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ABSTRACT

Two parliamentary authorities, Robert and Sturgis, disagree on five issues of parliamentary procedure: abstained votes, the motion to reconsider, the number of votes afforded a presiding officer, the requirements for a quorum, and the authority of the presiding officer to create committees. These areas of disagreement may be resolved by examining the precedents set in specific cases where courts have applied the standard provisions of parliamentary procedure to parliamentary law. The Commission on American Parliamentary Practices should research these court decisions involving parliamentary law and should relate them to common parliamentary procedure. The Commission should communicate its findings in terms that laymen will comprehend, so that parliamentary procedure may be rendered a consistent, comprehensible tool of the public. (EE)

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"PARLIAMENTARY PROCEDURE AS LAW"

by

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The subject of this paper had a double genesis: first, in a sense of curiosity regarding the relationship between what we usually teach in parliamentary procedure courses and that vague thing called "parliamentary law"; and secondly, in the self-imposed problem when I switched from using Robert to Sturgis and found myself being asked by students what was actually contained in the court decisions to which Mrs. Sturgis refers.

But simply looking at court decisions has little value without a clear understanding of the direct relationship between decisions and issues of parliamentary procedure. It is the intent of this paper to open to view this relationship, however slightly.

Over a period of years I have kept track of a number of problems that have come to me and have drawn on this collection for five areas that I would like to discuss in this paper.

The first problem came to my attention in the instance of an organization headed by a college president's wife who announced that in a mail ballot, all ballots not returned would be counted as affirmative votes for the proposals contained in the ballot.

What this meant was that a person who exercised his right to abstain from voting would actually find that his vote had been

counted in a way that he did not intend. Both Robert's and Sturgis agree that members have the right to abstain from casting a vote, but the question here is: Can those "passed" votes be counted in the decision? In the case of Caffey v. Veale, (Caffey v. Veale (1944) 193 Oklahoma 444, 145 Pa. (2d) 961.) the Oklahoma court made it very clear that a passed vote is simply that, it is neither an affirmative nor a negative vote.

In this decision, the Supreme Court of Oklahoma made a statement regarding the act of voting that perhaps should be quoted in full: "The act of 'voting' is a positive act whereby the person makes known an affirmative or negative position, and no presumption should be indulged that a voter who does not vote yea or nay is thereby to be counted among those who vote yea, particularly where it is necessary to so count in order to support adoption of the matter under consideration." The reason for referring to this decision is that while I have indicated that both Robert's and Sturgis agree on the right of abstaining, they give no further information regarding the abstained or passed vote.

The second area which has come to my attention rather frequently is the matter of the motion to reconsider. As you all know, the new edition of Robert's holds to the position that was initiated originally by the General in that it says that "a person in order to move reconsideration must have voted on the prevailing side."

Sturgis, on the other hand, drawing support from Clarence Cannon, holds that anyone may move reconsideration.

This issue has bothered me for some time because I could not reconcile in my own mind the position of Robert's and two other facts: (1) that a member's right to move reconsideration would be dependent upon how he had voted in an earlier vote, and (2) that his right to a secret ballot could not be sustained, if the earlier vote had been by written ballot and he therefore had to reveal how he had voted.

Robert's makes no reference to any court decision in discussing the motion to reconsider. In the case of Locke v. the City of Rochester, (The People ex rel. Locke v. the Common Council of the City of Rochester (1871) 5 Lans. S. C. Rep. (N. Y.) 11.) the Supreme Court of New York indicated that the matter of the motion to reconsider is not as simple or one-sided as Robert's would lead us to believe.

The appropriate paragraph in the court's decision is as follows: "It was unquestionably competent for the Board to reconsider the vote by which the ordinance was lost. Parliamentary law requires that the motion to reconsider be made by one who voted with the majority on the motion proposed to be reconsidered. But, whether this shall be insisted upon or dispensed with, and the motion made by one voting with the majority, rests exclusively

in the discretion of the body whose action it is proposed to reconsider, and no other tribunal has a right to treat a reconsideration thus moved for as void. A majority could dispense with the rule requiring the reconsideration to be moved by the one who voted with the majority, and if the majority treat the motion as regularly made, it is to be considered as a tacit suspension of the rule. The members of the body alone have the right to object to the violation of the parliamentary rule."

At first glance, this paragraph may seem to only confuse the issue, for it does at one and the same time appear to support Robert's position that the right to move reconsideration is limited and at the same time support the Sturgis position that the right to move reconsideration is open to anyone. However, it is, I think, clear that Robert's arbitrary statement is not supported by the modified factors referred to in the court decision.

It should be noted that the Court would only require a majority vote, one more than half of the valid votes cast, to void Robert's position and not a two-thirds vote as might normally be required to change such a provision found in the parliamentary authority that is being suspended.

The third area of consideration is the question as to whether a presiding officer who is a member of the organization has a second vote as the presiding officer, which he may use in

addition to his vote as a member.

There is uncertainty in the minds of many organizations because Robert's, again taking an arbitrary stand, says that there shall be no second vote by a chairman. Sturgis, on the other hand, provides that the presiding officer may have a second vote, if the by-laws or constitution of the organization specifically provides for such.

Here again, the narrow and unelaborated statement of Robert's is not supported by any reference to a court decision. However, Sturgis, referring to the case of O'Neil v. O'Connell, (O'Neil v. O'Connell (1945) 300 Ky. 707, 189 S. W. (2d) 965.) has support in the decision of the Court of Appeals of Kentucky wherein it states: "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 provided." Therefore, an organization may, if it so desires, give its presiding officer, who is also a member of the organization, the right to cast a second vote; or it may not. But, the position in Robert's does not even allow for the possibility of such.

The fourth area is the ever-recurring question of what constitutes a quorum. There are two aspects to this in problems that have come to my attention.

The first is whether or not the presiding officer is to be counted as a part of the quorum. This becomes an issue more often than we realize, particularly among voluntary organizations where the attendence at a given meeting is small and the difference of one person makes the difference as to whether business can proceed.

Robert's again is not clear on this matter and makes no reference to court decisions, while Sturgis says that the presiding officer is to be counted in the quorum count.

However, the two court decisions referred to by Sturgis, Shugars v. Hamilton (Shugars v. Hamilton (1906) 122 Ky. 606, 92 S. W. 564.) and Defoe v. Harshaw (Defoe v. Harshaw (1886) 60 Mich. 200, 26 N. W. 879.) refer to two cases involving municipal council meetings that at first glance do not appear to apply to voluntary organizations, which is the kind most of us deal with in the majority of problems.

However, the Shugars v. Hamilton decision is applicable in this principle: when a member of an organization is serving as the presiding officer pro-tempore, and the presiding officer is not normally counted in the quorum of that organization, having been excluded by specific provision, the member serving as the pro-tempore presiding officer is to be counted for the purpose of obtaining a quorum as a member and not as presiding officer.

The other case, Defoe v. Harshaw, is applicable in that the Michigan Court makes it clear that in order to avoid confusion organizations may well desire to specifically state the position of presiding officers of boards, committees, and commissions as to the question of membership on those entities and, therefore, on those boards, committees, and commissions establish the needed quorum count and whether the presiding officer is to be included or excluded.

Another area of the quorum issue which needs to be investigated is the rather astounding statement in Robert's on page 355, Rules of Order, Newly Revised, that during a roll call vote when it becomes apparent that not enough members have answered the roll call to establish the presence of a quorum either by voting in the affirmative or negative or by indicating only their presence by abstaining from voting, that the chair shall direct the secretary to list the members physically absent from the chamber as being "present" so as to obtain the quorum count necessary for the conducting of business. It seems to me that since Robert's makes no reference to a court decision permitting such action, the question must be raised how any chairman has, as Robert's says, the duty to record in the permanent minutes the roll call vote of an organisation that persons were present when they were not. To be so indicated would record them as having "passed" their vote. If he can do this, would not the next step be to grant the presiding officer the power to indicate an affirmative or negative vote for

those not physically present?

The fifth and last area of consideration to come to my attention is when presidents of organizations have inquired as to whether or not they have the power to create committees or the power to delegate authority in cases where there has been no motion made and passed in a business session specifically creating a committee or delegating authority.

Again, the two major parliamentary authorities, Robert and Sturgis, disagree. Robert's, on page 486, flatly says, "No." Sturgis, on the other hand, says that a presiding officer does have the power to create committees to assist him in fulfilling the functions and duties of his office, and it follows that the presiding officer would therefore have the right to delegate some of his power and authority to a person or persons. Mrs. Sturgis does make it clear that persons receiving delegated authority are responsible to the person from whom they received that authority or responsibility.

But organizations still are confused when they turn to Robert's and find the flat, negative response. So, the question is: On what basis does Sturgis allow for this creation of committees or delegation of authority?

Two cases are cited: Dewey v. National Tank Maintenance

Corporation (Dewey v. National Tank Maintenance Corp. (1943), 233 Iowa 58, 8 N. W. (2d) 593.) and Gerrish Dredging Company v. Bethlehem Shipbuilding Corporation (Gerrish Dredging Co. v. Bethlehem Shipbuilding Corp. (1923) 247 Mass. 162, 141 N. E. 867.) These two cases, the first from Iowa and the second from Massachussetts, are rather involved and technical; and we need not go into all the details. But, they clearly support the distinction that Mrs. Sturgis makes between the discretionary duties of a president and the administrative duties of the president.

The discretionary duties of the president are those which cannot be delegated to another person or given to a committee of the president's creation. These discretionary duties are those that involve a matter of trust and are dependent upon the president using his own powers of discretion, experience, and thought. The case of Dewey v. National Tank Maintenance makes this clear.

However, those administrative duties which are routine, repetitive, and often time-consuming, that require no specific or special abilities on the part of a subordinate or members of a committee may be delegated to that subordinate or to a committee created by the president. The case of Gerrish Dredging Company v. Bethlehem Shipbuilding Corporation supports this delegation of authority.

There is no way that an organization using Robert's Rules of Order,

Newly Revised, can be aware of the distinction between discretionary and administrative duties, because on page 380, Robert's says that any discussion of the administrative duties of the presiding officer or president are "outside the scope of parliamentary law."

Therefore, the final question: Is there something called parliamentary law? can be answered only by specific reference to court decisions. In this matter, Robert gives no help, neither in the new Robert's Rules of Order, Newly Revised, nor, for that matter, in his book entitled, Parliamentary Law. In neither publication is there a single, specific reference to a court decision.

Mrs. Sturgis does refer in footnotes to court decisions, but does not elaborate any of these decisions.

Therefore, it appears to me that there is a whole area of not only research, but communication of the results of that research, that might well fall within the scope of the Commission on American Parliamentary Practices. And this is to not only locate these court decisions involving parliamentary law, but to relate them to common parliamentary procedures. And to communicate them so that laymen involved in voluntary associations can understand the application.