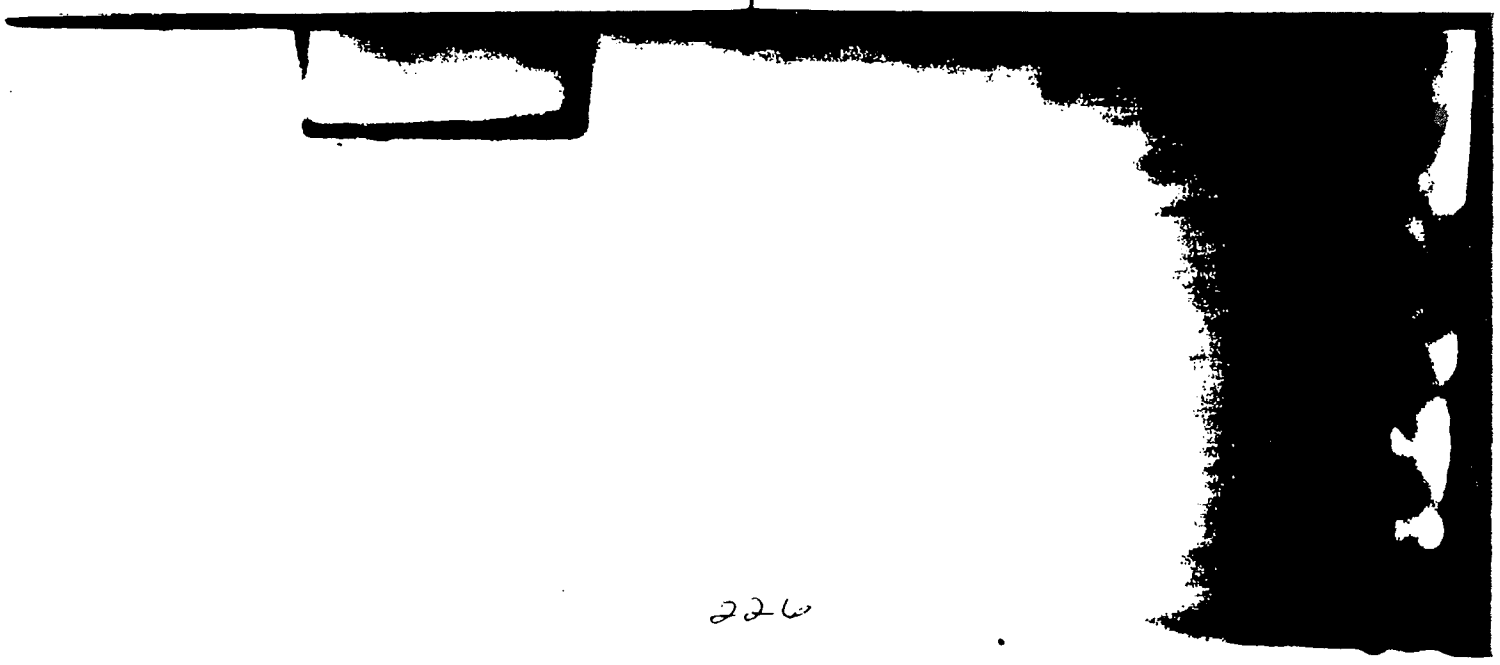
2. If a committee is opposed to the whole bill or document, it cannot reject it, but should report it back to the body. The measure may be reported without recommendation or the committee may recommend the disapproval of the measure. The committee may, of course, propose to the body any change by amendment so long as the amendments are germane to the subject of the measure.

3. The practice of preventing the passage of measures by leaving them in committee without taking action on them, or laying them on the table in committee, is well established in some state legislatures.

Sec. 637. Adjournment of Committee Meetings

1. A regular or special committee meeting may be adjourned but never beyond the time for the next regular

Section 636—
Paragraph 1—
Jefferson, Sec. XXVI.
Paragraph 2—
Jefferson, Sec. XXVI.
Paragraph 3—
Hughes, Sec. 880.



meeting. If an adjourned meeting does not complete its business, it may adjourn again to a time not beyond the next regular meeting, and any business that might be conducted at the regular meeting may be conducted at the adjourned meeting.

2. All committees, upon the completion of the regular business of the meeting, should be adjourned upon motion.

3. The motion to rise is never used in standing committees except when the work of the committee is completed and the committee will not meet again. This motion in a committee is equivalent to the motion to adjourn sine die in the house.

Section 637—
Paragraph 1—
Hughes, Sec. 743.
Paragraph 2—
Hughes, Sec. 745.

CHAPTER 60

SPECIAL OR SELECT COMMITTEES

Sec. 640. Membership of Special Committees

1. As a matter of policy, a committee for action should be small and consist only of those in favor of the proposed action, and if one not at sympathy is appointed, he should ask to be released.

2. A committee for deliberation or investigation, on the other hand, should represent all the important factions in the body, so that its opinion will carry as great weight as possible. Such a committee should also consist of representatives on both sides of a question, where there is a clear division, as the committee will also be subject to charges of bias if any important faction is not represented.

3. Where a committee is appointed to study some particular measure or matter, persons opposed to the whole project should not be appointed, for such persons may attempt to destroy the matter referred to the committee, rather than to place it in condition to be better considered by the body.

Sec. 641. Instructions to Special Committees

See also Sec. 620, Instructions to Committees.

1. Instructions to a special committee may be agreed to or stated before the vote is taken on the motion to commit or they may be given afterwards.

Section 640—
Paragraph 1—
Sturgis, pp. 117, 118.
Paragraph 2—
Sturgis, p. 118; Reed, Sec. 69.
Paragraph 3—
Jefferson, Sec. XXVI.
Section 641—
Hughes, Sec. 752; Cushing's Legislative Assemblies, Secs. 2161-2166; Sturgis, p. 120.

2. Even after a select committee has been chosen, it is in order to move to discharge the order referring the bill and thereafter to appoint a different committee with different instructions.

Sec. 642. Meeting of Special Committees

See also Chapter 58, Secs. 625-629, Committee Meetings.

1. A meeting of a special committee may be called at any time by the chairman or by any two members of the committee by notifying every member of the meeting. When a special committee adjourns to meet at another time, it is advisable, though not necessary, that absent members be notified of the adjourned meeting. When a special committee adjourns without fixing a time for the next meeting, it is regarded as having adjourned at the call of the chairman.

Sec. 643. Procedure in Special Committees

See also Chapter 59, Secs. 632-637, Procedure in Committees.

1. Procedure in special committees is the same in all important particulars as procedure in standing committees.

2. Most of the routine consideration of bills is done by standing committees, but the matters which require some special consideration are often referred to special or select committees. The selection of special committees, therefore, differs from that of standing committees, and because of the different nature of their duties they have no regular meetings, and when their special work is completed, they are discharged. Their reports also, being

Section 642—
Cushing's Legislative Assemblies, Secs. 1895-1899; Hughes, Sec. 752.

usually on special matters, receive a special consideration, while the recommendations of standing committees on bills accompany the bills to second and third readings without the reports themselves receiving any separate consideration.

Sec. 644. Discharge or Dissolution of Special Committees

1. When a special committee is appointed for a specific purpose, it continues to exist until the purpose assigned to it has been fulfilled, unless sooner discharged. When the final or complete report of a special or select committee has been received by the house, the committee is thereby dissolved or ceases to exist without any motion to that effect being made. When the report is only partial, the committee is not discharged until the final report is received.

2. A special or select committee may be dissolved by discharging or rescinding the order or motion providing for it.

3. A special or select committee which has expired is revived by a vote or by the reference of any matter to it.

4. A special committee expires at the end of a session of the legislature unless continued by resolution.

Section 644—
Paragraph 1—
Keys v. Westford (1835), 17 Pick. (Mass.) 273; Jefferson, Sec. XXVII; Hughes, Sec. 760; Reed, Sec. 85; Cushing, Secs. 290, 291.
Paragraph 2—
Hughes, Sec. 758.
Paragraph 3—
Jefferson, Sec. XXVI; Hughes, Secs. 759, 760; Cushing, Sec. 290.
Paragraph 4—
Hughes, Sec. 759.

5. When a committee is discharged, the chairman should promptly return to the secretary or chief clerk all papers that have been entrusted to the committee.

Sec. 645. Appointment Should Immediately Follow Reference

1. It is in order to refer a matter to a committee not yet appointed. When a motion to refer a matter to a special committee is adopted, the committee should be selected as promptly thereafter as is reasonably possible.

CHAPTER 61

COMMITTEE OF THE WHOLE AND INFORMAL CONSIDERATION

Sec. 650. Purpose of Committee of the Whole

1. The purpose of the committee of the whole is to permit more free and informal discussion of any question than could be had in a deliberative body acting under its ordinary rules of procedure.

Sec. 651. Chairman of Committee of the Whole

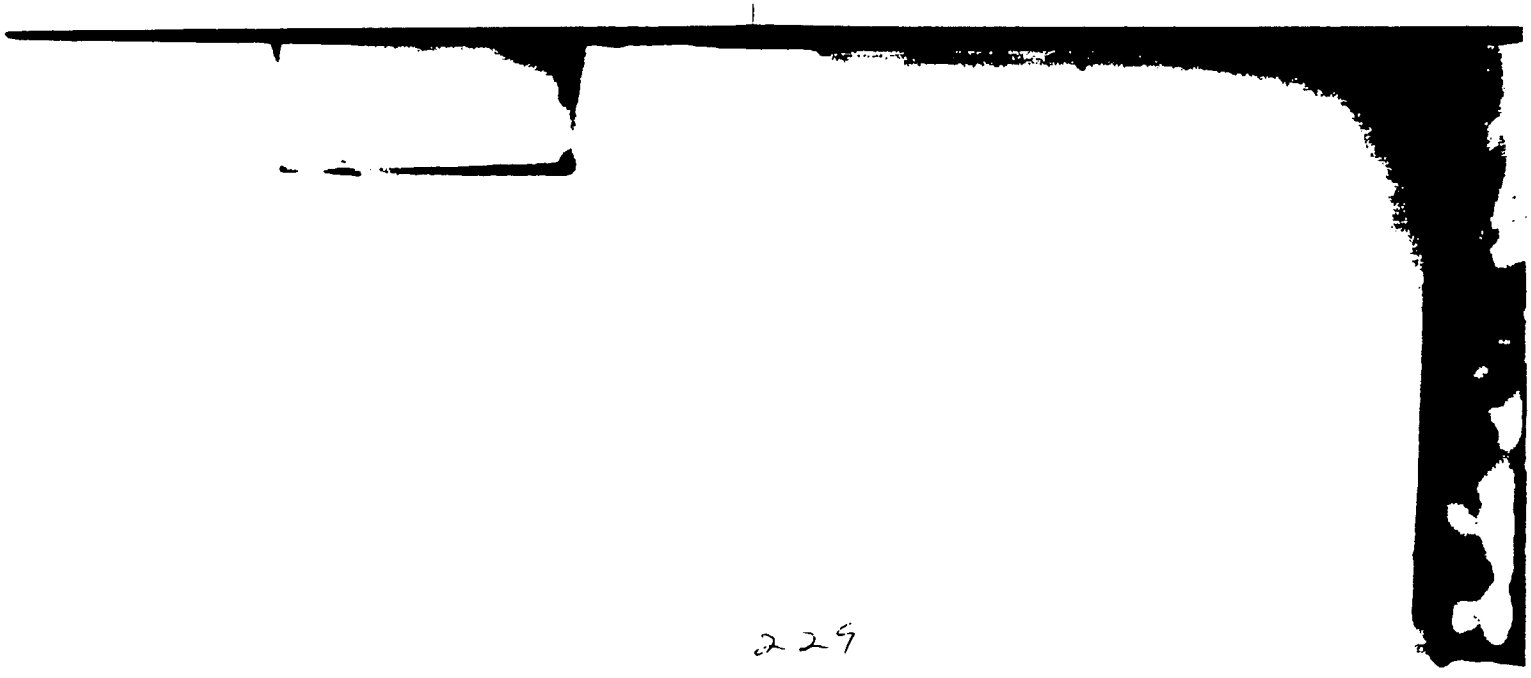
1. When the house resolves itself to the committee of the whole, the presiding officer appoints a chairman of the committee, and leaves the chair. When he is a member he may take his place among the other members.

2. The appointment of the chairman of the committee of the whole by the presiding officer is usually acquiesced in, although it is disputed whether the committee has the right to select its own chairman.

3. If a message to the house is announced during a committee of the whole, the presiding officer takes the chair and receives the message, relinquishing the chair again to the chairman of the committee of the whole.

4. The secretary or clerk does not record in the minutes the proceedings of the committee of the whole, but should

Section 651—
Paragraph 1—
Jefferson, Sec. XII; Cushing, Secs. 297, 298; Reed, Sec. 87.
Paragraph 2—
Jefferson, Sec. XII; Reed, Sec. 87.
Paragraph 3—
Jefferson, Sec. XII.
Paragraph 4—
Cushing, Sec. 301; Reed, Sec. 88.



keep a record of the proceedings for the use of the committee.

5. In case of disorder in committee of the whole, the presiding officer of the house may resume the chair without formality, and after the disturbance subsides, may again relinquish the chair to the chairman of the committee.

Sec. 652. Going Into Committee of the Whole

1. When it is desired to go into the committee of the whole, the motion is made "That the senate (or house or council) do now resolve itself into a committee of the whole to consider," or "for the purpose of considering," the subject which it is desired to consider more freely.

2. The motion to resolve into a committee of the whole is equivalent to the motion to commit and takes precedence in the same order.

Sec. 653. Quorum of Committee of the Whole

1. The quorum of the committee of the whole is the same as the quorum of the house, and in case a quorum is not present or other defect is observed, the committee can take no other action than to rise.

2. A motion to rise may be carried by less than a quorum in committee of the whole.

Section 651—Continued
Paragraph 5—
N. Y. Manual, p. 433; Cushing, Sec. 300a.
Section 652—
Cushing, Sec. 207.
Section 653—
Paragraph 1—
Jefferson, Sec. XII; Cushing's Legislative Assemblies, Sec. 1995; Reed, Secs. 18, 89; Cushing, Sec. 299.
Paragraph 2—
Hughes, Sec. 651.

Sec. 654. Procedure in Committee of the Whole

See also Chapter 59, Secs. 632-637, Procedure in Committees.

1. Except for the greater leeway offered for debate and discussion, the procedure in committee of the whole is subject to the same rules as the house. The rules of the house should be observed so far as they are applicable.

2. After resolving into committee of the whole, it is permissible on motion to limit the debate to a certain length of time, to close at a certain time, to limit the length of speeches, or to otherwise limit debate.

3. Unless debate is limited, any member may speak as often as he can get the floor, and as long as the rules permit, although he cannot speak a second time, provided another member who has not spoken wishes the floor.

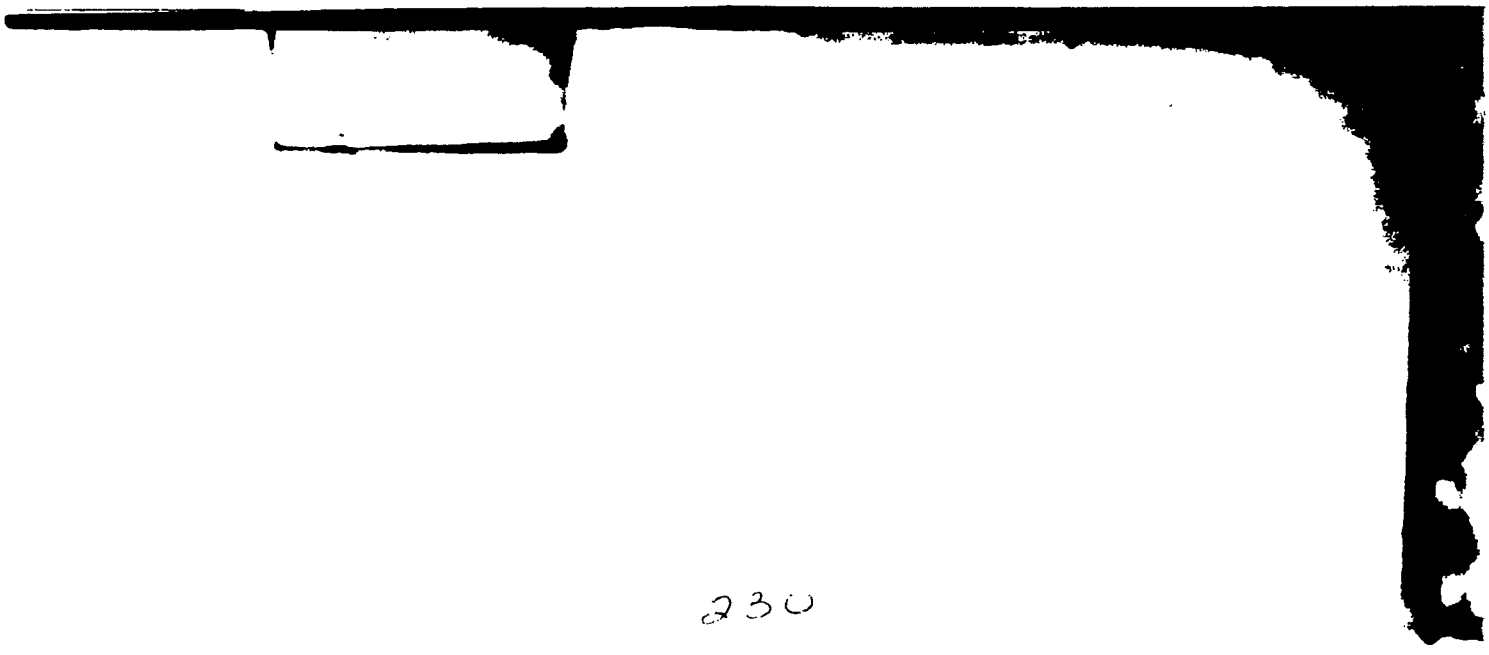
4. The motion for the previous question cannot be put in committee of the whole, and a vote taken in committee of the whole may not be reconsidered.

5. The motions permitted in committee of the whole are considerably restricted, the only regular motions available being: to limit debate, to propose amendments, to recommend, and to rise.

6. Likewise, the committee of the whole cannot take any final action but its power is limited to recommendation to the house, the same as any other committee.

7. An appeal from a decision of the chair can be made but must be taken directly as it cannot be laid on the table nor postponed, since neither of these motions is permitted.

Section 654—
Concerning procedure in committee of the whole see Cushing's Legislative Assemblies, Secs. 1987-2022; Jefferson, Sec. XII; N. Y. Manual, p. 435; Reed, Secs. 86-99; Cushing, Secs. 302-309.



8. When the house has fixed the duration of the committee of the whole, the time cannot be extended even by unanimous consent.

9. But, when the work of the committee is incomplete, at the expiration of the time available, the chairman of the committee of the whole may ask leave to sit again.

Sec. 655. Limitations on Committee of the Whole

1. The committee of the whole, like other committees, derives its authority solely from the body and is confined strictly to the powers delegated to it.

2. Also, being but a committee, it is limited in other matters.

3. A committee of the whole:

(a) Cannot order a vote by roll call taken on any matter.

(b) Cannot entertain any question of priority.

(c) Cannot entertain any matter of privilege.

(d) Cannot lay a question on the table.

(e) Cannot postpone the consideration of any question.

(f) Cannot reconsider a vote.

Section 655—
Paragraph 1—
N. Y. Manual, p. 435.
Paragraph 2—
N. Y. Manual, p. 434.
Paragraph 3—
(a) Reed, Sec. 90; Cushing's Legislative Assemblies, Sec. 2000.
(b) N. Y. Manual, p. 435.
(c) Cushing's Legislative Assemblies, Sec. 2000; N. Y. Manual, p. 434.
(d) Tilson, p. 61; Cushing's Legislative Assemblies, Sec. 2000.
(e) Cushing's Legislative Assemblies, Sec. 2000.
(f) Cushing's Legislative Assemblies, Sec. 2000.

(g) Has no authority to appoint a subcommittee.

(h) Cannot punish members for disorderly conduct, but must report any misconduct to the body for its action.

(i) Is dissolved by the absence of a quorum, but may proceed when a quorum is obtained.

4. Seconds to motions were not required in committee of the whole even before they became obsolete in legislative bodies generally.

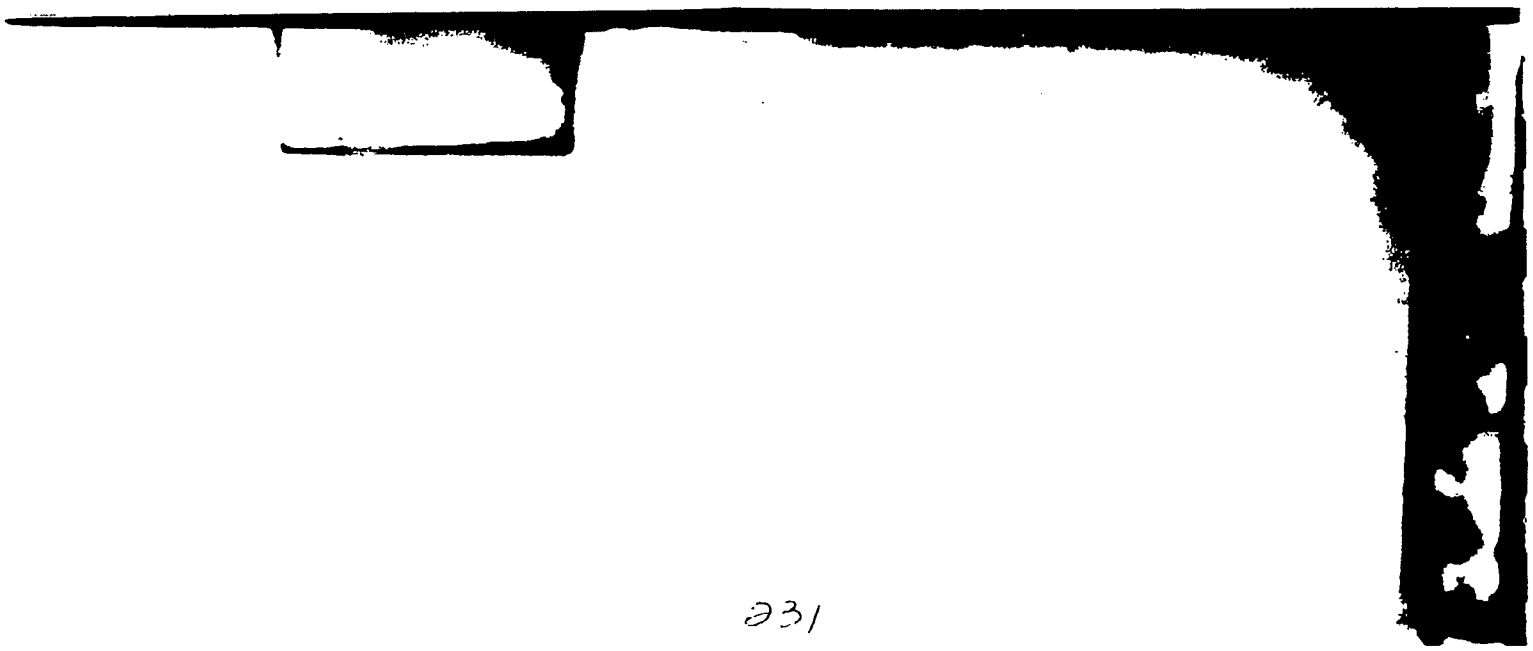
Sec. 656. Returning From Committee of the Whole to Proceeding as Body

1. When it is decided to revert to proceedings as the body, the motion is made that "The committee rise and report," or that "The committee do now rise." This motion is equivalent to the motion to adjourn in the body, and is always in order, except while voting or while a member has the floor. It is likewise undebatable and cannot be amended nor have any subsidiary motions applied to it.

2. The motion to adjourn is not in order in committee of the whole. The proper procedure is to adopt the motion to "rise" restoring the committee to the status of the body when the motion to adjourn is in order.

3. The motion to rise in committee of the whole may be carried by less than a quorum.

Section 655—Continued
Paragraph 3—Continued
(g) Reed, Sec. 97; Cushing, Sec. 306; N. Y. Manual, p. 435.
(h) Reed, Sec. 94; Cushing, Sec. 308; N. Y. Manual, p. 433.
(i) Cushing, Sec. 299; N. Y. Manual, p. 436.
Paragraph 4—
Cushing's Legislative Assemblies, Sec. 2000.
Section 656—
Paragraph 1—
Jefferson, Sec. XXVI; Cushing, Sec. 310; Reed, Sec. 92.
Paragraph 3—
Hughes, Sec. 651.



CHAPTER 63

JOINT COMMITTEE

See also Sec. 764, Conference Between the Houses, and Chapter 72, Secs. 766-775, Conference Concerning Amendments.

Sec. 663. Joint Committees Defined

1. A joint committee is a committee made up of committees appointed by each house sitting together.

Sec. 664. Chairmen of Joint Committees

1. It is the custom for the chairman of the senate committee to act as chairman of the joint committee, but a joint committee has the right to select its own chairman.

Sec. 665. Quorum of Joint Committees

See Sec. 502, Par. 5, for Quorum of Joint Meetings.

1. A quorum of a joint committee is a majority of its combined membership and when a quorum is present a majority of that quorum is capable of transacting business. The quorum of a committee on conference is a quorum of the committees of each house.

Sec. 666. Instructions to Joint Committees

See also Sec. 620, Instructions to Committees.

1. A joint committee may be instructed by either house acting independently or both houses acting concurrently.

Section 663—
Cushing's Legislative Assemblies, Sec. 2043; Hughes, Sec. 747; Reed, Secs. 62, 238.

Section 664—
Hughes, Sec. 747.

Section 665—
Hughes, Sec. 747.

Section 666—
Hughes, Sec. 864.

Sec. 667. Reports of Joint Committees

1. The report of a joint committee should be made to each house by the members of the house represented on the committee.

Sec. 668. Voting in Joint Committees

1. In voting in joint committees, except in conference committees, the members vote individually and not by houses. Conference committees are in fact joint meetings of separate committees, consequently in conference committees the committees from each house vote separately, and a majority vote of each committee is required to take any action.

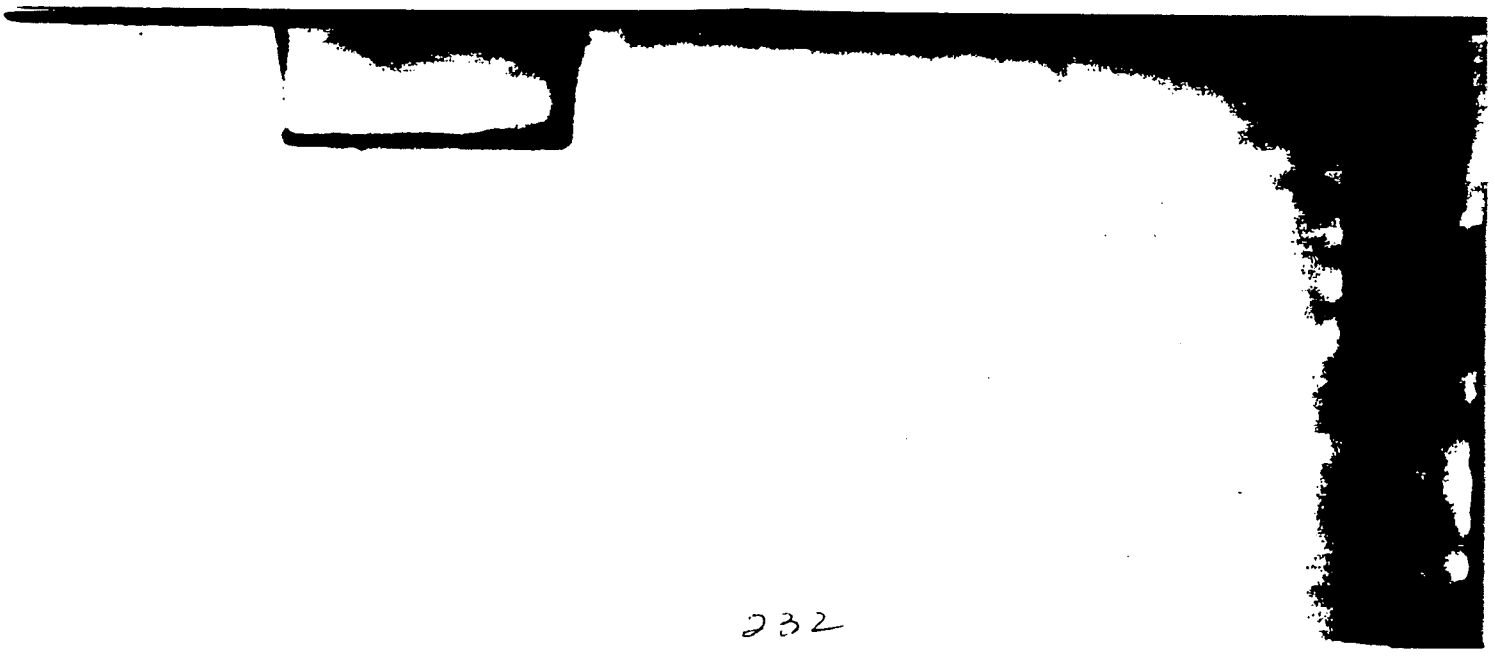
Sec. 669. Joint Meetings of Standing Committees

1. A house may authorize or direct two standing committees to sit as one committee for the consideration of a specified bill or subject.

Section 667—
Hughes, Sec. 856.

Section 668—
Hughes, Sec. 747.

Section 669—
Hughes, Sec. 839.



CHAPTER 64

COMMITTEE REPORTS

Sec. 672. Form of Committee Reports

1. Every bill reported by a committee must be accompanied by a written report. The bill should be returned with its report but should not be permanently attached to it.

2. A committee should report only such recommendations as have been agreed upon by a majority vote at a meeting to which all members were invited, and at which a quorum was present.

3. A committee report should make a distinct recommendation concerning each bill or question reported by it, but one report may recommend concerning several bills.

4. When a committee has not been able to agree on a bill, it may report the bill back without recommendation.

5. When an amendment was pending when a bill was referred to committee, the committee should report on the amendment, but when a motion to postpone indefinitely was pending, it may be regarded as defeated by the reference and so may be ignored.

6. When resolutions are required to carry into effect the recommendations of a committee on matters submitted to it, the appropriate resolutions should be prepared by the committee and submitted with its report.

7. A committee report does not necessarily contain a recommendation but may simply report facts.

Section 672—
Hughes, Secs. 772, 773, 820, 825-833; Reed, Sec. 76; Sturgis, p. 124.

8. The report of a committee appointed to investigate or report upon any matter should be accompanied by formal resolutions covering all recommendations concerning the matter referred to it, so that when the report is made, no motion is necessary except to adopt the resolutions.

Sec. 673. Preparation of Committee Reports

1. In other than simple routine reports, when the general nature of the report to be made has been agreed upon, some member of the committee should be directed to prepare the report. No one has authority to make a report for a committee except as authorized by the committee.

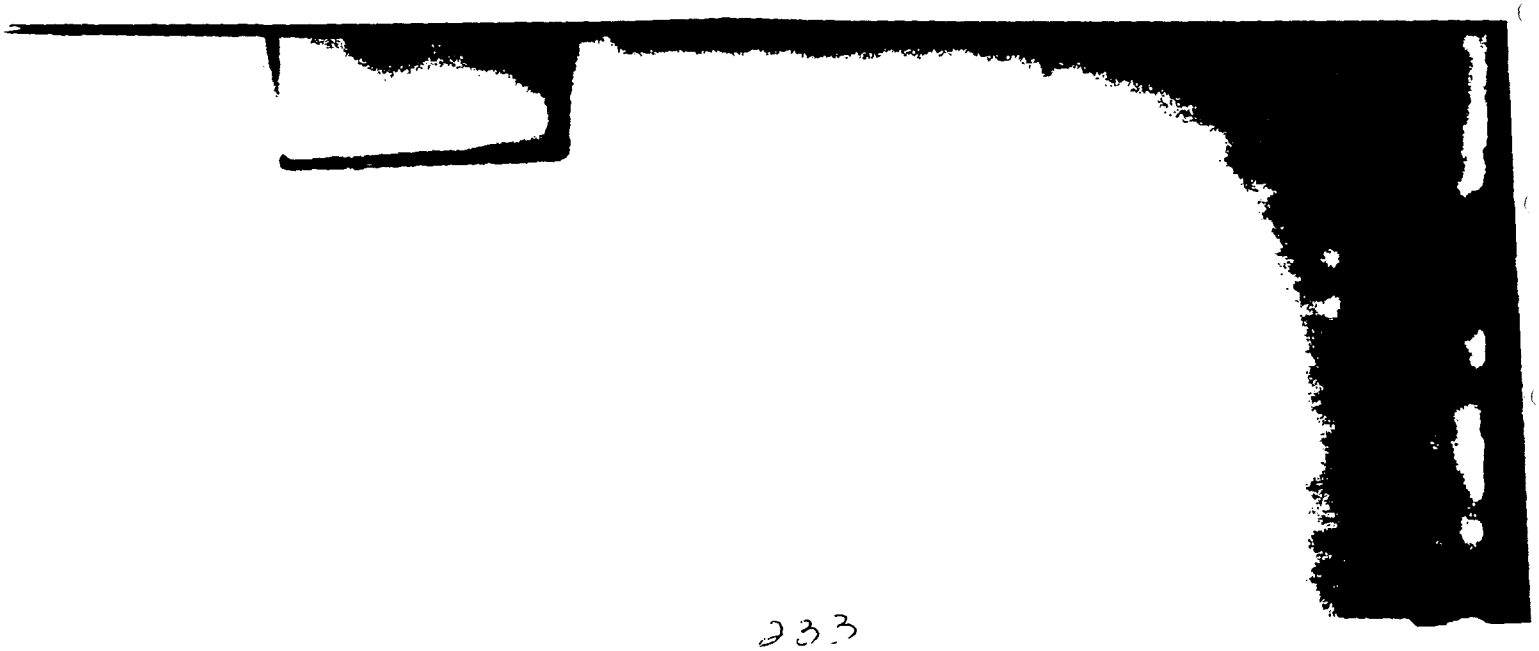
2. Usually the committee chairman prepares a draft of the report and submits it for the approval of the full committee. The chairman is never justified in making a report which has not been approved by the committee.

Sec. 674. Authentication of Committee Reports

1. Committee reports must be authorized by a majority of a quorum meeting as a committee, but it is not necessary that the report be signed by all members agreeing to it.

2. In cases where the rules require that a majority of the members of a committee sign the report, the signatures of members not in accord with the report may not be questioned.

Section 673—
Hughes, Secs. 764-770; Sturgis, p. 125; Reed, Sec. 80.
Section 674—
Paragraph 1—
Hughes, Sec. 771; Reed, Sec. 79.
Paragraph 2—
Hughes, Sec. 780.



3. If a committee report be sustained by a majority vote of a committee, it is not impeached by the fact that a lesser number signed or that more than a majority of a committee signed a further or different report.

4. A member may not withdraw his signature from a committee report which he has regularly signed, since the signing of a report is the act of the committee itself and not of the members with the consent of the committee.

Sec. 675. Presentation of Committee Reports

1. In general practice, reports of committees on enrollment, engrossment, calendar or rules, and committees on conference may report at any time when no other business is pending. All other committees should report at the proper place in the order of business.

2. At the place in the order of business provided for reports of committees, they are presented when called for by the presiding officer. Upon the arrival of the time for these reports, the presiding officer calls for the reports of standing committees, after which he calls for the reports of the special committees in the order of their appointment. When called upon, the chairman of the committee, unless another member is appointed to make the report, rises and addresses the presiding officer, and when recognized, reads the report and sends or delivers it to the desk, and when necessary, moves its adoption or acceptance.

Section 674—Continued
Paragraph 3—
Hughes, Sec. 800.
Paragraph 4—
Hughes, Sec. 883.
Section 675—
Hughes, Secs. 820, 856, 861, 869; Cushing, Secs. 287, 289; Reed, Secs. 63, 80; Sturgis, p. 126.

3. If it is desired to receive a report earlier than th rules provide, it can be done by unanimous consent o by suspending the rules.

4. The right given to a committee to report at any tim carries with it the right to consider the matter whe reported.

5. Committee reports are sometimes received out o order by unanimous consent or under suspension of th rules, and when a bill is so reported, it may be taken up fo immediate consideration without a motion to that effect

6. As a matter of practice, the routine reports are sen to the desk when prepared, and are read by the chie clerical officer or reading clerk when called for by the presiding officer under the appropriate order of business A formal reading of committee reports is not necessary when the reports are printed in the journal.

7. A report of a joint committee should be made to each house by the members of the house represented on the committee.

Sec. 676. Consideration of Committee Reports

1. The report of a committee consists only in recommendations and has no force or effect until confirmed by the house.

2. When the report of a committee is agreed to, the recommendation of the committee becomes the action of the house.

3. When a committee report is agreed to, if any motions are necessary to carry out the purpose of the report, they should be immediately submitted.

Section 676—
Jefferson, Sec. XI; Hughes, Secs. 795-799; N. Y. Manual, pp. 431, 488; Reed, Secs. 80-83; Sturgis, p. 127.

4. When the house desires further time to consider a committee report, it is in order to move that the consideration be postponed until some later time.

5. It is the usual procedure not to consider bills reported by committees when the report is received by the house, but to order the bill to second reading and to consider the bill and the recommendation of the committee when the bill comes up for second or third reading.

6. The action of the house in considering committee recommendations on measures is always directed to the bill or resolution, as, to adopt amendments or to pass the bill; and is not directed to accepting or approving the report of the committee, except in the case of adopting reports of conference committees.

7. Members of a special committee may vote on the question of receiving their own report.

8. It is a common error, after a report has been read, to move that it be received, because the fact that it has been read proves that it has been received. Another serious error is to move that a report be accepted, which is equivalent to adopting it, when it is intended only to make the report available for consideration at a later date.

Sec. 677. Minority Committee Reports

1. The reception of a minority report of a committee is a mere matter of courtesy, as the report must be made by the committee as such, and no minority need be officially recognized. It is customary to permit the minority to submit their report following the submission of the regular committee report.

Section 677—
Paragraph 1—
Hughes, Secs. 787, 788, 789; N. Y. Manual, pp. 428, 485; Reed, Sec. 75; Sturgis, p. 131.

2. The minority members of a committee may, collectively or individually, present views with the committee report, but unless filed with the report, they may be presented only by permission of the body.

3. It is proper for a single member to dissent from the report of the majority or to agree to the report with certain exceptions.

4. A member of a committee who does not agree with the report may be permitted to state his views following the filing of the committee report.

5. A minority of a committee may, with permission, submit a report in which they make recommendations opposed to all or part of the recommendations of the majority, or they may make recommendations concerning matters within the consideration of the committee which were not covered by the majority report.

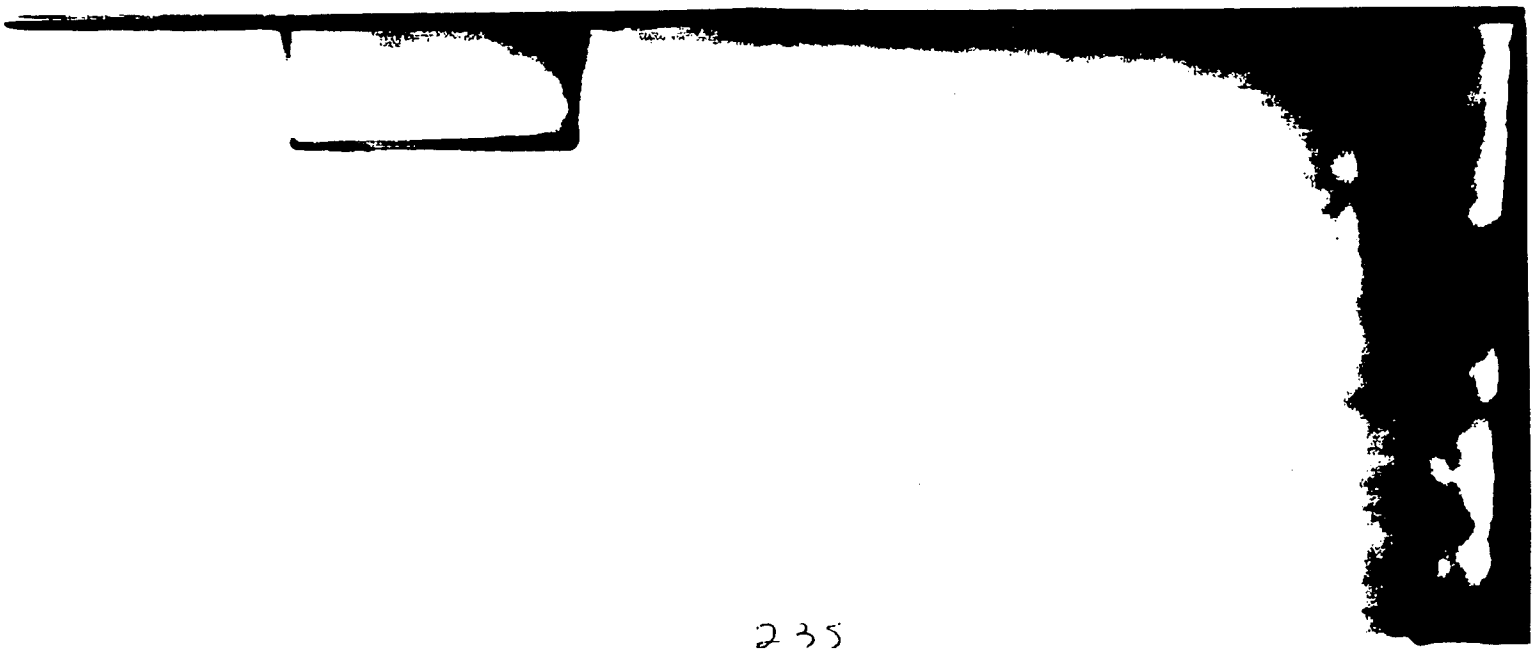
6. When a minority report has been presented, it is in order to move that it be substituted for the regular committee report. The only way that the report of a minority can be brought before the body for consideration is to move that it be substituted for the regular committee report.

7. Either a regular committee report or a "minority" report may be laid on the table without the other report adhering to or being affected by the action.

Sec. 678. Amendments Proposed by Committees

See also Chapter 39, Secs. 395-423, Motion to Amend, and Sec. 404, Amendments Proposed by Committees.

1. Amendments proposed by a committee are not binding on a legislative body in any sense but, being merely recommendations, the body, on consideration of such amendments, may agree or disagree to all or to any



amendments, or may add others or take such other action as it may choose.

2. When committee amendments are presented, it is in order to offer amendments to such amendments, or to offer other amendments, but amendments proposed by the committee are entitled to prior consideration as being first proposed.

3. The previous question may be ordered on amendments submitted by a committee and thus prevent the submission of further amendments as well as prevent debate or motions concerning the amendments submitted by the committee.

Sec. 679. Records of Actions in Committees

1. It is not in order for minutes of the meetings of a committee to be produced in the body and made public, but the chairman is at liberty to make a statement of fact regarding any action taken by such committee regarding a pending bill.

2. It is not in order, in debate, to refer to proceedings of a committee unless the committee has formally reported its proceedings, and members may not allude to, nor relate in debate, what was done or said in committee, or by any members of the committee, except such as is contained in the written report made to the body by authority of the committee.

3. No member of a committee nor any other person has a right to publish any portion of the proceedings of a committee until they have been reported by the committee to the body. Any publication of the committee report before it is presented to the body is a breach of privilege of the body.

4. The ancient rule that committees must report all matters referred to them back to the body is treated with such laxity as to standing committees that its observance is almost obsolete. In Congress, the motion to indefinitely postpone is permitted in standing and select committees.

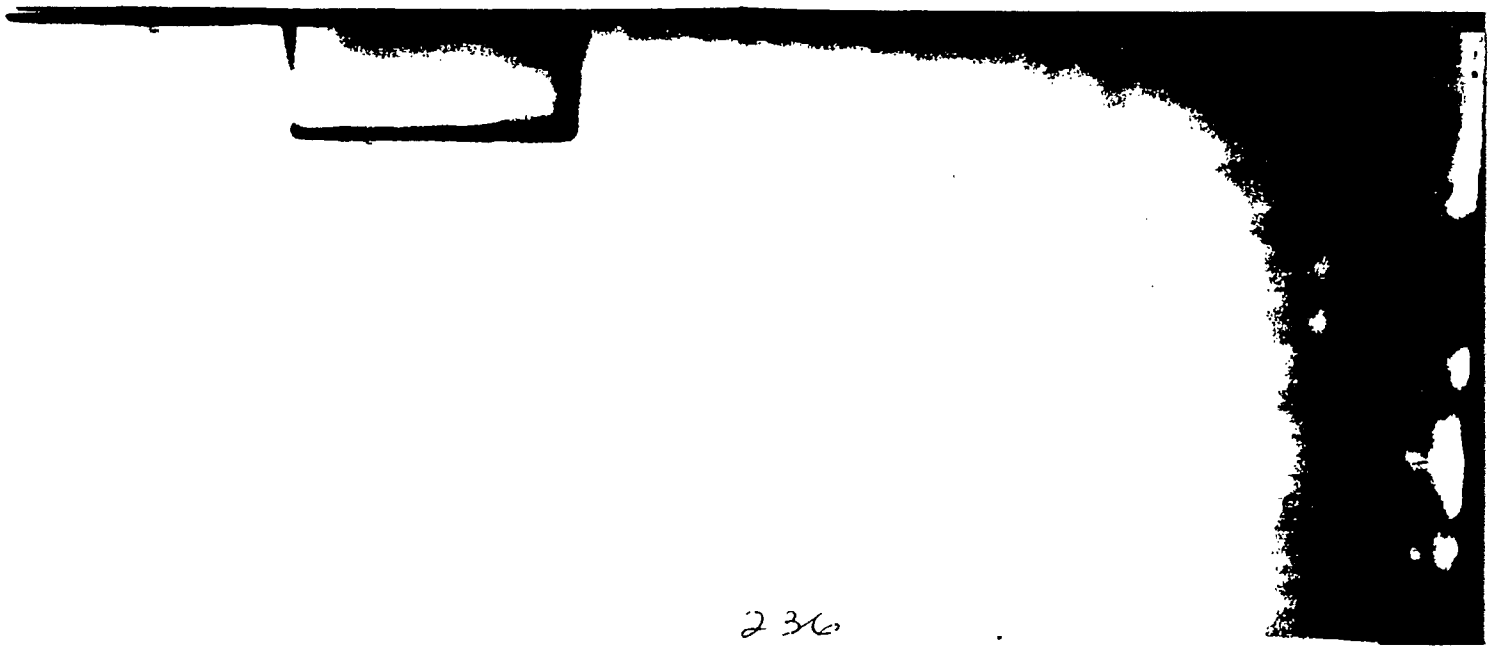
Sec. 680. Improper Committee Reports

1. It is not in order for a committee to report a bill or other matter which was not considered at a regular committee meeting, and it is the duty of the presiding officer to refuse to accept any report on a bill or other question when he has knowledge that it was not considered and acted upon at a regular meeting.

2. A committee consists of a quorum of the membership of that committee meeting together as a committee, and a paper circulated and signed by a majority of the members of the committee reporting a bill or authorizing a

Section 678—
Paragraph 1—
Jefferson, Sec. XI; Hughes, Sec. 797; N. Y. Manual, p. 431; Reed, Sec. 81.
Paragraph 2—
Hughes, Sec. 795; Reed, Sec. 84.
Paragraph 3—
Hughes, Sec. 795.
Section 679—
Paragraph 1—
Reed, Sec. 51; Hughes, Secs. 694, 748.
Paragraph 2—
Hughes, Secs. 694, 850.

Section 679—Continued
Paragraph 3—
Hughes, Sec. 850.
Paragraph 4—
Hughes, Sec. 880.
Section 680—
Paragraph 1—
Hughes, Sec. 815.
Paragraph 2—
Hughes, Secs. 741, 742.



certain committee action to be taken, in the absence of a rule authorizing that proceeding, is ineffective and cannot be regarded as a report of the committee because a committee can only act when convened as such.

3. A bill not properly reported from a committee is not entitled to its place on the calendar and should be referred back to the committee.

Sec. 681. Questioning Validity of Committee Reports

1. Neither the right of a committee to consider and report a bill, nor the validity of any action reported by a committee may be questioned after the house has begun its consideration of the bill or other matter reported.

2. If the question of whether a committee report is sufficient, or has been properly authorized, be raised, the question should be submitted to the body itself for decision rather than to be decided by the presiding officer.

3. After the report on a bill has been filed and the bill is no longer in the possession of the committee, the committee has no authority to present a supplemental report.

Sec. 682. Committee Recommendations Concerning Bills

1. The regular reports of committees, particularly the reports of standing committees concerning bills referred

Section 680—Continued
Paragraph 3—
Hughes, Sec. 798.
Section 681—
Paragraph 1—
Hughes, Secs. 775, 790, 792.
Paragraph 2—
Hughes, Secs. 780, 828.
Paragraph 3—
Hughes, Sec. 793.

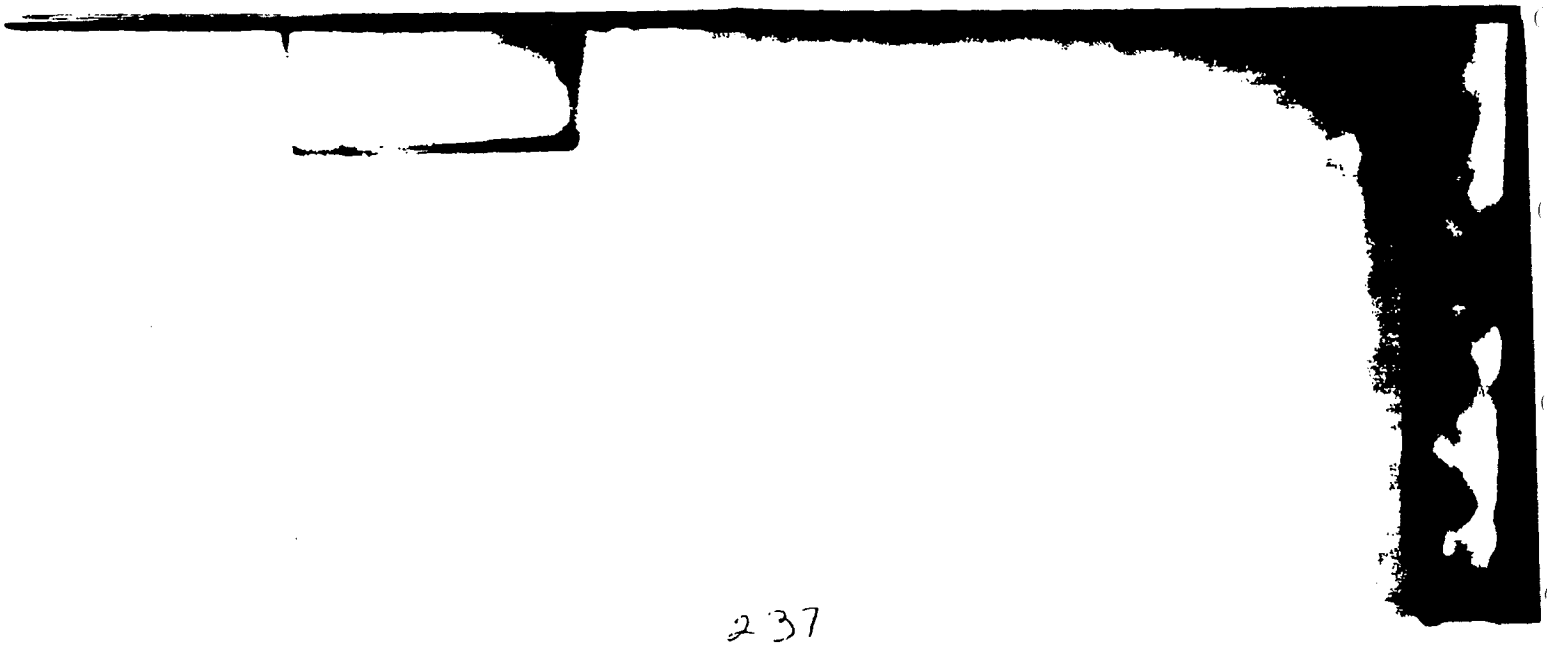
to them, usually follow a simple routine. The reports, after being received from the committee with the bills, are read in the appropriate order of business and the bills are ordered to second reading where any amendments proposed by the committee may be considered. Any other amendments may, of course, be proposed on second reading. From second reading the bills are ordered to engrossment and third reading where the question of passage is considered. The reports of the committees as such receive no special or independent consideration, but the recommendation of amendments proposed by committees are considered in connection with the bills on second reading, and the recommendation concerning passage is considered when the bills receive final consideration, at their place on the calendar.

Sec. 683. Special Reports of Committees

1. When a report by a special committee on some special question is received, it may require special consideration. When such a report has been received from committee and presented to the body, the next business is the appropriate disposition of the report. This depends largely on the nature of the report and the urgency of the matter reported. When there is no special urgency the report may be placed on calendar for consideration in the usual course.

Sec. 684. Reports of Committees for Information

1. When a report contains only a statement of facts or a statement for the information of the body, no action need be taken upon it. In such cases it is usually received and the presiding officer may order it filed or printed in the journal without a motion to that effect.



2. Where a partial report is received which reports progress only and does not contain any recommendations, it is treated the same as a report for information only.

3. The report of a nominating committee does not require any action or other consideration by the body, but the nominations upon receipt of the report are treated as if they had been made by members from the floor.

See Secs. 545 to 550, Nominations.

Sec. 685. Motion to "Adopt" Committee Reports

1. When a report makes any statement of policy which the body desires to approve, the proper motion is to "adopt" or "approve" the report, which has the effect of endorsing the statement or expressing its approval by the body.

2. When the body desires to take no action whatever on the report, the motion should not be made to "accept" the report, as this motion has the effect of expressing approval or endorsing the findings or recommendations. The motion to "adopt" a report is probably preferable to the motion to "accept" when the purpose of the body is to adopt the policy or express its approval of the report.

3. It is in order for the presiding officer, upon the consideration of a report or recommendation made by a committee, to put the question on adoption of the report, amendment, or substitution, without waiting for a motion from the floor. The report of the committee may be regarded as proposing any matter to the body which is contained or recommended in the report.

Section 685—
Sturgis, p. 129; Hughes, Secs. 134, 676.

Sec. 686. Presenting Committee Recommendations

1. When a report contains recommendations, they should be summarized at the end so that they may be conveniently given special consideration, or separate consideration when desired. When the committee proposes that some action be taken by the legislative body, the proper resolutions should be prepared and submitted with the report, and the proper procedure is for the member making the report to move the adoption of the resolutions. When the body desires to approve these recommendations, the proper motion is to adopt the recommendations.

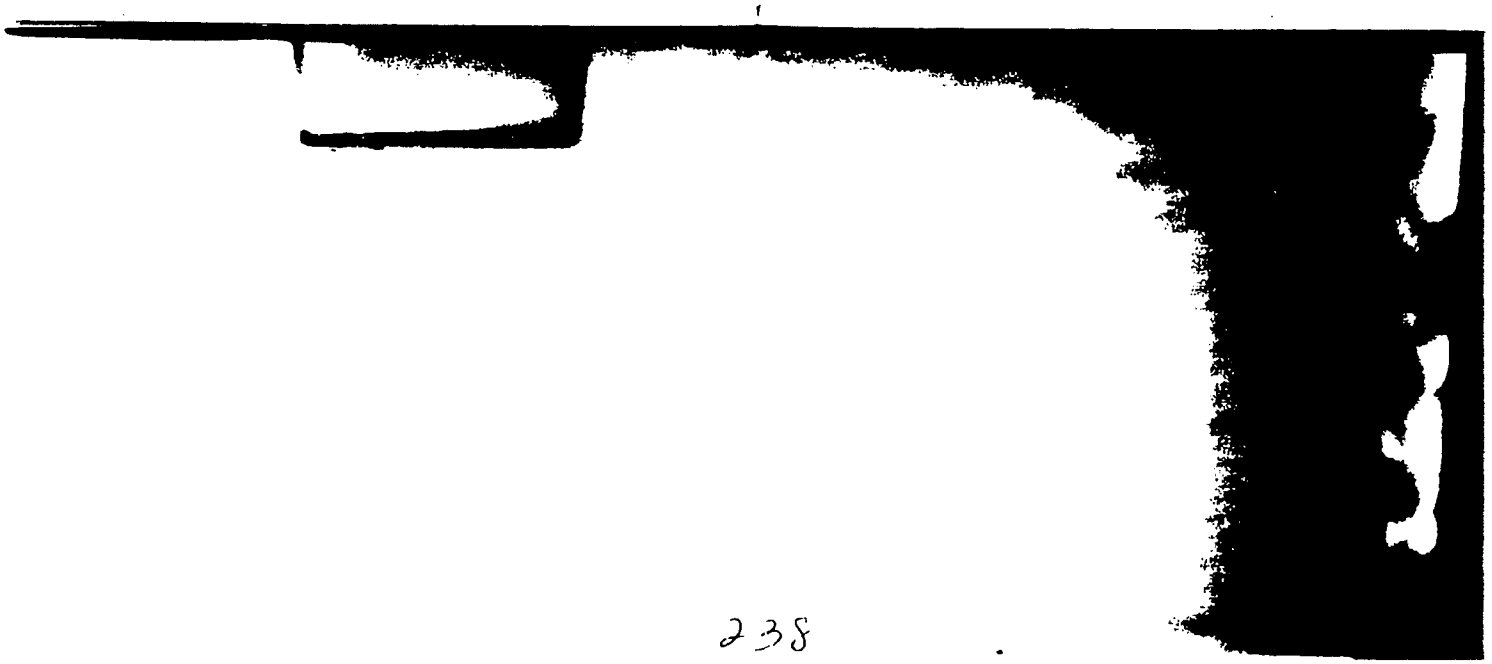
Sec. 687. Consideration of Committee Amendments

See also Secs. 616, Proposing Amendments to Bills; Sec. 617, Substitute Bills, and Chapter 39, Secs. 395-423, The Motion to Amend.

1. When a committee reports back a bill or resolution previously referred to it, with amendments, the amendments proposed by the committee may be treated in the same manner as if proposed from the floor. The first question should be on the adoption of the amendments, which will be followed, at the proper stage, by the question on the adoption of the bill or resolution. Opportunity should be given for members to propose further amendments from the floor. The offering of any amendments can, of course, be prevented by the adoption of the previous question.

2. The question may be put on the adoption of all amendments proposed by a committee to a measure, at the same time, unless a separate vote is demanded on any amendment or group of amendments.

Section 686—
Sturgis, p. 124; Cushing, Secs. 294-296.



Sec. 688. Substitute Measures Proposed by Committee

1. When a committee recommends a substitute resolution, the question must first be put on any amendments pending when the resolution was referred to the committee. Opportunity should be given for amendment of both the original measure and the substitution proposed by the committee before the question on the substitution is put, because if the substitute be adopted, it is not subject to further amendment.

Section 688—
Hughes, Secs. 134, 795.

CHAPTER 65

JOURNALS AND RECORDS

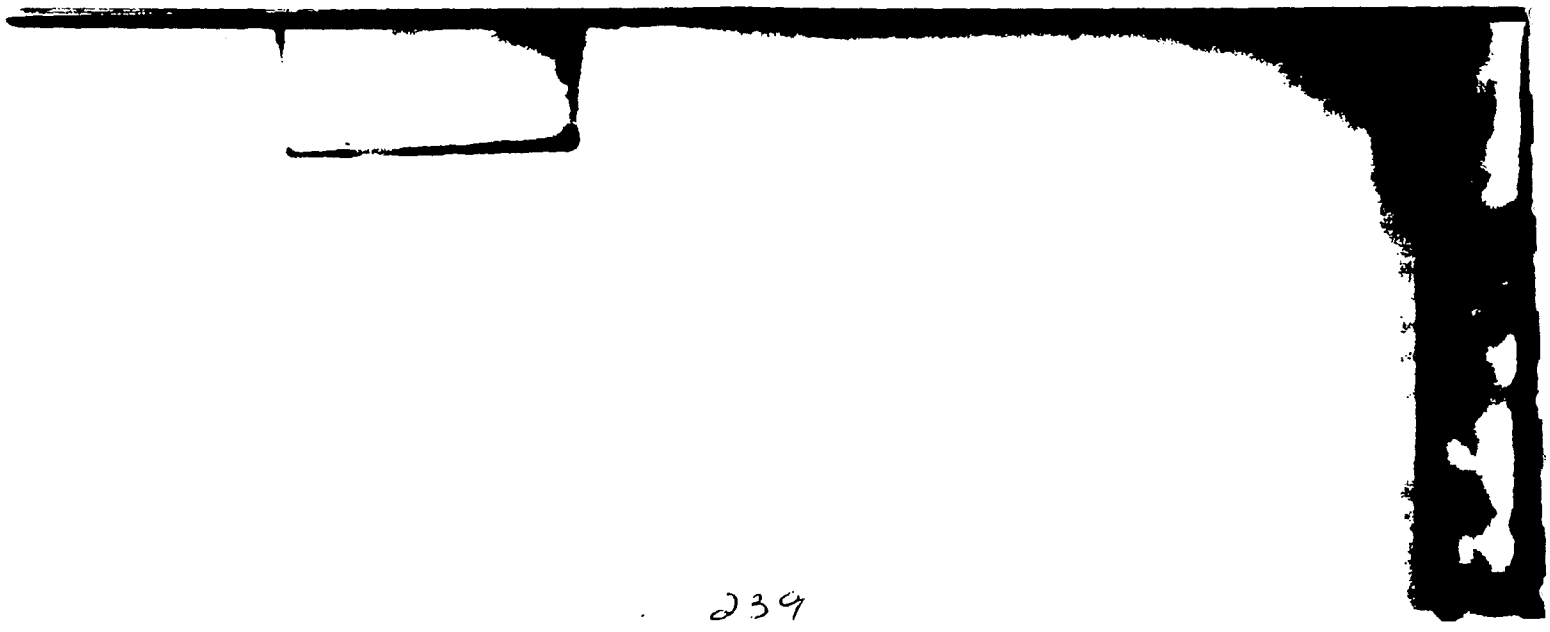
Sec. 694. Constitutional Requirements Concerning Journal

1. Each house must keep and publish a journal of its proceedings and the houses are also required, in many cases, upon the demand of a certain number or proportion of the members, to take an "aye" and "no" vote on any question and publish the same in the journal.

2. The usual constitutional requirement that each house must keep a journal does not require that every step in the passage of bills or amendments be recorded in the journals of the houses or endorsed on the bills. In the absence of a constitutional requirement, it is not essential that the journal should show the adoption of amendments.

3. Where the constitution authorizes each house to determine the rules of its proceedings, and provides that

Section 694—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 423; Ala. IV, 55; Ariz. IV, 10; Ark. V, 12; Cal. IV, 10; Colo. V, 13; Conn. III, 9; Del. II, 10; Fla. III, 12; Ga. III, Sec. VII, 4; Idaho III, 13; Ill. IV, 10; Ind. IV, 12; Iowa III, 9; Kan. II, 10; Ky. 40; La. III, 15; Me. IV, Pt. III, 5; Md. III, 22; Mich. V, 16; Minn. IV, 5; Miss. IV, 55; Mo. IV, 42; Mont. V, 12; Neb. III, 11; Nev. IV, 14; N. H. II, 23; N. J. IV, Sec. IV, 4; N. M. IV, 12; N. Y. III, 11; N. C. II, 16; N. D. II, 49; Ohio II, 9; Okla. V, 30; Ore. IV, 13; Pa. II, 12; R. I. IV, 8; S. C. III, 22; S. D. III, 13; Tenn. II, 21; Tex. III, 12; Utah VI, 14; Vt. II, 9; Va. IV, 49; Wash. II, 11; W. Va. VI, 41; Wis. IV, 10; Wyo. III, 13.
Paragraph 2—
Perry v. State (1919), 139 Ark. 227, 214 S.W. 2; State v. Cox (1920), 105 Neb. 74, 178 N.W. 918; School Dist. v. Chapman (1907), 152 Fed. 887; West v. State (1905), 50 Fla. 154, 39 So. 412.



it shall keep a journal, it refers to those matters submitted to it by the constitution, or to something relating to them and necessary toward their execution.

4. When there is no provision requiring the entry in a journal of either house of the time when a bill was returned by the governor with his objections, a recital in the journal that a bill vetoed by the governor was returned on a particular day is not conclusive as to the date of its return. The return of a bill by the governor without his approval is not a proceeding of either house within the constitutional provision requiring each house to keep a journal of its proceedings.

5. The duty of keeping a journal is imposed by constitutional provisions upon the house and not upon the presiding officer, and the duty of keeping the journal, imposed by the rules upon the secretary or chief clerk, is not a delegation of the control of the journal and he can enter upon it only such matters as the body determines shall be placed thereon.

6. When a legislative body is adjourning from day to day, in the absence of a quorum prior to organization, a temporary officer should be elected, and the record should be authenticated by the signatures of all of the members present.

Section 694—Continued
Paragraph 3—
Jefferson, Sec. XVIII.
Paragraph 4—
Parkinson v. Johnson (1911), 160 Cal. 756, 117 Pac. 1057.
Paragraph 5—
Turnbull v. Giddings (1893), 95 Mich. 314, 54 N.W. 887.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 262.

Sec. 695. Journal Record of Proceedings

See also Sec. 723, Journal Record of Readings.

1. The journal is the official record of the acts of a legislative body. It should be a true record of the proceedings arranged in chronological order. It should be a record of what is done rather than what is said.

2. The journal should be a clear, concise, unembellished statement of all proposals made and all actions taken complying with all requirements of constitutions, statutes, charters or rules concerning what is to be recorded and how it is to be recorded. It should record all procedural motions such as: to recess, to lay on the table, and to postpone; and the action taken on them, the same as upon bills or other main motions. When a motion is reversed it is not necessary or desirable that it be expunged but the original action and the one reversing it should both be in the record.

Sec. 696. What May Be Recorded in the Journal

1. There is nothing in the constitutional requirements for keeping a journal which prevents the recording in the journal of any matter considered by the house, though it may have no relation to legislation or the constitutional duties of the house.

2. The houses of the legislature may make their journals show that all their business was transacted before the time fixed for final adjournment. The statement of the legislative journals that a bill was read by sections

Section 695—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 415; Jefferson, Sec. XLIX; Sturgis, p. 98; Reed, Sec. 46; Hughes, Sec. 193.
Section 696—
Paragraph 2—
Earnest v. Sargent (1915), 20 N. M. 427, 150 Pac. 1018; State v. Carley (1925), 89 Fla. 361, 104 So. 577.

on final passage will be accepted as true although it was physically impossible for all bills passed at such session to have been read by sections on final passage.

3. A member of a legislative body may not vote or change his vote, when the vote was properly taken, after the result has been announced by the presiding officer. The member may, however, upon permission, have a statement concerning the vote printed in the journal. In having his protest against the passage of a bill printed in the journal, a member merely exercises a personal privilege and the protest does not destroy the conclusive effect of the journal.

Sec. 697. Journal as Showing Passage and Legality of Bills

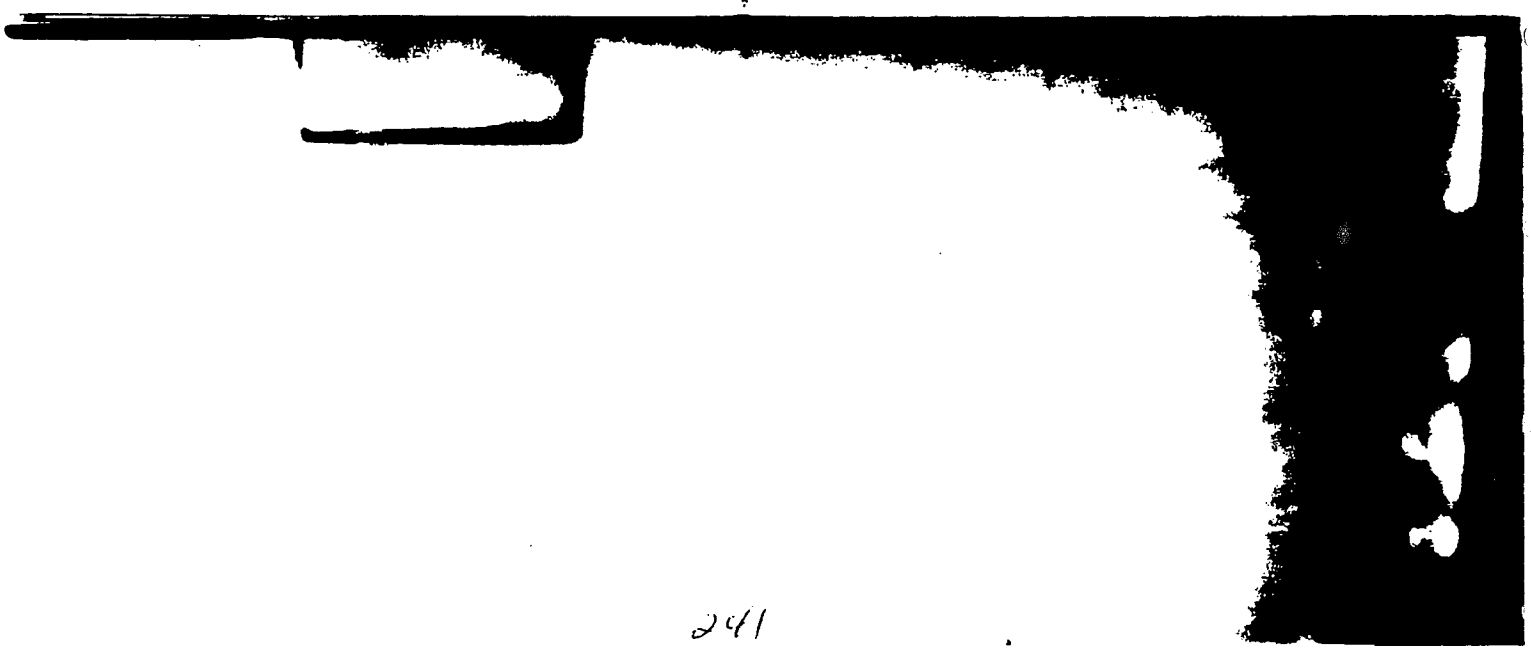
A. Mandatory requirements must be complied with.

1. All requirements of the constitution concerning the passage of bills must be complied with, but there are

Section 696—Continued
Paragraph 3—
City of Ensley v. Simpson (1909), 166 Ala. 366, 52 So. 61; Cushing, Sec. 32; N. Y. Manual, p. 504.

Section 697—
Paragraph 1—
Following is a list of the states with the rule applied in each:
U. S. Congress—The enrolled bill cannot be impeached by the journals.
Field v. Clark (1891), 143 U. S. 649, 36 L. Ed. 294.
Alabama—Journal and bill both accepted as evidence but no other evidence will be considered. Entry of votes in journal mandatory.
Robertson v. State (1901), 130 Ala. 164, 30 So. 494; State v. Martin (1909), 160 Ala. 181, 48 So. 846.
Arizona—Appears to follow the enrolled bill rule.
Graves v. Alsap, (1876), 1 Ariz. 274, 25 Pac. 836; Harwood v. Wentworth (1895), 4 Ariz. 378, 42 Pac. 1025.
Arkansas—Enrolled bill is prima facie evidence but may be disputed by journals and records of the Secretary of State.
Hodges v. Keel (1913), 108 Ark. 84, 159 S.W. 21; Mech. Bldg. and Loan Assn. v. Coffman (1913), 100 Ark. 269, 162 S.W. 1090; Rice v. Lonoke-Cabot Road Imp. Dist. (1920), 142 Ark. 454, 221 S.W. 179; Ewing v. McGehee (1925), 169 Ark. 448, 275 S.W. 766.
California—Enrolled bill rule strictly followed. Journal record not permitted to dispute the enrolled bill.
Parkinson v. Johnson (1911), 160 Cal. 756, 117 Pac. 1057; People v. Taft (1919), 42 Cal. App. 411, 183 Pac. 845.
Colorado—Enrolled bill is prima facie evidence but may be disputed by the journal.
Mass. Mutual, etc., Co. v. Colorado Loan Co. (1894), 20 Colo. 1, 36 Pac. 793; Robertson v. People (1894), 20 Colo. 270, 38 Pac. 326; In re House Bill No. 250 (1899), 26 Colo. 234, 57 Pac. 49; Andrews v. People (1905), 33 Colo. 193, 79 Pac. 1031.
Connecticut—The enrolled bill rule is followed.
Eld v. Gorham (1849), 20 Conn. 8; State v. Savings Bank of New London (1906), 79 Conn. 141, 64 Atl. 5.
Delaware—Journals are conclusive as to matters required to be recorded.
Rash v. Allen (1910), 24 Del. 444, 76 Atl. 370.
Florida—Enrolled bill is prima facie evidence of passage of bill but may be disputed by showing by journals that the mandatory provisions of the constitution were not complied with.
State v. Carley (1925), 89 Fla. 361, 104 So. 577; Gwynn v. Hardee (1926), 92 Fla. 228, 110 So. 343; Volusia County v. State (1929), 98 Fla. 1166, 125 So. 375.
Georgia—The court will look to the journal to determine whether a bill passed.
Carswell v. Wright (1910), 133 Ga. 714, 66 S.E. 905.
Idaho—Enrolled bill may be disputed by journals. Journals must show that mandatory requirements of constitution were complied with.
Cohn v. Kingsley (1897), 5 Idaho 416, 49 Pac. 985.
Illinois—Enrolled bill is prima facie evidence but may be impeached by the journals.
Ill. Central R. R. Co. v. People (1892), 143 Ill. 434, 33 N.E. 173; Neiberger v. McCullough (1912), 253 Ill. 312, 97 N.E. 660; People v. Leuders (1918), 283 Ill. 287, 119 N.E. 339.
Indiana—The journals cannot be used to impeach the enrolled bill.
Bender v. State (1876), 53 Ind. 254; Edger v. Board of Commissioners (1886), 70 Ind. 331.

several distinct rules as to the evidence which will be accepted by the courts to establish compliance with the



mandatory requirements of the constitution. The principal rules are set forth below.

Section 697—Continued
Paragraph 1—Continued

Iowa—The courts will look to the journals to determine whether the constitutional requirements were complied with in the passage of an act.
State v. Livermore (1921), 192 Iowa 626, 183 N.W. 1.

Kansas—Enrolled bill is prima facie evidence but may be disputed by journal entries.
Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355; Kansas v. Robertson (1889), 41 Kan. 200, 21 Pac. 382.

Kentucky—(No court decisions have been found which are directly in point but municipal corporations must rely upon their records).
County Board of Education v. Durham (1923), 198 Ky. 732, 249 S.W. 1028.

Louisiana—Courts look to the journals to determine whether a bill was properly enacted.
State v. Laiche (1901), 105 La. 84, 29 So. 700.

Maine—Enrolled bill is best evidence and may be disputed by journals only if incomplete.
Weeks v. Smith (1889), 81 Me. 538.

Maryland—Reliance is placed on journal entries rather than on the enrolled bill.
County Commissioners v. Baker (1922), 141 Md. 623, 119 Atl. 461.

Massachusetts—(No court decisions found on this question).

Michigan—Courts look to the journals. Journals are conclusive evidence of recitals but presumptions favor regularity.
City of Lansing v. Michigan Power Co. (1914), 183 Mich. 400, 150 N.W. 250; McClelland v. Stein (1924), 229 Mich. 203, 201 N.W. 209.

Minnesota—Enrolled bill is prima facie evidence but may be overcome by journal record.
Ellis v. Ellis (1893), 55 Minn. 401, 56 N.W. 1056; State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749.

Mississippi—Enrolled bill rule is followed.
Green v. Weller (1857), 32 Miss. 650; Ex parte Wren (1886), 63 Miss. 512, 56 Am. Rep. 825; Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.

Missouri—Enrolled bill raises presumption that provisions not required to be entered in the journal have been complied with but the presumption may be rebutted and the courts will look to journals.

B. Enrolled Bill Rule

2. Any act of the legislature which has been properly enrolled, authenticated by the signatures of the proper officers of both houses, signed by the governor, and de-

Section 697—Continued
Paragraph 1—Continued

State v. Mason (1900), 155 Mo. 486, 55 S.W. 636; State v. Drabelle (1914), 261 Mo. 515, 170 S.W. 465; Ex parte Seward (1923), 299 Mo. 385, 253 S.W. 356.

Montana—The courts look to the journals to determine whether a bill has passed.
Johnson v. City of Great Falls (1909), 38 Mont. 369, 99 Pac. 1059.

Nebraska—Enrolled bill is prima facie evidence and may be disputed by the journals.
State v. Burlington (1900), 60 Neb. 741, 84 N.W. 254; State v. Davis (1902), 66 Neb. 333, 92 N.W. 740; State v. Ryan (1912), 92 Neb. 636, 139 N.W. 235; State v. Cox (1920), 105 Neb. 175, 178 N.W. 913.

Nevada—Enrolled bill may not be disputed by the journal.
State v. Rogers (1875), 10 Nev. 250; State v. Glenn (1883), 18 Nev. 34, 1 Pac. 186.

New Hampshire—Courts will look to the journals to determine whether a bill passed.
In re Opinion of Justices (1857), 35 N. H. 579; In re Opinion of Justices (1864), 45 N. H. 607; In re Opinion of Justices (1873), 52 N. H. 622.

New Jersey—The courts will look to the journals to determine in what form a bill passed.
In re Jaegle (1912), 83 N. J. L. 313, 85 Atl. 214.

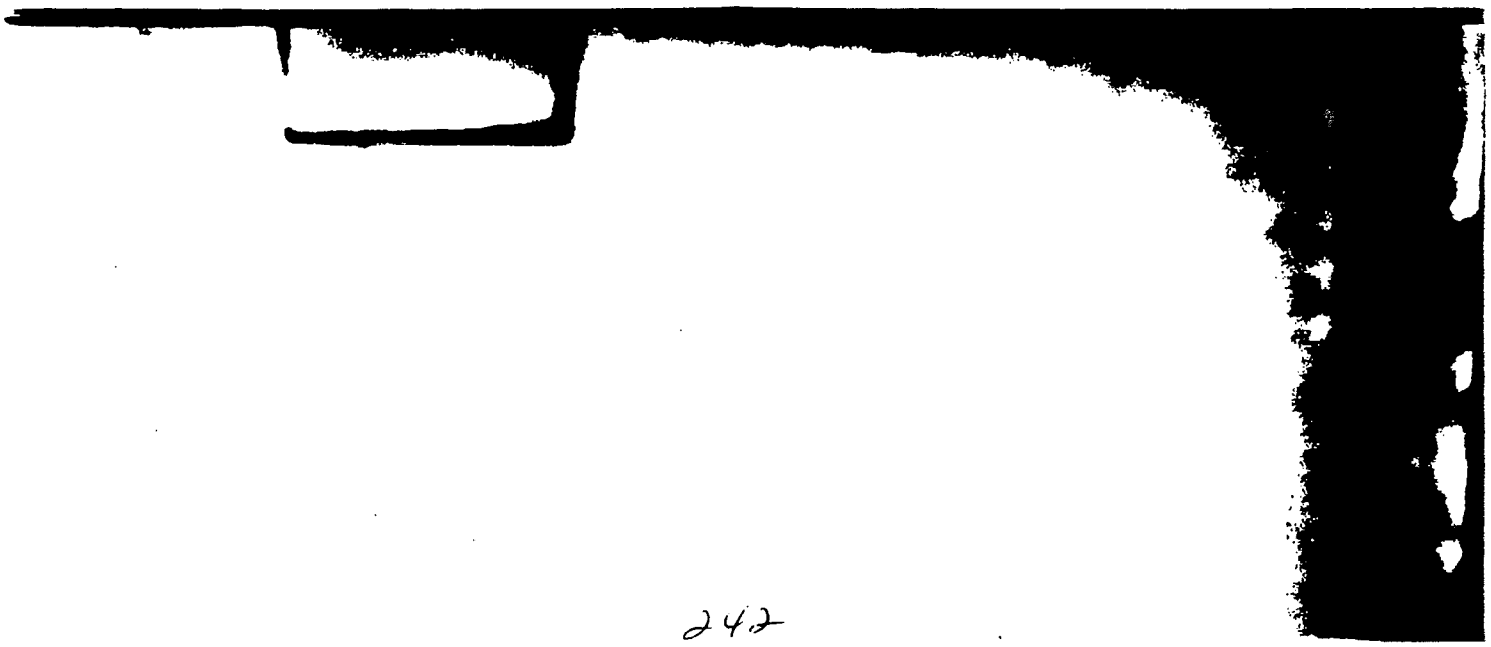
New York—Enrolled bill cannot be impeached by the journals.
People v. Chenango County Supervisors (1853), 8 N. Y. 317; People v. Marlborough Highway Commissioners (1873), 54 N. Y. 276.

North Carolina—The courts look to the journals which must affirmatively show that the bill was properly passed.
Smathers v. Commissioners of Madison County (1899), 125 N. C. 480, 34 S.E. 554; Debman v. Chitty (1902), 131 N. C. 657, 43 S.E. 3; Burlingham v. City of New Burn (1914), 213 Fed. 1014.

North Dakota—Enrolled bill is presumed to have been legally passed but may be disputed by journals.
State v. Schultz (1919), 44 N. D. 269, 174 N.W. 81; State v. Steen (1927), 55 N. D. 239, 212 N.W. 843.

Ohio—Journals prevail over the enrolled bill.
Herron v. Smith, 44 Ohio St. 348; State v. Kiesewetter (1887), 45 Ohio St. 254.

Oklahoma—Would seem that courts will look to journals.
Rolls v. Wyand (1914), 40 Okla. 323, 138 Pac. 158.



posited with the secretary of state, is conclusive evidence as to the act and of its passage which will not be im-

Section 697—Continued
Paragraph 1—Continued
Oregon—Journals control over the enrolled act.
State v. Wright (1887), 14 Ore. 365.
Pennsylvania—Great weight is placed on the enrolled bill. Apparently it will not be disputed by the journals.
Kilgore v. Magee (1877), 85 Pa. St. 401; Commonwealth v. Martin (1884), 107 Pa. St. 185.
Rhode Island—Language in enrolled bill controls but passage is established by journal.
State v. Septon (1855), 3 R. I. 119; O'Neil v. Remers (1922), 44 R. I. 504.
South Carolina—The enrolled bill rule prevails. The courts do not look to the journals.
State v. Lewis (1936), 181 S. C. 10, 178 S.E. 625.
Tennessee—Courts look to the journals and will not permit the journals to be impeached by other evidence.
State v. Dixie Finance Co. (1925), 152 Tenn. 306, 278 S.W. 59.
Texas—Enrolled bill is best evidence and not controlled by the journals.
Usener v. State (1880), 8 Tex. App. 177; Ex parte Tipton (1890), 28 Tex. App. 438.
Utah—The enrolled bill is prima facie, but not conclusive evidence of its constitutional enactment and of what the law is.
Ritchie v. Richards (1896), 14 Utah 345, 47 Pac. 670.
Vermont—Enrolled bill rule appears to prevail.
In the matter of Welman (1844), 20 Vt. 653.
Virginia—Presumption favors the enrolled bill but may be defeated by the journal record.
Wise v. Bigger (1884), 79 Va. 269.
Washington—A regularly enrolled bill is conclusively presumed to have been passed.
State v. Jones (1893), 6 Wash. 452, 34 Pac. 201, 23 L. R. A. 343.
West Virginia—Courts look to the journals.
Price v. City of Moundsville (1897), 43 W. Va. 522, 27 S.E. 218.
Wisconsin—Journal controls over the enrolled bill as to procedure but presumption favors content of law as in enrolled bill.
State v. Wendler (1896), 94 Wis. 369, 68 N.W. 759; Milwaukee County v. Isenring (1901), 109 Wis. 9, 85 N.W. 131.
Wyoming—Courts will look at the entire record to determine whether a bill has properly passed.
Arbuckle v. Pflaeging (1912), 20 Wyo. 351, 123 Pac. 918.

peached by resort to the journals of the legislature or to extensive evidence of any sort.

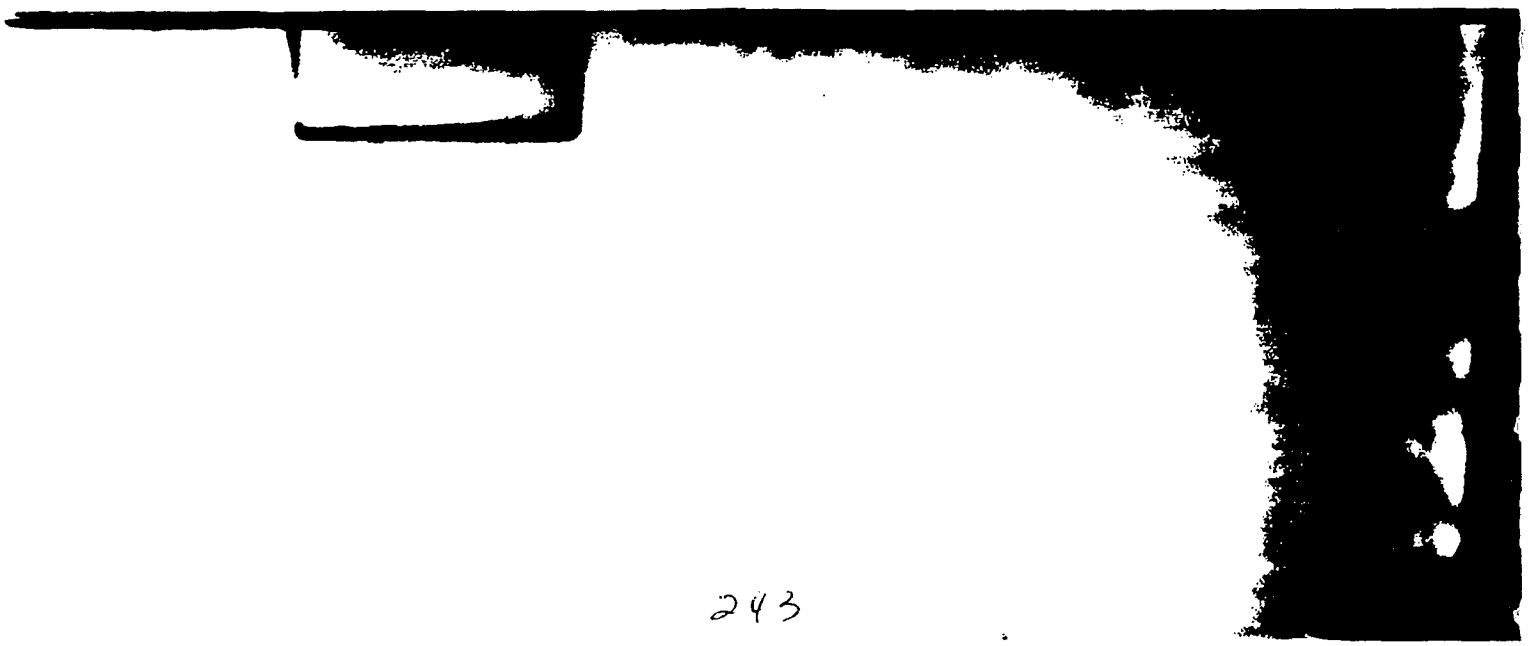
3. The enrolled bill rule appears to be based on the opinion that the certificate of the officers of the legislature made at the time of passage of the act is more reliable than evidence from the journals or other sources which might be presented to the courts at a later time.

4. The enrolled bill rule is the rule developed in Parliament and now applied to acts of Parliament, acts of Congress and to acts of the legislatures in several of the states.

C. Presumptions Favor Enrolled Bill

5. A regularly enrolled bill will be presumed to have been duly passed and legal, in the absence of evidence

Section 697—Continued
Paragraph 2—
Sherman v. Story (1866), 30 Cal. 253; Hale v. McGettigan (1896), 114 Cal. 112, 45 Pac. 1049; Yolo County v. McColgan (1901), 132 Cal. 265, 64 Pac. 403; Parkman v. Johnson (1911), 160 Cal. 756, 117 Pac. 1057; People v. Taft (1919), 42 Cal. App. 411, 183 Pac. 845; De Loach v. Newton (1910), 134 Ga. 739, 68 S.E. 708; Green v. Weller (1857), 32 Miss. 650; State v. Glenn (1883), 18 Nev. 34, 1 Pac. 186; People v. Chenango (1853), 8 N. Y. 317; State v. Lewis (1936), 181 S. C. 10, 186 S.E. 625; State v. Jones (1893), 6 Wash. 452, 23 L. R. A. 343, 34 Pac. 201.
Paragraph 5—
City of Ensley v. Simpson (1909), 166 Ala. 366, 52 So. 61; Smithee v. Garth (1878), 33 Ark. 17; Mech. Bldg. and Loan Assoc. v. Coffman (1913), 110 Ark. 269, 162 S.W. 1090; Ewing v. McGehee (1925), 169 Ark. 448, 275 S.W. 766; Massachusetts Mutual etc. Co. v. Colorado Loan etc. Co. (1894), 20 Colo. 1, 36 Pac. 793; State v. Carley (1925), 89 Fla. 361, 104 So. 577; Larrison v. Peoria etc. R. R. (1875), 77 Ill. 11; Markham v. City of Anamosa (1904), 122 Iowa 687, 98 N.W. 493; Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355; People v. McElroy (1888), 72 Mich. 446, 40 N.W. 750; State v. City of Hastings (1877), 24 Minn. 78; State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749; State v. Mason (1900), 155 Mo. 486, 55 S.W. 636; State v. Cox (1920), 150 Neb. 175, 178 N.W. 913; State v. Steen (1927), 55 N. D. 239, 212 N.W. 843; State v. Boyer (1917), 84 Ore. 513, 165 Pac. 587.



in the journal alone or in the journal and other records that the bill was not legally passed, and any omissions in the record except as to those matters required to be recorded, will be overcome by the presumption.

D. Journal Must Show Passage of Bill

6. The journals alone or the journals and other records are required to show all necessary steps in the passage of bills. Unless questioned, the enrolled bill will stand, but no further presumptions favor its passage or regularity.

Sec. 698. Reading of the Journal

See also Sec. 505, Procedure on Absence of a Quorum.

1. When a quorum is present, no business is in order until after the reading of the journal, except that the motion to dispense with the reading and the simple motion to adjourn are sometimes permitted.

2. The reading of the journal may not be interrupted, even by a highly privileged question, other than the question of no quorum, or the motion to dispense with the further reading of the journal.

Section 697—Continued
Paragraph 6—
Rash v. Allen (1910), 24 Del. 444, 76 Atl. 370; Volusia County v. State (1929), 98 Fla. 1166, 125 So. 375; Cohn v. Kingsley (1897), 5 Idaho 416, 49 Pac. 985; Auditor General v. Board of Supervisors (1891), 89 Mich. 551, 51 N.W. 483; City of Lansing v. Michigan Power Company (1914), 183 Mich. 400, 150 N.W. 250; In re Opinion of Justices (1873), 52 N. H. 622; Smathers v. Commissioners of Madison County (1899), 125 N. C. 480, 34 S.E. 554; State v. Dixie Finance Co. (1925), 152 Tenn. 306, 278 S.W. 59; Milwaukee County v. Isenring (1901), 109 Wis. 9, 85 N.W. 131; Arbuckle v. Pflaeging (1912), 20 Wyo. 351, 123 Pac. 918.

Section 698—
Paragraph 1—
Hughes, Secs. 663, 668; N. Y. Manual, p. 423.
Paragraph 2—
Hughes, Sec. 668.

3. The presiding officer should ascertain the presence of a quorum before directing the reading of the journal, for if a question of no quorum is raised, the reading of the journal is not permitted until the fact that a quorum is present has been ascertained by count.

4. In the absence of a quorum, a call of the house may be moved before the journal is read.

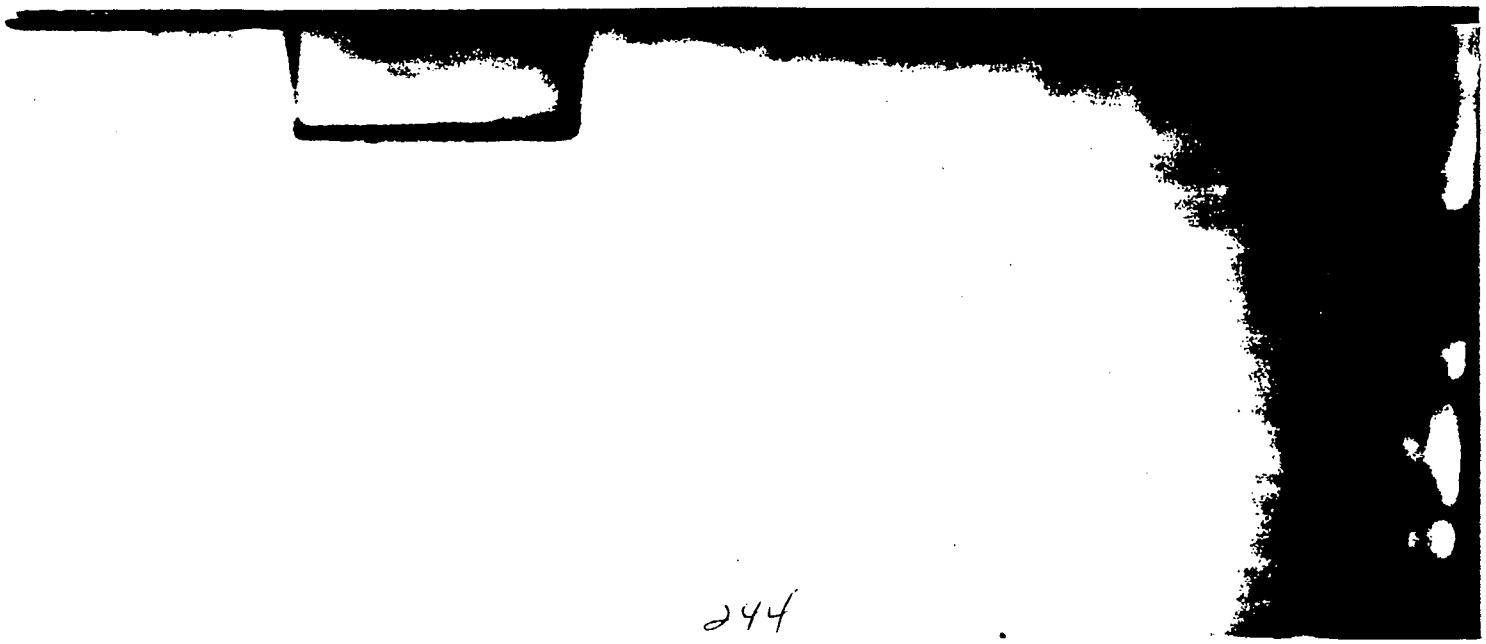
Sec. 699. Manner of Correcting the Journal

See also Sec. 406, Correction of Minutes.

1. Journals are usually corrected informally, the presiding officer directing the correction to be made when suggested. But if objection be made, a formal vote is necessary for the approval of the correction or amendment. In approving the journals, the usual procedure is for the presiding officer to inquire if there are any corrections. If any are suggested, they are made, providing there is no objection. If there are no corrections or when there are no further corrections, the presiding officer may say "there being no corrections (or no further corrections), the minutes stand approved." No particular form of approving minutes is required.

2. The more usual manner of correcting the journals is to move at intervals that the journals of certain days be approved as corrected by a committee assigned that responsibility or by the minute clerk or other officer charged with that duty, the corrected journals being at the same time submitted to the body so that they may be inspected and corrections questioned or further corrections made.

Section 698—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 369; Hughes, Secs. 663, 668, 673.
Paragraph 4—
N. Y. Manual, p. 422.



Sec. 700. Authority to Correct Journal

1. The right of a legislative body to correct its journal is an inherent right which does not depend upon the constitution nor upon statute.

2. Each house of the legislature has power to correct its journals so as to make them speak the truth at any time before final adjournment.

3. Adoption of minutes of a previous meeting of a deliberative body is not a legislative act. The minutes may be corrected whenever the error is noticed regardless of the time which has elapsed, even though the same correction or amendment may have been previously proposed and lost. This is necessary for the protection of the records, which otherwise would be subject to the risk of being tampered with by temporary majorities.

4. Where, through inadvertence, the clerk of the senate failed to enter in the journal the passage of a bill and the yea and nay votes thereon as required by the constitution, the same legislature at a special session could correct the journal to show that a quorum was present and that all the members voted for the bill and the journal when so corrected showed a compliance with the constitution and made the statute valid.

Section 700—
Paragraph 1—
People v. Chicago M. & St. P. Ry. Co. (1927), 326 Ill. 179, 147 N.E. 200; State v. Tollison (1915), 100 S. C. 165, 84 S.E. 819.
Paragraph 2—
Stewart v. Wilson Printing Company (1924), 210 Ala. 624, 99 So. 92; State v. Tollison (1915), 100 S. C. 165, 84 S.E. 819.
Paragraph 3—
Harnaday v. Goodman (1929), 167 Ga. 555, 146 S.E. 173; Mann v. Le Mars (1899), 109 Iowa 244, 80 N.W. 327.
Paragraph 4—
Richmond County Commissioners v. Farmers Bank (1910), 152 N. C. 387, 67 S.E. 969.

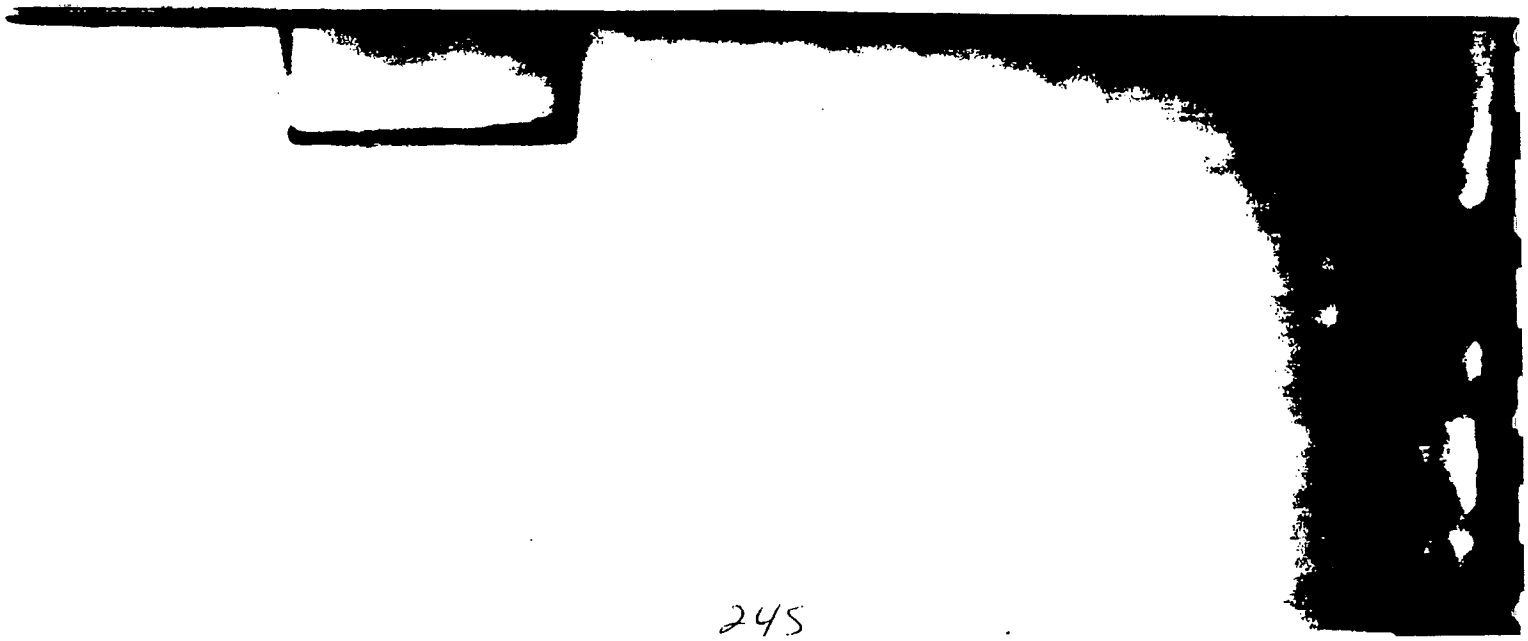
5. The legislature may even at a subsequent session correct its journals by amendments which show the true facts as they actually occurred when it is satisfied that by neglect or design the truth has been omitted or suppressed.

6. The rule that the legislature may correct its journals so as to make them speak the truth and that when corrected the journals will stand as if so originally made is applicable to an amendment of legislative records, especially where no adversary rights of innocent third persons have intervened.

7. The house itself is the only tribunal authorized to correct an error in the legislative journal. On information that an error or omission has been made in the journal, a committee may be appointed to examine and correct it and report to the house.

8. Where the secretary is authorized to correct the journal, the record with any corrections by the secretary is to be accepted as the true record. When it is not affirmatively shown at what time the clerk made corrections in the daily journal, they will be presumed to have been made on or before the time of his certificate.

Section 700—Continued
Paragraph 5—
Turley v. Logan Co. (1855), 17 Ill. 151.
Paragraph 6—
Richmond County Commissioners v. Farmers Bank (1910), 152 N. C. 387, 67 S.E. 969.
Paragraph 7—
Jefferson, Sec. XLIX; State v. Dixie Finance Company (1926), 152 Tenn. 306, 278 S.W. 59.
Paragraph 8—
People v. Burch (1891), 84 Mich. 408, 47 N.W. 765.



Sec. 701. The Corrected Journal

1. The action of the house in approving a corrected journal makes such journal the only authorized journal of the day's proceedings.

2. The regular printed journals of the legislature are competent evidence of their content and their effect as evidence will not be destroyed by clerical errors or omissions shown to have occurred in writing up the records to complete the written journals.

3. Clerical errors in the journal, where the facts can be ascertained as where, in recording the passage of a bill, the wrong title but the correct number or the correct title but wrong number was shown, do not invalidate the bill; and where a bill was substituted and a new title used or materially amended, but the record in the journals continued to use the old title, the act was validly passed, since it could not be presumed that the original title to the act alone was read in its readings in process of enactment.

4. While legislative journals are printed and published for the convenience and information of the public, the official journal is the copy filed in the office of the secretary of state, and it governs where there is any discrepancy between it and the printed journal. The manuscript prevails over the printed journal.

5. Every member of the house has the right to see the minutes, and to take notes from them, and the approved journal being a public record, everyone may see and publish it.

6. A record of a vote in the journal of a house is sufficient ground for the other house to take official notice of the action.

7. A house of a state legislature can speak only through its journal. For the confirmation of an appointment of the governor to be effective it must be set forth in the journal.

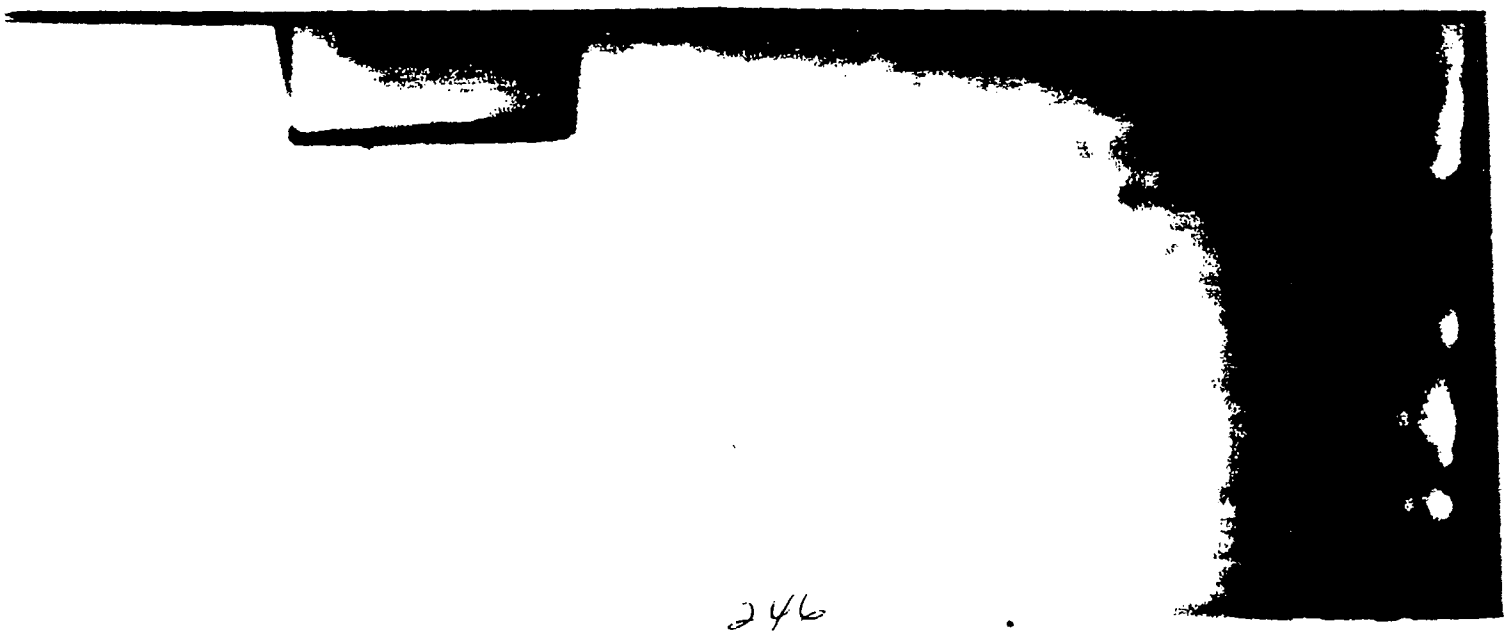
8. In determining from its journal what was or was not done by the house, the journal must be considered as a whole as any other record would be.

Sec. 702. Minutes of Local Legislative Bodies

1. The clerk must keep an accurate record of the proceedings of a city council under the supervision of the council.

Section 701—
Paragraph 1—
State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749; Mann v. Le Mars (1899), 109 Iowa 224, 80 N.W. 327.
Paragraph 2—
Lincoln v. Haugen (1891), 45 Minn. 451, 48 N.W. 196.
Paragraph 3—
Desha-Drew Road Improvement Dist. v. Taylor (1917), 130 Ark. 503, 197 S.W. 1152; Marshall v. Baugh (1918), 133 Ark. 64, 201 S.W. 808; Thrift v. Towers (1915), 127 Md. 54, 95 Atl. 1064; Price v. City of Moundsville (1897), 43 W. Va. 522, 27 S.E. 218.
Paragraph 4—
State v. Martin (1909), 160 Ala. 181, 48 So. 846; Stewart v. Wilson Printing Company (1924), 210 Ala. 624, 99 So. 92; Chicot County v. Davies (1882), 40 Ark. 200.

Section 701—Continued
Paragraph 5—
Jefferson, Sec. XLIX.
Paragraph 6—
Jefferson, Sec. XLIX.
Paragraph 7—
Witherspoon v. State (1925), 138 Miss. 310, 103 So. 134.
Paragraph 8—
State v. Tollison (1915), 100 S. C. 165, 84 S.E. 819.
Section 702—
Paragraph 1—
Mann v. Le Mars (1899), 109 Iowa 244, 80 N.W. 327.



2. When a town clerk makes a defective, erroneous record of a vote or any other typographical or clearly clerical error it is competent for him while in office to amend it according to the truth.

3. Where minutes of a city council are incorrect they may be corrected by a direct proceeding for that purpose in order to make them state the truth.

4. So long as minutes stand they cannot be impeached or varied in a collateral proceeding or by parol testimony.

5. Where the vote of a city council is required to be entered in its journal the vote must be entered or the ordinance will not be deemed passed.

6. The governing body of a municipal corporation can speak only through its records and can confer authority to make contracts only by proper proceedings at a meeting regularly called and held where facts are duly recorded and authenticated.

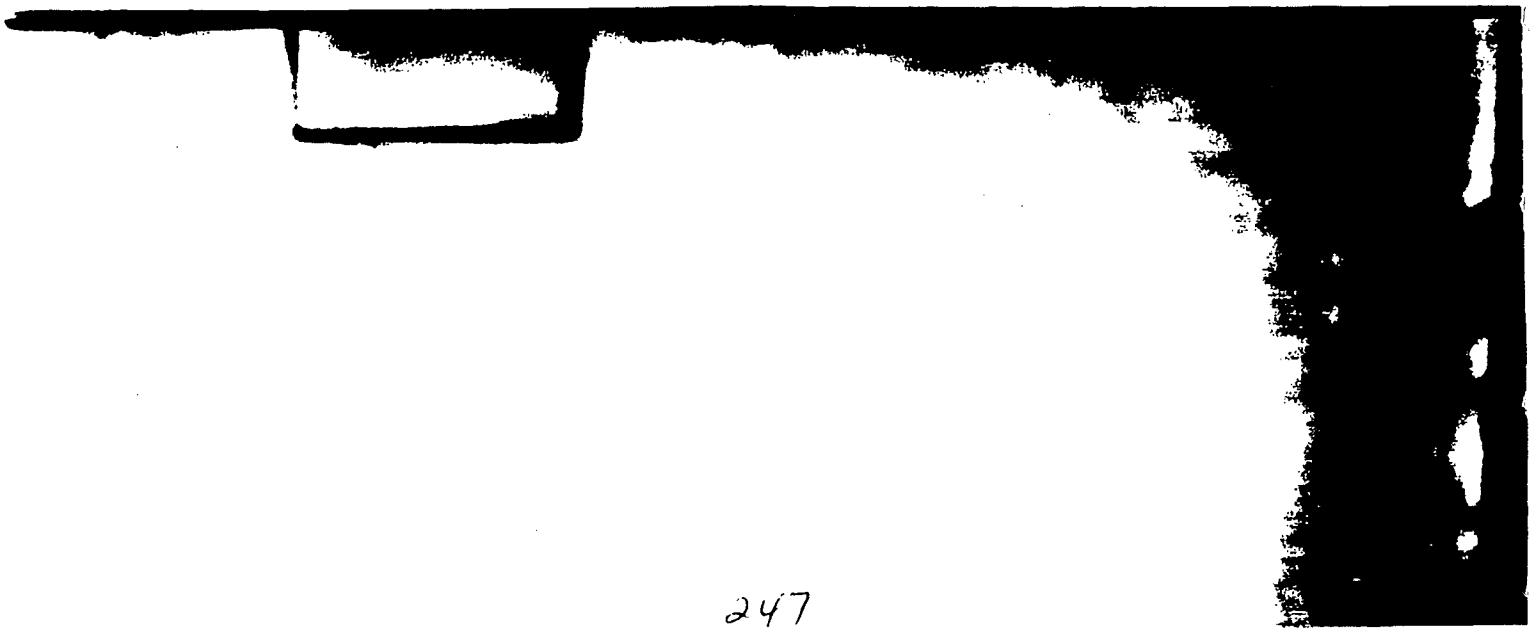
7. The official records of a city, properly attested and identified, are competent evidence in behalf of the city upon the question of the passage of one of its ordinances.

Section 702—Continued
Paragraph 2—
Chamberlain v. Dover (1836), 13 Me. 466.
Paragraph 3—
Ex parte Lusk (1887), 82 Ala. 519, 2 So. 140; Carter v. Durango (1891), 16 Colo. 534, 27 Pac. 1057; Board of Commissioners v. Johnson (1890), 124 Ind. 145, 24 N.E. 128; Anniston v. Davis (1893), 98 Ala. 629, 13 So. 331.
Paragraph 4—
Anniston v. Davis (1893), 98 Ala. 629, 13 So. 331.
Paragraph 5—
Boyd v. Chicago, Etc. R. R. Co. (1902), 103 Ill. App. 199; Greeley v. Hamman (1891), 17 Colo. 30, 28 Pac. 460; Markham v. City of Anamosa (1904), 122 Iowa 687, 98 N.W. 493.
Paragraph 6—
County Board of Education v. Durham (1923), 198 Ky. 732, 249 S.W. 1028.
Paragraph 7—
Greeley v. Hamman (1891), 17 Colo. 30, 28 Pac. 460.

8. Resolutions of a meeting of the directors of a private corporation may be shown by the record of the proceedings, if one is kept, otherwise parol evidence is admissible to show what was resolved, and by what vote.

9. Parol evidence is admissible to show proceedings taken by a city council but not properly entered on the record. Where the city council authorized certain work to be done, but the clerk failed to enter the record in the proceedings of the council, this does not affect the rights of those who, acting upon faith of the authorization, performed the work.

Section 702—Continued
Paragraph 8—
Ten Eyck v. Pontiac (1889), 74 Mich. 226, 41 N.W. 905.
Paragraph 9—
Wheat v. VanTine (1907), 149 Mich. 314, 112 N.W. 933.



CHAPTER 66

THE LEGISLATIVE CHAMBER

Sec. 705. Admission to Legislative Chambers

1. When the place of meeting of a legislative body has been designated by law, it may be changed only on legal authority, and no valid meeting can be held nor business conducted at any other than the legally designated place.

2. When the legislative body adjourns without any previous order or resolution, it is to reconvene on the next legislative day at the usual place of sitting and at the usual hour.

3. A legislative body has absolute control of its chambers and may exclude therefrom, at its pleasure, all persons who are not members, even though members of a coordinate branch or other offices of the government.

4. Of right, the door of the house ought not to be shut, but to be kept by porters or sergeants-at-arms, assigned for that purpose.

5. It is a matter of practice that the doors of all American legislative bodies are open to the public, galleries usually being provided for visitors.

6. No persons except the members of the house and the officers when engaged in their duties are permitted upon

Section 705—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 343.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 510.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 343.
Paragraph 4—
Jefferson, Sec. XVIII.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 346.

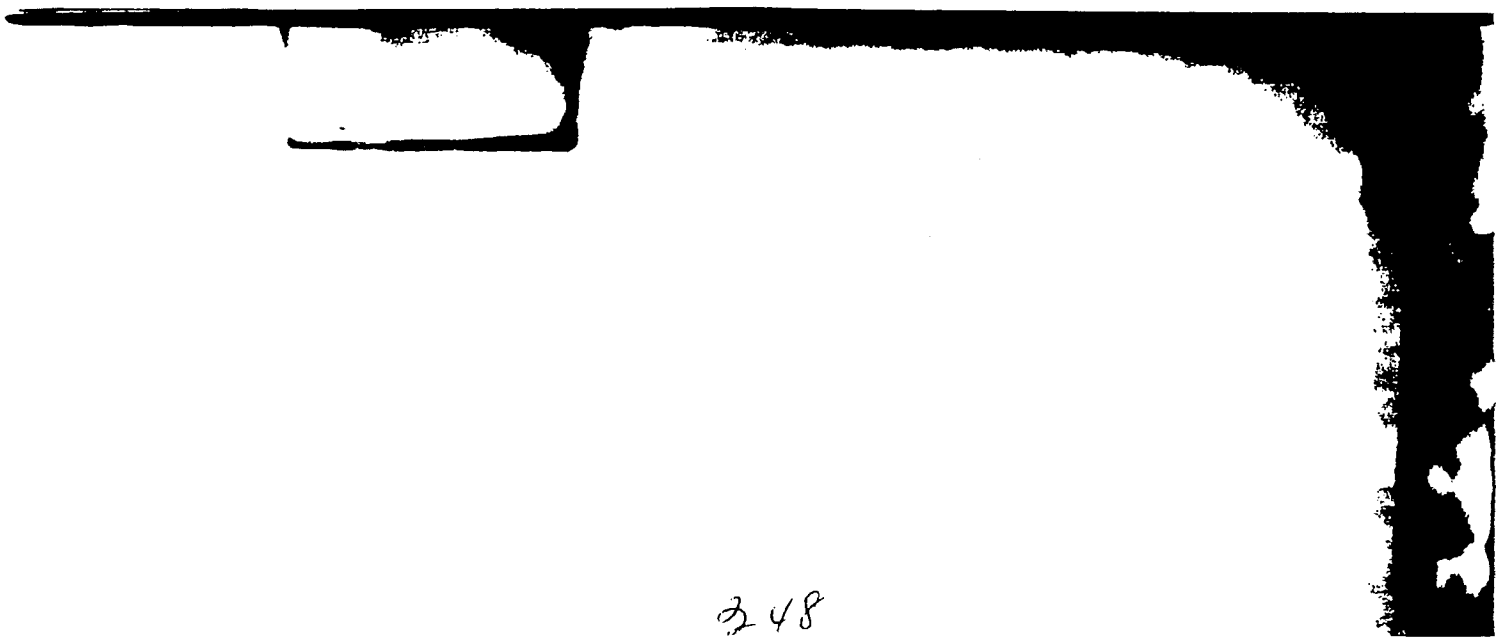
the floor of the chamber while the house is in session except as may be permitted by the rules or by the house. The rules frequently provide that ex-members, certain state officers, and accredited representatives of the press may be admitted to the floor.

Sec. 706. Use of Legislative Chambers

1. A committee may not occupy the legislative chamber for the purpose of meetings without the consent of the house.

2. The fact that persons who are not members are permitted to sit on the floor of the chamber and consult with members does not invalidate acts passed.

Section 706—
Paragraph 1—
Hughes, Sec. 858.
Paragraph 2—
State v. Iron Cliffs Co. (1884), 54 Mich. 350, 20 N.W. 493.



PART VII

CONDUCT OF BUSINESS

CHAPTER 67

GENERAL ORDER OF BUSINESS

Sec. 710. Usual Order of Business

1. It is customary for each house of a legislature to provide in its rules for a regular daily order of business. This order of business varies in the different legislatures, but the order of the essential procedure established by usage, and therefore the general order when no rule to the contrary has been adopted, is as follows:

(a) Roll call.
(b) Prayer by the chaplain.
(c) Reading and approval of the journal of the previous day.
(d) Presentation of petitions and papers.
(e) Messages from the Governor.
(f) Messages from the other house.
(g) Reports of standing committees.
(h) Reports of special or select committees.
(i) Special orders (not set for a particular hour).
(j) Unfinished business.
(k) Introduction and first reading of bills.
(*l*) Consideration of daily calendar.
(m) Announcement of committee meetings.
(n) Adjournment.

Section 710—
Reed, Secs. 260-264; Sturgis, Ch. 2; U. S. House Rule XXIV.

Sec. 711. Motions Relating to Business Under Regular Order

1. Where reports are submitted in the proper order of business, motions to receive or read, or equivalent motions, are unnecessary, the procedure following in due course under the order of business without any further motions or orders. Even the motion to adopt is not necessary when proceeding under the order of business where measures are submitted to the body for consideration unless there is objection.

Sec. 712. When Certain Motions Are in Order

1. A motion to take from the table is in order in the same order of business in which the matter affected was laid on the table. The motion to take from the table a motion to reconsider the vote by which a bill was defeated may be made in order of business of third reading of bills.

2. A motion to discharge a committee from further consideration of a bill is in order only under reports of committees or motions and resolutions.

3. Motions affecting bills on third reading are not in order, even under that order of business, until the particular bill is reached on the calendar.

4. A motion to suspend the rules may be made, either under the order of business of motions and resolutions, or under the order of business to which the matter proposed to be considered relates.

Section 711—
Hughes, Secs. 134, 676.

Section 712—
N. Y. Manual, pp. 419, 425, 453, 459, 462; Hughes, Secs. 454, 455.

Sec. 713. Taking Up Questions Out of Order

See also Chapter 29, Secs. 279-287, Suspension of the Rules.

1. A motion to take up a question out of order suspends the rules, and therefore requires the same vote as is required to suspend the rules. Such a motion may be reconsidered or may be renewed after intervening business, but may not be debated, amended, laid on the table, postponed nor committed. The motion to take up a question out of order is in order whenever any main motion is in order.

2. An order of the day may be discharged at any time, and a new one made for a different day.

Sec. 714. Unfinished Business

1. When the consideration of a question regularly on the calendar is interrupted by adjournment, it does not come up for further consideration as unfinished business, but comes up in its proper place on the daily calendar.

2. A motion relating to the order of business, when not disposed of, does not recur as unfinished business on the succeeding day, as such motions expire with the completion of the day's business to which they relate.

Section 713—
Hughes, Sec. 517; Jefferson, Sec. XVIII.

Section 714—
Jefferson, Sec. XXXVII; Hughes, Sec. 270.

CHAPTER 68

REQUIRED READING OF BILLS

Sec. 720. Bills Must Be Read on Three Separate Days

1. Ancient parliamentary practice and the constitutions of most of the states require that bills be read three separate times on three separate days in each house of a legislature before final passage. City charters and statutes frequently make the same requirement concerning local legislative bodies.

2. The requirement that each bill or ordinance be read on three separate days, prescribed by the constitution, legislative rules, or by charters or statutes, is one of the many restrictions imposed upon the passage of bills and ordinances to prevent hasty and ill-considered legislation, surprise or fraud, and to inform the legislators and the public of the contents of the bill.

3. A substantial compliance with the constitutional requirement as to the reading of bills is generally sufficient, although it has been held that the requirement of reading the bill on different days is mandatory. Mandatory requirements must be complied with.

4. A reading of a bill by title is considered a reading of the bill, unless it is specifically required by the constitution that the bill be read at length or in full.

5. The requirement that bills be read on different days in each house does not prevent the reading of a bill the first time in one house on the same date that it was given third reading and passed in the other.

6. Where an election takes place and a new city council or local legislative body takes office after the first reading or second reading of an ordinance, these readings do not need to be repeated, but the procedure already begun needs only to be completed.

Section 720—
Paragraph 1—
Jefferson, Sec. XVIII; Cushing's Legislative Assemblies, Sec. 2123; State Constitutions as follows: Ala. IV, 61, 63; Ariz. IV, Pt. II, 12; Ark. V, 21, 22; Cal. IV, 15; Colo. V, 17, 22; Del. II, 10; Fla. III, 17; Ga. III, Sec. VII, 7; Idaho III, 15; Ill. IV, 13; Ind. IV, 1, 18; Iowa III, 15; Kan. II, 15, 20; Ky. 46; La. III, 24; Me. IV, Pt. III, 9; Md. III, 27, 29; Mass. II, Chap. I, Sec. I, 2; Mich. V, 23, 29; Minn. IV, 20; Miss. IV, 59, 60; Mo. IV, 23, 25; Mont. V, 19; Neb. III, 13, 14; Nev. IV, 18, 23; N. J. IV, Sec. IV, 6; N. M. IV, 15; N. Y. III, 15; N. C. II, 23; N. D. II, 58, 63; Ohio II, 16; Okla. V, 34; Ore. IV, 19; Pa. III, 1, 4; R. I. IV, 2; S.C. III, 18; S. D. III, 17; Tenn. II, 18; Tex. III, 30, 32; Utah VI, 22; Vt. II, 6; Va. IV, 50; Wash. II, 18; W. Va. VI, 29; Wis. IV, 17; Wyo. III, 20.
Paragraph 2—
State v. Buckley (1875), 54 Ala. 599; State v. Carley (1925), 89 Fla. 361, 104 So. 577.

Section 720—Continued
Paragraph 3—
State v. Crawford (1879), 35 Ark. 237; Smith v. Mitchell (1911), 69 W. Va. 481, 72 S.E. 755; Tarr v. Western Savings and Loan (1909), 15 Idaho 741, 99 Pac. 1049; Smathers v. Madison Co. (1899), 125 N. C. 480, 34 S.E. 554; City of Charlotte v. Shepard (1898), 122 N. C. 602, 29 S.E. 842; State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749; Wagstaff v. Central Highway Commission (1917), 174 N. C. 377, 93 S.E. 908; Aurora Water Co. v. City of Aurora (1895), 129 Mo. 540, 31 S.W. 946; Nelson v. City of South Omaha (1909), 84 Neb. 434, 121 S.W. 453.
Paragraph 4—
Saunders v. Board of Liquidation (1903), 110 La. 313, 34 So. 457; People v. McElroy (1888), 72 Mich. 446, 40 N.W. 750; McClelland v. Stein (1924), 229 Mich. 203, 201 N.W. 209.
Paragraph 5—
Skipper v. Street Imp. Dist. No. 1 (1920), 144 Ark. 38, 221 S.W. 866; Chicot Co. v. Davies (1882), 40 Ark. 200; Smithee v. Garth (1878), 33 Ark. 17; State v. Persica (1914), 130 Tenn. 48, 168 S.W. 1056; Smith v. Mitchell (1911), 69 W. Va. 481, 72 S.E. 755.
Paragraph 6—
Coles v. Williamsburg (1833), 10 Wend. (N. Y.) 659; McGraw v. Whitson (1886), 69 Iowa 348, 28 N.W. 632.

7. The official reading of bills is not invalid or ineffective because it takes place on Sunday.

Sec. 721. Suspension of Requirement of Three Readings

1. The constitutions of many of the states provide that the requirement of reading a bill on three several days may be suspended by a two-thirds vote in case of emergency. The same provision may also be made concerning readings of ordinances by a local legislative body. It has been held that the legislative body is the exclusive judge as to when a case of emergency arises or exists.

2. In suspending the requirement for reading bills on three separate days, when suspension is permitted by the constitution, the suspension may be effected by a resolution naming the bill and approved by the prescribed vote without any other formality, and it is not material that other bills than the one in question are included in the resolution suspending the provision.

Sec. 722. Three Readings of Amended Bills

1. The constitutional requirement that bills be read three times, is not generally interpreted to apply to amendments, so that bills are required to be read the

Section 720—Continued
Paragraph 7—
Ex parte Seward (1923), 299 Mo. 385, 253 S.W. 356, 264 U. S. 599.

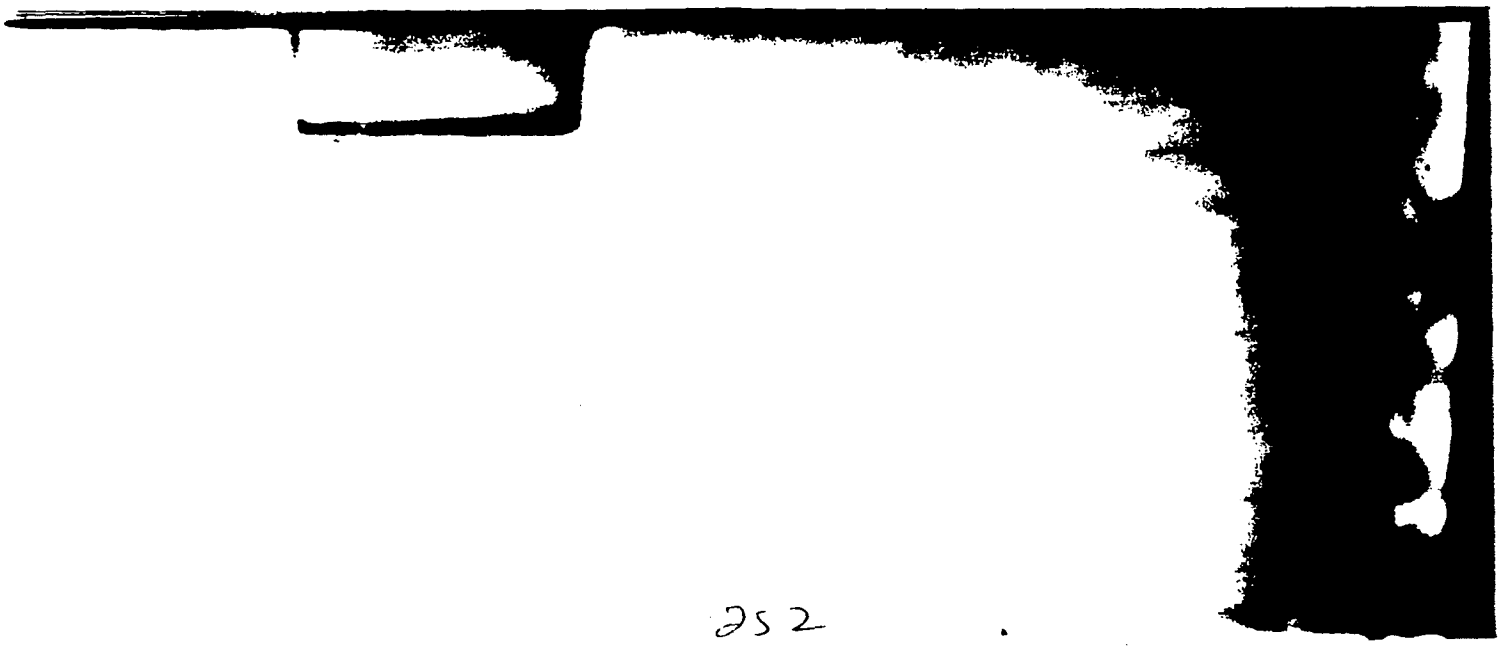
Section 721—
Paragraph 1—
People v. Glenn Co. (1893), 100 Cal. 419, 35 Pac. 302; Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355; Hull v. Miller (1876), 4 Neb. 503; McCulloch v. State (1858), 11 Ind. 424; Brown v. Lutz (1893), 36 Neb. 527, 54 N.W. 860.
Paragraph 2—
State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749; People v. Glenn Co. (1893), 100 Cal. 419, 35 Pac. 302.

specified number of times after amendment, although in some jurisdictions material amendments are excluded from this rule. When amended bills are required to be read, this requirement can be suspended the same as for other readings.

2. When a bill which has been passed by one house has been materially amended in the other, and there passed as amended, it has been held that the constitutional provision with reference to reading three times does not require the bill as amended to be read three times in the house of origin before concurring in the amendments of the other house. The same rule applies when a bill has been recalled and reconsidered and again passed.

3. Where a substituted bill may be considered as an amendment, the rule with reference to reading a bill on three several days does not require the bill to be read three times after substitution. One house may substitute

Section 722—
Paragraph 1—
School Dist. v. Chapman (1907), 152 Fed. 887; People v. Thompson (1885), 2 Cal. unreported 481, 7 Pac. 142; State v. Dillon (1900), 42 Fla. 95, 28 So. 781; People v. La Salle St. Trust & Sav. Bank (1915), 269 Ill. 518, 110 N.E. 38; Allopathic St. Bd. v. Fowler (1898), 50 La. Ann. 1358, 24 So. 809; State v. Field (1892), 119 Mo. 593, 24 S.W. 752; State v. Ryan (1912), 92 Neb. 636, 139 N.W. 235; People v. Chenango Co. (1853), 8 N. Y. 317; Miller v. State (1854), 3 Ohio St. 475; Evanhoff v. St. Industrial Accident Comm. (1915), 78 Ore. 503, 154 Pac. 106; State v. Brown (1890), 35 S. C. 151, 11 S.E. 641; Tenn. C. I. & R. Co. v. Hooper (1915), 131 Tenn. 611, 175 S.W. 1146; Nelson v. Haywood County (1892), 91 Tenn. 596, 20 S.W. 1; Capito v. Topping (1909), 65 W. Va. 587, 64 S.E. 845. Re suspension of readings of amended bills see Tarr v. Western Loan and Savings Co. (1909), 15 Idaho 741, 99 Pac. 1049.
Paragraph 2—
State v. Dillon (1900), 42 Fla. 95, 28 So. 781; Brake v. Callison (1903), 122 Fed. 722; State v. Crawford (1879), 35 Ark. 237.



an identical bill of its own for the bill of the other house without rereading of the substitute bill being required.

4. A bill already read one or two times is not required to be reread because of a change in the title.

5. A bill which is amended or redrafted by a conference committee is not a new bill in the sense that it requires three readings thereafter.

Sec. 723. Journal Record of Readings

See also Chapter 65, Secs. 694-702, Journals and Records.

1. Where the constitution or controlling statutory or charter provision does not expressly require the journal to show three readings of bills, or the reading thereof at length before final passage, or the suspension of rules by a particular number of votes, or that a case of emergency exists, it will be presumed that the legislature observed the constitutional requirements, nothing affirmatively appearing to the contrary.

2. Provisions of the constitution as to the reading of bills are generally considered as not requiring these matters to be entered in the journal, unless there are express words to that effect.

3. When a provision of a constitution, statute or charter requires that the journal show three readings on separate days, or show the vote on each legislative proposal or makes other like affirmative provisions, these provisions must be complied with or the proposed legislation does not become effective.

4. When the enrolled bill rule is followed, the absence from the journal of an entry showing that a particular thing was done is no evidence that it was not done.

Section 722—Continued
Paragraph 3—
People v. La Salle Street Tr. & Sav. Bank (1915), 269 Ill. 518, 110 N.E. 38; State v. Cox (1920), 105 Neb. 75, 178 N.W. 913; Edwards v. Nash County Bd. (1922), 183 N. C. 58, 110 S.E. 600; Brown v. Road Commissioners (1917), 173 N. C. 598, 92 S.E. 502; Tennessee Coal, etc., Co. v. Hooper (1915), 131 Tenn. 611, 175 S.W. 1146; State v. Persica (1914), 130 Tenn. 48, 168 S.W. 1056; Hood v. City of Wheeling (1920), 85 W. Va. 578, 102 S.E. 259; Smith v. Mitchell (1911), 69 W. Va. 481, 72 S.E. 755. *See also* State v. Buckley (1875), 54 Ala. 599; Worthen v. Badgett (1877), 32 Ark. 496.
Paragraph 4—
State v. Cronin (1904), 72 Neb. 636, 101 N.W. 325; State v. Field (1894), 119 Mo. 593, 24 S.W. 752.
Paragraph 5—
Nelson v. Haywood Co. (1892), 91 Tenn. 596, 20 S.W. 1.
Section 723—
Paragraph 1—
Ill. v. Ill. Cent. R. Co. (1892), 33 Fed. 730, 146 U. S. 387; Clifton v. State (1928), 22 Ala. App. 559, 118 So. 235; State v. Buckley (1875), 54 Ala. 599; Chicot County v. Davies (1882), 40 Ark. 200; Worthen v. Badgett (1877), 32 Ark. 496; State v. Carley (1925), 89 Fla. 361, 104 So. 577; Andrews v. People (1905), 33 Colo. 193, 79 Pac. 1031; Ill. Cent. R. Co. v. People (1892), 143 Ill. 434, 33 N.E. 173; McCulloch v. State (1858), 11 Ind. 424; Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355; Mass. Mutual etc. Co. v.

Section 723—Continued
Paragraph 1—Continued
Colorado Loan Co. (1894), 20 Colo. 1, 36 Pac. 793; State v. Wagner (1915), 130 Minn. 424, 153 N.W. 749; Ellis v. Ellis (1893), 55 Minn. 401, 56 N.W. 1056; Hull v. Miller (1876), 4 Neb. 503; Miller v. State (1854), 3 Ohio St. 475; Supervisors of Schuyler Co. v. People (1860), 25 Ill. 181.
Paragraph 2—
State of Ill. v. Ill. Cent. R. Co. (1892), 33 Fed. 730, 146 U. S. 387; State v. Buckley (1875), 54 Ala. 599; Worthen v. Badgett (1877), 32 Ark. 496; Vinsant v. Knox (1871), 27 Ark. 266; Mass. Mut. Life Ins. Co. v. Colorado Loan etc. Co. (1894), 20 Colo. 1, 36 Pac. 793; State v. Carley (1925), 89 Fla. 361, 104 So. 577; Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355; Ellis v. Ellis (1893), 55 Minn. 401, 56 N.W. 1056; Miller v. State (1854), 3 Ohio St. 475.
Paragraph 3—
Tarr v. Western Loan and Savings Co. (1909), 15 Idaho 741, 99 Pac. 1049; State v. Livermore (1921), 192 Iowa 626, 183 N.W. 1; County Commissioners v. Baker (1922), 141 Md. 623, 119 Atl. 461; City of Charlotte v. Shepard (1898), 122 N. C. 602, 29 S.E. 842; Debman v. Chitty (1902), 131 N. C. 657, 43 S.E. 3.
Paragraph 4—
Ellis v. Ellis (1893), 55 Minn. 401, 56 N.W. 1056.

5. When a bill is read by title and passed and the journal is silent as to the suspension of the rule, the court, to uphold the act, will presume that the rules were suspended when the constitution does not require that the journals affirmatively show the suspension.

6. When an act is read at length the required number of times but certain amendments to the act are not so read, the act nevertheless retains its identity and the reading of the entire act for the required number of times is sufficient.

7. The mere fact that the house journals disclosed that a bill had been read as required by law and that the title in each case in the record was correct but that the number of the bill was erroneously set down on its third reading, did not invalidate the enactment, such error being a clerical misprision.

8. Whether an emergency is such as will permit a legislative body to suspend the provision requiring bills be read three times on separate days in each house is a question within the exclusive judgment of the house as to when a case of emergency arises or exists, and it is not necessary in order that the reading of the bill be considered valid that the emergency be stated in the journal.

Section 723—Continued
Paragraph 5—
Chicot County v. Davies (1882), 40 Ark. 200.
Paragraph 6—
People v. LaSalle Street Trust and Savings Bank (1915), 269 Ill. 518, 110 N.E. 38.
Paragraph 7—
Marshall v. Baugh (1918), 133 Ark. 64, 201 S.W. 808.
Paragraph 8—
Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355.

CHAPTER 69

PROCEDURE ON CONSIDERATION OF LEGISLATION

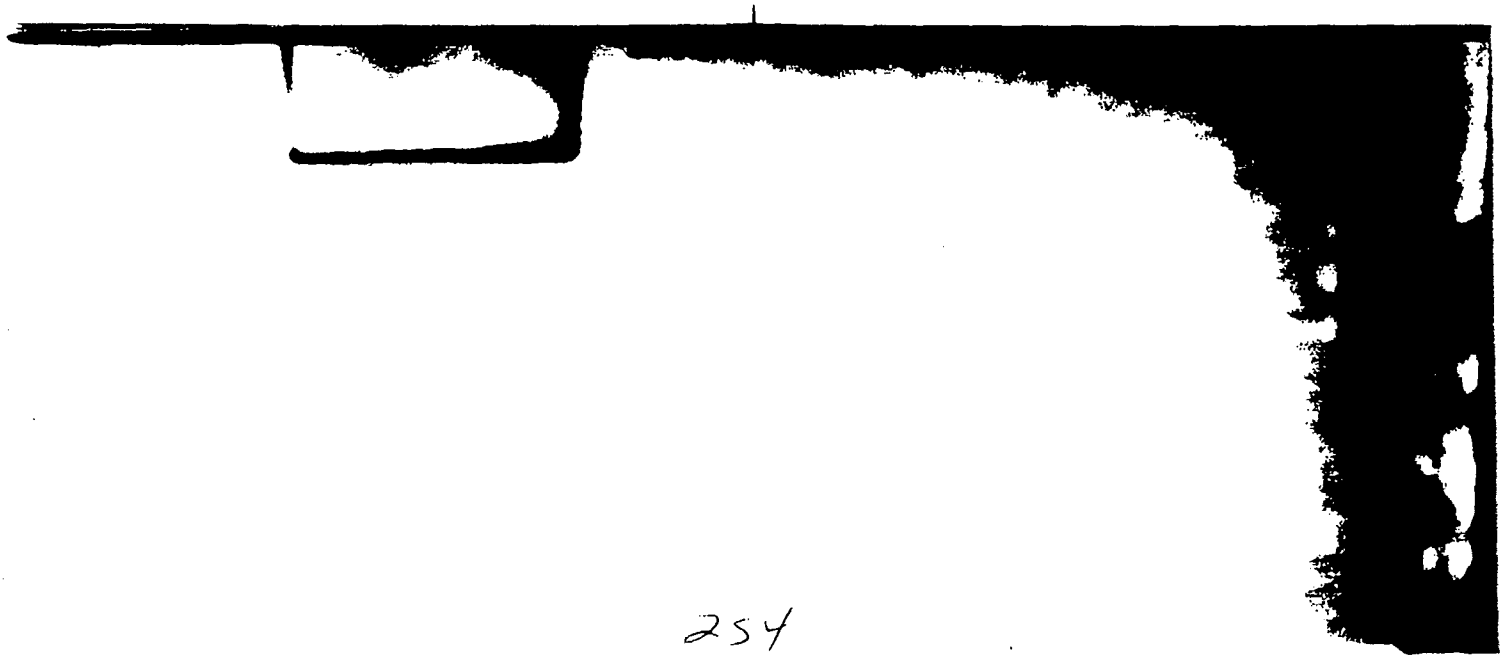
Sec. 726. Introduction of Legislation

See also Chapter 17, Secs. 155-165, Presentation of Motions.

1. The regular formal manner of introducing bills and other measures is for the member, in the appropriate order of business, to rise at his desk and secure recognition and to then present the measure, giving it to a page to be presented at the desk. Where there is a regular order of business, any business properly coming up under the appropriate order requires no special consent, and where such business is in the nature of submitting bills or other measures, it is the well-established practice in many legislative bodies to permit the documents to be sent to the desk in advance of the order of business, it is the duty of the chief clerical officer to keep all such papers in his possession and not to permit them to be examined, even by members, until they are formally presented to the body under the appropriate order of business. When the proper order of business is reached, the bills or other documents are presented from the desk without the special request of the person submitting them, and receive consideration in regular order.

2. A bill is not regarded as having been introduced until it has been delivered to the clerk, read, and given a number.

Section 726—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 2120; Hughes, Sec. 134.
Paragraph 2—
Jefferson, Sec. XXXIII.



3. Bills are introduced in the form in which it is desired that the law will read.

4. There is nothing to prevent the introduction of identical bills in both houses.

5. When a bill has been rejected, at any stage, in the house in which it originated, it may not be reintroduced in the same house; but a new bill, presenting the same question or the same question in a modified form, or a bill presenting substantially the same question, may be introduced.

6. When a bill has been passed in one house and defects are discovered, it is within the established practice to permit the introduction of a new bill in the same house with the corrections desired.

7. State constitutions sometimes provide that bills may not be introduced after a certain time or period except by consent of the house or by unanimous consent. It is the practice of many legislatures to place stringent limitations upon the introduction of bills after a particular date or period. Such limitations are of an entirely different nature than the general rule concerning objection to consideration, and where such rules are adopted, measures or motions may be submitted only as authorized by the rules.

Section 726—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 2065.
Paragraph 4—
Cushing's Legislative Assemblies, Secs. 2321 and 2322.
Paragraph 5—
Cushing's Legislative Assemblies, Sec. 2321.
Paragraph 6—
Cushing's Legislative Assemblies, Sec. 2323.
Paragraph 7—
Jefferson, Sec. XVIII.

8. When a bill has been introduced into the legislature within the time limit prescribed by the constitution for the introduction of bills, amendments of which are germane to the purpose of the bill may be made after that limit has expired and bills may be consolidated after that date.

9. Where charter provisions provide that no ordinance shall be passed by the common council unless introduced at a previous stated meeting, an ordinance may be so introduced at an adjourned meeting of a previous stated meeting.

10. When amendments are required to be made only by setting out the section or law to be amended in full as amended, new sections can be added to an act without setting out the entire act.

Sec. 727. Withdrawal of Bills

See also Sec. 272, Right to Withdraw Motions.

1. A bill may be withdrawn prior to introduction, which consists of giving it a number and reading it by title. A bill may not be withdrawn, after introduction, in the absence of a special rule, without the consent of the body. Many legislative bodies have provided by rule that

Section 726—Continued
Paragraph 8—
State v. Ryan (1912), 92 Neb. 636, 139 N.W. 235; People v. McElroy (1888), 72 Mich. 446, 40 N.W. 750; Hale v. McGettigan (1896), 114 Cal. 112, 45 Pac. 1049.
Paragraph 9—
State v. Jersey City (1855), 25 N. J. L. 309.
Paragraph 10—
People v. Edmonds (1911), 252 Ill. 108, 96 N.E. 914.
Section 727—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 1235, 1240, 1241, 1477; Hughes, Secs. 205, 206; U. S. House Rule XVI, Par. 2.

a bill may be withdrawn without consent before decision or amendment. Under such a rule a bill may be withdrawn after a motion is made concerning it, or after an amendment is proposed, but before the adoption of either. So long as no rule is violated, a bill may be withdrawn, with the consent of the body, at any time prior to passage.

2. Where the rules require all bills to be referred to committee upon introduction, it would seem that bills could be withdrawn only by unanimous consent, or by suspension of the rules, if at all.

3. When a bill is withdrawn, the situation is as though the bill had never been before the house, and the same bill or a similar bill may be again introduced.

Sec. 728. Numbers of Bills

1. The number of a bill is not part of the act but is a method of convenient handling of bills in legislative procedure.

2. When there is a discrepancy between the number and the title of a bill, the title will control.

3. When a bill is identified only by number and the number could refer to a different bill, it will not be presumed that a wrong number was erroneously used.

Section 727—Continued
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 2330.
Paragraph 3—
State v. Ryan (1912), 92 Neb. 636, 139 N.W. 235; State v. Cronin (1904), 72 Neb. 636, 101 N.W. 325; Price v. Moundsville (1897), 43 W. Va. 523, 27 S.E. 218.
Section 728—
Paragraph 1—
Volusia County v. State (1929), 98 Fla. 1166, 125 So. 375.
Paragraph 3—
State v. Wendler (1896), 94 Wis. 369, 68 N.W. 759.

Sec. 729. Titles to Legislation

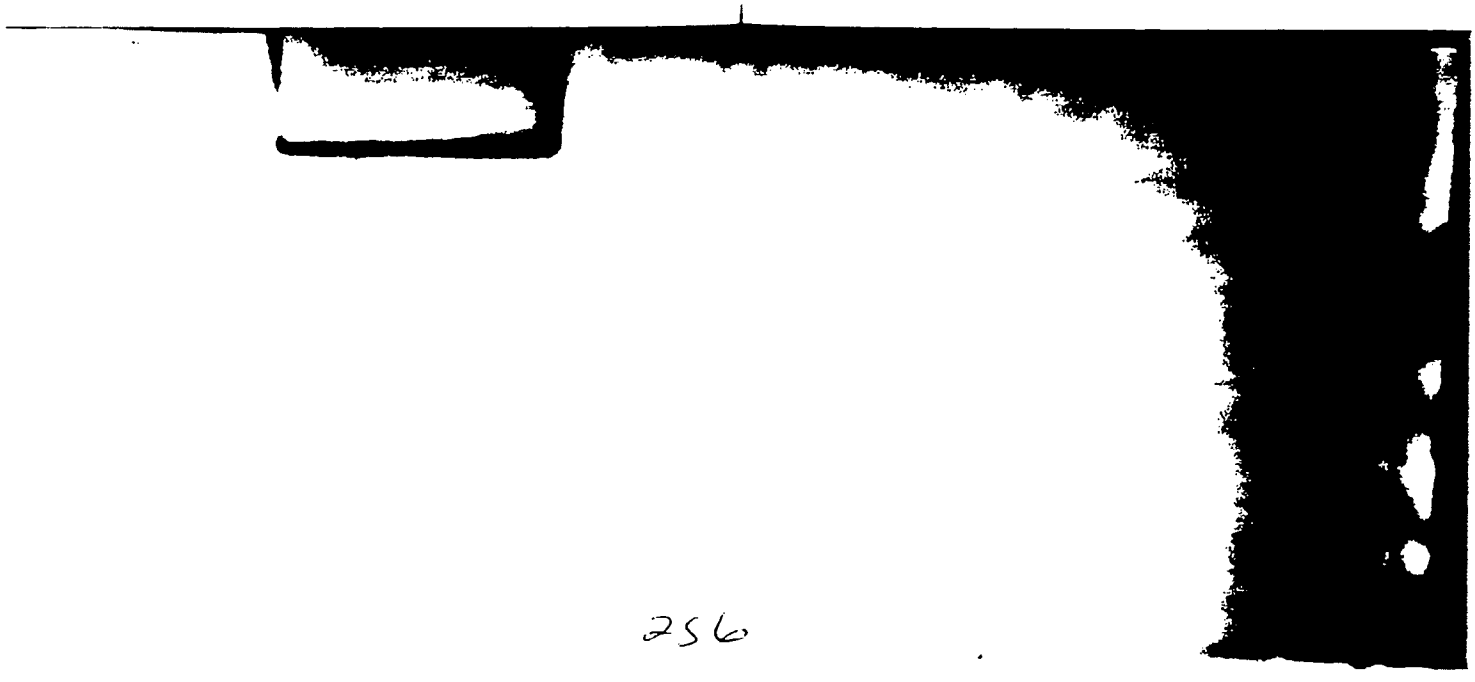
1. The main object of a provision requiring that every act shall embrace but one subject which shall be expressed in its title, is to prevent a legislative body and the public from being entrapped by misleading titles, whereby legislation relating to one subject might be obtained under the title of another; and in the accomplishment of this object the provision is not to receive narrow or technical construction.

2. Discrepancies and irregularities in the title of legislation as it appears in various places in the journal will not invalidate the legislation so long as there is no question of identity and the legislation is properly enrolled.

3. When the object of an act as passed is fully expressed in the title, the form or status at its introduction, or during the stages of legislation before it becomes a law, is immaterial.

4. It is not necessary that an act retain the same title through all its stages in both houses. The title of the bill

Section 729—
Paragraph 1—
Heron v. Riley (1930), 209 Cal. 507, 289 Pac. 160.
Paragraph 2—
Weyand v. Stover (1886), 35 Kan. 545, 11 Pac. 355; Clifton v. State (1928), 22 Ala. App. 559, 118 So. 235; Ewing v. McGehee (1925), 169 Ark. 448, 275 S.W. 766; Deshn-Drew Road Improvement District v. Taylor (1917), 136 Ark. 503, 197 S.W. 1152; State v. Bethea (1911), 61 Fla. 60, 55 So. 550; Volusia County v. State (1929), 98 Fla. 1166, 125 So. 375; Ellis v. Parsell (1894), 100 Mich. 170, 58 N.W. 839; Ex parte Seward (1923), 299 Mo. 385, 253 S.W. 356; Tyson v. City of Salisbury (1909), 151 N. C. 418, 66 S.E. 532; Nelson v. Haywood County (1892), 91 Tenn. 596, 20 S.W. 1; State v. Wendler (1896), 94 Wis. 369, 68 N.W. 759; Walnut v. Wade (1880), 103 U. S. 683.
Paragraph 3—
Detroit v. Schmid (1901), 128 Mich. 379, 87 N.W. 383; People v. McElroy (1888), 72 Mich. 446, 40 N.W. 750; State v. Cronin (1904), 72 Neb. 636, 101 N.W. 325.



as it is adopted by the legislature controls, not the title by which the bill may have been introduced or which it may have carried in reports of committees.

Sec. 730. Urgency Clauses—Legislation Immediately Effective

1. Courts will not ordinarily inquire into existence of an emergency nor question a provision passed by the requisite vote declaring the existence of an emergency, providing that legislation shall by reason thereof become immediately effective.

2. The failure of one house to pass a bill on the first vote by a majority necessary to make certain provisions of the act effective does not amount to an amendment striking out these provisions. When a bill passed one house but did not receive sufficient votes to make the emergency clause effective and was sent to the other house, there amended, passed with a vote sufficient to make the urgency clause effective; was returned to the first house where the amendments were concurred in by a vote sufficient to make the emergency clause effective and the speaker declared the urgency clause carried, both houses

Section 729—Continued
Paragraph 4—
Walnut v. Wade (1880), 103 U. S. 683; Cantini v. Tillman (1893), 54 Fed. 969; Ill. Cent. R. R. Co. v. People (1892), 143 Ill. 434, 33 N.E. 173; Ex parte Seward (1923), 299 Mo. 385, 253 S.W. 356, 264 U. S. 599; State v. Field (1894), 119 Mo. 593, 24 S.W. 752; Milwaukee Co. v. Isenring (1901), 109 Wis. 9, 85 N.W. 131; Nelson v. Haywood Co. (1892), 91 Tenn. 596, 20 S.W. 1; Chicago B. & Q. Co. v. Smyth (1900), 103 Fed. 376.
Section 730—
Paragraph 1—
Hill v. Taylor (1936), 264 Ky. 708, 95 S.W. 2d 566.
Paragraph 2—
State v. Steen (1927), 55 N. D. 239, 212 N.W. 843.

adopted the urgency clause by the constitutional vote necessary to make the clause effective.

3. When, on the original passage of a bill, one house voted that the bill should take effect immediately and the other house, after amending the bill, passed it by a like vote, the bill took effect immediately although the first house, when it concurred in the amendments, did not vote again to make the bill effective immediately.

4. When a bill was passed by one house with an emergency clause which was omitted in the other and the journals did not show that it had been amended the statute was invalid as not being passed by both houses.

5. A declaration by a municipal council that a certain ordinance was an emergency measure necessary for the preservation of the public peace, health and safety did not make unnecessary compliance with the requirement of publication of notice.

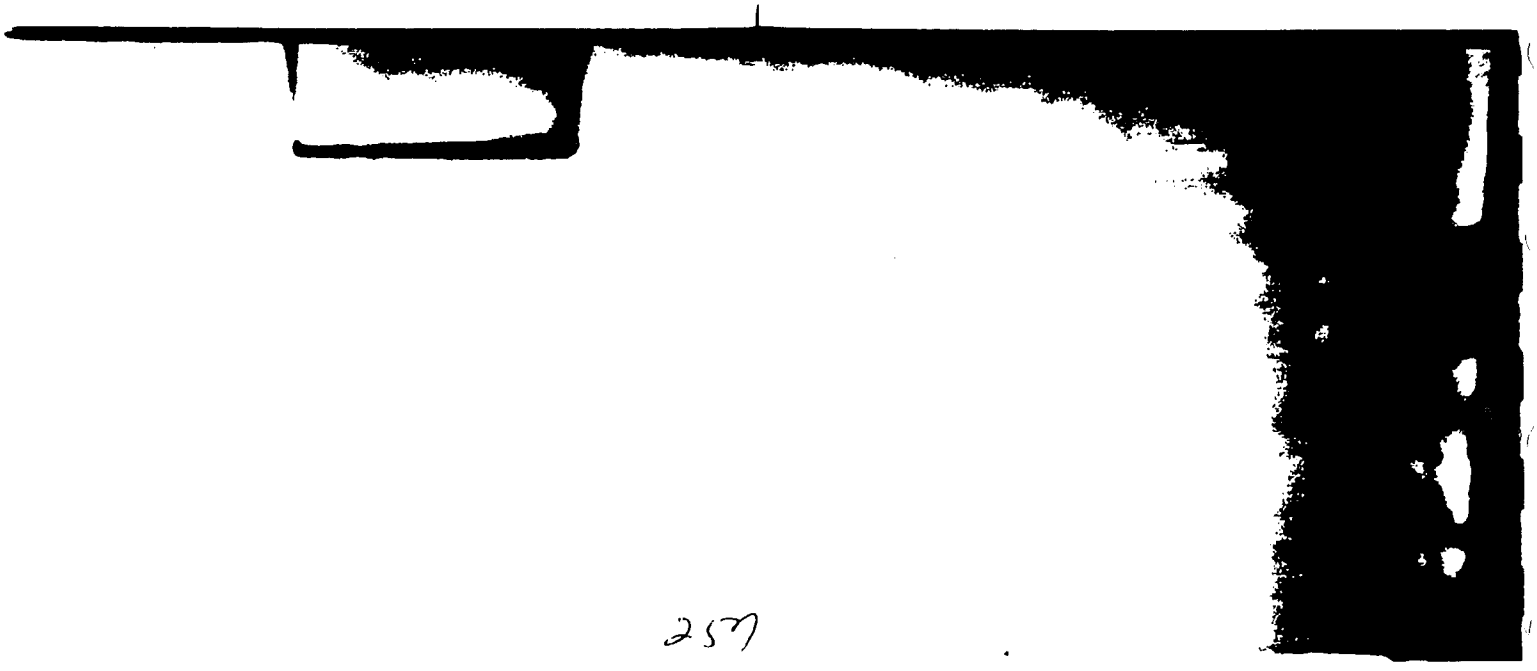
Sec. 731. Amendment of Bills

See also Chapter 39, Secs. 395-423, Motion to Amend, and Sec. 407, Amendment to Titles of Bills.

1. It is competent for the legislature to correct defects or imperfections or to amend a bill at any time before the final passage so long as the subject of the bill is not essentially changed.

2. A bill is open to amendment on second reading and upon third reading. Amendments to bills are frequently proposed in committee but can be adopted only upon

Section 730—Continued
Paragraph 3—
People v. Burch (1891), 84 Mich. 408, 47 N.W. 765.
Paragraph 4—
People v. Knopf (1902), 188 Ill. 340, 64 N.E. 843.
Paragraph 5—
Merrill v. City of Lowell (1920), 230 Mass. 436, 128 N.E. 862.



second and third readings, or upon the adoption of a conference report.

3. A bill, after passing the house, may be materially amended in the other and passed as amended, this practice being in accordance with common legislative procedure; and the amendments may take the form of the substitution of an entirely new bill for the bill introduced, so long as the subject of the bill is not changed.

4. The right of amendment, in the absence of constitutional restrictions, may be exercised with equal freedom by either house irrespective of the house in which the bill originated.

5. It is not proper for any member or officer to make any change in a legislative proposal except as may be ordered by the body. It is not proper even to correct a clerical error in a measure after its introduction, the proper procedure being to present an amendment to accomplish that purpose.

Sec. 732. Printing of Bills

1. The constitutional provisions requiring the printing of bills are mandatory. This requires the printing of the original bill and with every amendment.

Section 731—
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 2328; N. Y. Manual, p. 405; Hughes, Sec. 795.
Paragraph 3—
State v. Dillon (1900), 42 Fla. 95, 28 So. 781; Thrift v. Towers (1915), 127 Md. 54, 95 Alt. 1064.
Paragraph 4—
In re Amendments of Legislative Bills (1894), 19 Colo. 356, 35 Pac. 917.
Section 732—
Paragraph 1—
In re House Bill No. 250 (1899), 26 Colo. 234, 57 Pac. 49; Cohn v. Kingsley (1897), 5 Idaho 416, 49 Pac. 985;

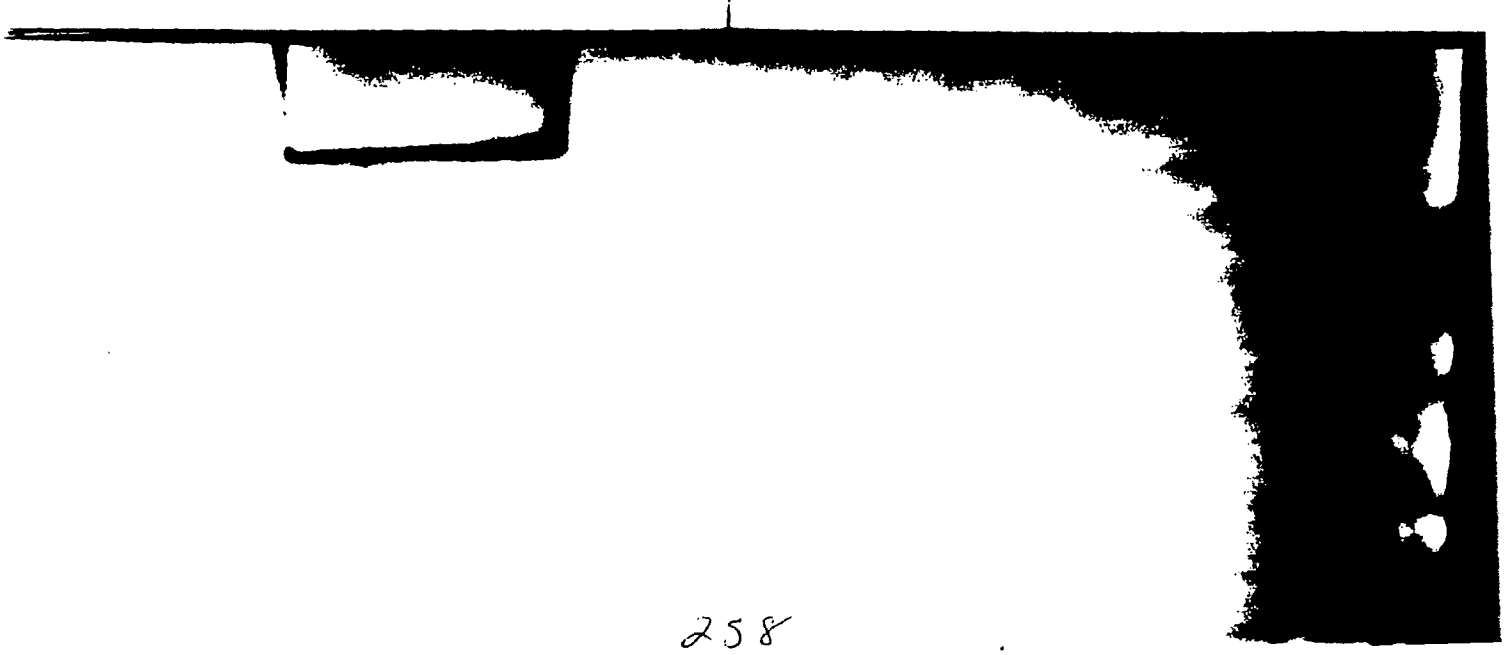
2. A constitutional provision requiring a bill to be printed with amendments before passage is mandatory, and acquiescence in a failure to comply with the provision for a long period will not be permitted by the courts to defeat the requirement.

3. When the constitution requires a printed bill to be before the house before it is voted upon for passage, the bill must be printed in the form required by the rules. When the rules require amendatory or amended bills to be printed in a particular manner, the bill is not properly on the files or before the house until it is printed in conformity with the rules.

4. A constitutional requirement that a bill be printed before it shall be considered or become a law does not necessitate the printing of the bill before it is read, but it is sufficient if it is printed before it is taken up for debate or amendment.

5. It is not necessary that the journal affirmatively show that bills were printed before consideration or

Section 732—Continued
Paragraph 1—Continued
Neiberger v. McCullough (1912), 253 Ill. 312, 97 N.E. 660; State v. Burlington R. Co. (1900), 60 Neb. 741, 84 N.W. 254; People v. Reardon (1906), 184 N. Y. 431, 77 N.E. 970.
Paragraph 2—
Neiberger v. McCullough (1912), 253 Ill. 312, 97 N.E. 660; People v. Reardon (1906), 184 N. Y. 431, 77 N.E. 970.
Paragraph 3—
N. Y. Manual, pp. 405, 454.
Paragraph 4—
Massachusetts Mutual etc. Co. v. Colorado Loan etc. Co. (1894), 20 Colo. 1, 36 Pac. 793.
Paragraph 5—
People v. LaSalle Street Trust and Savings Bank (1915), 269 Ill. 518, 110 N.E. 38; Mass. Mutual etc. Co. v. Colorado Loan etc. Co. (1894), 20 Colo. 1, 36 Pac. 793; State v. Field (1894), 119 Mo. 593, 24 S.W. 752; Ex parte Seward (1923), 299 Mo. 385, 253 S.W. 356; State v. Cox (1920), 105 Neb. 175, 178 N.W. 913.



passage unless the constitution contains that requirement, as it will be presumed that the bills were printed in compliance with the requirement.

6. In Illinois where the constitution specifically requires that bills be printed with amendments before passage and where "the journals must show on their face a compliance with every requirement of the constitution," failure of the journals to show that conference amendments were printed in the bill before the adoption of a conference report was held to invalidate a bill.

7. When a constitutional provision requires that all substantial amendments to a bill be printed, the question as to what is a substantial amendment is a judicial question.

8. The object of the requirement for the printing of bills is to prevent fraud and trickery, deceit and subterfuge in the enactment of bills, and to prevent hasty and ill-considered legislation.

Sec. 733. First Reading of Bills

1. The usual procedure on introduction of a bill is for the bill to be given a number and read the first time by title, and referred by the presiding officer to the appropriate committee.

2. Amendments may not be proposed to a bill at the first reading nor before reference to committee unless the bill is considered without reference to committee.

Section 732—Continued
Paragraph 6—
Nolberger v. McCullough (1912), 253 Ill. 312, 97 N.E. 660.
Paragraph 7—
In re House Bill No. 250 (1899), 26 Colo. 234, 57 Pac. 49.
Paragraph 8—
In re House Bill No. 250 (1899), 26 Colo. 234, 57 Pac. 49.
Section 733—
Paragraph 2—
Hughes, Sec. 203; Jefferson, Sec. XXIV.

3. It is not usual for a bill to be opposed on first reading but it may be opposed and rejected at this stage unless this action is prevented by some rule of the house.

4. When the rules require that all bills be referred to committees or make other like provisions, the introduction of a bill may not be objected to without first suspending the rules.

Sec. 734. Second Reading of Bills

1. When bills are required to be read on three several days, the second reading must, of course, be on a day following the day upon which the bill was read the first time, unless the rule may be suspended and the proper steps to suspend the rule have been taken.

2. Upon second reading of a bill it is open to amendment.

3. On taking up a bill reported by a committee with amendments, the committee amendments are disposed of before any other amendments are admitted, except an amendment to a committee amendment. When the amendments proposed by the committee are disposed of, the presiding officer should pause and give time for amendments to be proposed from the floor, as he also does when a bill has been reported without amendments. When the bill has been read the second time, and any amend-

Section 733—Continued
Paragraph 3—
Jefferson, Sec. XXIV.
Section 734—
Paragraph 1—
Jefferson, Sec. XXV.
Paragraph 2—
Hughes, Sec. 795; Cushing's Legislative Assemblies, Sec. 2328; N. Y. Manual, p. 405.
Paragraph 3—
Jefferson, Sec. XXIX.

ments disposed of, it is ordered to engrossment and third reading, or to print, engrossment and third reading.

4. When a bill is favorably reported by a committee, and an identical bill from the other house is on third reading, the rules of many of the legislatures provide that a motion is in order that the bill reported from committee, when read the second time, be substituted for the bill on the third reading calendar, and if this action is taken, the effect is to indefinitely postpone the bill already on the calendar.

Sec. 735. Engrossment of Bills

1. All bills must be engrossed prior to third reading, and when a bill is amended on third reading it must be re-engrossed before it can be again considered for passage.

2. An engrossment is a proofreading and verification in order to be certain that the bill before the house is identical with the original bill as introduced with all amendments which have been adopted correctly inserted. The engrossment is usually done under the direction of a committee on engrossment, or a committee on engrossment and enrollment. The engrossed bill is also usually reprinted, omitting the means of indicating the amendments, when bills are printed in this manner. The copy of the bill, when reported by the committee as correctly engrossed, is substituted for the official original bill on the files.

Section 734—Continued
Paragraph 4—
Hughes, Sec. 872.
Section 735—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 2133; N. Y. Manual, p. 419.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 2284.

Sec. 736. Third Reading of Bills

1. On third reading a bill is presented for consideration and passage.

2. Amendments on third reading of a bill are not favored but are permitted. After passage, the title of a bill may be amended to conform to the body, but the body of a bill is no longer subject to amendment, except upon reconsideration.

3. Motions affecting bills on third reading are not in order, even under that order of business, until the particular bill is reached upon the calendar.

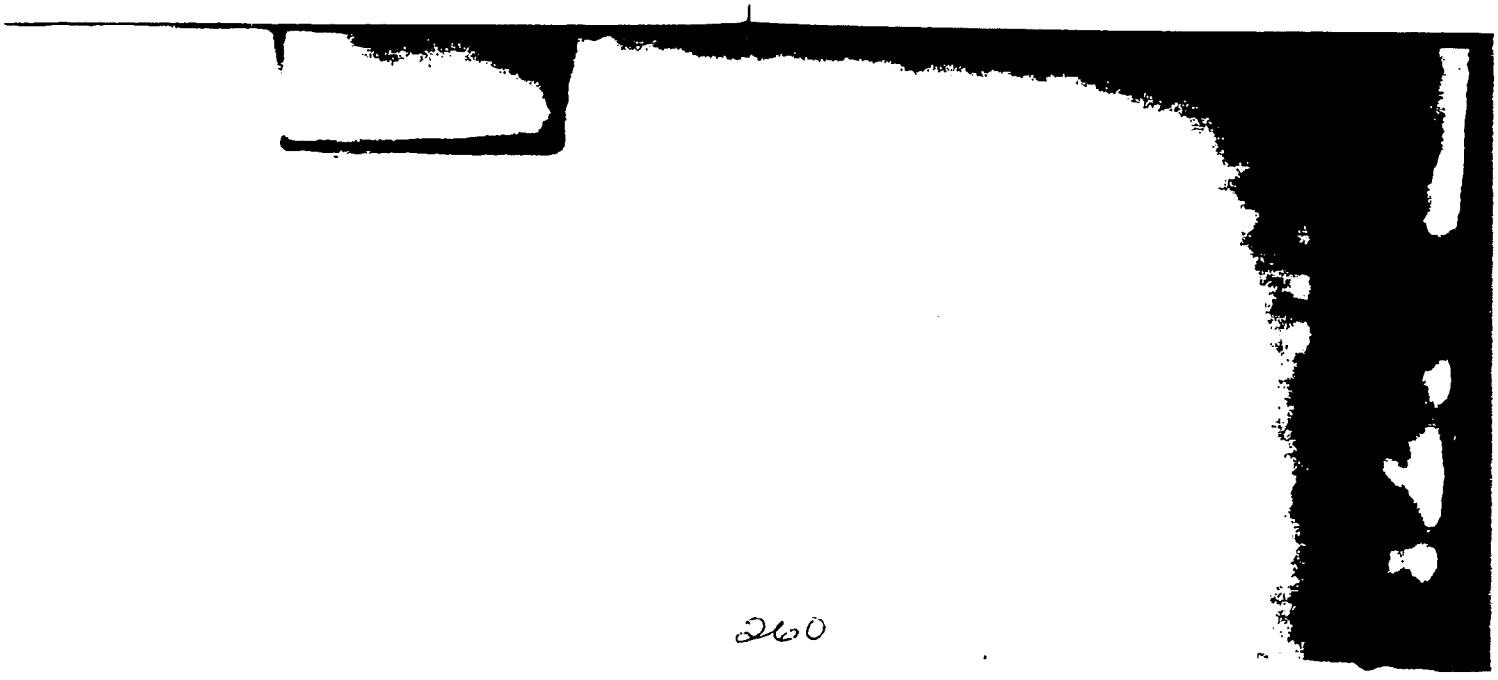
4. A motion or request for the reading of a bill for the information of the members is not in order after the roll call has been ordered.

Sec. 737. Passage of Bills

1. The word "passage," used in connection with legislation, refers to the compliance with all the forms necessary to give force and effect to the legislation.

2. A bill is not duly enacted until it has been voted on affirmatively by both houses in its final form.

Section 736—
Paragraph 1—
Jefferson, Sec. XL.
Paragraph 2—
Jefferson, Sec. XL.
Paragraph 3—
N. Y. Manual, p. 419.
Paragraph 4—
N. Y. Manual, p. 448.
Section 737—
Paragraph 1—
People v. Coffin (1917), 279 Ill. 401, 117 N.E. 185.
Paragraph 2—
Chicago B. & Q. R. Co. v. Smyth (1900), 103 Fed. 376; Jefferson Co. v. Crow (1904), 14 Ala. 126, 37 So. 469; Rogers v. State (1904), 72 Ark. 565, 82 S.W. 169; State



3. Under our system of government, the house and senate are separate and independent bodies, and their votes are to be taken and counted separately.

4. The fact that there is agreement between the houses as to the contents of a bill should appear with certainty, but it is sufficient if it be clear from the record as a whole that the bill, as finally passed by both houses, was identical.

5. When a house has passed a bill, and it is out of its possession, as when it has been returned to the other house which has refused to return it, jurisdiction of the bill has been lost and it has been finally passed.

Section 737—Continued
Paragraph 2—Continued
v. N. L. Sav. Bank (1906), 79 Conn. 141, 64 Atl. 5; Volusia Co. v. State (1929), 98 Fla. 1166, 125 So. 375; People v. Knopf (1902), 188 Ill. 340, 64 N.E. 843; Norman v. Ky. Board of Managers (1892), 93 Ky. 537, 20 S.W. 901; State v. Laiche (1901), 105 La. 84, 29 So. 700; Comm. of Wash. Co. v. Baker (1922), 141 Md. 623, 119 Atl. 461; Ellis v. Parsell (1894), 100 Mich. 170, 58 N.W. 839; Johnson v. City of Great Falls (1909), 38 Mont. 369, 99 Pac. 1059; State v. Cox (1920), 105 Neb. 75, 178 N.W. 913; In re Opinion of Justices (1858), 35 N. H. 579; In re Jaegle (1912), 83 N. J. L. 313, 85 Atl. 214; Tyson v. City of Salisbury (1909), 151 N. C. 418, 66 S.E. 532; State v. Schultz (1919), 44 N. D. 269, 174 N.W. 81; State v. Boyer (1917), 84 Ore. 513, 165 Pac. 587; State v. Persica (1914), 130 Tenn. 48, 168 S.W. 1056; Wilson v. Young Co. Hdw. Co. (Tex. Civ. App. 1924), 262 S.W. 873; Smith v. Mitchell (1911), 69 W. Va. 481, 72 S.E. 755; State v. Wendler (1896), 94 Wis. 369, 68 N.W. 759; Arbuckle v. Pflaeging (1912), 20 Wyo. 351, 123 Pac. 918.
Paragraph 3—
Belote v. Coffman (1915), 117 Ark. 352, 175 S.W. 37.
Paragraph 4—
Perry v. State (1919), 139 Ark. 227, 214 S.W. 2; Walnut v. Wade (1880), 103 U. S. 683; Butler v. Board of Directors (1912), 103 Ark. 109, 146 S.W. 120; State v. Bethea (1911), 61 Fla. 60, 55 So. 550; City of Lansing v. Mich. Power Co. (1914), 183 Mich. 400, 150 N.W. 250.
Paragraph 5—
Smith v. Mitchell (1911), 69 W. Va. 481, 72 S.E. 755.

6. Where a bill has been voted upon favorably by both houses, but a motion to reconsider its action in passing the bill is pending in the house last acting on the bill and the bill is still in its possession, it has not been finally passed by both houses.

7. The fact that legislative action in the passage of a bill is taken on Sunday does not render the action ineffective.

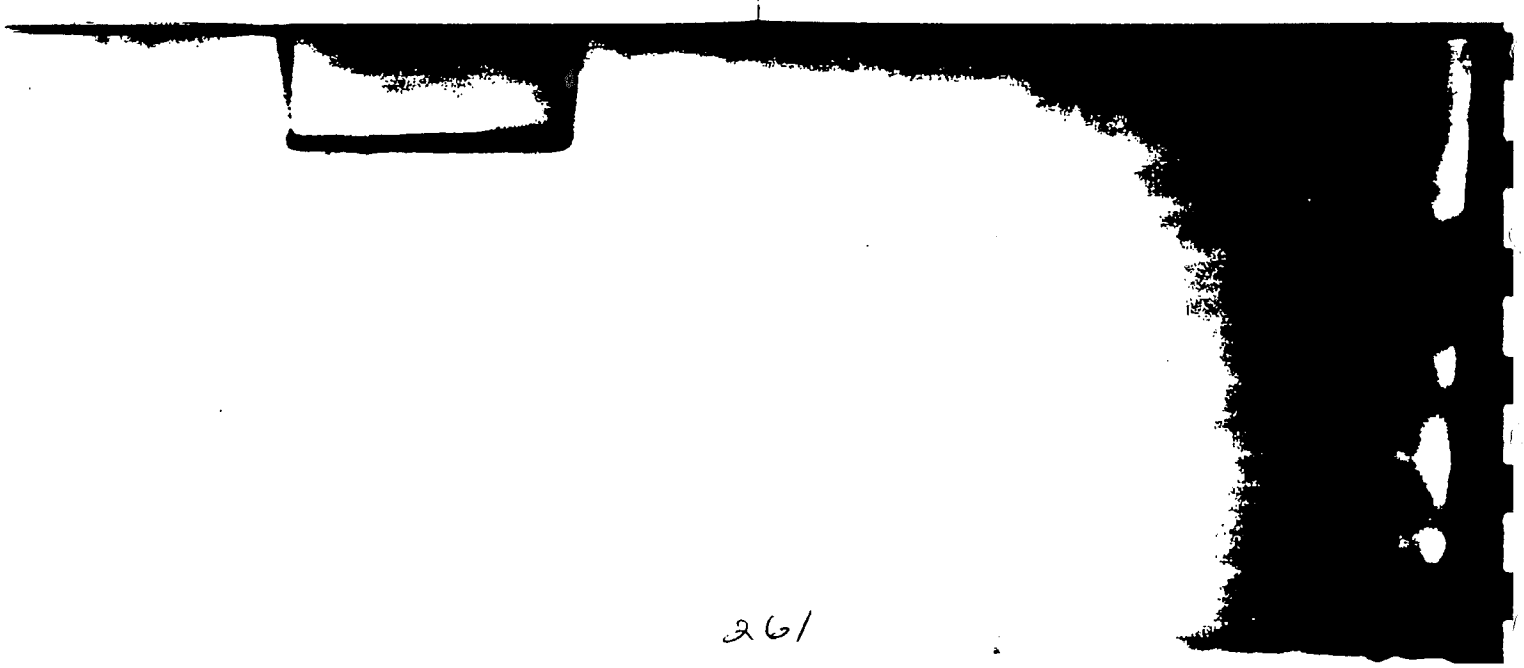
Sec. 738. Enrollment of Bills

1. An enrolled bill, in legislative parlance, is a reproduction or copy of the identical bill passed by both houses.

2. After passage a bill is enrolled, authenticated by the signatures of the presiding officers and chief clerical officers of both houses, and presented to the governor for his signature.

3. The enrolling clerk or committee has no power or authority to modify in any respect a bill passed by the legislature, but a correction may be made by concurrent

Section 737—Continued
Paragraph 6—
State v. New London Sav. Bank (1906), 79 Conn. 141, 64 Atl. 5; Crawford v. Gilchrist (1912), 64 Fla. 41, 59 So. 963.
Paragraph 7—
Ex parte Seward (1923), 299 Mo. 385, 253 S.W. 356, 264 U. S. 599.
Section 738—
Paragraph 1—
Rice v. Lonoke-Cabot Road Improvement District (1920), 142 Ark. 454, 221 S.W. 179.
Paragraph 2—
Rice v. Lonoke-Cabot Road Improvement District (1920), 142 Ark. 454, 221 S.W. 179; Katerndahl v. Daugherty (1917), 30 Idaho 356, 164 Pac. 1017; People v. Davis (1920), 88 Tex. Crim. 183, 225 S.W. 532; State v. Wisconsin Board of Medical Examiners (1920), 172 Wis. 317, 177 N.W. 910.



resolution prior to enrollment. Any material unauthorized change will invalidate legislation.

4. A bill as enrolled and presented to the governor should be to the same effect as the bill passed by both houses of the legislature. A bill presented to the governor in a form different from that in which it was passed, if the change is material, is void even if signed. Correction of purely typographical errors or errors in form only, apparently, will not invalidate legislation.

5. The governor, in signing an enrolled bill, approves the bill as passed by the legislature, the enrolled bill being merely a reproduction thereof and the act not being impaired by additions, omissions or misprisions of the enrolling clerk in copying the bill. Clerical mistakes of legislative employees may be considered in determining whether the bill passed is different from that which was enrolled, signed and filed with the secretary of state's office, not to defeat the legislative will, but to identify amendments in fact proposed and adopted.

Sec. 739. Authentication of Passage of Bills

1. After a bill has been passed by both houses and enrolled, it is signed by the presiding officer and chief clerical officer of the house where it originated, and then

Section 738—Continued
Paragraph 4—
Gwynn v. Hardee (1926), 92 Fla. 228, 110 So. 343; People v. Lueders (1918), 283 Ill. 287, 119 N.E. 339; Katerndahl v. Daugherty (1917), 30 Idaho 356, 164 Pac. 1017; People v. Davis (1920), 88 Tex. Crim. 183, 225 S.W. 532; State v. Wisconsin State Board of Medical Examiners (1920), 172 Wis. 317, 177 N.W. 910.
Paragraph 5—
Ewing v. McGehee (1925), 169 Ark. 448, 275 S.W. 766; Rice v. Lonoke-Cabot Road Improvement Dist. (1920), 142 Ark. 454, 221 S.W. 179.

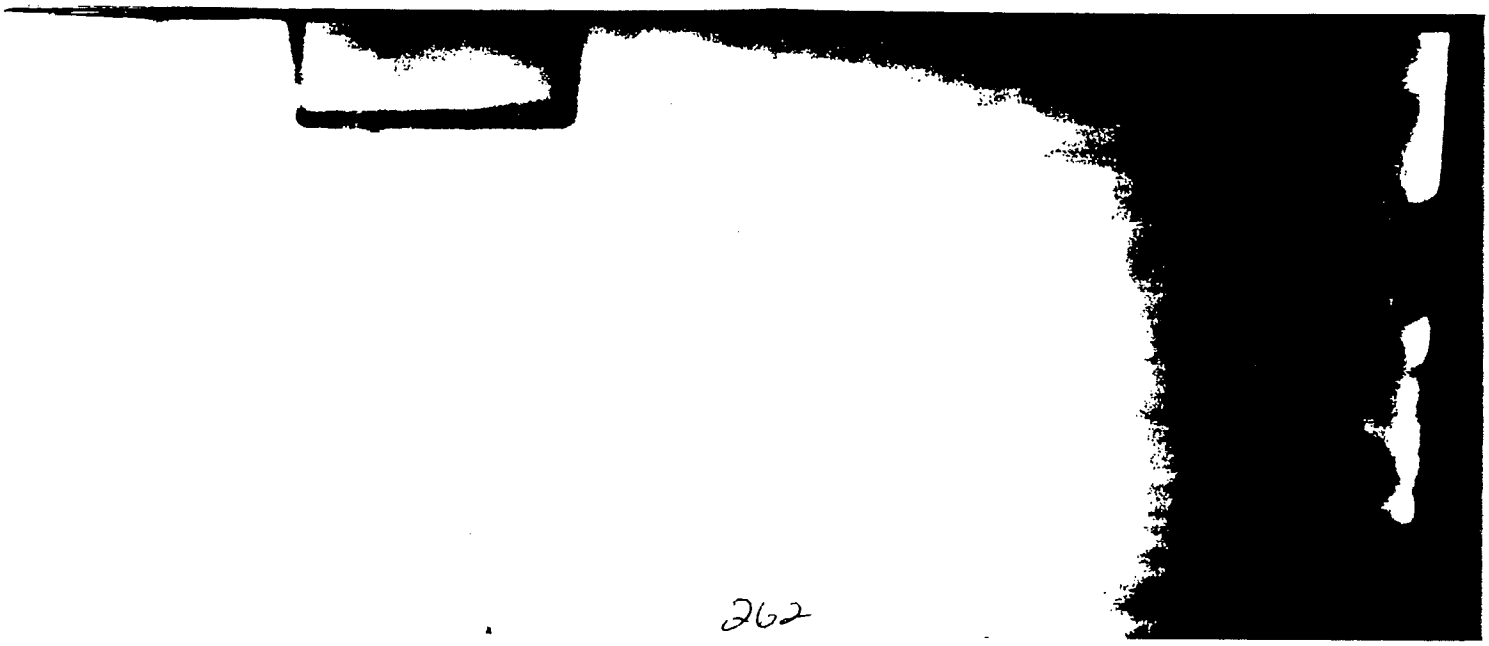
sent to the other house, where it is signed by the presidin officer and chief clerical officer. Procedure for the auther tication of legislation prescribed by the constitution o other controlling authority must be complied with.

2. Where a bill has duly passed a legislative body, th presiding officer must sign it. When there is no prescribe procedure to determine whether legislation has been dul passed, that decision is made by the presiding officer sub ject to appeal and decision by the body.

3. Although the particular officers who should sign bill passed by both houses are designated by the constitution the signature of an assistant, attached to a bill while ful filling the duties of the office, is a substantial and sufficien compliance with the requirement of the provision.

4. The duty of the presiding officer to sign legislation properly passed by the body over which he presides, is a legislative act and not a merely ministerial one, and a writ of mandate or an injunction will not lie to compe him to sign or to restrain him from signing legislation If a presiding officer should refuse to sign legislation which has been duly passed, he could be required to do so or be deposed from office and another presiding office elected who would have authority and whose duty i would be to sign the legislation.

Section 739—
Paragraph 1—
Jefferson, Sec. XLVIII; Amos v. Gunn (1922), 84 Fla 285, 94 So. 615.
Paragraph 2—
Amos v. Gunn (1922), 84 Fla. 285, 94 So. 615; State v Meier (1898), 143 Mo. 439, 45 S.W. 306; Albright v. Fisher (1901), 164 Mo. 56, 64 S.W. 106.
Paragraph 3—
Robertson v. State (1901), 130 Ala. 164, 30 So. 494; State v. Glenn (1883), 18 Nev. 34, 1 Pac. 186.
Paragraph 4—
Amos v. Gunn (1922), 84 Fla. 285, 94 So. 615; Ex parte Echols (1866), 39 Ala. 698.



Sec. 740. Presentation of Bills to the Governor

1. After being authenticated, a bill must be presented by the committee on enrollment, or officer charged with this duty, to the governor and that fact is reported to the house.

2. Under the usual constitutional provision requiring bills to be presented to the governor for his signature, all bills must be presented to the governor while the legislature is still in session. But this rule has been modified in many cases by constitutional provision.

3. The procedure for the presentation of legislation to the executive for his approval is usually prescribed in detail by the constitution and rules in the case of state legislatures and by the charters or statutes in the case of local legislative bodies.

4. In presenting legislation to the executive for his approval constitutional or other controlling provisions must, of course, be strictly followed.

5. When a bill has passed both branches of the legislature and has been signed by the appropriate officers and sent to the governor for his approval, it has passed beyond the control of either house and cannot be recalled except by the joint action of both houses.

6. When a bill is presented to a governor without amendments adopted in the legislature and is signed by him the bill is void.

Section 740—
Paragraph 1—
People v. Devlin (1865), 33 N. Y. 269; Amos v. Gunn (1922), 84 Fla. 285, 94 So. 615.
Paragraph 2—
Amos v. Gunn (1922), 84 Fla. 285, 94 So. 615.
Paragraph 5—
People v. Devlin (1865), 33 N. Y. 269.
Paragraph 6—
In re Jaegle (1912), 83 N. J. L. 313, 85 Atl. 214.

Sec. 741. Effective Date of Legislation

1. A statute speaks from the time it commences to take effect.

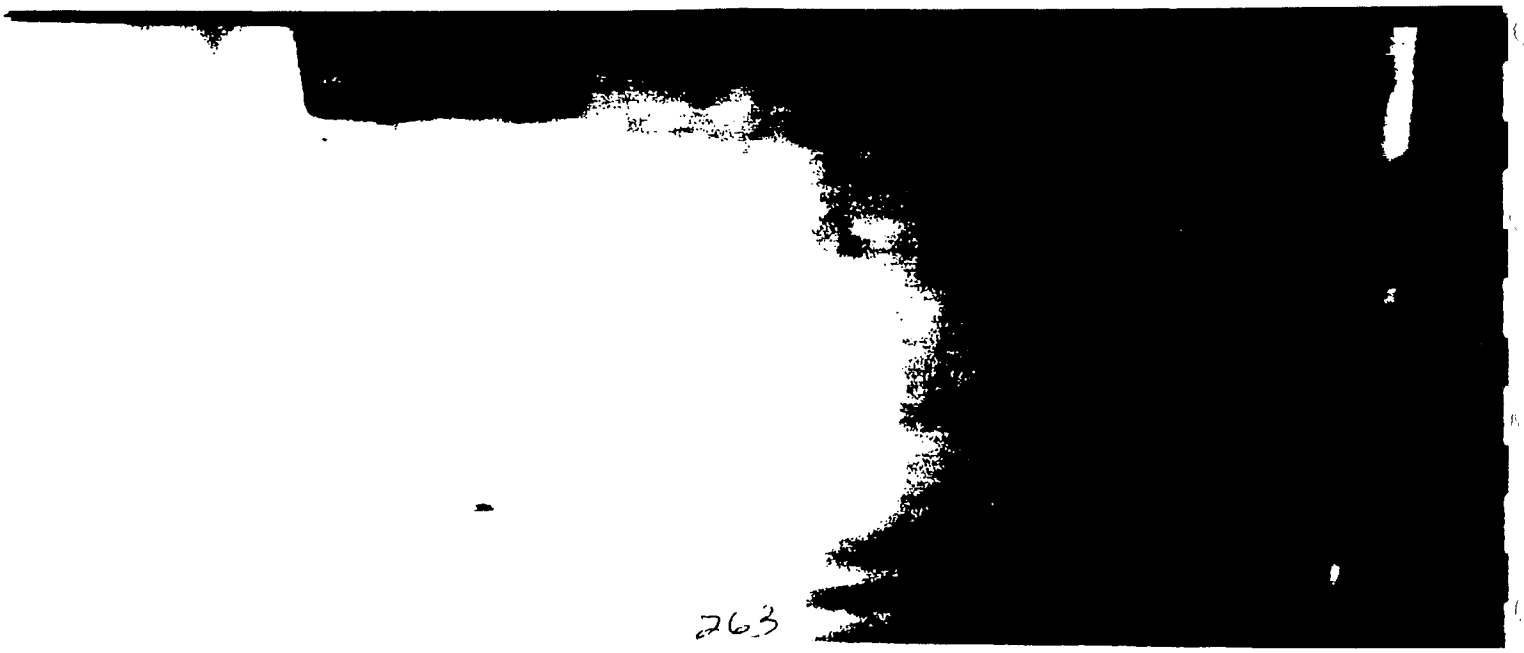
2. Different parts of the same statute may go into effect at different times unless prohibited by constitutional provisions.

3. A statute may be in effect in the sense that it is a valid subsisting law, but not become operative until a later or future date.

4. The time a particular statute shall take effect may be fixed by another statute passed at the same legislative session.

5. In the absence of a constitutional provision or general statute to the contrary, a proposed charter will become effective on the date of its adoption unless otherwise provided therein.

Section 741—
Paragraph 1—
State v. Kansas City (1925), 310 Mo. 542, 276 S.W. 389.



PART VIII

RELATIONS WITH THE OTHER HOUSE AND WITH THE EXECUTIVE

CHAPTER 70

RELATIONS WITH THE EXECUTIVE

Sec. 750. Messages From the Governor

1. Messages from the governor relating to the bills or measures of one house need only be sent to that house, but messages relating to general matters should be communicated to both houses. Where the subject of a message is of such a nature that it should be communicated to both houses of the legislature, it should be communicated to both on the same day and as nearly at the same hour as conditions reasonably permit.

Sec. 751. Confirmation of Appointments of the Governor

1. It is not in order for the presiding officer to question the legality of an appointment by the governor which is regularly before the house for confirmation.

2. A motion to reconsider a vote confirming or refusing to confirm an appointment of the governor is not in order after the notice of the action of the house has been transmitted to the governor.

See Chapter 42, Secs. 450-473, The Motion to Reconsider and particularly Sec. 453, Election or Confirmation of Officers.

Section 750—
Jefferson, Sec. XLVII.

Section 751—
Paragraph 1—
N. Y. Manual, p. 454.
Paragraph 2—
N. Y. Manual, p. 454.

Sec. 752. Reference to Executive in Debate

1. It is irregular and disorderly for a member in debate to use the name of the executive for the purpose of influencing votes of the members.

Sec. 753. Communications With Executive

1. Upon the organization of the houses of a legislature, each should notify the governor of its organization. This notice is usually sent by a committee.

2. A constitutional provision requiring the governor to certify to the necessity of immediate passage of a bill is supplied by a message to one house and no certification to the other is necessary.

3. If either branch desires for any reason to revise an enacted bill, concurrent action of the two branches should be taken, and the motion should be one providing that a message be sent by the two branches requesting the governor to return the bill. It is the practice in Massachusetts for one house to request the return of the bill, without asking the concurrent action of the other house.

Sec. 754. Executive Approval or Rejection of Legislation

1. There are three ways in which a bill may become a law: (1) by signature of the governor after passage of the legislature, (2) by the governor retaining the bill for a specified period or beyond a specified period while both houses are in session without action on it, (3) by passage of the bill over the objections of the governor.

2. The approval of the executive to legislation must be in writing.

3. When legislation is approved by the governor, it is signed and transmitted to the secretary of state who assigns a chapter number to each law, files it in his office, and makes such publication as the law requires.

4. It is not necessary to the validity of a law that the executive should inform the legislative body of his approval.

5. When the recitals of a legislative journal show that a bill was not returned by the governor with his veto within the time prescribed by the constitution, it became a law.

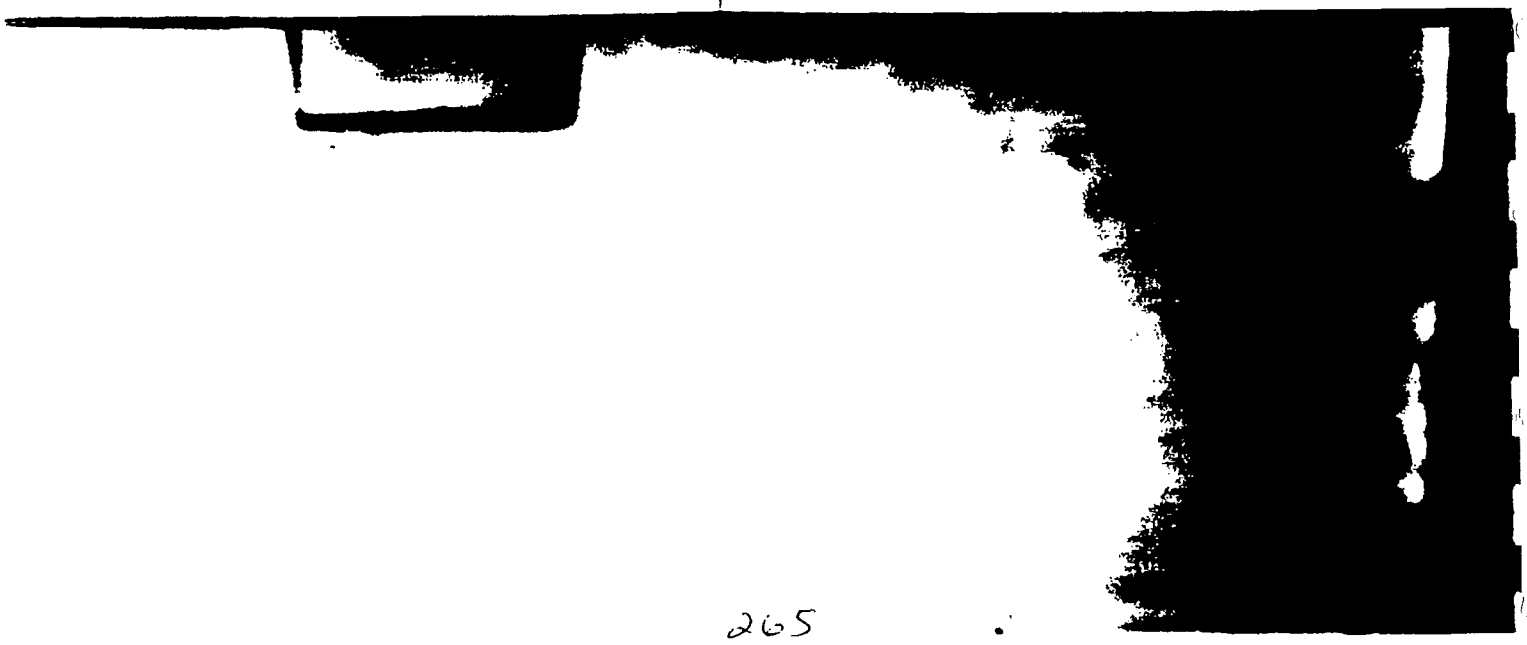
6. The constitutional provisions with reference to the time within which a governor must veto a bill or have it go into effect is mandatory in respect to both the time and manner of exercising the veto power.

7. A constitutional provision relating to legislative consideration of vetoed bills is construed in connection with the constitutional provision authorizing each house to determine its rules of procedure.

Section 752—
Cushing's Legislative Assemblies, Sec. 738.

Section 753—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 277.
Paragraph 2—
People v. La Setra (1920), 185 N. Y. Supp. 638.
Paragraph 3—
Mass. Manual, p. 594.

Section 754—
Paragraph 1—
Parkinson v. Johnson (1911), 160 Cal. 756, 117 Pac. 1057.
Paragraph 2—
Martindale v. Palmer (1876), 52 Ind. 411.
Paragraph 4—
U. S. House Manual, note to Art. I of Constitution.
Paragraph 5—
State v. Dixie Finance Co. (1925), 152 Tenn. 306, 278 S.W. 59; Parkinson v. Johnson (1911), 160 Cal. 756, 117 Pac. 1057.
Paragraph 6—
Capito v. Topping (1909), 65 W. Va. 587, 64 S.E. 845.
Paragraph 7—
State v. Lewis (1936), 181 S. C. 10, 186 S.E. 625.



8. A constitutional provision requiring that when a governor vetoes a bill he must return it to the house where it originated, and if that house passes it over his objection it is then sent to the other for consideration. Failure of the house of origin to pass the bill by the required majority, though it is later passed by the other house and returned to such house which then passes it with the requisite number, does not make the bill a law.

9. The return of a bill by the governor without his approval is not a proceeding of either house of the legislature within the provisions of the constitution requiring that each house keep a journal of its proceedings.

10. When legislation is passed so late in the session that the session ends before the time the governor is given to act on bills expires, the governor has the power to withhold action on the bill and let it die from his failure to approve it. This is called the pocket veto.

Sec. 755. Procedure on Veto of Legislation

1. Legislation incorrectly enrolled may be recalled from the executive for correction.

2. Legislation is also sometimes recalled from the executive for further consideration. Legislation is usually recalled by a resolution but sometimes a committee is sent to the executive for that purpose.

3. The vote upon final passage of a bill recalled from the governor may be reconsidered at any time after its return in the house having such bills in its possession.

Section 754—Continued
Paragraph 8—
Webb v. Carter (1914), 129 Tenn. 182, 165 S.W. 426.
Paragraph 9—
Parkinson v. Johnson (1911), 160 Cal. 756, 117 Pac. 1057.
Section 755—
Paragraphs 1-6—
U. S. House Manual, notes to Art. I of Constitution; Mass. Manual, p. 596; N. Y. Manual, 1948-49, p. 453.

4. It is permissible to reconsider a vote refusing to pass a bill over the executive veto, notwithstanding the first vote is described in the constitution as a reconsideration of the bill.

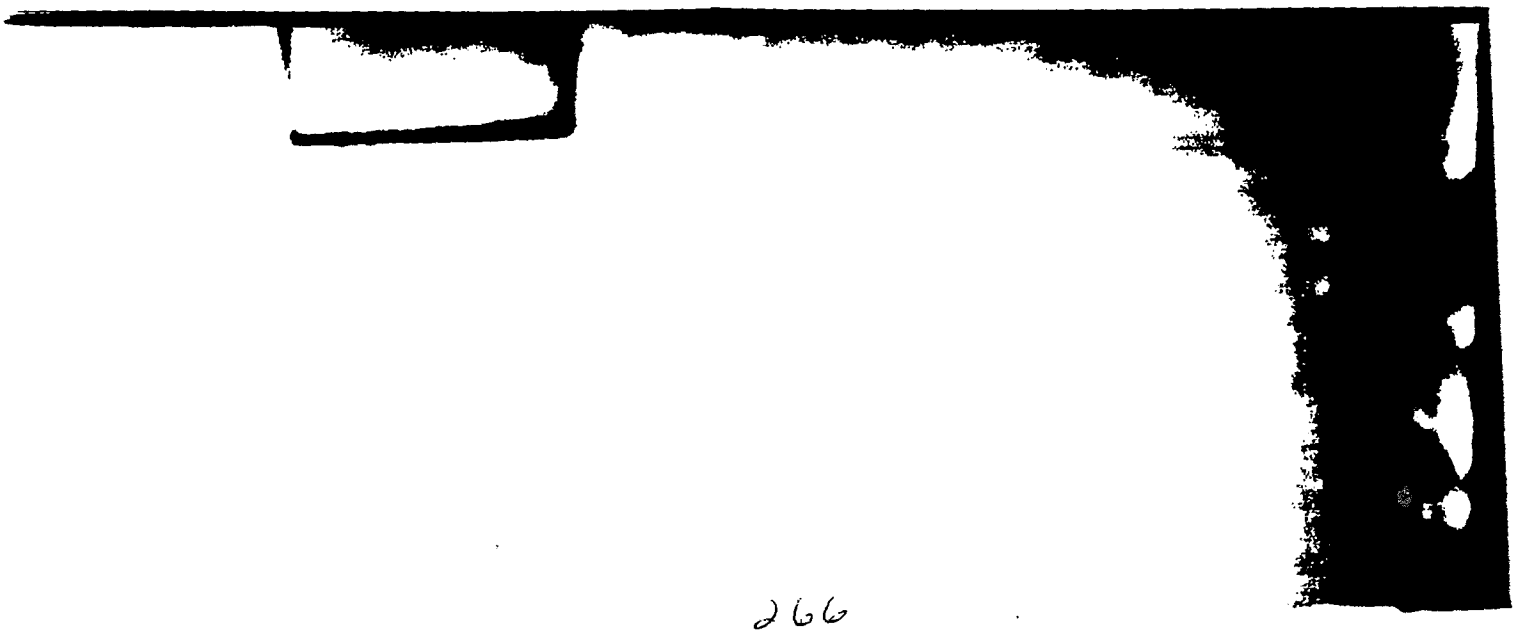
5. Legislation which is not approved by the executive is returned by him, within the time allowed him to consider and act upon legislation, to the house in which it originated. It is first considered by this house and, if approved by the required vote, sent to the other house, where it is considered. If approved by the second house by the required vote it is transmitted, with a certificate of passage notwithstanding the objections of the executive, to the secretary of state who chapters it and files it in his office.

6. Legislation returned by the executive with his objections is usually considered promptly but may be referred to committee or laid on the table.

7. The executive may sign legislation within the time allowed him for consideration, even though the house may, in the meantime, have adjourned or have taken a recess, and a bill so signed, has been held to be valid by the Supreme Court.

8. When a city council passes a resolution appropriating money to pay a salary of a person employed by the council over the veto of the mayor, it is the duty of the mayor to countersign the warrant drawn for such appropriation and that duty, on his refusal to perform it, will be enforced by the court.

Section 755—Continued
Paragraph 7—
Edwards v. U. S. (1931), 286 U. S. 482.
Paragraph 8—
State v. Haynes (1887), 50 N. J. L. 97, 11 Atl. 151.



CHAPTER 71

RELATIONS WITH THE OTHER HOUSE

Sec. 760. The Other House and Its Members

See also Sec. 127, Relations With the Other House and Its Members.

1. Neither house can exercise any authority over a member or officer of the other, but when some action appears advisable, one house may complain to the other concerning the conduct of a member or officer, and leave any punishment to that house.

2. The members or officers of one house have no right to attempt to direct the members or officers of the other house, but either house may request the other house to instruct its officers or members concerning any matter of interest to the first house.

3. If the motives of a member of either house have been impugned in the other, he may refer to the proceedings of the other house sufficiently to explain his motives under the right of personal privilege, but he may not bring into discussion matters of controversy between the houses.

4. When there is complaint of words disrespectfully spoken by a member of the other house, it is difficult to obtain punishment, because of the rules supposed necessary to be observed, that the objectionable words must be immediately noted down, for the security of members. It is, therefore, the duty of the house, and more particularly of the presiding officer, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other house and introduce proceedings and mutual accusations between the two houses.

5. It is a breach of order in debate to notice what has been said on the same subject in the other house, or the particular votes or majorities on it there, because the opinion of each house should be independent and not be influenced by the proceedings of the other, and the quoting of them might cause reflections leading to a misunderstanding between the two houses.

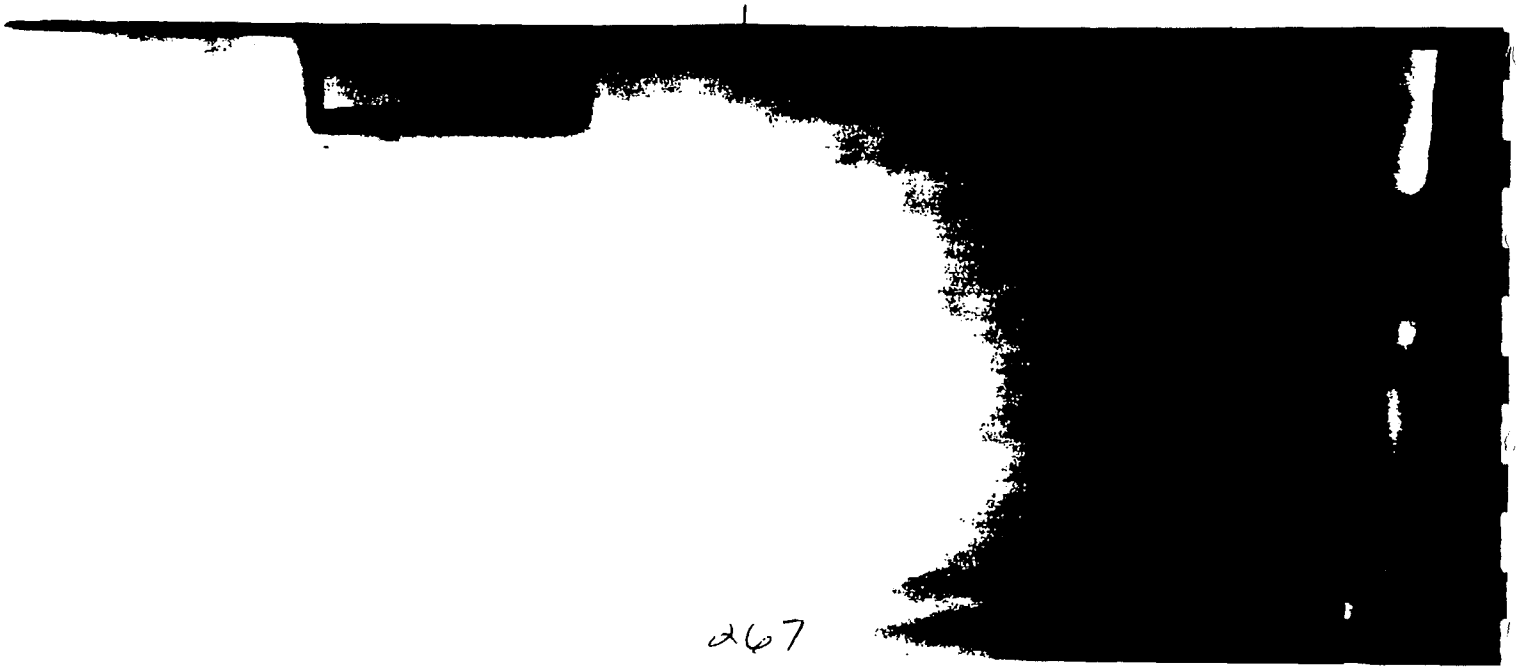
6. A record of a vote in the journal of one house is sufficient ground for the other house to take official notice of the action of that house.

7. It is not within the province of one house to question any action taken by a committee of the other house in reporting a bill to that branch.

Sec. 761. Messages Between the Houses

1. Communications between houses may take place by messages, by conference committees, and by joint sessions.

Section 760—
Paragraph 1—
Jefferson, Sec. XVII; Hughes, Secs. 83, 84, 694.
Paragraph 2—
Hughes, Sec. 85.
Paragraph 3—
Hughes, Sec. 694.
Paragraph 4—
Jefferson, Sec. XVII; Hughes, Sec. 694.
Section 760—Continued
Paragraph 5—
Jefferson, Sec. XVII; Reed, Sec. 224; Cushing's Legislative Assemblies, Sec. 739.
Paragraph 6—
Jefferson, Sec. XLIX.
Paragraph 7—
Mass. Manual, p. 697.
Section 761—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 804.



2. The most usual method of communication between houses is by messages. Messages may relate to passage of bills, to amendments, to questions of privilege, or to any other business between the houses.

3. Upon the organization of the houses of a legislature, each should notify the other of its organization. Notice of organization is usually transmitted by a committee.

4. When a bill has passed one house, that fact should be noted on the bill itself with such other record as the rules or practice may require, and it should be authenticated by the signature of the secretary or chief clerk. It is usually provided by rule in American legislative bodies that a bill sent from one house to the other should bear a statement of the action taken by the house, authenticated by the signature of the clerk or secretary. In the absence of any such rule, however, it appears that the passage of a bill is sufficiently authenticated by the message which accompanies it.

5. Where one branch has passed upon a matter and forwarded it to the other, the latter is, as a rule, bound to receive and act upon it.

6. Each house should notify the other promptly of the passage of bills of the other house, and the bills should be returned with the message notifying the other house of their passage. When a bill of one house is rejected by

Section 761—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 277.
Paragraph 4—
Cushing's Legislative Assemblies, Secs. 2276, 2285, 2293.
Paragraph 5—
Mass. Manual, p. 696.
Paragraph 6—
Jefferson, Sec. XLVII; Reed, Sec. 237; Cushing's Legislative Assemblies, Sec. 2292.

the other, the house in which the bill originated is notified of the action, the bill being returned with the message.

7. When a bill is returned from one house to the house of its origin with amendments, it is sent with a message informing the house of the passage of the bill with amendments and requesting its concurrence in the amendments.

8. It is not competent for a legislative body or its committees to proceed with the consideration of a bill not in its possession.

Sec. 762. Errors in Messages

1. When a bill is sent from one house to the other by mistake, or it is wanted in the originating house for the purpose of reconsideration, or for any other purpose, or where mistakes have occurred in the amendment or engrossment of a bill in one house and it is sent to the other before discovering the errors, the bill may be returned upon receipt of a message requesting its return, or a secretary or clerk may be permitted to correct the errors in the bill in the other house as directed by his own house.

2. When a bill has been sent to one house by the other without its passage being authenticated by the signature of the secretary or clerk, the bill may be returned upon the receipt of a message requesting its return, or the secretary or clerk may be permitted to affix his signature to the bill in the other house.

Section 761—Continued
Paragraph 7—
Cushing's Legislative Assemblies, Secs. 2233, 2287.
Paragraph 8—
Cushing's Legislative Assemblies, Sec. 2396.
Section 762—
Paragraph 1—
Cushing's Legislative Assemblies, Secs. 2393, 2394.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 2393.

3. If a mistake occurs in a message accompanying a bill, the mistake may be corrected by means of a new message from the house which sent the message, or by a message from the other suggesting the mistake.

Sec. 763. Delivery of Messages

1. Messages between the houses should be sent only while both houses are sitting.

2. It is customary for messengers to be received in any state of business except:

(a) While a question is being put.
(b) While roll is being called.
(c) While the ballots are being counted.

3. When a message is received while debate is in progress, the debate is merely suspended long enough for the delivery of the message and the speaker is permitted to resume.

4. When a house is in committee of the whole when a message arrives, the business may be interrupted while the presiding officer takes the chair and receives the message. The business of the committee of the whole is then resumed without any motion being made or question being put.

Section 762—Continued
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 2392.
Section 763—
Paragraph 1—
Jefferson, Sec. XXVIII.
Paragraph 2—
Jefferson, Sec. XLVII.
Paragraph 3—
Jefferson, Sec. XLVII; Reed, Sec. 237.
Paragraph 4—
Jefferson, Sec. XLVII; Reed, Sec. 237.

5. When the messenger from the other house appears, he is announced by the sergeant-at-arms to the presiding officer, and he then briefly states the message and either delivers or sends the message to the desk by a page.

6. In lieu of the formal presentation of messages to the house, they may be presented by the messenger of one house to the appropriate officer of the other. When messages are not formally presented, the measures should be receipted for by an officer of the house.

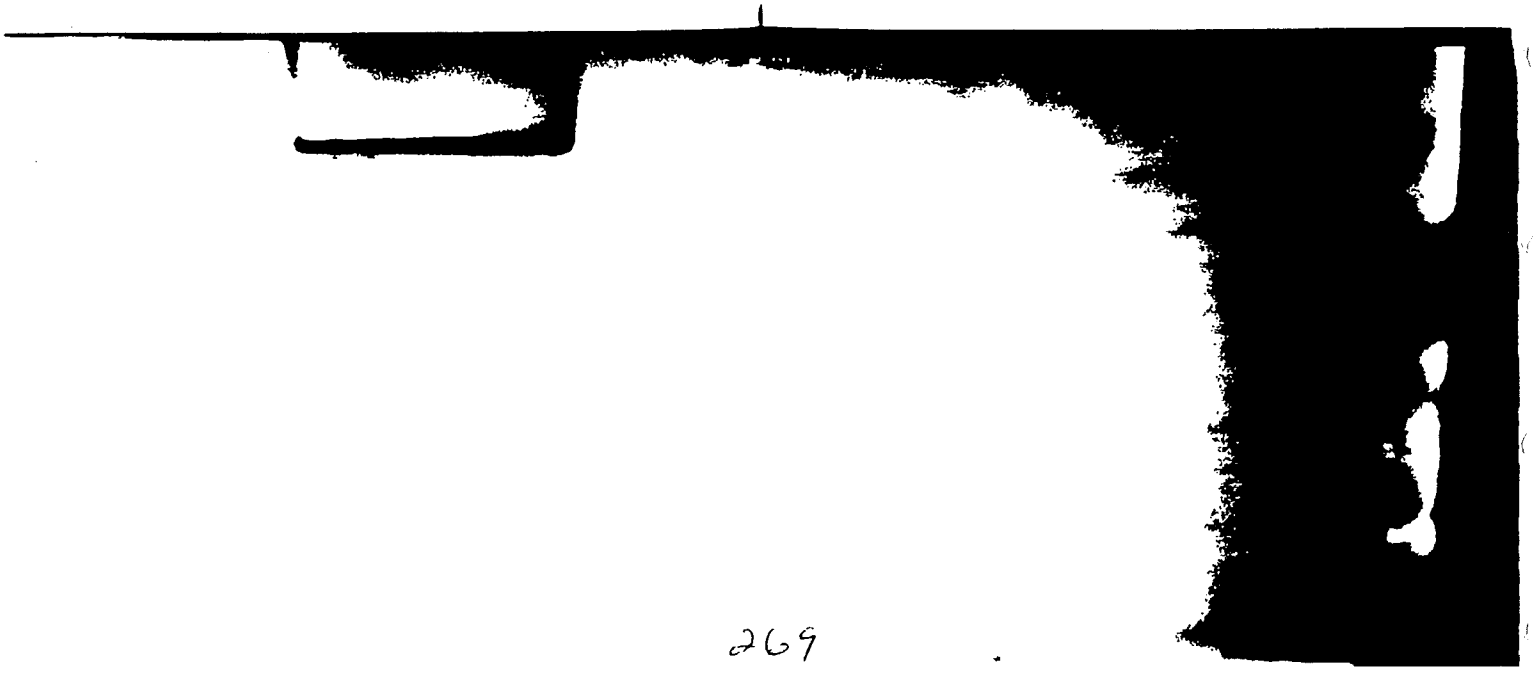
Sec. 764. Conferences Between the Houses

See also Chapter 63, Secs. 663-669, Joint Committee.

1. It is proper for either house to request a conference with the other on any matter of difference or dispute between them. When a conference is requested, the subject of the conference should always be stated. One house may request a conference to inquire or protest concerning an offense or default on the part of a member or officer of the other house. When there is a question concerning procedure, or when an unparliamentary message has been sent, instead of replying directly, a conference should be requested. When there are questions as to procedure between the two houses, the proper procedure is to discuss the matter by a conference committee; also, where one house desires to formally present a question to the other, the question should be submitted through a conference committee.

2. Conference committees are used for this purpose in order to discuss matters between the houses in a more con-

Section 763—Continued
Paragraph 5—
Reed, Sec. 237.
Section 764—
Paragraph 1—
Jefferson, Secs. XLVI, XLVII; Reed, Sec. 241.



fidential and direct manner than they could be conducted by a message transmitted in the usual manner. The common present practice in ordinary cases appears to be for the conferences to be entirely informal, and to be between the presiding officers or members without formal designation as committees, but in cases of particular importance committees may be appointed or existing committees designated for that purpose.

3. Any difference between the two branches can be submitted to a committee of conference.

Section 764—Continued
Paragraph 2—
Reed, Sec. 241.
Paragraph 3—
Mass. Manual, p. 682.

CHAPTER 72

CONFERENCES CONCERNING AMENDMENTS

Sec. 766. Concurrence in Amendments

See also Chapter 63, Secs. 663-669, Joint Committees, and Sec. 764, Conferences Between the Houses.

1. When a bill has been amended in the second house and passed with the amendment, it is returned by that house to the house of its origin with a message stating the facts and requesting the house where the bill originated to concur in the amendment.

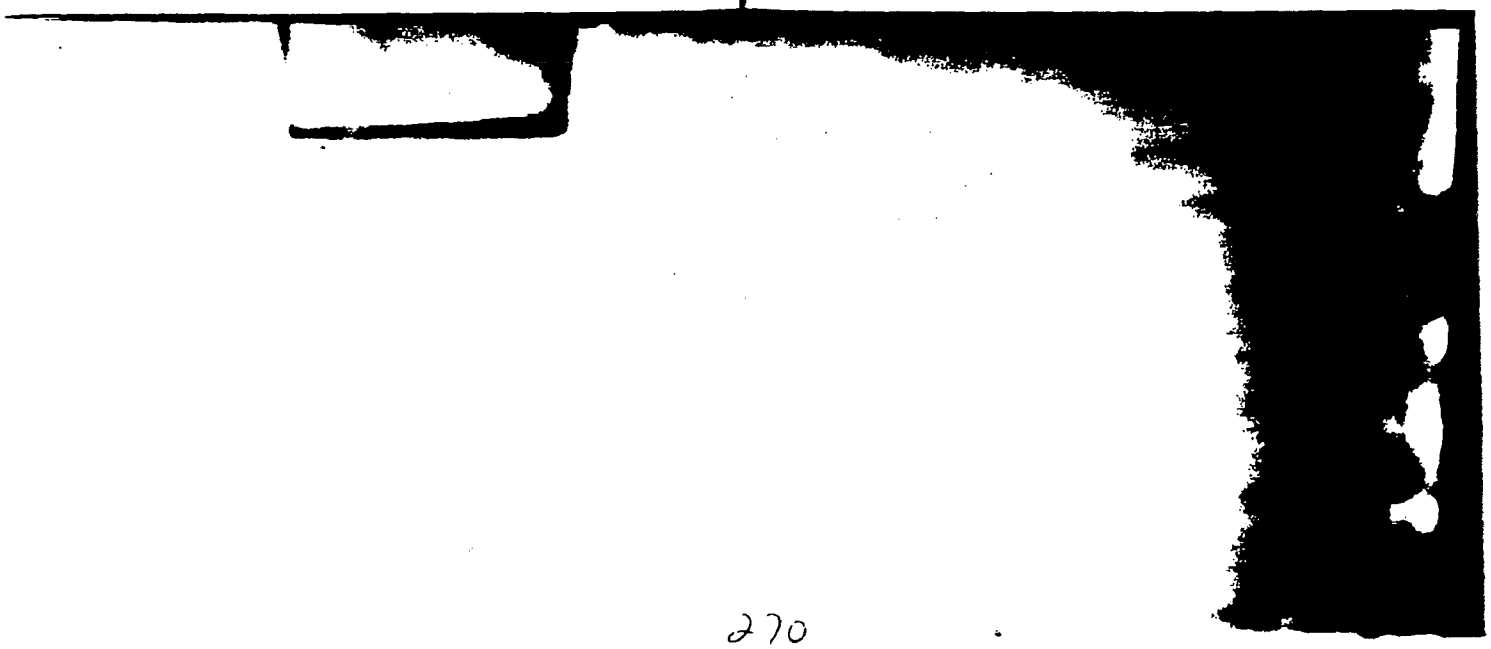
2. When a message is received by one house from the other requesting it to concur in amendments, the message, upon being received, may be immediately considered or consideration may be had at some more convenient time.

3. It is proper for a house, upon receiving an amended bill with a request to concur, to refer the message with the bill to a committee for consideration and a report upon concurrence.

4. When acting upon a request for concurrence in amendments of the other house, the question should be placed upon the concurrence in the amendments, either individually or as a whole, and not upon the adoption of the report of a committee.

5. When one house concurs in amendments of the other house, a message should be sent informing the house which made the amendments of the concurrence. The bill is not returned with this message but is ordered enrolled.

Section 766—
Cushing's Legislative Assemblies, Secs. 2233, 2334, 2337.



6. A refusal of one house to concur in amendments of the other does not have the same effect as if the bill had been passed by the latter without the amendments.

Sec. 767. Receding From Amendments

1. When one house refuses to concur in amendments of the other, the bill is not thereby lost as the house which originally adopted the amendments may be willing to recede from them, or some compromise may be reached between the two houses.

2. A vote to recede from amendments, by the house which made the amendments, constitutes a final passage of the bill without the amendments from which the house has receded, since both houses have then agreed to the bill in its form prior to amendment.

3. When a house which amended a bill of the other recedes from its amendments, a message to that effect is sent to the house where the bill originated and, as both houses have then agreed to the bill in the identical form, the bill has been passed in its form prior to amendment and is thereupon sent to enrollment.

4. The ancient practice in Parliament was to communicate a refusal to concur by means of a conference committee. The modern American practice appears to be to communicate such a matter though an ordinary message stating that the house has refused to concur in the amendments of the other and requesting that that house recede from its amendments.

Section 766—Continued
Paragraph 6—
Robertson v. People (1894), 20 Colo. 279, 38 Pac. 326; People v. Edmonds (1911), 252 Ill. 108, 96 N.E. 914; Loomis v. Callahan (1928), 196 Wis. 518, 220 N.W. 816.
Section 767—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 2239.
Paragraph 2—
Robertson v. People (1894), 20 Colo. 279, 38 Pac. 326; People v. Edmonds (1911), 252 Ill. 108, 96 N.E. 914; Loomis v. Callahan (1928), 196 Wis. 518, 220 N.W. 816.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 2242.

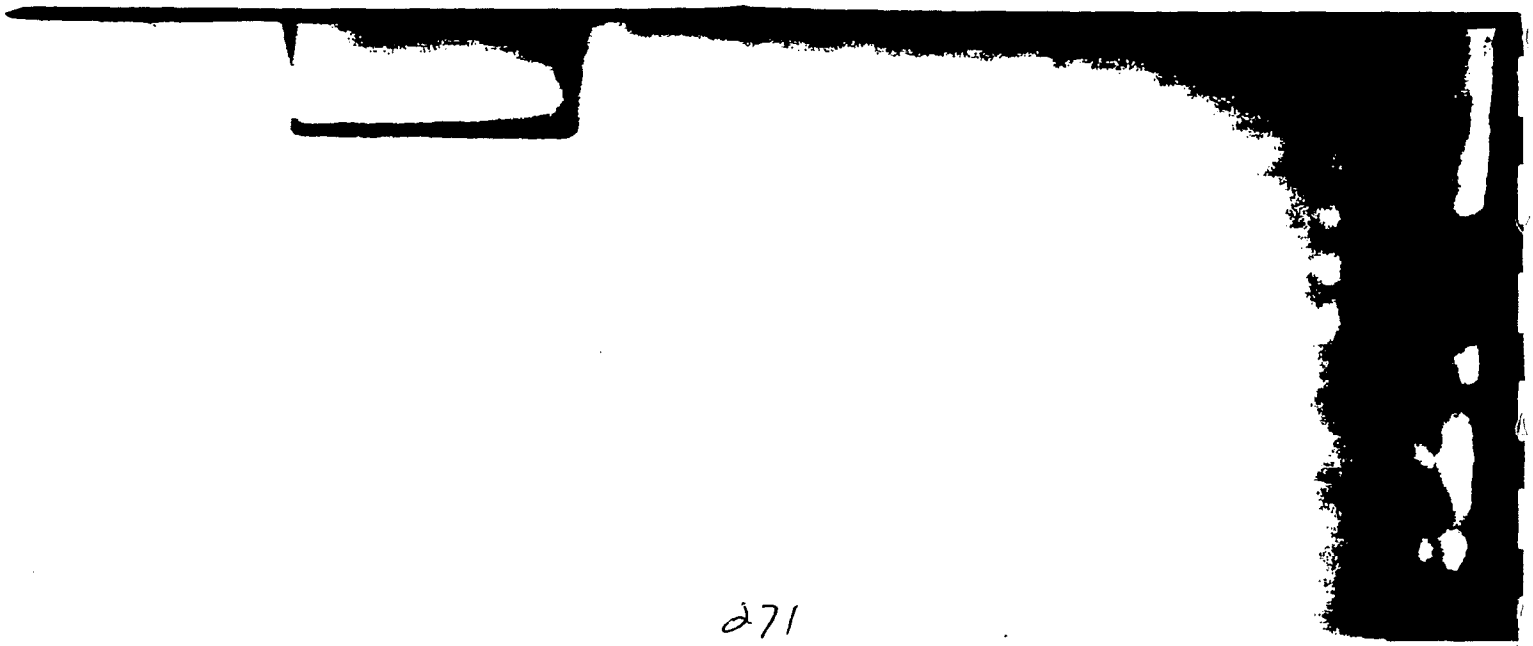
Sec. 768. Appointment of Conference Committee

1. When a house refuses to recede from its amendments, the generally accepted American procedure is for it to request a conference. The procedure in requesting a conference is for the house making the request to appoint its committee on conference and to send a message to the other house requesting a conference, naming its own conference committee and proposing the appointment of a similar committee by the other house.

2. Upon receiving a request from the other house requesting a conference, the house in which the bill originated likewise appoints a conference committee, and notifies the other house of the appointment and the names of the members of the committee.

3. It is the usual practice for each house to appoint a conference committee of three members, but if the rules

Section 767—Continued
Paragraph 4—
Cushing's Legislative Assemblies, Secs. 2240, 2241.
Section 768—
Paragraph 1—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Secs. 2243, 2265.
Paragraph 2—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2243.
Paragraph 3—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2267.



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do not otherwise regulate the matter, either house can fix the size of its committee on conference.

4. According to the earlier practice, the same member could not be appointed to more than one conference or free conference committee on the same subject. This practice is still rigidly adhered to in some legislatures but in Congress and some of the states this rule has been relaxed or abolished.

5. If no special provisions exist in the rules for the appointment of conference committees, they are appointed pursuant to the provisions applicable to other committees.

6. Where there was a division in the house with reference to a bill, it is the established practice to appoint a majority of the committee from the prevailing side in the controversy, but to also appoint a representative from the minority. In committees of three, two will represent the majority and one, the minority, if any.

7. The bill, concerning with the dispute exists as to amendments, should be referred to the conference committee of the house in whose possession the bill remains.

Sec. 769. Conference Committees

1. Conference committees are usually small committees consisting of the same number of persons from each house. When the conference is concerning amendments to a bill,

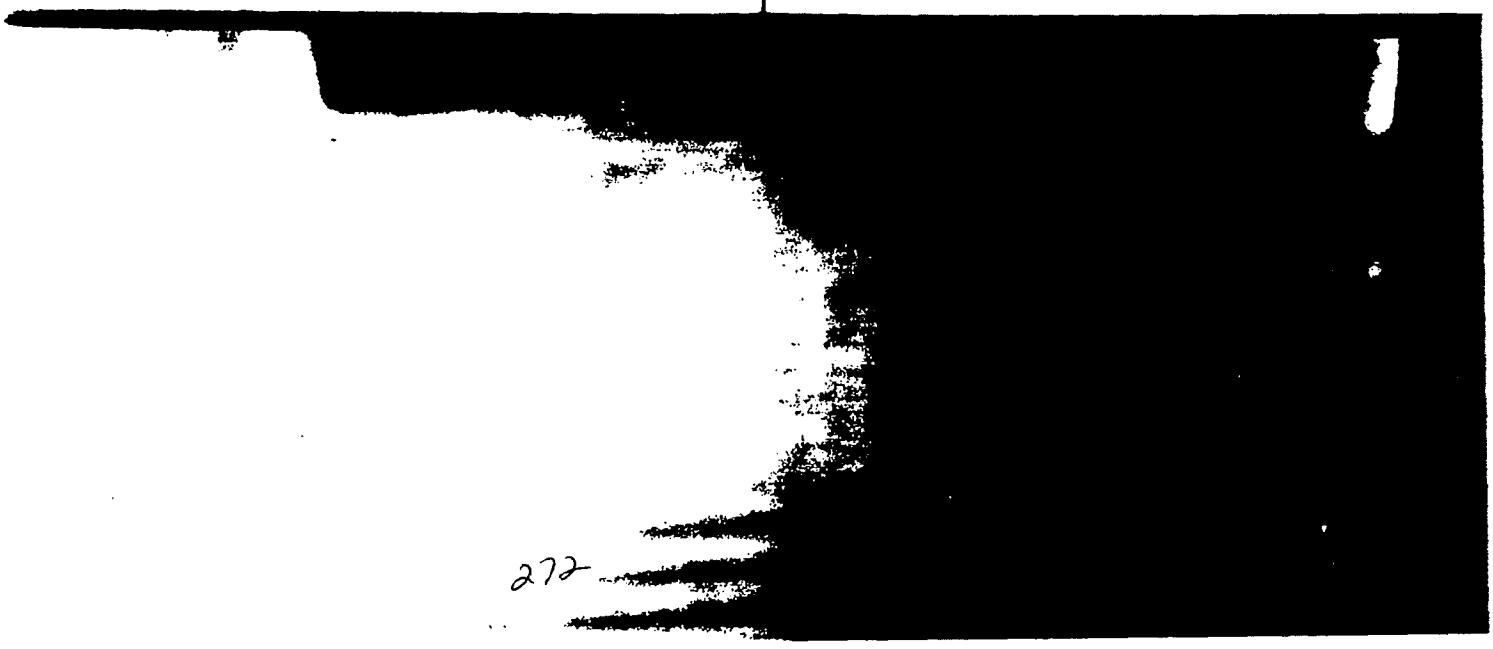
Section 768—Continued
Paragraph 4—
Jefferson, Sec. XLVI.
Paragraph 5—
Cushing's Legislative Assemblies, Sec. 2267.
Paragraph 6—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2267.
Paragraph 7—
Cushing's Legislative Assemblies, Sec. 2269.

the practice is to appoint the author or sponsor of the measure, or the persons nominated by him, to the committee, and when the committee is expected to proceed from conference to free conference, the author or sponsor usually reserves the free conference committee for his membership.

2. A committee on conference from each of the two houses meeting together is not a joint committee but a joint meeting of two committees. The quorum of a committee on conference is a majority of the members of each committee. In voting in a conference committee, the committee of each house votes separately. The committee on conference from each house submits its report to the house from which it was appointed, and the report, upon being received, may be treated like other reports, except that the report of a conference committee is usually given a higher precedence, and that under no condition may the house alter or amend the report of the committee, but must adopt or refuse to adopt the report in the form submitted.

3. As the two houses have equal authority, it is not proper for either to appoint the time and place for a conference. The custom is for no specific provision to be made by either house but for the committees to meet at a time arranged among themselves at the usual or a convenient place for the meeting of conference committees.

Section 769—
Paragraph 1—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2267.
Paragraph 2—
Jefferson, Sec. XLVI; Hughes, Sec. 754; Reed, Secs. 63, 240-243; Cushing's Legislative Assemblies, Sec. 2267; N. Y. Manual, p. 430.
Paragraph 3—
Cushing's Legislative Assemblies, Sec. 2267.



Sec. 770. Reports of Conference Committees

1. When the conference committee has agreed on its report, an identical report is made to each house by the committee from that house. The reports are signed by the members or a majority of the members of each committee, the committee of either house signing first on the report which is made to their house.

2. A report of a conference committee is objectionable in form if the committee has not confined itself to differences of opinion between the houses, but objection to form must be made at the time the report is introduced, and if not made at that time is not in order at a later period.

3. Reports of conference committees are highly privileged, and may be made at any time except when the journal is being read or a vote is being taken.

4. The report of a committee on conference may be taken up immediately, or consideration may be delayed and it may be referred to a select committee or considered in committee of the whole.

5. When the report of the committee on conference is adopted by either house, a message to that effect is sent to the other. When both houses have adopted the report they have both approved the bill in its final form and it is ordered to enrollment.

Section 770—
Paragraph 1—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2269; Reed, Sec. 244.
Paragraph 2—
Cushing's Legislative Assemblies, Sec. 2270.
Paragraph 3—
Jefferson, Sec. XLVI; Reed, Sec. 246; Cushing's Legislative Assemblies, Sec. 2270.
Paragraph 4—
Cushing's Legislative Assemblies, Sec. 2270.
Paragraph 5—
Cushing's Legislative Assemblies, Secs. 2244, 2247.

6. When the conference committees are unable to agree that the amendments in dispute be concurred in by the house of origin, or that they be receded from or not insisted upon by the house making them, or for any reason no agreement has been effected by the committee, that fact should be reported to the houses, the committee discharged, and committees on free conference appointed. Also when, for any reason, either house refuses to adopt the report of the committee, the committees should be discharged and new committees on conference or free conference appointed.

7. During conference procedure it is in order for one house to reconsider a vote previously taken on the measure.

8. It is unparliamentary, but within the power of a house, to indefinitely postpone the consideration of a report of the committee on conference.

9. When amendments to a bill are adopted by the second house and returned to the house of origin and there concurred in, the clerk in that house should immediately insert or have the amendments inserted in the bill; and when conference committee amendments are adopted, these amendments are inserted in the bill in the same manner as though they had been adopted by either house in the usual manner.

Section 770—Continued
Paragraph 6—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2244.
Paragraph 7—
Jefferson, Sec. XLVI; Cushing's Legislative Assemblies, Sec. 2273.
Paragraph 8—
Cushing's Legislative Assemblies, Sec. 2274.
Paragraph 9—
Cushing's Legislative Assemblies, Secs. 2275, 2283.

Sec. 771. Vote on Report of Conference Committee

1. The final passage of a bill upon which the vote is required to be taken by "ayes" and "noes" is the vote by which each house adopts it after final reading, and not the vote by which the house in which it originated may subsequently concur in amendments made by the other house. The constitutional provision requiring an "aye" and "no" vote on final passage of bills does not apply to concurrence in amendments of the other house.

2. When more than a majority vote is required for the passage of certain types of bills, an amendment by the other house, not involving any question requiring more than a majority vote, requires only the majority vote for concurrence.

Sec. 772. Free Conference

1. When a conference committee is unable to reach an agreement, or either house refuses to approve the recommendation of its committee, the only course of procedure is to order the bill to free conference at which the committee on conference has authority to propose any amendments within the scope of the issue between the houses.

Section 771—
Paragraph 1—
Ewing v. McGehee (1925), 169 Ark. 448, 275 S.W. 766; State v. Crowe (1917), 130 Ark. 272, 197 S.W. 4, L. R. A. 1918 A. 567; Brown v. Road Commissioners (1917), 173 N. C. 598, 92 S.E. 502; Wilson v. Young County H. and F. Co. (1924), 262 S.W. 873. It is held in State v. Boyer (1917), 84 Ore. 513, 165 Pac. 587 that the same vote is required to concur in amendments as to pass the bill.
Paragraph 2—
Wagstaff v. Central Highway Commission (1917), 174 N. C. 377, 93 S.E. 908; State v. Boyer (1917), 84 Ore. 513, 165 Pac. 587.

Section 772—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 2245.

2. When the free conference committee is unable to agree or either house refuses to adopt its recommendations, the bill may be ordered to a second committee on free conference.

3. Procedure in a committee on free conference is the same as a committee on conference, except that such a committee has authority to propose amendments in addition to recommending that one house concur in the amendments of the other, or that the house proposing the amendments recede from its amendments. A committee on conference has authority to recommend concerning all matters of dispute on a particular bill between the two houses.

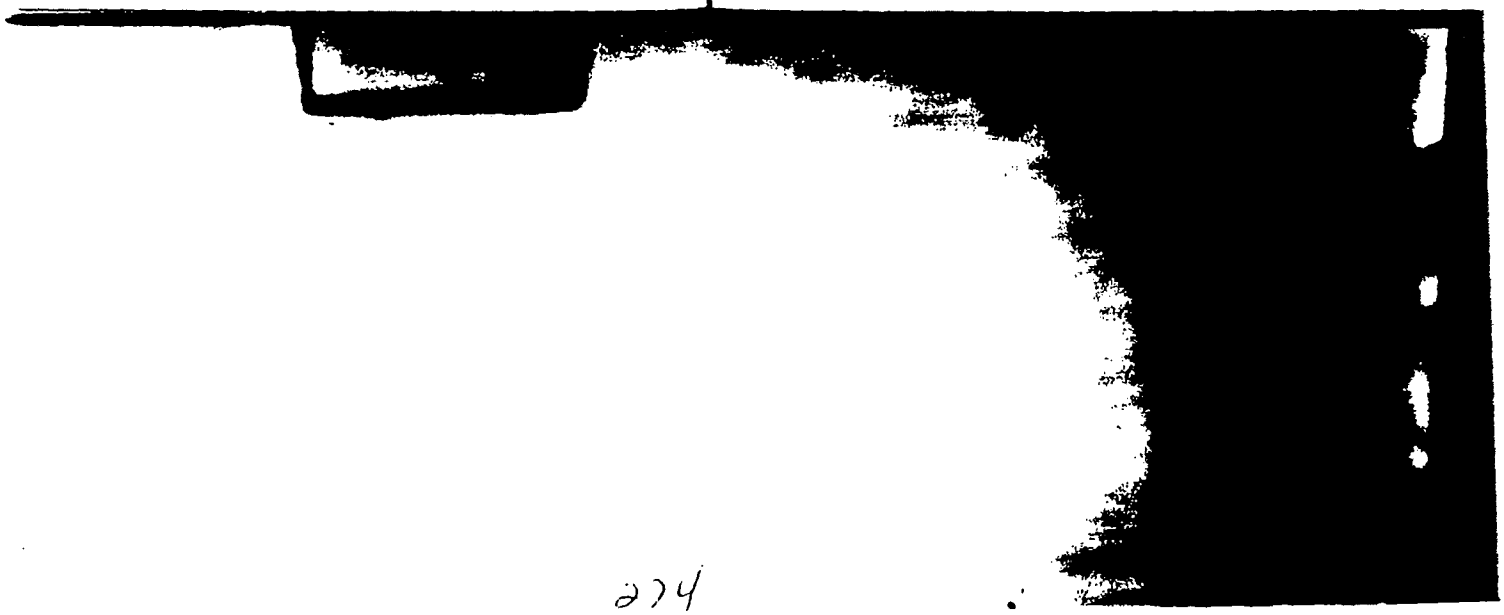
4. Conference procedure between the houses is usually controlled by joint rules.

Sec. 773. Journal Records of Conference Procedure

1. In general, the rules relating to journal records and vote applicable to the passage of legislation applies to conference procedure. Where the "enrolled bill rule" is not in effect the journal must show the essential steps

Section 772—Continued
Paragraph 2—
Cushing's Legislative Assemblies, Secs. 2246, 2247.
Paragraph 3—
Cushing's Legislative Assemblies, Secs. 2245, 2269.

Section 773—
Paragraph 1—
Mech. Bldg. and Loan Assoc. v. Coffman (1913), 110 Ark. 269, 162 S.W. 1090; Johnson v. Great Falls (1909), 38 Mont. 369, 99 Pac. 1059; Ewing v. McGehee (1925), 169 Ark. 448, 275 S.W. 766; State v. Martin (1909), 160 Ala. 181, 48 So. 846; Robertson v. State (1901), 130 Ala. 164, 30 So. 494; Jefferson County v. Crow (1904), 14 Ala. 126, 37 So. 469; State v. Laiche (1901), 105 La. 84, 29 So. 700; County Commissions v. Baker (1922), 141 Md. 623, 119 Atl. 461; People v. Chenango (1853), 8 N. Y. 317; State v. Boyer (1917), 84 Ore. 513, 165 Pac. 587; Dakota School District v. Chapman (1907), 152 Fed. 887.



in the procedure and account for the concurrence or non-concurrence of all amendments adopted by the second house. It has been held in Arkansas and Montana that the vote on concurrence is not required to meet the technicalities of vote on final passage and the vote may be viva voce and the names of those voting need not be entered in the journal. The best practice would require that the vote on concurrence be taken with the same formalities as the vote on final passage.

Sec. 774. Trends in Conference Procedure

1. The procedure for conference and free conference on amendments followed above is the ancient procedure developed in Parliament and used with some changes in Congress and state legislatures. There are distinct trends toward simplification of the procedure and modern practice proves that many of the old technicalities are not necessary. The houses may provide for such procedure as they may agree upon unless constitutional requirements prevent. For example, a bill may be sent directly to a conference with broad authority to recommend any changes in a bill upon the house of origin refusing to concur in amendments.

PART IX
SESSIONS AND MEETINGS

CHAPTER 73
SESSIONS OF STATE LEGISLATURES

Sec. 780. Calls for Special Sessions

1. A constitutional provision forbidding the enactment of laws at a special session, other than those specified in the proclamation by the governor, is mandatory.

2. In issuing a call for a special session of the legislature, the governor may confine legislation to the subjects specified in his proclamation.

3. The governor may limit the consideration of a special session to a special phase of a general subject, but he cannot restrict the details springing from that subject.

Section 780—

Paragraph 1—

Long v. State (1910), 58 Tex. Cr. 209, 127 S.W. 208; State v. Edwards (1922, Mo.) 241 S.W. 945.

Paragraph 2—

Devereaux v. Brownsville (1887), 29 Fed. 742; Denver and R. G. Co. v. Moss (1911), 50 Colo. 282, 115 Pac. 696; Bunger v. State (1917), 146 Ga. 672, 92 S.E. 72; State ex rel. Byrne v. Edwards (1922), 241 S.W. 951; State v. Clancy (1904), 30 Mont. 529, 77 Pac. 312; People v. Parker (1873), Pennant's Case, 3 Neb. 409; State v. Key (1926), 121 Okla. 64, 247 Pac. 656; In re Likens Petitions (1909), 223 Pa. 456, 468, 72 Atl. 858, 862; State v. Woollen (1913), 128 Tenn. 456, 161 S.W. 1006; Ex parte Fulton (1919), 86 Tex. Cr. 149, 215 S.W. 331.

Paragraph 3—

State v. Woollen (1913), 128 Tenn. 456, 161 S.W. 1006; Simms v. Weldon (1924), 165 Ark. 13, 263 S.W. 42; In re Likens Petitions (1909), 223 Pa. 456, 72 Atl. 858, 862; Ex parte Fulton (1919), 86 Tex. Cr. 149, 215 S.W. 331; Devereaux v. Brownsville (1887), 29 Fed. 742; State v. Edwards (1922, Mo.), 241 S.W. 945; State v. Clancy (1904), 30 Mont. 529, 77 Pac. 312.

4. While a legislature cannot go beyond the business specified in a call for an extra session, yet within such limits, it can act freely, in whole or in part or not at all.

5. A special message need not be addressed by the governor to the legislature as a whole and, if addressed to the respective houses, it is a message to the legislature within the meaning of the constitution. The governor is not limited to any precise form, manner, or time in presenting his recommendations.

6. In determining whether a given act is germane to the subject stated in the proclamation, the entire proclamation should be considered and should be reasonably construed to bring the act within its meaning if possible.

7. As a general rule, after the legislature has been convened pursuant to proclamation by the governor, subjects in addition to those specified in the proclamation may be submitted by special message.

Section 780—Continued

Paragraph 4—
In re Governor's Proclamation (1894), 19 Colo. 333, 35 Pac. 530; State v. Key (1926), 121 Okla. 64, 247 Pac. 656; State v. Edwards (1922, Mo.), 241 S.W. 945; Denver and R. G. Co. v. Moss (1911), 50 Colo. 282, 115 Pac. 696; Ex parte Davis (1919), 86 Tex. Cr. 186, 215 S.W. 341.

Paragraph 5—
Lauck v. Reis (1925), 310 Mo. 184, 274 S.W. 827; State v. Tweed (1924), 63 Utah 176, 224 Pac. 443; State v. Key (1926), 121 Okla. 64, 247 Pac. 656; State v. Edwards (1922, Mo.), 241 S.W. 945.

Paragraph 6—
Wells v. Mo. Pac. R. Co. (1892), 110 Mo. 286, 19 S.W. 530; State v. Clancy (1904), 30 Mont. 429, 77 Pac. 312; City of Rockwood v. Rodgers (1926), 154 Tenn. 638, 290 S.W. 381; Ex parte Davis (1919), 86 Tex. Cr. 168, 215 S.W. 341; State v. Shores (1888), 31 W. Va. 491, 7 S.E. 413.

Paragraph 7—
State v. Key (1926), 121 Okla. 64, 247 Pac. 656; State v. Tweed (1924), 63 Utah 176, 224 Pac. 443.

8. A proclamation by a governor calling a special session may be revoked by himself or his successor, and when revoked the legislature is without authority to act.

9. Legislation passed at a special session not within the call is not valid and is not validated by the signature of the governor.

10. The governor is invested with the exclusive authority to call an extraordinary or special session of the legislature and in the exercise of such power neither the legislature nor the judicial department has any power to call him to account.

11. The power to call extra sessions is vested in the governor and he can be divested of that authority only by an amendment to the constitution. The legislature cannot call itself into special session even for the purpose of impeaching the governor.

12. A statute passed at a special or extraordinary session of the legislature will be held by the courts to be within the scope of the governor's call if it can be done so under any reasonable construction.

Section 780—Continued

Paragraph 8—
People v. Parker (1873), Tennant's Case, 3 Neb. 409.

Paragraph 9—
Long v. State (1910), 58 Tex. Cr. 209, 127 S.W. 208; Wells v. Missouri Pacific Railway Co. (1892), 110 Mo. 286, 19 S.W. 530.

Paragraph 10—
Sarrelly v. Cole (1899), 60 Kan. 356, 56 Pac. 492; Bunger v. State (1917), 146 Ga. 672, 92 S.E. 72.

Paragraph 11—
Simpson v. Hill (1927), 128 Okla. 269, 263 Pac. 635.

Paragraph 12—
City of Rockwood v. Rodgers (1925), 154 Tenn. 638, 290 S.W. 381.

13. It is only when both houses are lawfully assembled that they constitute the legislature of the state.

Sec. 781. Adjournment of Legislative Sessions

See also Sec. 445, Motion to Adjourn Sine Die.

1. When a state legislature is duly convened it cannot be adjourned sine die or dissolved except in a manner provided by law, and an adjournment from day to day can have no other effect than to enable those present to determine whether a quorum is present.

2. The date of adjournment of the legislature, as shown by its journals is not contradicted or rendered uncertain by record evidence therein of the transaction of a large amount of business within a short period of time. When the records of the legislature show the time of adjournment and are clear and unambiguous they are conclusive and extraneous evidence cannot be admitted to show a different date of adjournment.

3. The two houses of the legislature have the right and power to make their respective journals show that all their business was transacted before the arrival of the moment of time for their adjournment as fixed by the constitution and, at least in the absence of a gross and flagrant violation of the constitutional restriction as to the length of the session, evidence is inadmissible to contradict the journal.

Section 780—Continued
Paragraph 13—
Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220.
Section 781—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 254.
Paragraph 2—
Capito v. Topping (1909), 65 W. Va. 587, 64 S.E. 845.
Paragraph 3—
Earnest v. Sargent (1915), 20 N. M. 427, 150 Pac. 1018.

4. It is a matter of common knowledge that legislatures almost universally do continue their sessions beyond the time fixed for their adjournment, and for the sake of regularity and form often stop the clock before the hour has arrived for adjournment so that in form the adjournment actually takes place at the proper moment of time. A legislative body has the power and right to determine for itself when the moment of time has arrived for adjournment, and it has the power to make its journals conform to what it determines to be that moment of time.

5. A session is the period of time during which a legislative body sits from day to day, with occasional intermissions, until the business is completed and the daily sittings are brought to a close.

Sec. 782. Joint Sessions

1. The two houses of a legislature may have the right to sit in joint session for certain purposes, but the right so to sit is a limited constitutional right and cannot be augmented by the legislature.

Section 781—Continued
Paragraph 4—
Earnest v. Sargent (1915), 20 N. M. 427, 150 Pac. 1018.
Paragraph 5—
Cushing's Legislative Assemblies, Sec. 495.
Section 782—
Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220.

CHAPTER 74

MEETINGS OF LOCAL LEGISLATIVE BODIES

Sec. 785. General Requirements Concerning Meetings

1. A deliberative body can act only at a meeting.

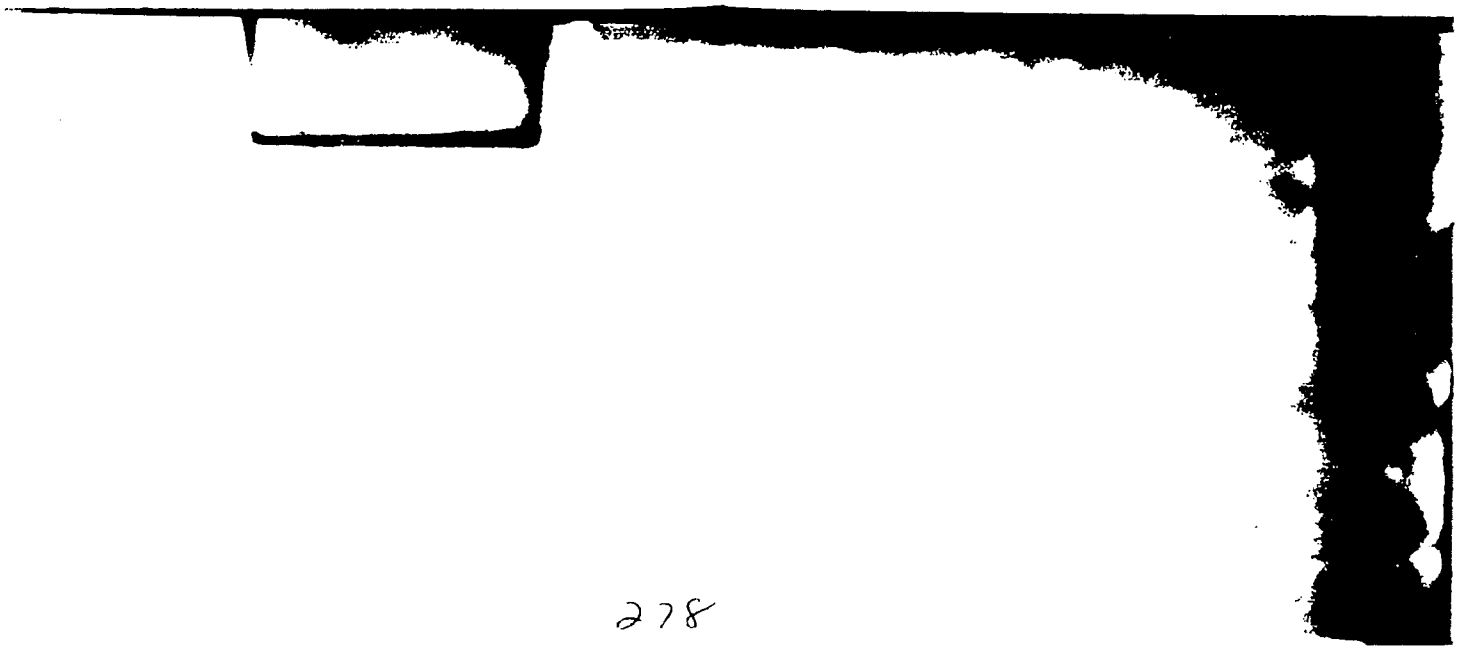
2. The legislative and discretionary powers of a legislative body or administrative board can be exercised only at a meeting of the members who compose it, and

Section 785—
Paragraph 1—
Mobile v. Kiernan (1910), 170 Ala. 449, 54 So. 102; Little Rock v. Board of Impr. (1883), 42 Ark. 152; Zottman v. San Francisco (1862), 20 Cal. 96, 81 Am. Dec. 96; Strong v. Dist. of Columbia (1885), 4 Mackey (15 D. C.) 242; Junction R. Co. v. Rieve (1860), 15 Ind. 236; Root v. Topeka (1901), 63 Kan. 129, 65 Pac. 233; Warren County Board v. Durham (1923), 198 Ky. 733, 249 S.W. 1028; Pierce v. New Orleans Building Co. (1836), 9 L. R. A. 397, 29 Am. Dec. 448; Baltimore v. Poultney (1866), 25 Md. 18; Glasscow v. Morrison-Fuller (1910), 142 Mo. App. 303, 126 S.W. 236; Magneau v. City of Fremont (1890), 30 Neb. 843, 47 N.W. 280; Despatch Line etc. v. Bellamy Mfg. Co. (1841), 12 N. H. 205, 37 Am. Dec. 203; Schumm v. Seymour (1873), 24 N. J. Eq. 143; People v. Batchelor (1860), 22 N. Y. 128, 28 Barb. 310; Duke v. Markham (1890), 105 N. C. 131, 10 S.E. 1017; Williston v. Ludowese (1926), 53 N. D. 797, 208 N.W. 82; Murphy v. Albina (1892), 22 Ore. 106, 29 Pac. 353; Edsall v. Jersey Shore Burough (1908), 220 Pa. 591, 70 Atl. 429; Fitzgerald v. Pawtucket St. R. Co. (1902), 24 R. I. 201, 52 Atl. 887; Acord v. Booth (1908), 33 Utah 279, 93 Pac. 734; Holswade v. Huntington (1924), 96 W. Va. 124, 122 S.E. 449; Lisbon Ave. Land Co. v. Lake (1907), 134 Wis. 470, 113 N.W. 1099; D'Arcy v. Tamar, etc. R. Co. (1867), L. R. (Eng.) 2 Exch. 158.

Paragraph 2—
Mobile v. Kiernan (1910), 170 Ala. 449, 54 So. 102; Little Rock v. Board of Improvement (1883), 42 Ark. 152; San Luis Obispo County v. Hendricks (1886), 71 Cal. 242, 11 Pac. 682; Ex parte Mirande (1887), 73 Cal. 365, 14 Pac. 888; Alderman v. Town of West Haven (1938), 24 Conn. 391, 200 Atl. 330; Pollard v. Norwalk (1928), 108 Conn. 145, 142 Atl. 807; Commissioners v. King (1870), 13 Fla. 451;

no valid act can be taken except at a meeting duly convened. Any understandings or agreements made before or outside of a legal meeting individually or as a group,

Section 785—Continued
Paragraph 2—Continued
Rankin v. Jauman (1895), 4 Idaho 394, 39 Pac. 1111; Conger v. Board of Commissioners (1896), 5 Idaho 347, 48 Pac. 1064; Centralia v. McKee (1932), 267 Ill. App. 585; Cass County Commissioners v. Ross (1874), 46 Ind. 404; Junction R. Co. v. Reeve (1860), 15 Ind. 236; Fayette County v. Chitwood (1856), 8 Ind. 504; English v. Smock (1870), 34 Ind. 115; Independent School District v. Wirtner (1892), 85 Iowa 387, 52 N.W. 243; Beers v. Lasher (1930), 209 Iowa 1158, 229 N.W. 821; Hardin County v. Louisville etc. R. R. Company (1891), 92 Ky. 412; Warren County Bd. of Education v. Durham (1923), 198 Ky. 733, 249 S.W. 1028; Johnson v. Natchitoches (1930), 14 La. App. 40, 129 So. 433; Lander v. School District (1851), 33 Maine 239; Shea v. Milford (1888), 145 Mass. 528, 14 N.E. 764; Reed v. Lancaster (1890), 152 Mass. 500, 25 N.E. 974; Field v. School District (1905), 114 Mo. App. 68, 91 S.W. 471; Belmore Investment Co. v. Lewis (1913), 180 Mo. App. 22, 162 S.W. 675; Scott v. Lincoln (1920), 104 Neb. 546, 178 N.W. 203; Giles v. School District (1855), 31 N. H. (Foster) 304; Laconia v. Bellnap County (1934), 86 N. H. 565, 172 Atl. 245; Schumm v. Seymour (1873), 24 N. J. Eq. 143; State v. Van Buskirk (1878), 40 N. J. L. 463; Johnson v. Dodd (1874), 56 N. Y. 76; Pegram v. Cleveland County Commissioners (1870), 64 N. C. 557; Williston v. Ludowese (1926), 53 N. D. 797, 208 N.W. 82; McCortle v. Bates (1876), 29 Ohio St. 419; Murphy v. Albina (1892), 22 Ore. 106, 29 Pac. 353; Fisher v. Harrisburg Gas Co. (1857), 1 Pears. (Pa.) 118; Commonwealth v. Cullen (1850), 13 Pa. St. 133, 53 Am. Dec. 450; Appeal of Rittenhouse (1891), 140 Pa. St. 172, 21 Atl. 274; Edsall v. Jersey Shore Burough (1908), 220 Pa. 591, 70 Atl. 429; Gelinas v. Fugere (1935), 55 R. I. 225, 180 Atl. 346; Denison and P. S. Ry. v. James (1899), 20 Tex. Civ. App. 358, 49 S.W. 660; Hunneman v. Fire District (1864), 37 Vt. 40; Atlantic Bitulithic Co. v. Edgewood (1915), 76 W. Va. 630, 87 S.E. 183; Ray v. Huntington (1918), 81 W. Va. 607, 95 S.E. 23; Delchsel v. Maine (1892), 81 Wis. 553, 51 N.W. 880; Kleimenhagen v. Dixon (1904), 122 Wis. 526, 100 N.W. 826; Lisbon Ave. Land Co. v. Town of Lake (1907), 134 Wis. 470, 113 N.W. 1099; Holswade v. City of Huntington (1924), 96 W. V. 124, 122 S.E. 449; Bass v. Casper (1922), 28 Wyo. 387, 205 Pac. 1008; Strong v. District of Columbia (1885), 15 D. C. 242; Blacket v. Blizard (1829),



are not valid or binding. This rule applies to the commission form of government the same as to the council type.

3. When a meeting is convened it may, in the absence of a contrary provision, be called to order by the presiding officer, someone acting for him, or by a member of the body, and in the absence of the regular presiding officer a presiding officer pro tempore may be selected.

Sec. 786. Regular Meetings

1. Meetings of local legislative bodies may be of three types; (1) regular, (2) special, and (3) adjourned. Regular meetings may be prescribed by the charter or may be provided for by ordinance, resolution, or motion under regular authority. Special meetings are convened ordinarily by the presiding or executive officer on due notice to members. An adjourned meeting is a continuation of another meeting.

2. Where the charter or statute fixes a regular time for meetings, no special notice is required.

Section 785—Continued
Paragraph 2—Continued
9 B. and C. 851; Milford v. Towner (1891), 126 Ind. 528, 26 N.E. 484; Jordan v. School District (1854), 38 Me. 164; Murphy v. Albina (1892), 22 Ore. 106, 29 Pac. 353.
Paragraph 3—
People v. Albany, etc., R. Co. (1869), 1 Lands. 308, 55 Barb. 344; Proctor Coal Co. v. Finley (1895), 98 Ky. 405, 33 S.W. 188; Billings v. Fielder (1882), 44 N. J. L. 381; Commonwealth v. Vandegrift (1911), 232 Pa. 53, 81 Atl. 153.
Section 786—
Paragraph 1—
Coon Valley v. Spellum (1926), 190 Wis. 140, 208 N. W. 916; State v. Jersey City (1855), 25 N. J. L. 309; Rome v. Whitestone Water Wks. Co. (1906), 100 N. Y. Supp. 357; Oakland v. Carpentier (1859), 13 Cal. 540; Lisbon Avenue Land Co. v. Lake (1907), 134 Wis. 470, 113 N.W. 1099.
Paragraph 2—
State v. Kirk (1878), 46 Conn. 395; Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807; Glascow v. Morrison-

3. In calling a meeting, a notice to all members of the body is necessary. The mere attendance of a quorum does not constitute a legal meeting unless the meeting is attended by all the members composing the body, because every member has a right to be present and to participate in the action of the body.

4. The general rule is that to bind the municipality the legislative body must be duly assembled, must act

Section 786—Continued
Paragraph 2—Continued
Fuller (1910), 142 Mo. App. 303, 126 S.W. 236; Morrill v. Little Falls Mfg. Co. (1893), 53 Minn. 371, 55 N.W. 547; People v. Town of Fairburg (1869), 51 Ill. 149; People v. Batchelor (1860), 22 N. Y. 128, 28 Barb. 310; Hudson County v. State (1853), 24 N. J. L. 718; Guildersleeve v. Board of Education (1863), 17 Abb. Pr. (N. Y.) 201.
Paragraph 3—
Beaver Creek v. Hastings (1884), 52 Mich. 528, 18 N.W. 250; State ex rel. Guiney (1879), 26 Minn. 313, 3 N.W. 977; Kleimenhagen v. Dixon (1904), 122 Wis. 526, 100 N.W. 826; Ryan v. Tuscaloosa (1908), 155 Ala. 479, 46 So. 638; Sommercamp v. Kelly (1902), 8 Idaho 712, 71 Pac. 147.
Paragraph 4—
Little Rock v. Board of Improvements (1883), 42 Ark. 152; San Luis Obispo Co. v. Hendricks (1886), 71 Cal. 242, 11 Pac. 682; Ex parte Mirande (1887), 73 Cal. 365, 14 Pac. 888; City Commissioners v. King (1870), 13 Fla. 451; Ind. School District v. Wirtner (1892), 85 Iowa 387, 52 N.W. 243; County Board of Edu. v. Durham (1923), 198 Ky. 732, 249 S.W. 1028; Baltimore v. Poultney (1866), 25 Md. 18; Coffin v. Nantucket (1850), 59 Mass. 269; Reed v. Lancaster (1890), 152 Mass. 500, 25 N.E. 974; Pugh v. School District (1905), 114 Mo. App. 688, 91 S.W. 471; Scott v. Lincoln (1920), 104 Neb. 546, 178 N.W. 203; Schumm v. Seymour (1873), 24 N. J. Eq. 143; State v. Van Buskirk (1878), 40 N. J. L. 463; Del. County Comm. v. Sackrider (1860), 35 N. Y. 154; Pegram v. Cleveland County Comm. (1870), 64 N. C. 557; McCortle v. Bates (1876), 29 Ohio St. 419; Rittenhouse's Estate (1891), 140 Pa. St. 172, 21 Atl. 254; Commonwealth v. Howard (1892), 149 Pa. 302, 24 Atl. 308; Dennison and P. S. Ry. Co. v. James (1899), 20 Tex. Civ. App. 358, 49 S.W. 660; Cade v. Bellington (1918), 82 W. Va. 613, 96 S.E. 1053; Ray v. Huntington (1918), 81 W. Va. 607, 95 S.E. 23; State v. Madison County Council (1862), 15 Wis. 30;

in the mode prescribed by law, and the action must be entered on its record.

Sec. 787. Special Meetings

1. In the absence of express provisions, it has been held that local legislative bodies possess the incidental or implied power to call special meetings; but where a charter makes express provision for regular meetings but no provision for special meetings, the body is without authority to call special meetings.

2. Requirements as to the calling of special meetings in local legislative bodies are generally held to be mandatory and jurisdictional, and in case of failure to observe them, particularly as to notice, the body has no power to transact business.

3. It is necessary to the validity of a special meeting that all members be notified as required by law, unless those who were not properly notified are present at the

Section 786—Continued
Paragraph 4—Continued
Deischel v. Maine (1892), 81 Wis. 553, 51 N.W. 880; Bass v. Casper (1922), 28 Wyo. 387, 205 Pac. 1008; Strong v. Dist. of Columbia (1885), 4 Mackey (15 D. C.) 242; Leavenworth County Commissioners v. Sellew (1878), 99 U. S. 624, 25 L. Ed. 333.

Section 787—
Paragraph 1—
Aurora Water Co. v. Aurora (1895), 129 Mo. 540, 31 S.W. 946; Glascow v. Morrison-Fuller (1910), 142 Mo. App. 303, 126 S.W. 236.

Paragraph 2—
White v. Fleming (1888), 114 Ind. 560, 16 N.E. 487; Bd. of Supervisors v. Horton (1888), 75 Iowa 271, 39 N.W. 394; Scott v. Paulen (1875), 15 Kan. 162; Donough v. Dewey (1890), 82 Mich. 309, 46 N.W. 782; Kidder v. McClanahan (1921), 126 Miss. 179, 88 So. 508; Whiteside v. People (1841), 26 Wend. (N. Y.) 634.

meeting. When the mayor is a member or an ex officio member he must be notified.

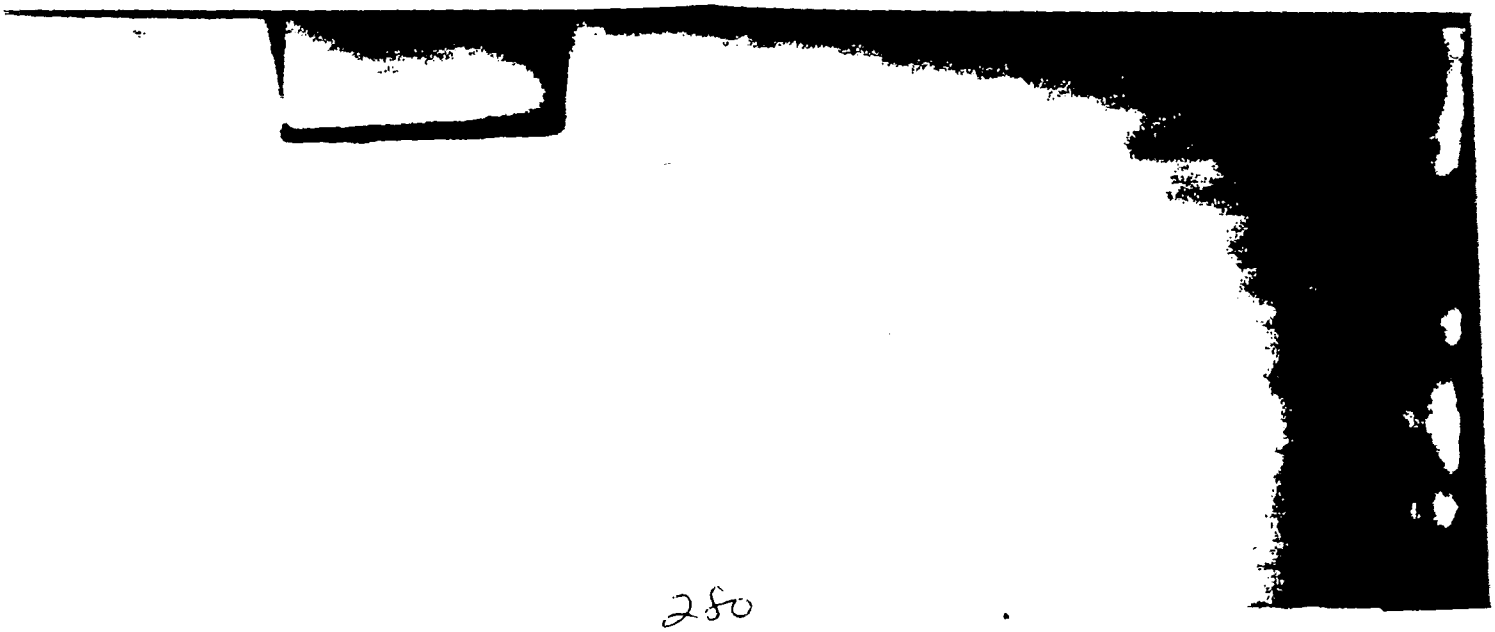
4. In calling special meetings, unless the law otherwise provides, notice to each member is required.

5. When all members who are entitled to be present and participate in a meeting are present, defects or fail-

Section 787—Continued
Paragraph 3—
City of Orange v. Clement (1919), 41 Cal. App. 497, 183 Pac. 189; Lawrence v. Trainer (1891), 136 Ill. 474, 27 N.E. 197; Tombaugh v. Grogg (1896), 146 Ind. 99, 44 N.E. 994; Moore v. Perry (1903), 119 Iowa 423, 93 N.W. 510; Shugars v. Hamilton (1906), 122 Ky. 606, 92 S.W. 564; Beaver Creek v. Hastings (1884), 52 Mich. 528, 18 N.W. 250; Lord v. Annoka (1886), 36 Minn. 176, 30 N.W. 550; Aurora Water Wks. v. Aurora (1895), 129 Mo. 540, 31 S.W. 946; Magneau v. City of Fremont (1890), 30 Neb. 843, 47 N.W. 280; People v. Batchelor (1860), 28 Barb. (N. Y.) 310, 22 N. Y. 128; Wells v. Mt. Olivet (1907), 126 Ky. 131, 102 S.W. 1182.

Paragraph 4—
Harding v. Vandewater (1870), 40 Cal. 77; State v. Kirk (1878), 46 Conn. 395; Roger v. Slonaker (1884), 32 Kan. 191, 4 Pac. 138; Burgess v. Pue (1844), 2 Gil. (Md.) 254; Nortonville v. Woodard (1921), 191 Ky. 730, 231 S.W. 224; Widgin v. Free Will Baptist (1844), 8 Met. (Mass.) 301; State v. Jersey City (1855), 25 N. J. L. 309; Downing v. Ruger (1839), 21 Wend. (N. Y.) 178; Cassin v. Zavalla Cty. (1888), 70 Tex. 419, 8 S.W. 97.

Paragraph 5—
Ryan v. Tuscaloosa (1908), 155 Ala. 479, 46 So. 638; Greeley v. Hamman (1891), 17 Colo. 30, 28 Pac. 460; Lawrence v. Trainer (1891), 136 Ill. 474, 27 N.E. 197; White v. Fleming (1888), 114 Ind. 560, 60 N.E. 487; Tombaugh v. Grogg (1896), 146 Ind. 99, 44 N.E. 994; Moore v. City Council of Perry (1903), 119 Iowa 123, 93 N.W. 510; Oehlert Tractor Co. v. Cawker Township (1933), 137 Kan. 286, 20 Pac. 2d 527; Shugars v. Hamilton (1906), 122 Ky. 606, 92 S.W. 564; Tandy v. Hopkinsville (1917), 174 Ky. 189, 192 S.W. 46; Lord v. Anoka (1886), 36 Minn. 176, 30 N.W. 550; Magneau v. City of Fremont (1890), 30 Neb. 843, 47 N.W. 280; Nelson v. City of South Omaha (1909), 84 Neb. 434, 121 N.W. 453; Schwartz v. Gallup (1917), 22 N. M. 521, 165 Pac. 345; State v. Hellman (1931), 120 Tex. 282, 36 S.W. 2d 1002; Holton v. Board of Education (1933), 113 W. Va. 590, 169 S.E. 239.



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ure of notice are waived since the purpose of the notice has been accomplished and the meeting is a valid meeting for all purposes unless otherwise specifically provided by law.

6. In the absence of proof to the contrary it will be presumed that a special meeting of the common council of a city was regularly called and held.

Sec. 788. Adjourned Meetings

1. In the absence of any controlling provision to the contrary a meeting of a local legislative body, when duly organized, has authority to adjourn to a further time.

2. An adjourned meeting is a continuation of the meeting which was adjourned. Any business which could have been properly considered at the meeting which was adjourned may be considered and acted upon at an adjourned meeting, and nothing can be considered which could not have been considered at the regular or special meeting which was adjourned.

3. Less than a majority can adjourn a meeting to a later time. An adjournment from day to day by less than a quorum preserves the continuity of a session.

4. Where an adjournment is regular the members are bound to take notice of the time to which the meeting has been adjourned.

5. When a meeting is adjourned to reconvene at the call of the presiding officer, any meeting called pursuant to such authority is not an adjourned meeting and members must be given proper notice of such a meeting.

6. An adjourned meeting will be presumed to have been properly adjourned and the business considered to have been properly before it.

Section 787—Continued
Paragraph 6—
City of Rome v. Whitestown Water Works Co. (1906), 100 N. Y. Supp. 357.

Section 788—
Paragraph 1—
Ex parte Mirande (1887), 73 Cal. 365, 14 Pac. 888; Stockton v. Powell (1892), 10 So. 688; People v. Fairbury (1869), 51 Ill. 149; Chamberlain v. Dover (1836), 13 Me. 466; Atty. Gen. v. Simons (1873), 111 Mass. 256; Donough v. Dewey (1890), 82 Mich. 309, 46 N.W. 782; State v. Smith (1875), 22 Minn. 218; Rackliffe v. Duncan (1908), 130 Mo. App. 695, 108 S.W. 1110; Ex parte Wolfe (1883), 14 Neb. 24, 14 N.W. 660; Kimball v. Marshall (1863), 44 N. H. 465; Styles v. Lambertville (1905), 73 N. J. L. 90, 62 Atl. 288; In re Newland Avenue (1891), 38 N. Y. St. Rep. 796; Commonwealth v. Fleming (1903), 23 Pa. Sup. Ct. 404.

Paragraph 2—
Strain v. Mims (1937), 123 Conn. 275, 193 Atl. 754; State v. Reichmann (1911), 239 Mo. 81, 142 S.W. 304; Ex parte Wolfe (1883), 14 Neb. 24, 14 N.W. 660; Magneau v. City of Fremont (1890), 30 Neb. 843, 47 N.W. 280; Vogel v. Parker (1937), 118 N. J. L. 521, 193 Atl. 817; Delaware & Atl. T. and T. Co. v. Beverly (1914), 86 N. J. L. 677, 94 Atl. 310; People v. Common Council City of Rochester (1871), 5 Lans. (N. Y.) 11; Commonwealth v. Fleming (1903), 23 Pa. Sup. Ct. 404; Granger v. Grubb (1870), 7 Phila. (Pa.) 350; Neill v. Ward (1930), 163 Vt. 117, 153 Atl. 219.

Section 788—Continued
Paragraph 3—
Choate v. North Fork Highway District (1924), 39 Idaho 483, 228 Pac. 885; Scott v. Paulen (1875), 15 Kan. 162; State v. Smith (1875), 22 Minn. 218; Rolla v. Schuman (1915), 189 Mo. App. 252, 175 S.W. 241; O'Neil v. Tyler (1892), 3 N. D. 47, 53 N.W. 434; Nash County v. Council Bluffs (1909), 174 Fed. 182.

Paragraph 4—
Scott v. Paulen (1875), 15 Kan. 162; Kimball v. Marshall (1863), 44 N. H. 465; Nugent v. Wring (1877), 44 Conn. 283; People v. Batchelor (1860), 22 N. Y. 128, 28 Barb. 310; Commonwealth v. Fleming (1903), 23 Pa. Sup. Ct. 404.

Paragraph 5—
Kleimenhagen v. Dixon (1904), 122 Wis. 526, 100 N.W. 826; Village of Coon Valley v. Spellum (1926), 190 Wis. 140, 208 N.W. 916.

Paragraph 6—
Hudson County v. State (1853), 24 N. J. L. 718.

Sec. 789. Notice of Meetings

1. When all members of a body having a fixed membership are notified of a meeting and a majority of the whole number attend, the meeting can legally transact business.

See Chapter 45, Secs. 500-507, Quorum.

2. Town meetings are governed by the common law rule that in a body having an indefinite membership, where a meeting has been duly called, those who attend, though less than a majority of all the inhabitants legally qualified, have full power to act for and bind the town, and the absence of others is equivalent in law to their consent to any legal action taken by those attending.

3. Where a statute provides a particular method of calling a meeting or prescribes a particular form of notice of a meeting, such notice is mandatory and, unless such notice is given, the meeting is illegal. But where no form of notice is prescribed any reasonable form of actual notice is sufficient and oral notice is valid.

4. Substantial compliance with laws or rules respecting notice is required, but a technical mistake in the notice of a meeting where there is no evidence that anyone was misled or harmed thereby does not invalidate the call f the meeting.

5. Actions taken at a town meeting held on insufficie notice are no more binding than if the meeting had bee held without notice.

6. A personal notice must be given where possibl but where a member is absent from the state and beyon reach of actual notice, such notice is not necessary an constructive notice will serve.

Section 789—
Paragraph 1—
Guildersleeve v. Board of Education (1863), 17 Abb. Pr. (N. Y.) 201; Morrill v. Little Falls Manufacturing Co. (1893), 53 Minn. 371, 55 N.W. 547.

Paragraph 2—
Pollard v. Norwalk (1928), 108 Conn. 145, 142 Atl. 807; Pratt v. Swanton (1843), 15 Vt. 147.

Paragraph 3—
Kleimenhagen v. Dixon (1904), 122 Wis. 526, 100 N.W. 826; Kidder v. McClanahan (1921), 126 Miss. 179, 88 So. 508; White v. Fleming (1888), 114 Ind. 560, 60 N.E. 487.

Paragraph 4—
People v. Batchelor (1860), 22 N. Y. 128, 28 Barb. 310; Gilmore v. Utica (1892), 131 N. Y. 26, 29 N.E. 841

Sec. 790. Place of Meetings

1. A call for a meeting must specify the place unless the meeting is held at the usual place.

2. Where a particular place of meeting is prescribed by law or, by charter, meetings at any other place are forbidden. The proceedings at another place may be void unless a necessity for such meeting at a different place appears.

Section 789—Continued
Paragraph 5—
Pollard v. Norwalk (1928), 108 Conn. 145, 142 Atl. 807; Fitzgerald v. Select Men of Braintree (1937), 296, Mass. 362, 5 N.E. 2d 838; Walsh v. Farrington (1933), 105 Vt. 269, 165 Atl. 914.

Paragraph 6—
State ex rel. Harte v. Kirk (1878), 46 Conn. 395; Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807; State v. Wilkesville (1870), 20 Ohio St. 288.

Section 790—
Paragraph 1—
Strong v. District of Columbia (1885), 15 D. C. 242; Shugars v. Hamilton (1906), 122 Ky. 606, 92 S.W. 564; Leavenworth County Commissioners v. Sellew (1879), 99 U. S. 624, 25 L. Ed. 333.

Paragraph 2—
Ryan v. Tuscaloosa (1908), 155 Ala. 470, 46 So. 638; Shugars v. Hamilton (1906), 122 Ky. 606, 92 S.W. 564.

3. Where no specific meeting place is provided for, the council may fix the meeting place from time to time.

4. There cannot be a legal town meeting unless it is originally held at the time and place appointed in the warrant for calling the meeting.

Sec. 791. Time of Meetings

1. When a meeting was called for 8 o'clock but the meeting did not commence until 9 o'clock, the delay did not invalidate the meeting.

2. When notice is given for a meeting at 12 o'clock noon and a meeting was called to order at 15 minutes before 12 and business transacted, the meeting was a surprise and a fraud upon the membership and an election so conducted was void and of no effect.

3. When the presiding officer of a town council appeared at the regular hour appointed for the meeting and the meeting was adjourned because there was no quorum, the other members cannot appear at a later hour and conduct business.

4. Where a board met on a date required by statute for the purpose of conducting an election and continued in session and to ballot until after midnight the election was not thereby invalidated.

Section 790—Continued
Paragraph 3—
State v. Hellman (1931), 120 Tex. 282, 36 S.W. 2d 1002.
Paragraph 4—
Chamberlain v. Dover (1836), 13 Me. 466.
Section 791—
Paragraph 1—
North v. Cary (1874), 4 N. Y. 357.
Paragraph 2—
People v. Albany etc. Railroad (1869), 55 Barb. (N. Y.) 344.
Paragraph 3—
Fitzgerald v. Pawtucket (1902), 24 R. I. 201, 52 Atl. 887.
Paragraph 4—
State v. Vanosdal (1892), 131 Ind. 388, 31 N.E. 79.

PART X
LEGISLATIVE INVESTIGATIONS

CHAPTER 75
INVESTIGATIONS BY LEGISLATIVE BODIES

Sec. 795. Right of a Legislative Body to Make Investigations

1. The right of a legislative body to make investigations in order to assist it in the preparation of wise and timely laws must exist as an indispensable incident and auxiliary to the proper exercise of legislative power. This has been recognized from the earliest times in the history of American legislation, both federal and state, and from even earlier epochs in the development of British jurisprudence.

2. The legislature has the power to investigate any subject regarding which it may desire information in connection with the proper discharge of its function to

Section 795—
Paragraph 1—
Marshall v. Gordon (1917), 243 U. S. 521, Ann. Cas. 1918B, 371 L. R. A. 1917F, 279, 61 L. Ed. 881, 37 Sup. Ct. Rep. 448; Burnham v. Morrissey (1859), 14 Gray (Mass.) 226, 74 Am. Dec. 676; Wilckens v. Willet (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Robertson v. Peeples (1919), 120 N. C. 176, 115 S.E. 300; Anderson v. Dunn, 6 Whet. (U. S.) 204, 5 L. Ed. 242; Federal Trade Com. v. American Tobacco Co. (1924), 264 U. S. 298, 32 A. L. R. 786, 68 L. Ed. 696, 44 Sup. Ct. Rep. 336; Harriman v. Interstate Commerce Com. (1908), 211 U. S. 407, 53 L. Ed. 253, 29 Sup. Ct. Rep. 115; In re Chapman (1897), 166 U. S. 661, 41 L. Ed. 1154, 17 Sup. Ct. Rep. 677; Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

enact, amend or repeal statutes or to perform any other act delegated to it by the constitution.

3. The power and duty reposed in the legislature and in each and every member of both houses thereof is that of preparing and proceeding to enact wise and well-formed and needful laws, and in the preparation of such laws, the necessity of investigation of some sort must exist as an indispensable incident.

4. Legislatures in enacting laws, like courts in interpreting such laws when enacted, must have in mind the former law, if any, the wrong or defect requiring remedial action, and the nature and extent of the needed and appropriate remedy; and in the application of this principle, the power of these coordinate branches of government.

5. The inherent and auxiliary power reposed in legislative bodies to conduct investigations in aid of prospective legislation carries with it the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process, and to institute, and carry to the extent of punishment,

Section 795—Continued
Paragraph 2—
Ex parte McCarthy (1866), 29 Cal. 395; Greenfield v. Russel (1920), 292 Ill. 392, 129 N.E. 102; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; People v. Keeler (1885), 99 N. Y. 463, 2 N.E. 615; Simpson v. Hill (1927), 128 Okla. 269, 263 Pac. 635; Commonwealth v. Costello (1912), 21 Pa. Dist. 232; State v. Frear (1909), 138 Wis. 173, 119 N.W. 894.
Paragraph 3—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.
Paragraph 4—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 5—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

contempt proceedings in order to compel the attendance of such witnesses and the production of such documentary evidence as may be legally called for in the course of such proceedings, whether conducted by the legislative body or a branch thereof, directly or through its properly constituted committees.

6. The legislature has power to investigate any subject where there is a legitimate use that the legislature can make of the information sought, and an ulterior purpose in the investigation or an improper use of the information cannot be imputed.

7. The legislature or a committee cannot be enjoined from investigating a matter which is under litigation in the courts.

8. The ascertainment of pertinent facts as a basis for legislation is within the power of a legislative body.

9. A legislature in conducting whatever inquisitions the proper exercise of its proper functions require, must be as broad as the subject to which the inquiry properly entered upon has relation.

10. An investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature.

Section 795—Continued
Paragraph 6—
Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300.
Paragraph 7—
Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300.
Paragraph 8—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 9—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 10—
Dickinson v. Johnson (1915), 117 Ark. 582, 176 S.W. 113

11. The right to investigate any lawful matter is a right separate and distinct in each house and may be exercised through a committee.

12. A local legislative body has the power to make investigations having a relation to the performance of its functions the same as a state legislature. The investigation can be conducted by the body itself or through a committee.

13. Authority to obtain information for its determination concerning the exercise of power to make laws may be conferred on nonlegislative bodies.

14. In the exercise of its power to make investigations, a legislature may incur reasonably necessary expenses payable out of the public funds.

Sec. 796. Investigations Respecting Members

See also Sec. 564, Investigation of Charges Against Members.

1. The legislature or either house has power to investigate and institute an inquiry into the truth of an alleged bribery of any of its members or the members of a previous legislature connected with its legislative functions,

Section 796—Continued
Paragraph 11—
Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; Simpson v. Hill (1927), 128 Okla. 269, 263 Pac. 635; Robertson v. Peeples (1919), 120 N. C. 176, 115 S.E. 300.
Paragraph 12—
State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50; Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.
Paragraph 13—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 14—
State v. Frear (1909), 138 Wis. 173, 119 N.W. 894.
Section 796—
Paragraph 1—
In re Falvey (1856), 7 Wis. 528; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.

and, in the exercise of such power, it must necessarily have the same power to compel the attendance of witnesses before it or before a committee and compel them to testify as in any other investigation.

2. A legislative body has the right in an election contest concerning one of its members to conduct an investigation, before the body or one of its committees and to compel the attendance of witnesses and take testimony.

3. Knowledge or information acquired by a witness, though at the instance of and in connection with and under the direction of a prosecuting attorney to use in the trial of indictment against members of the legislature for bribery, is not privileged and furnishes a witness lawfully summoned no legal ground for refusing to respond to legitimate questions by a legislative committee appointed to investigate the matter.

4. When a house is investigating the conduct of its members upon a public charge that some of them whose names are not given have taken bribes and have called as witnesses the editor and reporter of the paper which published the charge, it is a contempt of the authority of the house for the witnesses to refuse to give the names of those from whom they have received information concerning the charge of bribery and of the nature of that information.

5. When a committee is charged with an inquiry, if a member prove to be involved, the committee cannot pro-

Section 796—Continued
Paragraph 2—
In re Gunn (1893), 50 Kan. 155, 32 Pac. 470.
Paragraph 3—
Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.
Paragraph 4—
Ex parte Lawrence (1897), 116 Cal. 298, 48 Pac. 124.

ceed against him, but must make a special report to the house; whereupon the member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him.

Sec. 797. Limitations on Right of a Legislative Body to Investigate

1. It is a general rule that the legislature has no power through itself or any committee or any agency to make inquiry into the private affairs of a citizen except to accomplish some authorized end.

2. The legislature has no right to conduct an investigation for the purpose of laying a foundation for the institution of criminal proceedings, for the aid and benefit of grand juries in planning indictments, or for the purpose of intentionally injuring such persons or for any ulterior purpose.

3. A state legislature in conducting any investigation must observe the constitutional provisions relating to the enjoyment of life, liberty and property.

Section 796—Continued
Paragraph 5—
Jefferson, Sec. XI.
Section 797—
Paragraph 1—
Greenfield v. Russel (1920), 292 Ill. 392, 127 N.E. 102; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; In re Barnes (1912), 204 N. Y. 108, 97 N.E. 508.
Paragraph 2—
Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377; Greenfield v. Russel (1920), 292 Ill. 392, 127 N.E. 102; Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 3—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.

4. An investigation instituted for political purposes and not connected with intended legislation or with any of the matters upon which a house should act, is not a proper legislative proceeding and is beyond the authority of the house, or legislature.

5. When a committee is appointed by resolution to make an investigation and the object of the investigation, as shown by the resolution, is not a proper legislative object but is to establish an extraordinary tribunal for the trial of judicial and other officers, the duties imposed on the commission being strictly judicial and not ancillary to legislation, the committee has no legal status.

6. A governmental "fishing expedition" into the papers of a private corporation on the possibility that they may disclose evidence of crime is contrary to the first principles of justice and an intention to grant the power must be expressed in most explicit language.

Sec. 798. Method of Investigation by a Legislative Body

1. The legislative arm of government is not to be restricted in the exercise of the power of inquiry by the fact that methods and processes, judicial or quasi-judi-

Section 797—Continued
Paragraph 4—
Keeler v. McDonald (1885), 99 N. Y. 463, 2 N.E. 615.
Paragraph 5—
Commonwealth v. Costello (1912), 21 Pa. Dist. 232.
Paragraph 6—
Federal Trade Commission v. American Tobacco Company (1924), 264 U. S. 298.
Section 798—
Paragraph 1—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377.

cial in character, are employed in the course of the inquiry; and it is immaterial whether the power of inquiry is to be exercised by a state or a federal legislative body, or whether in the exercise of that power the legislative arm of the government is acting under or by virtue of granted or reserved authority, or what the particular constitutional limitations may be which separate legislative from judicial functions of government and which forbid the trespass of the one on the domain of the other.

2. Legislative bodies, by the mere employment of methods of procedure which resemble those employed or required in judicial proceedings, are not to be held to be engaged in the exercise of a judicial function and to be thereby trenching upon the area exclusively assigned to the judicial department of the state government.

3. By uniform custom, more or less rigidly adhered to, every official inquisition has from the earliest times made use of procedural methods which resemble those obtaining in judicial tribunals. This is because, in the nature of things, as exemplified by human experience, such methods have been found to furnish the surest means of arriving at the truth of the particular matter involved in the inquiry. It does not follow, however, that legislative bodies or administrative agencies or municipal organizations or executive officials, by the mere employment of methods of procedure which resemble those employed or required in judicial tribunals, must be held to be engaged in the exercise of a judicial function.

Section 798—Continued
Paragraph 2—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 3—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

4. Where the legislature has constitutional power to institute an investigation the manner of conducting such investigation rests on the sound discretion of the legislature.

Sec. 799. Legislative Investigating Committees

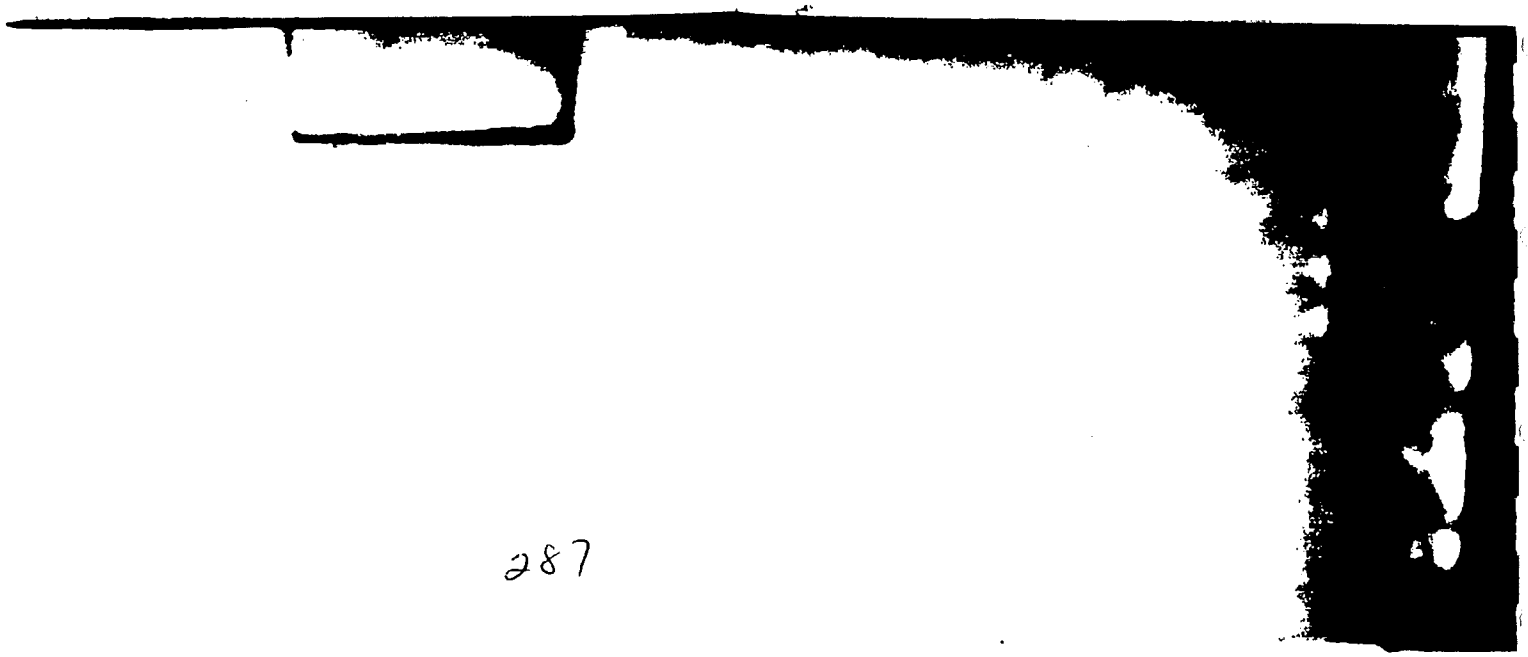
See also Sec. 564, Investigation of Charges Against Members.

1. In American legislatures, the investigation of public matters before committees, preliminary to legislation or with the view of advising the house appointing the committee, is a parliamentary usage as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committees and to punish for disobedience has been frequently enforced.

2. The legislature may proceed to make any investigations within its authority, by authorized committees of one or both houses. The houses can act jointly in appointing a committee or either house can act alone.

3. It is a common procedure for committees of local legislative bodies to be appointed to make investigations,

Section 798—Continued
Paragraph 4—
In re Falvey (1856), 7 Wis. 528.
Section 799—
Paragraph 1—
Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.
Paragraph 2—
Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; Dickinson v. Johnson (1915), 117 Ark. 582, 176 S.W. 116; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; People v. Keeler (1885), 99 N. Y. 463, 2 N.E. 615; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300; Terrell v. King (1929), 118 Tex. 237, 14 S.W. 2d 786; State v. Frear (1909), 138 Wis. 173, 119 N.W. 89.
Paragraph 3—
State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50; Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.



take evidence, and report to the body concerning pending and contemplated legislation, and for other purposes relating to the functions of the body.

4. The legislative power of a state being vested in the two houses of the legislature, such bodies may create committees or even commissions by concurrent resolutions as well as by act and may confer upon them such power as they are not prohibited by express provision of the constitution from conferring.

5. Powers delegated by the legislature or either house to a committee by a simple resolution cease with the adjournment sine die of the legislature. But a legislature may invest its committees with power to function after the adjournment of the session; and where each house can act separately, the joint act of both houses is not required to set up a committee which can continue to function after adjournment.

6. A legislative investigating committee may not delegate its powers of investigation to one of its members without authority granted in the resolution appointing the committee.

Section 799—Continued
Paragraph 4—
People v. Backer (1920), 185 N. Y. Supp. 459; Terrell v. King (1929), 118 Tex. 237, 14 S.W. 2d, 786; People v. Milliken (1906), 185 N. Y. 35, 77 N.E. 872.

Paragraph 5—
Fergus v. Russel (1915), 270 Ill. 304, 110 N.E. 130; People ex rel. Hastings v. Hofstadter (1932), 358 N. Y. 425, 180 N.E. 106; In re Impeachment (1913), 22 Pa. Dist. 833; see also Ex parte Caldwell (1906), 61 W. Va. 49, 55 S.E. 910, 10 L. R. A. (N. S.) 172.

Paragraph 6—
In re Leach (1922), 232 N. Y. 600, 19 N. Y. Supp. 135, 134 N.E. 588.

7. Testimony before a committee should be taken down for the information of the house.

Sec. 800. Witnesses in Legislative Investigations

See also Sec. 797, Limitations on Right of a Legislative Body to Investigate.

1. By the common parliamentary law, a legislative body may compel the attendance of all persons as witnesses in regard to any subject on which they have power to act, and into which they institute an investigation.

2. The power of a state legislative body to compel witnesses to testify in aid of investigations is an attribute of the power to legislate and follows as an essential implication.

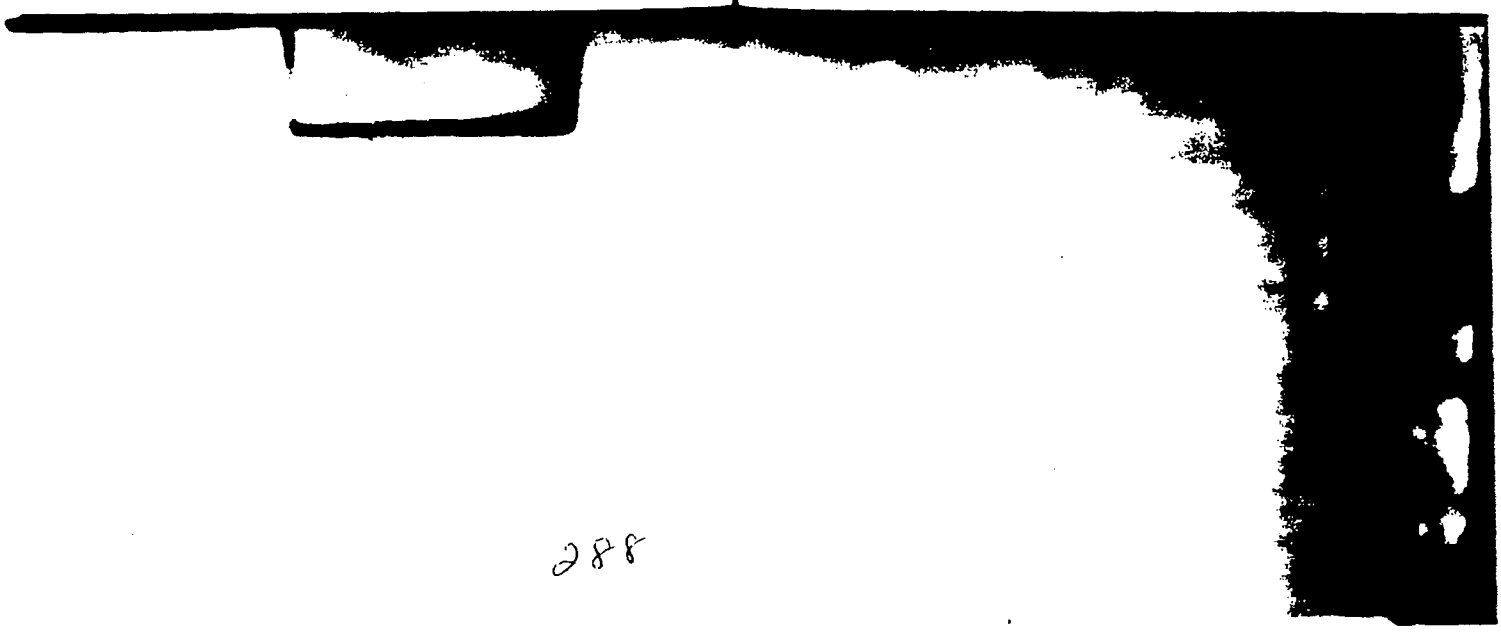
3. When witnesses are brought before either branch of the legislature, they may be compelled to testify by

Section 799—Continued
Paragraph 7—
Jefferson, Sec. XIII.

Section 800—
Paragraph 1—
Ex parte D. O. McCarthy (1866), 29 Cal. 395; Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; State v. Brewster (1916), 89 N. J. L. 658, 99 Atl. 338; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.

Paragraph 2—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82

Paragraph 3—
Ex parte D. O. McCarthy (1866), 29 Cal. 395; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.



process of contempt, when without legal cause they refuse to do so.

4. Witnesses before a legislative body or its committee need not be sworn, unless there is some provision of law or of the constitution authorizing it, but give their testimony under the penalty of being adjudged guilty of contempt, and punished, if they testify falsely.

5. When any person is examined before a committee, or at the bar of the house, any member wishing to ask the person a question must address it to the presiding officer, who puts the question to the person. If the propriety of the question be objected to, the presiding officer should direct the witness, counsel, and parties to withdraw, for no question can be moved or put or debated while they are there. Sometimes the questions are previously settled in writing before the witness enters.

6. A member, in his place, may give information to the house of what he knows of any matter under hearing at the bar.

7. Either house may request, but not command, the attendance of a member of the other. In case a member refuses to attend or testify, the house desiring his testimony may make the request by message to the other house, expressing clearly the purpose of the attendance.

Section 800—Continued
Paragraph 4—
Ex parte D. O. McCarthy (1866), 29 Cal. 395.
Paragraph 5—
Jefferson, Sec. XIII.
Paragraph 6—
Jefferson, Sec. XIII.
Paragraph 7—
Jefferson, Sec. XIII.

8. If either house have occasion for the presence of a person in custody of the other, they may ask the other house for the custody of the person.

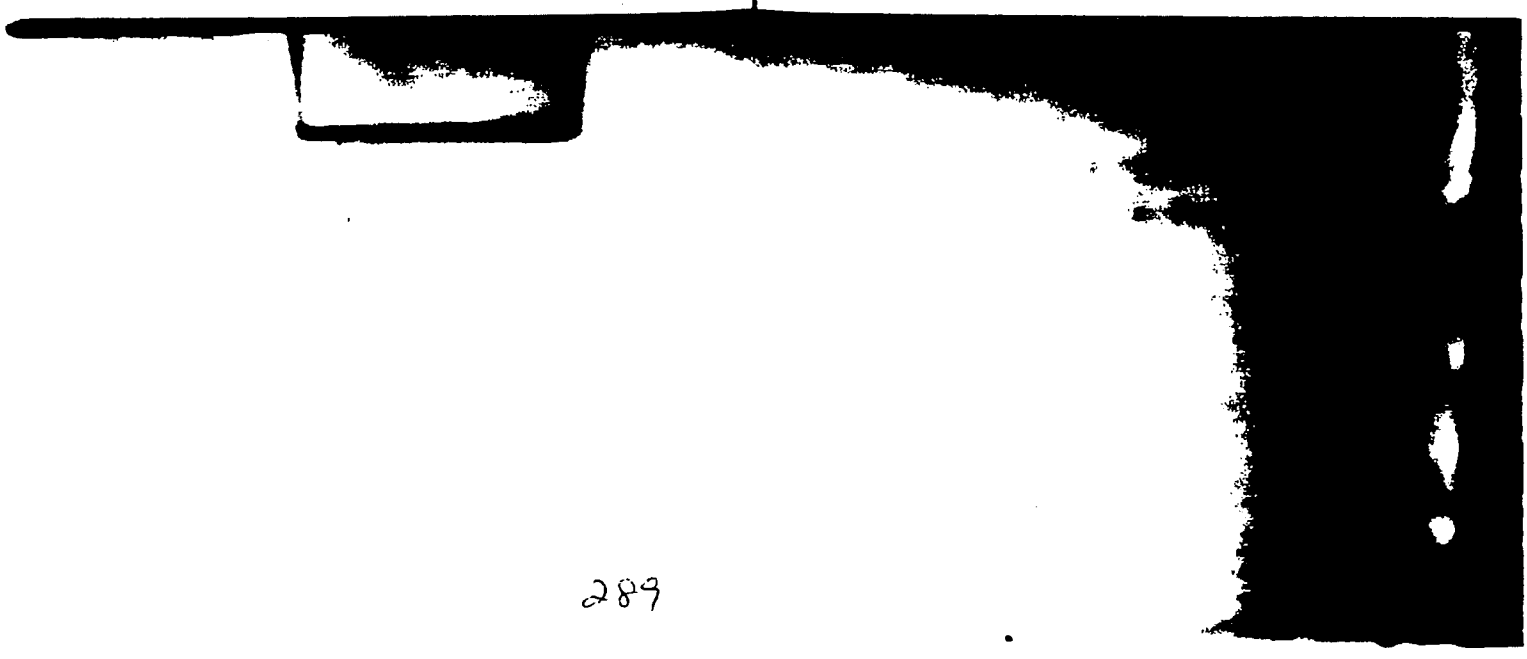
Sec. 801. Compelling Witnesses to Attend and Testify. Power to Punish for Contempt

1. Each house of the legislature may punish breaches of its authority when they are committed in its presence, and may equally punish a witness for contempt of the house for his refusal to appear or testify before a properly empowered committee or to produce books and papers.

2. The power of a house of a state legislature to punish a person for contempt can only be exercised in strict conformity with the rules of procedure which the laws of the state provide as a prerequisite to the validity of an adjudication of contempt.

3. A statute empowering either house to imprison a contumacious witness is not in excess of legislative power. Where a witness refuses to answer proper questions propounded by an investigating committee, it has been held to be criminal contempt.

Section 800—Continued
Paragraph 8—
Jefferson, Sec. XIII.
Section 801—
Paragraph 1—
Ex parte McCarthy (1866), 29 Cal. 395; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Burnham v. Morrissey (1859), 14 Gray (Mass.) 226; Lowe v. Summers (1897), 69 Mo. App. 637; In re Barnes (1912), 204 N. Y. 108, 97 N.E. 508; Keeler v. McDonald (1885), 99 N. Y. 463, 2 N.E. 615; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; In re Impeachment (1913), 22 Pa. Dist. 833; In re Falvey (1856), 7 Wis. 528; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 2—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 3—
People v. Keeler (1885), 99 N. Y. 463, 2 N.E. 615; Ex parte Wolters (1912), 64 Tex. Cr. 238, 144 S.W. 531.



4. Witnesses cannot be punished for contempt before a legislature unless the matters inquired into are within the jurisdiction of the legislature. A witness before a court or any other inquisitorial body who is otherwise orderly and respectful cannot be adjudged guilty of contempt committed in the presence of such tribunal for his failure or refusal to answer any question or to produce any record, book or paper, unless the order so adjudging him guilty of contempt contains an express recital of the facts affirmatively showing not only the precise question which he has declined to answer, or the precisely specified books or papers which he has refused to produce, but also affirmatively setting forth the facts which show the materiality and pertinency of each of these forms of evidence to the issue before the court or tribunal.

5. In order to authorize a conviction under a statute making it a misdemeanor for a witness in an investigation before a legislative committee to refuse to produce documents in his possession, it must appear that the documents demanded are material to the inquiry.

6. The right to compel a witness to produce books and papers before a legislative committee is determined by whether their production is necessary to the inquiry

Section 801—Continued
Paragraph 4—
Ex parte Hague (1930), 105 N. J. Eq. 134, 150 Atl. 322; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 5—
People v. Foster (1923), 236 N. Y. 610, 142 N.E. 304; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Federal Trade Commission v. American Tobacco Co. (1924), 264 U. S. 298.
Paragraph 6—
In re Barnes (1912), 204 N. Y. 108, 97 N.E. 508; Burnham v. Morrissey (1859), 14 Gray (Mass.) 226; People v. Foster (1923), 236 N. Y. 610, 142 N.E. 304.

which it is conducting, and the production of papers material to an inquiry cannot be refused merely becausc they are private.

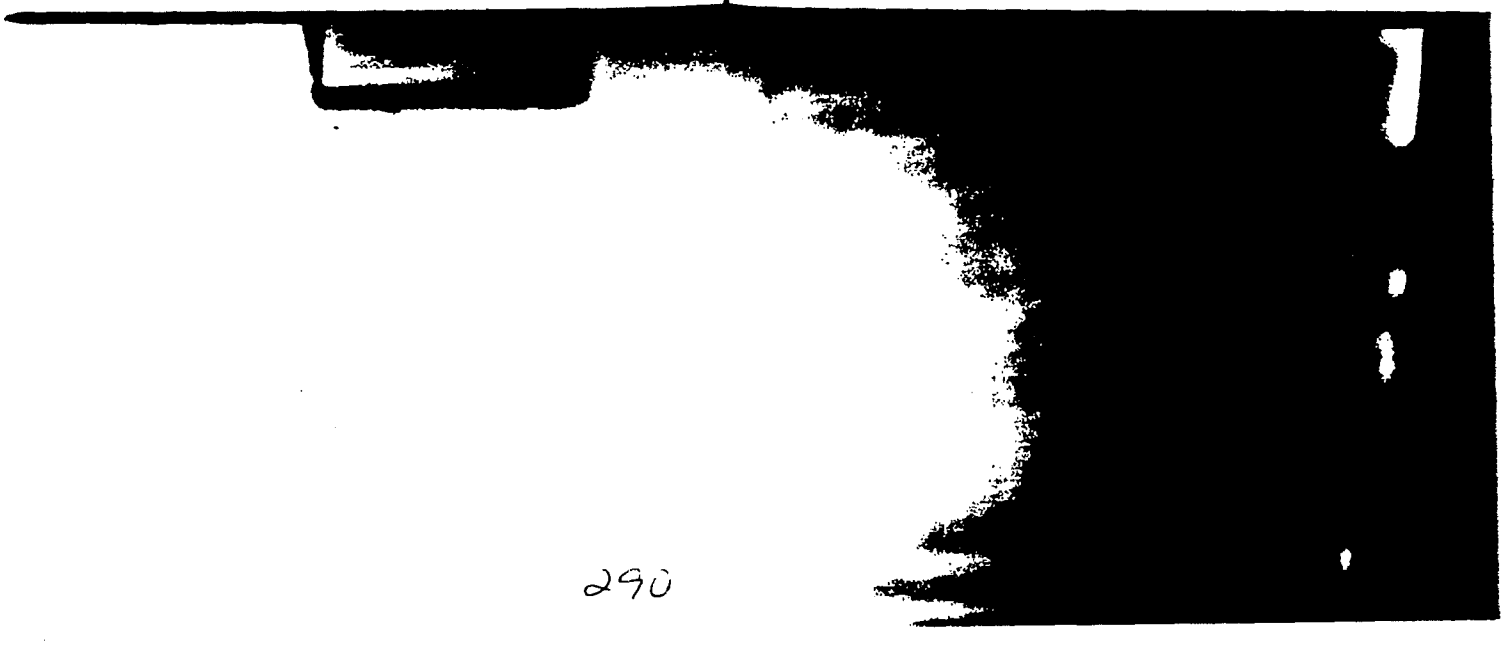
7. An examination of the history of the English Parliament and the decisions of the English courts shows that the power of the House of Commons, under the law and customs of Parliament, to punish for contempt rests upon principles peculiar to it and not upon any general rule applicable to all legislative bodies.

8. No expressed power to punish for contempt was granted to the houses of Congress except the power to deal with contempt submitted by its own members (Const. Art. I, Sec. 5). The houses have implied power to deal directly with contempt so far as necessary to preserve and exercise legislative authority especially granted, it being, however, a power of self preservation. It is a power to prevent acts which inherently prevent or obstruct the discharge of legislative duty.

9. The powers of a local legislative body to punish for contempt must be expressed clearly by constitution or statute. Such powers cannot be implied or inferred.

10. A legislative house may refuse to a party, summoned before it as a witness, the aid of counsel when charged with contempt in not answering questions.

Section 801—Continued
Paragraph 7—
Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377; Lowe v. Summers (1897), 69 Mo. App. 637; Marshall v. Gordon (1917), 243 U. S. 521.
Paragraph 8—
Marshall v. Gordon (1917), 243 U. S. 521.
Paragraph 9—
State v. Fitzgerald (1915), 131 Minn. 116, 154 N.W. 750.
Paragraph 10—
Ex parte D. O. McCarthy (1866), 29 Cal. 395.



Sec. 802. Summons, Subpenas and Warrants

1. A legislative body or a committee, when acting within the scope of its authority to conduct an investigation, may summon and examine witnesses, require the production of and examine books, records and papers.

2. The law may make it a penal offense for a person to fail to appear before a legislative committee on process, regular on its face, issued by the chairman of the committee under general authority conferred upon him by the committee, either expressly or by parliamentary usage, either with or without specific authority in the particular case.

3. Where a committee is authorized to subpena witnesses, the chairman of the committee in conjunction with its counsel may select the names and number of witnesses for attendance at each session, and the chairman may sign the summons for each witness. Subpenas should not be issued in blank.

4. A summons by the committee ordering a witness to appear before a joint committee of the two houses, may be signed by the chairman of the committee.

Section 802—
Paragraph 1—
Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136.
Paragraph 2—
State v. Brewster (1916), 89 N. J. L. 658, 99 Atl. 338; People v. Foster (1923), 236 N. Y. 610, 142 N.E. 304; Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670; In re Chapman (1897), 166 U. S. 661, 41 L. Ed. 1154.
Paragraph 3—
State v. Scott (1916), 89 N. J. Eq. 726, 99 Atl. 342; Jefferson, Sec. XIII.
Paragraph 4—
Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.

5. A subpena for attendance of a witness is not vitiated as to the necessity of the attendance of a witness by the inclusion of illegal requirements for the production of documents.

6. When a subpena duces tecum has been issued under statutory authority showing that the purpose of the examination was within the scope of the inquiry authorized, the court cannot cancel the subpena nor enjoin the issuance of any further subpena.

7. When a witness lawfully summoned refuses to appear, a warrant may be issued to compel his attendance.

8. No affidavit charging contempt need be filed before a house to authorize it to issue its warrant to arrest a contumacious person who refuses to testify before one of its committees. The written report of the committee is sufficient authority for the issuance of the warrant.

9. When a prisoner of the State of New York was taken by the sergeant-at-arms of the House of Representatives under a warrant issued by said house, it is not an escape and the state officer was not liable for his release.

Section 802—Continued
Paragraph 5—
Ex parte Hague (1929), 104 N. J. Eq. 31, 145 Atl. 618.
Paragraph 6—
In re Martens (1919), 180 N. Y. Supp. 171.
Paragraph 7—
Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; Wilckens v. Willet (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596; Ex parte Caldwell (1906), 61 W. Va. 49, 55 S.E. 910.
Paragraph 8—
Lowe v. Summers (1897), 69 Mo. App. 637.
Paragraph 9—
Wilckens v. Willet (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596.

10. A person disobeying a subpena of a legislative committee may be apprehended and brought before the committee by a sheriff under a warrant issued to him, and either prosecuted for a misdemeanor under a statute for failure to obey the subpena or punished for contempt by the legislature, but he cannot be punished by the judiciary for contempt.

11. A writ of prohibition cannot be used to prevent an administrative or legislative body from proceeding with an investigation.

12. Service of a subpena or the execution of a warrant requiring attendance before a legislative committee is not "an arrest" within statute exempting members of the legislature from arrest.

13. Warrants, subpenas, etc., issued during recess of Congress are signed only by authority specially given. The speaker also certifies cases of contumacious witnesses for action by the courts.

14. Witnesses summoned to appear before a city council are entitled to definite notice of the time and place of the meeting.

Section 802—Continued

Paragraph 10—
People ex rel. Hastings v. Hofstadter (1932), 258 N. Y. 425, 180 N.E. 106.

Paragraph 11—
People v. Milliken (1906), 185 N. Y. 35, 77 N.E. 872.

Paragraph 12—
People v. Hofstadter (1932), 258 N. Y. 425, 180 N.E. 106.

Paragraph 13—
U. S. House Rule 1, 80th Congress, note 626.

Paragraph 14—
Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.

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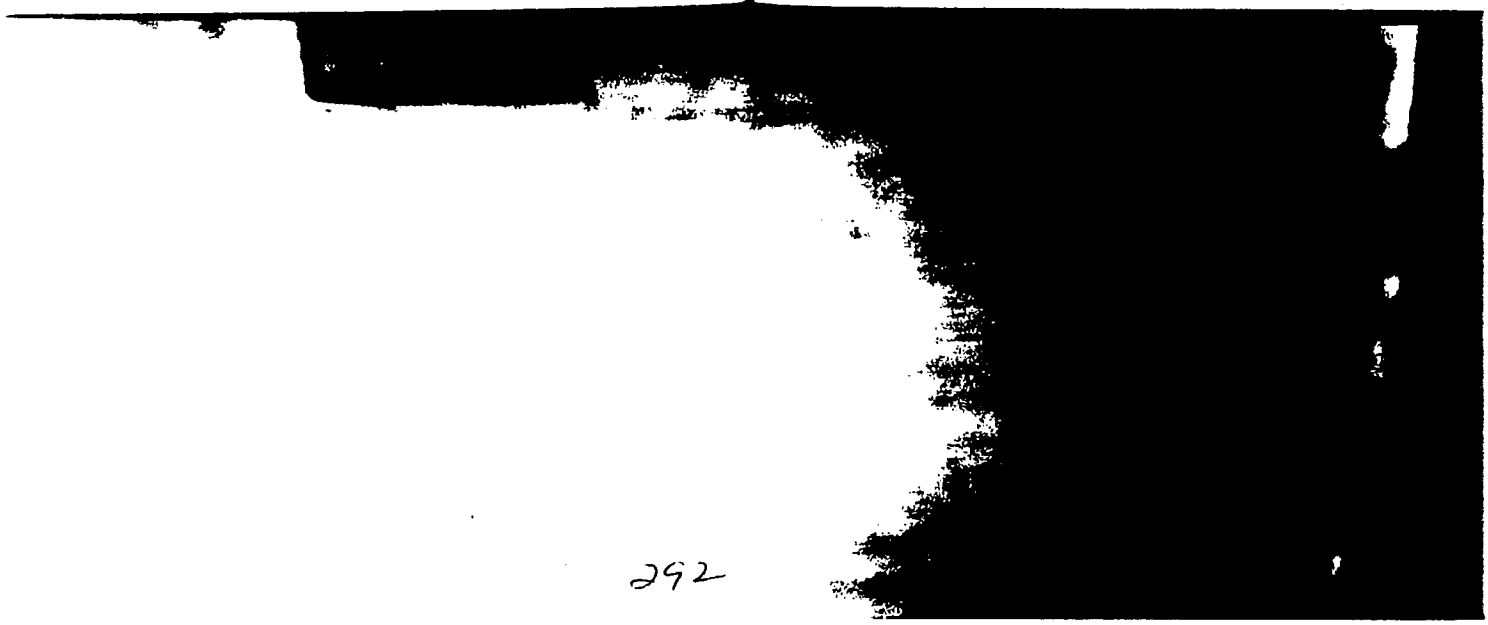

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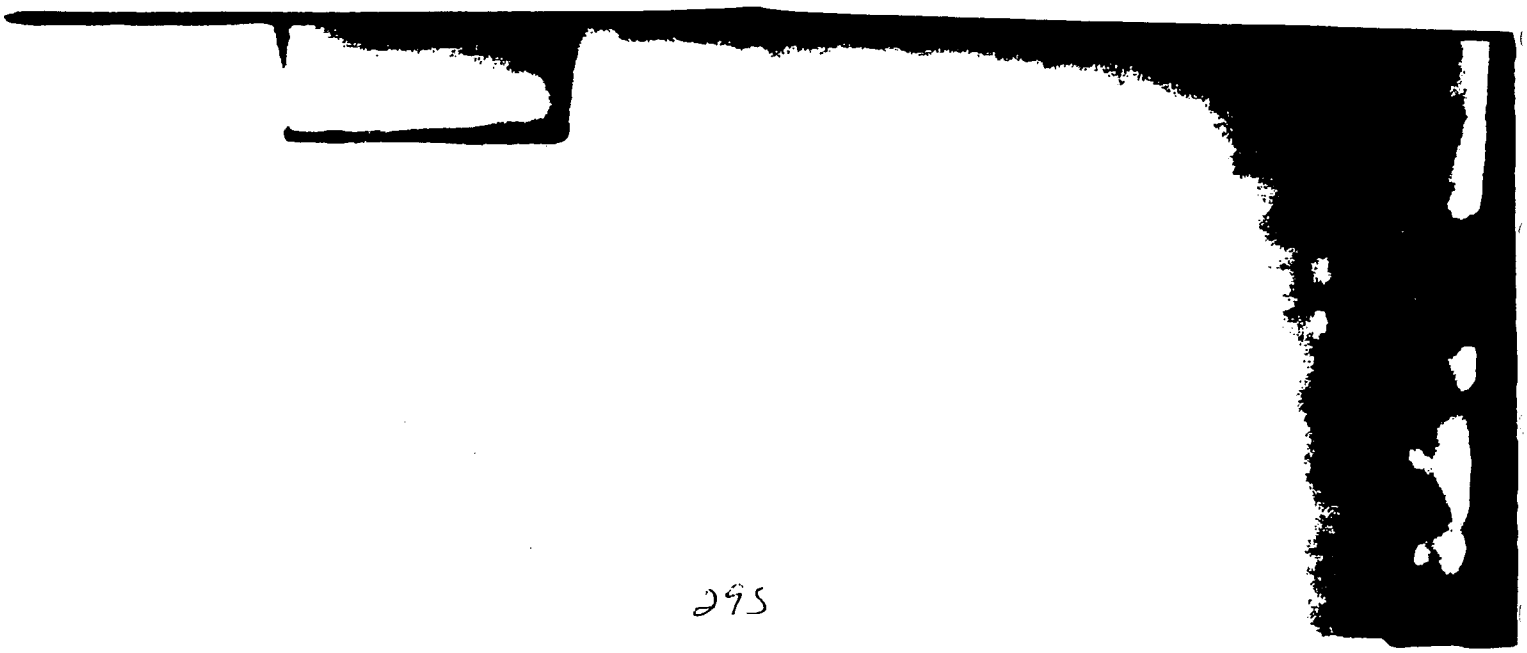

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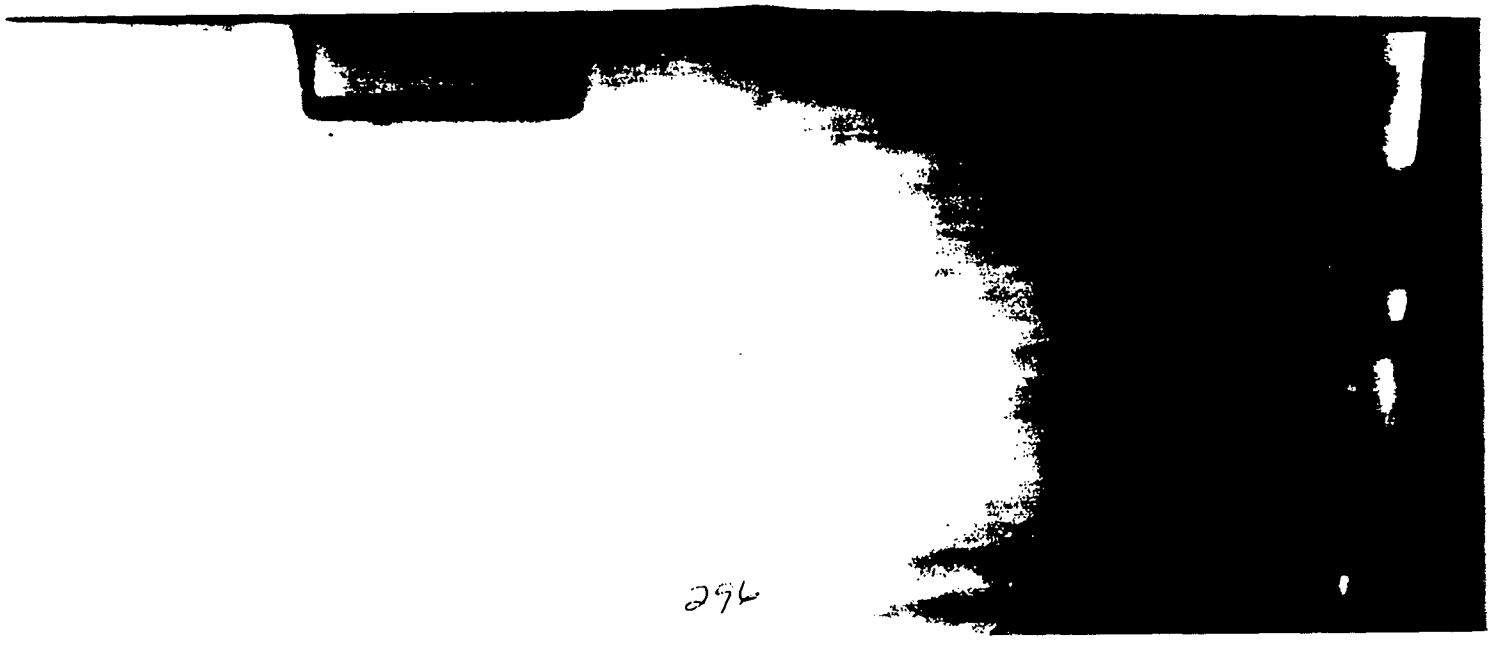

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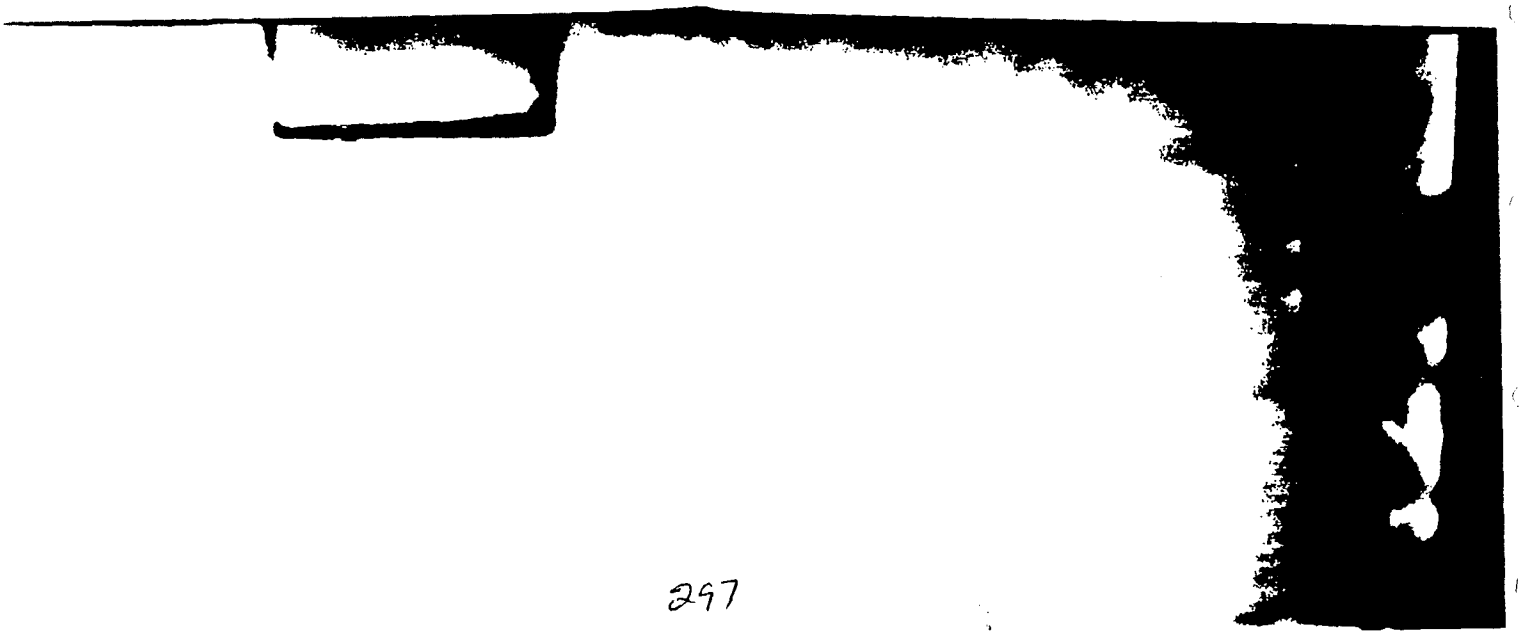

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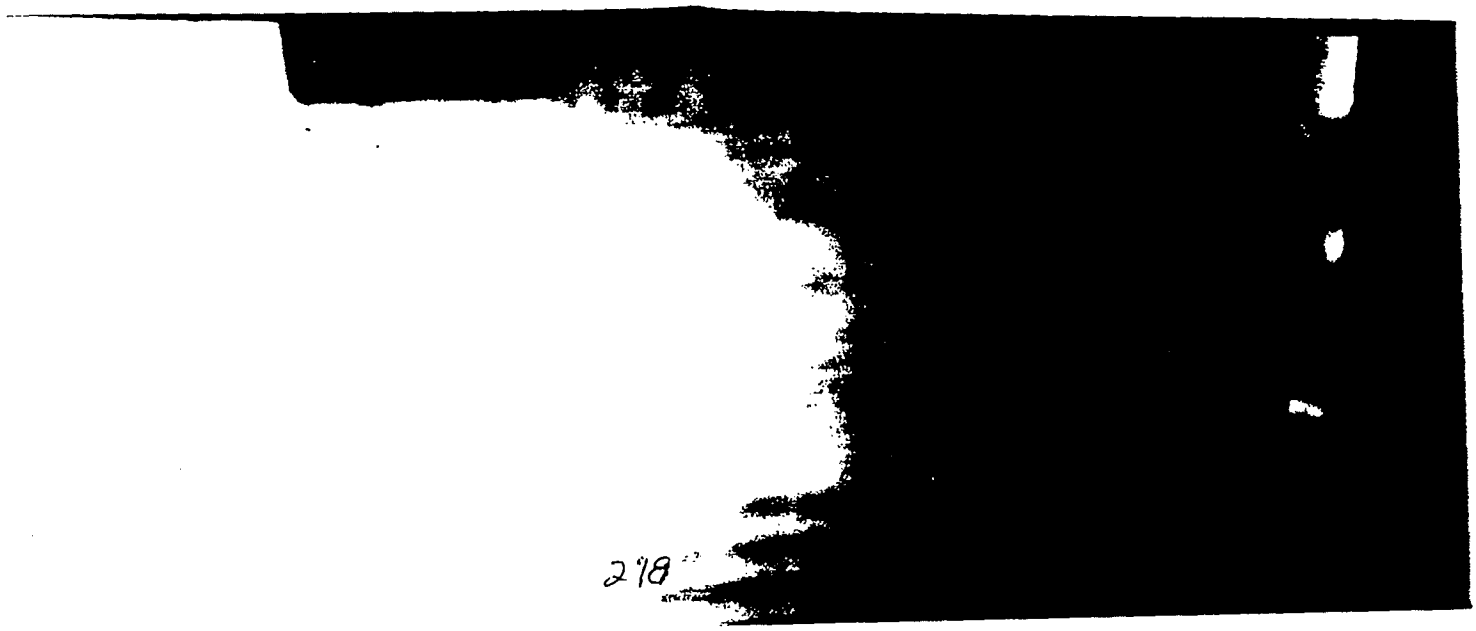

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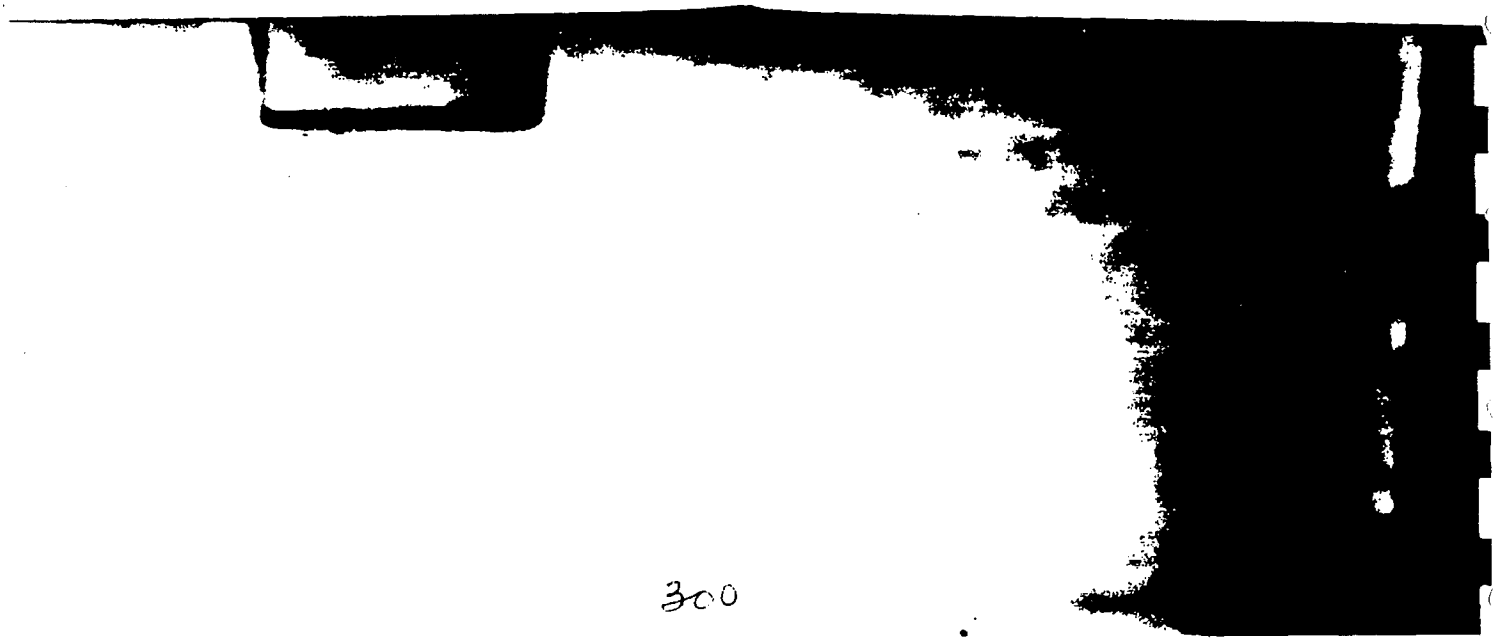

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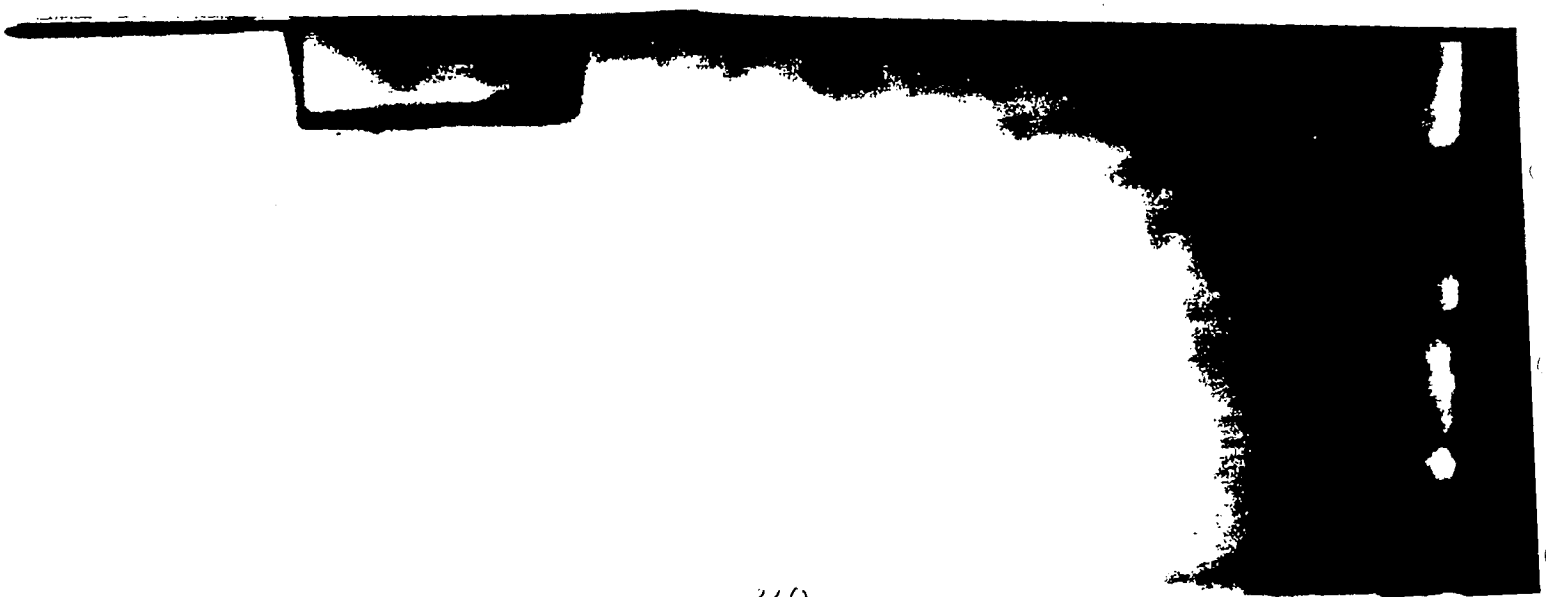

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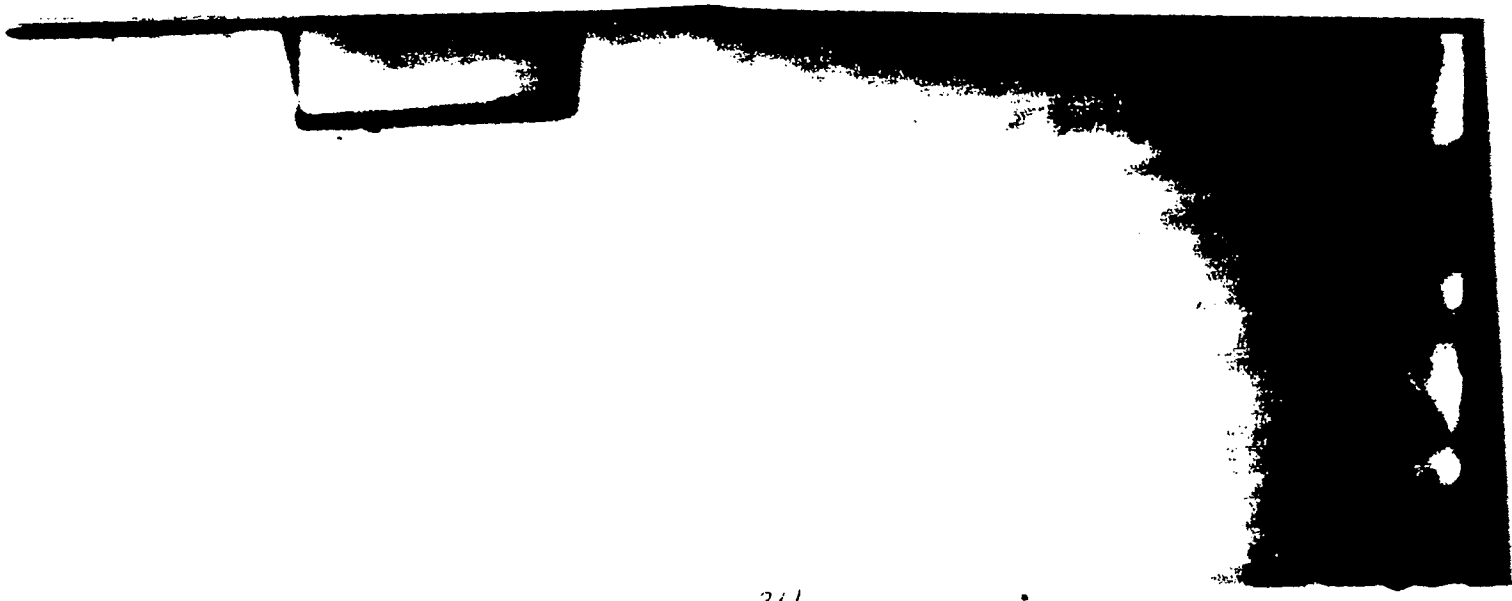

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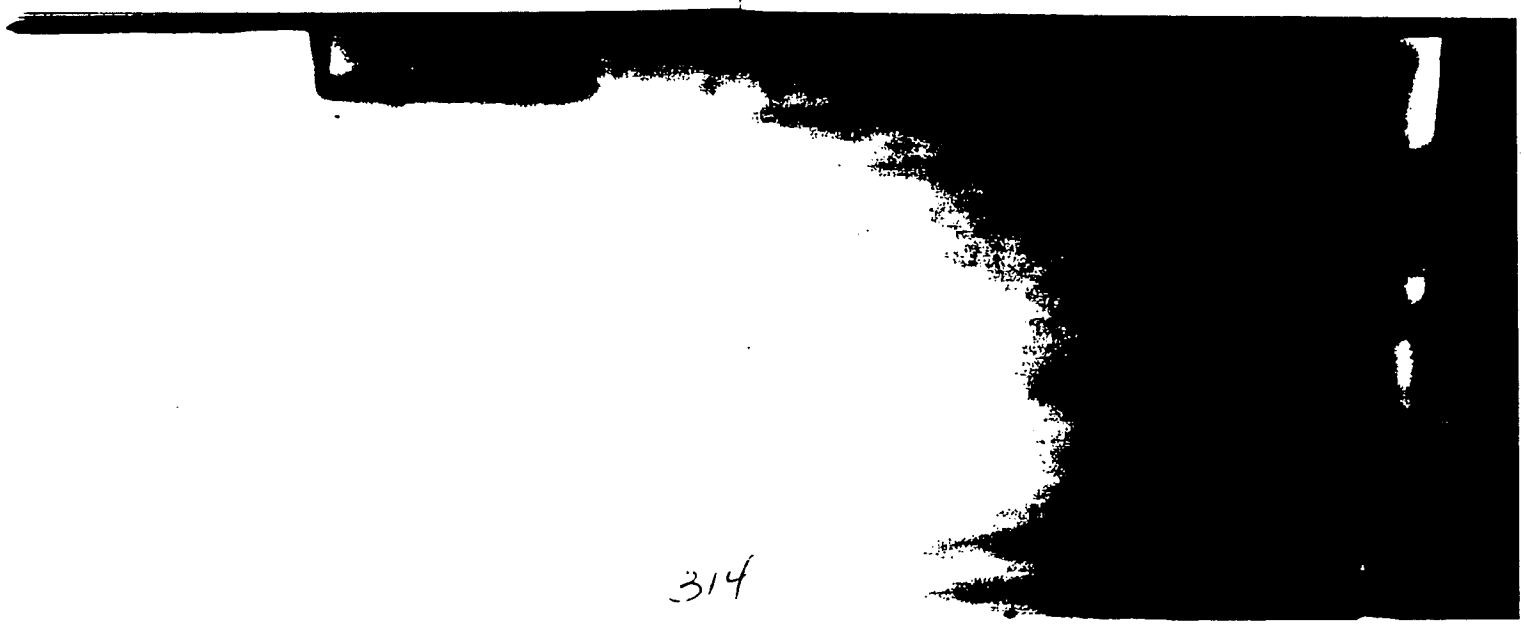

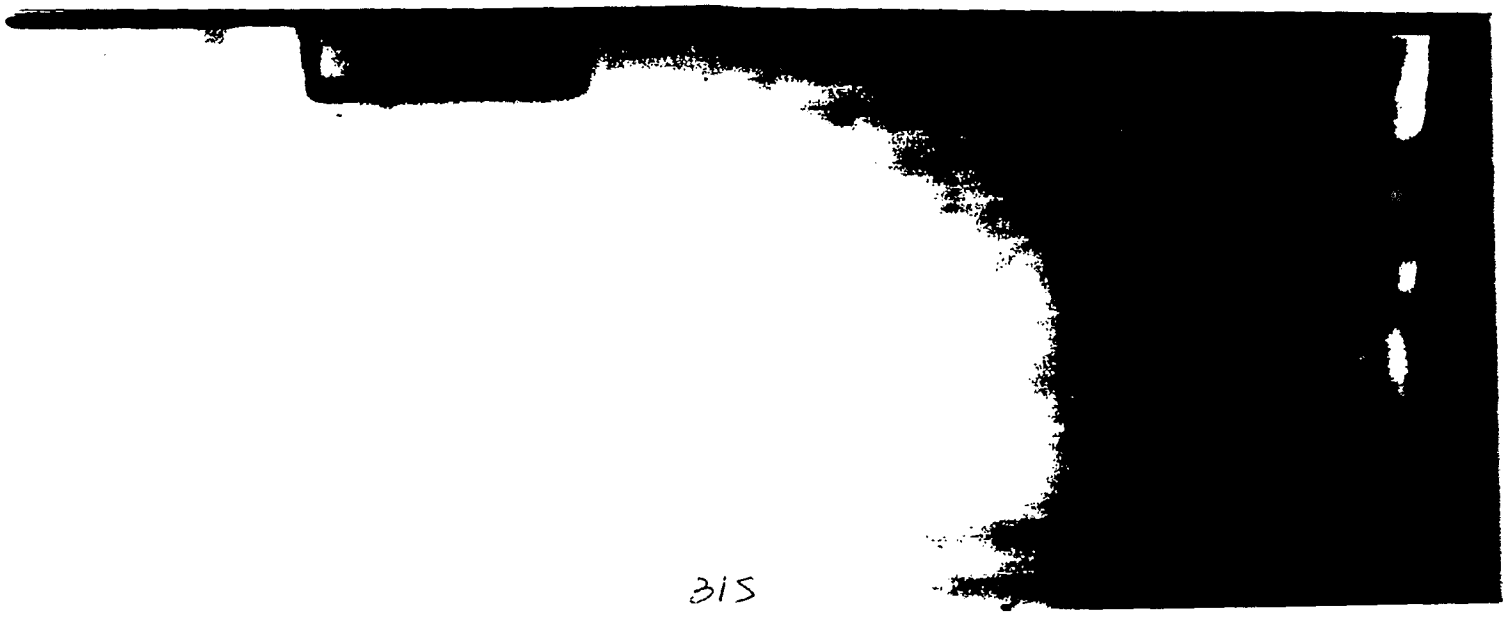

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Summary of Principal Rules Relating to Motions

Can the Speaker Be Interrupted. A speaker can be interrupted only when some question requires immediate consideration. The following motions may be permitted to interrupt:

a. Questions of privilege, when urgent;
b. Appeals, points of order, and parliamentary inquiries arising out of the question or having priority and requiring immediate consideration;
c. Objection to consideration, division of the Assembly, and voting or changing a vote on roll call when raised before other business intervenes.

Is a Second Required. Seconds are not required in legislative bodies, administrative boards and other official public bodies by parliamentary law.

When seconds to motions are required by rules, seconds are still not required for actions which are not technically motions. A member can exercise any right or privilege given him by parliamentary law or by the rules without a second by some other member. The following never require seconds:

a. Points of order
b. Parliamentary inquiries
c. Objection to consideration
d. Requests of any kind—as to withdraw a motion
e. Demands of any kind—as for a division
f. The exercise of any right or privilege given to any one member

What Is the Precedence of a Motion. The orderly consideration of business requires that the more urgent matters be considered first.

Usually each motion relates to other motions in such a manner that it is clear which must first be disposed of.

An amendment to any proposition, for example, requires determination before voting on the original proposition.

Motions are usually listed in a table of precedence in their relation to main motions. The motion to amend is near the bottom of this table but when it is applied to the motion to recess, for example, it is voted upon before the motion to recess, and in this instance its precedence, falls immediately below the motion to adjourn.

In some instances the relative precedence is not so clear, but in fairness to members the same order of precedence should always be followed. In the list of motions in Section 187 the usual motions are listed in the order of their precedence with reference to the main motion.

Is the Question Debatable. All substantive questions presented to a body for its determination and all motions which finally dispose of these questions are debatable. All purely procedural questions are not debatable.

All main questions, amendments and appeals are debatable. Motions to postpone indefinitely, to reconsider, and to rescind are debatable because they finally dispose of the main question. They also open the main question to debate. Motions to refer to committee and to postpone definitely are debatable only as to the reference or postponement.

Procedural questions such as the motions to adjourn, to recess or to lay on the table, and the incidental motions, except appeals, are not debatable. These motions are so simple as to be understood without debate. They are also not sufficiently permanent in effect to justify debate. If these motions are lost they can be renewed at a proper time and if carried, motions are available to meet changing situations. The previous question and motions closing or limiting debate are not debatable because to permit debate on them would defeat their purpose.

A body can control debate. If there are no constitutional, statutory or charter restrictions, it can regulate debate by its rules, or it can control debate on any question by a majority vote.

Can the Question Be Amended. Any question which could have been presented originally in more than one form can be amended. Any question which must be presented in a single definite form cannot be amended.

Thus, main motions, amendments, and motions like to recess, to limit debate, and to postpone definitely can be amended while motions like the previous question, to lay on the table, postpone indefinitely and the incidental motions cannot be amended.

Certain propositions, as requests and points of order and committee reports, are not propositions of the body in the sense that their form is determined by the body but they can be accepted or rejected or accepted with exceptions or limitations.

What Vote Is Required. Generally any action can be taken by a majority vote unless a higher or different vote is required by the constitution or other controlling authority, assuming always that a quorum is present.

A majority of the members voting, and not of the entire membership or the members present, is required to take any action unless a higher or different vote is required by some controlling authority.

When the constitution, charter or other such authority requires a particular proportion or number of votes or prescribes the manner of voting, those requirements must be complied with.

What Is a Quorum. A majority of the members of any body having a definite membership is necessary to enable it to take any legal action, except to adjourn,

or if it can compel its members to attend, to require the attendance of other members.

When a body has an indefinite membership, as a town meeting, the members present at any duly called meeting having authority to act.

A higher or different proportion of the members can be required to constitute a quorum for all or for certain purposes by the constitution, charter or other controlling authority.

Application of Motions to Other Motions. The following are the general rules governing the application of motions to other motions:

1. Main motions cannot be applied to other motions.
2. Subsidiary motions can all be applied to main motions.
3. Any motion can be withdrawn with consent except the motion to reconsider after it is too late to make the motion.
4. Motions closing or limiting debate can be applied to any debatable motion.
5. The previous question can be applied to any debatable or amendable motion because it cuts off debate and other motions.
6. The motion to amend can be applied to any motion which can be properly stated in more than one form.
7. Purely procedural motions are not subject to any delaying motions but are decided as they arise.
8. Certain propositions are not questions before a body for its determination and are therefore not subject to other motions. Parliamentary inquiries addressed to the presiding officer, and demands for division of the Assembly, or division of a question when provided for, are not subject to amendment or other motions nor, of course, to debate.

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BRIEF INDEX

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