



South Dakota Legislative Research Council

Issue Memorandum 96--11

THE LEGISLATIVE DAY: TIME AS A PARLIAMENTARY CONCEPT

Introduction

Few, if any, parliamentary usages are the continuing cause of as much public mirth and speculation as the hoary and time-honored practice of “covering the clock.” But, whether viewed as a relatively innocent and light-hearted distraction from the serious business of concluding a legislative session or an unfortunate opportunity for the press and other critics to belittle and ridicule the legislative process, it would be difficult to identify a parliamentary custom that is so widely misunderstood for so little reason. This memorandum will focus on the concept of the legislative day and attempt to explain how such a simple abstraction could have become the source of such general and popular confusion.

The definition of a Legislative Day

Although a rose is, in a literary and literal sense, generally speaking, a rose, few would assert the same about a day. Just a few of the more significant varieties of legal days to be culled from *Corpus Juris Secundum*, the original and most comprehensive legal encyclopedia, would include the business day, the calendar day, the eight-hour day, the entire day, the judicial day, the meridional day, the solar day, the twenty-four hour day, and the

working day. Each of these days has distinctive legal characteristics, and a body of case law has grown up interpreting each concept. However, nowhere in *Corpus Juris Secundum* is the term, legislative day, addressed. The reason is simple. The legislative day is essentially a parliamentary, not a legal, construct. Although a legislative day has some legal ramifications, it is inherently procedural.

If parliamentary law exists as a broad legal category, it is clearly distinguishable from civil, criminal, or administrative law. While civil and criminal law applies to everyone and may be enforced in the courts, parliamentary law is fundamentally associative and self-executing, not unlike church laws or club bylaws which are binding only on those who freely assent and only so long as they remain members of the association in question. As generally understood, parliamentary law encompasses the rules and usages of legislatures or similar deliberative bodies which regulate legislative procedure. The body adopts its own rules, amends and repeals them from time to time, and enforces them itself. The legislative body may also be subject to constitutional or statutory restrictions; but, these are of a fundamentally different character from parliamentary law. As 67A C.J.S. § 10 states:

The courts will not disturb the ruling on a parliamentary question made by a deliberative body having all the necessary authority to make rules for its governance and acting within the scope of its powers. In so far as its judgment and direction are uncontrolled by the law of the land, it is free from the control of the courts. Action taken by elected representatives in conformity with the established governing procedures of their organization are valid and legally irrefragable; this is so even where there has been no participation or informed consent by the constituencies of such representatives. However, in so far as acts of a deliberative body are directed by law, it is subject to judicial authority.

In South Dakota, although the Constitution limits the Legislature to meeting no more than forty and thirty-five legislative days in the long and short sessions, respectively, there is no constitutional or statutory definition of a legislative day. If there were a constitutional or statutory definition, those provisions could be enforced in a court of law. But, in South Dakota, as in most other jurisdictions, a legislative day is defined in rule, specifically section 271(1) of *Mason's Manual of Legislative Procedure*:

A legislative day can be terminated only by an adjournment or some actual dispersing of the assembled membership amounting to the same thing.

It is clear, therefore, that a legislative day is not identical to a calendar day which runs from midnight to midnight. A legislative day is grounded in legislative intent; if the intent of the Legislature is that the "day's" legislative work should continue, the "legislative day" does not end until that determination is shown by adjournment or a dispersal constituting adjournment. The body may recess from time to time. In fact, the body need not meet for a protracted interval, provided that the work of the body progresses from time to time in its committees. This latter point is illustrated in section 271(3) of *Mason's*:

The meeting and action of a legislative committee on a day on which neither house is in session does not constitute a legislative day and should not be included among the legislative days of the session.

Although, under ordinary circumstances, a legislative day will roughly correspond to a calendar day, the Legislature has sole discretion as to the length, as expressed in time, i.e., hours and minutes, of any legislative day. If the Legislature wishes to work through the night or to recess from time to time over several days, the legislative day will constitute the time from adjournment to adjournment whether that is twelve hours, twenty-four hours, forty-eight hours, seventy-seven hours, etc. Likewise, the Legislature could, although the reasons for doing so are obscure, toll two or more legislative days in the same day by meeting and adjourning the requisite number of times.

Sources of Confusion

If a legislative day is, as is clearly the case in South Dakota, from legislative adjournment to

legislative adjournment, from whence does all the confusion arise? Obviously, the most frequent cause must be that since few people understand that there is a difference between a legislative and a calendar day, they, being accustomed to thinking in terms of calendar days, assume that a legislative day is the same as a calendar day. This misconception is necessarily reinforced by the fact that, in most cases, the Legislature ultimately does conduct one legislative day per calendar day. A more serious vindication of this error arises when members have recourse to such unnecessary practices as covering the clock at midnight or recording in the journals that adjournment occurred at 11:59 p.m. Although, a moment's reflection would indicate the futility of such transparent ruses if legal consequences were in

fact entailed, the misinformed are thereby confirmed in their suspicion that the Legislature "got away with" some expediency.

A more logical cause for confusion lies in the fact that many state legislatures do employ calendar days rather than legislative days to regulate their sessions. Still other states require the Legislature to complete its business by a specific date or have no limits on how long the Legislature can meet. The following table illustrates these divisions. It should, however, be noted that most states have provisions for calling special sessions or extending regular sessions.

Legislative Sessions

Legislative Days	Calendar Days	Date Specific	Unlimited Time
Alabama	Alaska	Connecticut	Arizona
Georgia	Arkansas	Delaware	California
Hawaii	Colorado	Maine	Idaho
Indiana	Florida	Minnesota	Illinois
Kentucky	Kansas	Missouri	Iowa
Louisiana	Maryland	South Carolina	Massachusetts
Montana	Mississippi		Michigan
Nebraska	Nevada		New Jersey
New Hampshire	New Mexico		New York
North Dakota	Oklahoma		North Carolina
Rhode Island	Texas		Ohio
South Dakota	Utah		Oregon
Tennessee	Virginia		Pennsylvania
Wyoming	Washington		Vermont
	West Virginia		Wisconsin

Obviously, in any state with a constitutional

provision that requires the Legislature to

complete its session in sixty calendar days, for example, or by June thirtieth, any attempt to conduct business after midnight of the final permissible day would be illegal and could be challenged in court. Although the courts are reluctant to review cases arising out of procedural disputes about the legislative process, if the basis for the dispute is grounded in constitutional or statutory provisions, they will often intercede. South Dakota and other states that utilize an agenda of legislative days thus enjoy a measure of security that states utilizing an agenda of calendar days do not have.

excellent implement for scheduling and completing the modern legislature's workload.

Conclusion

South Dakota and many other midwestern and western states severely restrict the number of days, legislative or calendar, that the Legislature may meet. In the late nineteenth century the principal benefit of this concentrated mid-winter session was to finish the legislative business before the onset of calving and spring plowing. Today, with far fewer working farmers and ranchers in the Legislature and with a far greater press of legislative business, the wisdom of retaining these century-old time constraints is sometimes called into question. However, the flexibility that the concept of the legislative day provides to legislative leaders is an

This issue memorandum was written by Reuben D. Bezpaletz, Chief Analyst for Research and Legal Services for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
