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executive committee meeting of a committee of the House of Representatives on the floor of the House?

THE SPEAKER: The Chair would like to inquire of either the gentleman from Louisiana or the gentleman from Texas whether the gentleman from Louisiana is reading from the executive session record?

MR. WAGGONNER: Mr. Speaker, are you addressing the inquiry to me or to the gentleman from Texas?

THE SPEAKER: Either one may answer. . . .

MR. [OLIN E.] TEAGUE of Texas: Mr. Speaker, it is my remembrance that what he is quoting was what took place at an executive session.

THE SPEAKER: The Chair would like to make the further inquiry as to whether or not the members in the executive session voted to make public what took place in the executive session?

MR. TEAGUE of Texas: It is my memory that we did not vote on that and it was not discussed.

THE SPEAKER: The Chair would suggest to the gentleman from Louisiana that he refrain from referring to what took place in the executive session.

§ 23. Reporting Measure From Committee Requires Quorum

Quorum Consists of Majority of Members of Committee Who Must Be Actually Present

§ 23.1 No measure is to be reported from any committee unless a majority of the committee was actually present when the measure was ordered reported.

On May 11, 1950,[13] a resolution was withdrawn when a point of order was raised that the measure had been reported out of committee in the absence of a quorum. Mr. John E. Rankin, of Mississippi, then initiated the following exchange with Speaker pro tempore John W. McCormack, of Massachusetts:

> Mr. Speaker, under the rules of the House and the rules of every committee, legislation is passed every day without a quorum being present, and unless that question is raised they cannot go into the courts and contest the legislation. The same thing applies to the committee. A ruling to the contrary would simply demoralize legislative procedure as far as the committees of this House are concerned.
>
> THE SPEAKER PRO TEMPORE: The Chair calls the attention of the gentleman from Mississippi to paragraph (d) of section 133 of the Legislative Reorganization Act [of 1946], which reads as follows:
>
>> No measure or recommendation shall be reported from any such committee unless a majority of the committee was actually present.[14]

Formal Meeting Requirement

§ 23.2 A standing committee cannot validly report a meas-

13. 96 CONG. REC. 6920, 81st Cong. 2d Sess.

14. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

ure under the rules unless the report was authorized at a formal meeting of the committee with a quorum present.

On Sept. 30, 1966,[15] Omar T. Burleson, of Texas, Chairman of the Committee on House Administration, submitted a privileged report (H. Rept. No. 2158), to accompany a resolution (H. Res. 1028), providing funds for his committee and asked for its immediate consideration. At this juncture, Mr. Jonathan B. Bingham, of New York, rose to a point of order against the resolution on the ground that a quorum of the committee was not present when the resolution was reported.

In the course of the ensuing discussion, the following exchange took place between Speaker John W. McCormack, of Massachusetts, and Mr. Burleson:

THE SPEAKER: . . . The Chair wants to ask the gentleman from Texas, the chairman of the committee, was a committee meeting called for the purpose of acting on this resolution? And, if so, was a quorum present?

MR. BURLESON: Mr. Speaker, I have explained in some detail the procedure used in this instance.[16] There was an agreement by a majority of the committee that the resolution may be presented.

THE SPEAKER: Was there a meeting? Did the committee meet? Was there a quorum present and voting and acting on it?

MR. BURLESON: Mr. Speaker, on infrequent occasions when we have resorted to this procedure as a matter of convenience and of expediting legislation, it has always been accepted as establishing a quorum. As far as I know this procedure has not been challenged. In this case a majority of the committee agreed to the resolution and I insist that a quorum was established and that the report is proper and that the resolution is privileged.

THE SPEAKER: The Chair is prepared to rule.

The Chair does not inquire into the procedure of a committee, in reporting a bill, unless a point of order as to the matter is raised and thus called to the attention of the Chair. Unless a Member makes a point of order, the Chair does not go into the question of committee procedure.

However, since the point of order has been raised, the Chair will point out that the provisions of clause 26(e), rule XI,[17] make it clear that no measure

15. 112 CONG. REC. 24548, 89th Cong. 2d Sess.

16. Mr. Burleson was referring to a practice which the committee employed on occasion in which a telephone poll of members would be conducted to verify committee approval. For further details, see § 25.1, infra.

17. At the time, Rule XI clause 26(e) [H. Jour. 1483, 89th Cong. 2d Sess. (1966)] stated: "No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present." This provision is now part

can be reported from a committee unless a majority of the committee were actually present.

The chairman of the Committee on House Administration has stated that the resolution he now seeks to call up was not ordered reported at a formal meeting of the committee where a quorum was present.

Therefore, the Chair sustains the point of order made by the gentleman from New York [Mr. Bingham].

The report and resolution are recommitted to the Committee on House Administration.

Shortly thereafter, Mr. Burleson asked for the immediate consideration of House Resolution 1028 by unanimous consent. Mr. Bingham voicing objection, however, the bill continued as recommitted because of the invalid report.

Presumption of Quorum Upon Issuance of Report

§ 23.3 Unless a point of order is raised, the House assumes that reports from committees are authorized when a quorum of the committee was present.

On Sept. 30, 1966,[18] Omar T. Burleson, of Texas, Chairman of the Committee on House Administration, submitted a privileged report (H. Rept. No. 2158), to accompany a resolution (H. Res. 1028), providing funds for his committee and asked for its immediate consideration. Mr. Jonathan B. Bingham, of New York, then rose to make a point of order against the resolution on the ground that a committee quorum was not present when the resolution was reported. A discussion then ensued as to certain procedures undertaken by the committee with respect to measures of this kind.[19]

Prior to announcing his decision[20] with respect to the point of order, Speaker John W. McCormack, of Massachusetts, made the following observation:

The Chair does not inquire into the procedure of a committee, in reporting a bill, unless a point of order as to the matter is raised and thus called to the attention of the Chair. Unless a Member makes a point of order, the Chair does not go into the question of committee procedure.

Privileged Measure and Presence of Quorum

§ 23.4 Where the rules accord privileged status in the House to a measure reported from a particular committee,

of a different clause [Rule XI clause 2(l)(2)(A), House Rules and Manual § 713(C) (1979)].

18. 112 CONG. REC. 24548, 89th Cong. 2d Sess.

19. See § 25.1, infra, for details.

20. See §23.2, supra.

such status is retained only if the measure is reported when a quorum of such committee is present.

On May 11, 1950,[1] Speaker pro tempore John W. McCormack, of Massachusetts, recognized Mary T. Norton, of New Jersey, Chairwoman of the Committee on House Administration, who offered a privileged[2] resolution (H. Res. 495), providing for the payment of certain investigatory expenses from the contingent fund of the House. She asked for its immediate consideration. A point of order having been raised against consideration of the measure on the ground that a quorum was not present when the committee reported it out, Mrs. Norton withdrew the resolution.

Shortly thereafter, Mr. Thomas B. Stanley, of Virginia, asked the following series of parliamentary inquiries regarding the status of House Resolution 495:

> What is the status of the resolution now that has just been withdrawn?
>
> THE SPEAKER PRO TEMPORE: The gentlewoman from New Jersey has withdrawn the resolution. The matter is not before the House. Therefore, there is no question for the Chair to pass upon.
>
> MR. STANLEY: Could the resolution be properly presented to the House again without going back to the committee?
>
> THE SPEAKER PRO TEMPORE: Of course, it could be taken up by unanimous consent. In the event of its being presented again, a point of order could be raised; but the Chair would not express any opinion now on the point of order that might be raised at that time.
>
> MR. STANLEY: A further parliamentary inquiry, Mr. Speaker. Is this a privileged matter?
>
> THE SPEAKER PRO TEMPORE: If it is reported out of committee with a quorum present, it is a privileged matter.

Committee Reconsideration of Votes Taken in Absence of Quorum

§ 23.5 Where a committee votes to report several bills in the absence of a quorum and proceeds by omnibus motion to reconsider them en bloc with a quorum present, unless a point of order is raised in the committee at that time demanding the bills' separate consideration, such action is in accordance with the parliamentary procedures of the House.

1. 96 CONG. REC. 6920, 81st Cong. 2d Sess.
2. The Committee on House Administration has "leave to report at any time" on "all matters of expenditure of the contingent fund of the House;" see Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).

On July 9, 1956,[3] Speaker Sam Rayburn, of Texas, recognized Mr. John L. McMillan, of South Carolina, who, by direction of the Committee on the District of Columbia (which he chaired), called up a bill (H.R. 4697), to amend the 1954 Alcoholic Beverage Control Act of the District of Columbia, and asked unanimous consent that the bill be considered in the House as in Committee of the Whole. Immediately thereafter, Mr. Albert P. Morano, of Connecticut, raised a point of order against consideration of the bill on the ground that a quorum was not present when the committee ordered the measure reported. This prompted some discussion and much confusion owing to the fact that Mr. McMillan, under the Chair's questioning, indicated that a quorum was not present when the bill was passed, while Mr. Howard W. Smith, of Virginia, who was also a member of the committee, recalled the presence of a quorum.

As the following exchange indicates, both gentlemen were correct:

> THE SPEAKER: . . . The gentleman from South Carolina said that when this bill was reported there was not a quorum present. Is the Chair quoting the gentleman from South Carolina correctly?
>
> MR. MCMILLAN: That is correct, Mr. Speaker.
>
> MR. SMITH of Virginia: . . . It is true, I believe, there was not a quorum present when any one of these bills was considered, but before the session adjourned a quorum did appear, and then a blanket motion was made to reconsider all of the bills that had previously been passed upon and to vote them out, which motion was carried. May I ask the chairman of the committee if that is a correct statement of what occurred?
>
> MR. MCMILLAN: That is correct.

These facts prompted Mr. Morano to initiate the ensuing exchange[4] with the Chair:

> MR. MORANO: There is obviously a contradiction here, Mr. Speaker. The chairman of the committee said there was not a quorum present when this bill was considered. The issue before the Speaker, as I understand it, is a ruling on this bill, not on other bills that were considered en bloc.
>
> THE SPEAKER: That is correct, but the gentleman from South Carolina said that on the last action on the bill in the committee a quorum was present.
>
> The Chair under the circumstances must overrule the point of order made by the gentleman from Connecticut.

Although a point of order based on other considerations[5] was subsequently sustained against

3. 102 CONG. REC. 12199, 84th Cong. 2d Sess.

4. *Id.* at pp. 12199, 12200.

5. The committee reported the bill while the House was in session without having received permission to sit.

Mr. McMillan's motion, the Chair's initial ruling provoked several parliamentary inquiries, including the following question raised by Mr. John Taber, of New York:

> Mr. Speaker, is it proper to consider by a single vote a reconsideration of the votes by which several bills have been reported, and then make a single omnibus motion by which all those bills that have been so reconsidered would be reported?
>
> THE SPEAKER: If, as seems to be true in this instance, no point of order was made, then the action of the committee is presumed to have been in accordance with parliamentary procedure of the House of Representatives.

Waiver of Committee Quorum Requirement

§ 23.6 The House rejected a resolution, reported from the Committee on Rules, providing for the consideration of a bill improperly voted on and reported by the Committee on Post Office and Civil Service.

On July 23, 1973,[6] by direction of the Committee on Rules, Mr. Claude D. Pepper, of Florida, called up House Resolution 495 and asked for its immediate consideration. The measure provided that upon the adoption of the resolution, it would be in order to move, "clause 27(e), Rule XI[7] to the contrary, notwithstanding," that the House resolve itself into the Committee of the Whole for the consideration of a bill (H.R. 8929), affecting certain postal rates.

As the discussion proceeded, Mr. Pepper sought to explain the origin of the waiver provision, resulting in the following[8] exchange:

> MR. PEPPER: Mr. Speaker, House Resolution 495 provides for an open rule with 2 hours of general debate on H.R. 8929, a bill to provide relief from postal rate increases for certain mailers.
>
> House Resolution 495 provides that the provisions of clause 27(e), rule XI of the Rules of the House of Representatives are waived.
>
> I will state to my able friend from Iowa, whose inquiry I anticipate, if I may, that the occasion for this request for a waiver by the Committee on Rules is this: The committee [the Committee on Post Office and Civil Service] had before it H.R. 7554. The committee, on the 21st of June, I believe it was, voted, with a quorum present, by

6. 119 CONG. REC. 25476, 93d Cong. 1st Sess.

7. This clause provides [Rule XI clause 27(e), *House Rules and Manual* § 735(e) (1973)] that: "No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present."

8. 119 CONG. REC. 25477, 25478, 93d Cong. 1st Sess.

a record vote of 33 to 10, to report out the committee bill, H.R. 7554, with amendments. The bill and the amendments were voted favorably by the committee.

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, will the gentleman yield?

MR. PEPPER: I yield to the gentleman from Illinois.

MR. DERWINSKI: The gentleman said the vote was 33 to 10. It was 13 to 10.

MR. PEPPER: I am sorry. It was 13 to 10. I understand that there are 25 members of the committee, and 23 voted, and the vote to report out the bill was 13 to 10.

The committee [on Post Office and Civil Service] voted to report out a clean bill, which would embody H.R. 7554 and the amendments in a single clean bill.

On the day following that meeting of the committee there was introduced a clean bill, embodying exactly H.R. 7554 plus the amendments that had been voted upon favorably by the committee. There was not a subsequent meeting of the committee upon the clean bill. But the clean bill embodying what was voted upon exactly by the committee, as H.R. 8929, was reported out and presented to the Rules Committee. The situation was reported to the Rules Committee, and the Rules Committee voted to recommend consideration of the bill to the House, but recommended that there be a waiver of points of order so that any technicality which might arise out of that situation would be cured by the waiver of the rule, if the House adopted the waiver of the rule.

Following further discussion, the resolution was rejected[9] by a rollcall vote.

9. *Id.* at p. 25482.

§ 24. Point of Order Based on Lack of Committee Quorum—Timing

Effect of Failure to Raise in Committee

§ 24.1 Failure to raise a point of no quorum upon the taking of a committee vote to report a privileged resolution does not bar the subsequent raising of such a point of order when the measure is reported as privileged to the House.

On May 11, 1950,[10] Speaker pro tempore John W. McCormack, of Massachusetts, recognized Mary T. Norton, of New Jersey, Chairwoman of the Committee on House Administration, who, acting by direction of that committee, offered and asked for the immediate consideration of a privileged resolution (H. Res. 495), providing for the payment of certain investigatory expenses of the Committee on the District of Columbia. Immediately thereafter, Mr. Wayne L. Hays, of Ohio, made a point of order against the resolution on the ground that a quorum was not present when it was reported out of committee.

Before the Chair was able to conclusively determine whether or

10. 96 CONG. REC. 6920, 81st Cong. 2d Sess.